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Report of the People with Disabilities Access Commission

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MAINE= HUMAN RIGHTS COMMISSION

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January 12, 1996

Senator S. Peter Mills, Chair
Representative Sharon Anglin Treat, Chair
Judiciary Committee
State House
Augusta ME 04333

51 State House Station
Augusta, Maine 04333-0051

Executive Director
PATRICIA E. RYAN

Commission Counsel
JOHN E. CARNES

RE: Report of the People with Disabilities Access Commission

Dear Senator Mills and Representative Treat:

The People with Disabilities Access Commission "Access Commission" was originally established in April 1994 by Resolve (Chapter 73), and extended by legislation in June 1995 to present final findings and recommendations to you by January 15, 1996. I am pleased to transmit a report, recommendations, and suggested legislation to you.

MEMBERSHIP

Membership on the Access Commission was specified by Resolve and amended by the 1995 legislation. Eight members were appointed by the Governor; four by the President of the Senate; four by the Speaker of the House; and three members, including the Chair, were specified by Statute. A list of members, who they represented, and appointing authorities is appended to this Report.

ORGANIZATION

Two subcommittees were formed to study and make final recommendations to the Legislature on issues remaining that were identified during work with the Judiciary Committee in the Spring of 1995. The two subcommittees were Vertical Access, chaired by John Morris; and Title II - Government Goods & Services, chaired by Laurel Shippee. Both of these subcommittees met numerous times over the summer and fall; developed recommendations; and drafted legislation where necessary. The full Commission met and adopted these recommendations on January 8, 1996. Each subcommittee's report is appended to this overview.

SUMMARY OF REPORT

-- Vertical Access recommendations regarding elevators and lifts will be pursued with the Elevator Board. It is the hope of the Commission that legislation will not be necessary in this area; and that code adoptions for Maine can be achieved through Elevator Board Rules.

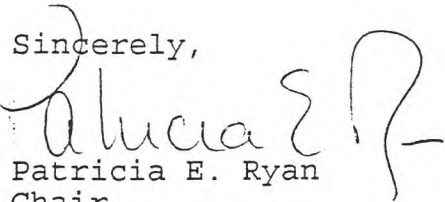
-- Legislation will be submitted creating a new subchapter in the Maine Human Rights Act concerning public entities and the ADA Title II provisions. Modifications will be made in the existing subchapter in the Act regarding public accommodations to distinguish the obligations of public and private entities as they apply to the operators of public accommodations. Specific language will be incorporated into the Act regarding drivers license provisions.

-- No legislation will be submitted regarding incorporating provisions of the ADA's Title IV (Telecommunications) or provisions relating to public transportation in Titles II and III of the ADA. New enforcement authorities would have to be created for both of these areas to parallel that of the ADA.

THE COMMISSION

The assurance of non-discrimination for people with disabilities coupled with the legitimate business interests of employers and building owners is a challenge and opportunity that continues. Members of the Access Commission, representing a diversity of interests, worked diligently to fulfill its mandate while insuring the best for all of Maine's citizens. We believe that we have met this challenge, and thank you for this opportunity to be of service.

Sincerely,


Patricia E. Ryan
Chair

Enc.

PEOPLE WITH DISABILITIES ACCESS COMMITTEE

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Report and Recommendations of the Title II Subcommittee

Title II of the Americans With Disabilities Act (ADA) prohibits state and local entities from discriminating against any qualified individual with a disability in their programs, services and activities. Title III of the ADA guarantees disabled people the "full and equal enjoyment of the goods, services, facilities, privileges, advantages or accommodations of any place of public accommodation". The recommendations of the Access Commission adopted by the legislature during the last session addressed amendments to the MHRA to attain consistency with Title III of the ADA. The task of this subcommittee was to achieve the same result with regard to Title II requirements.

The ADA definition of a place of public accommodation is a facility, **operated by a private entity**, whose operations affect commerce and fall within at least one of 12 categories. The MHRA definition of a place of public accommodation is a facility, **operated by a public or private entity**, whose operations fall within at least one of several categories. Further, it was determined by the Maine State Supreme Court that a place of public accommodation under Maine law did not extend to programs, services and activities of state and local governments but only to government facilities.

The Subcommittee agreed that there was a need to separate public accommodations operated by private entities from public accommodations operated by public entities in Maine law in order to reduce confusion and make it consistent with the ADA; several meetings were devoted to discussion of the appropriate structure in which to accomplish this. It was ultimately decided to draft language that creates a new subchapter for public entities and remove public entities from the definition of public accommodations. One of the results of this approach is to expand protections for other traditionally protected classes (race, color, sex, national origin, religion) under Maine law beyond public accommodations operated by public entities to include programs, services and activities of public entities. Although this would be new coverage under Maine law, it consistent with federal civil rights law and will not have a significant impact.

The other issue that generated considerable discussion was the proposal by the Bureau of Motor Vehicles to include specific language in the state statute regarding the issuance of drivers' licenses. The primary concern with this proposal of several subcommittee members was the inclusion of federal regulatory and commentary language in state statute in that it violates common drafting practices. The subcommittee agreed to include the following language:

Driver licenses issued by the Secretary of State. The Secretary of State may, when issuing, denying, suspending, revoking or restricting drivers' licenses, impose neutral rules, eligibility requirements and crier that screen out, or tend to screen out, individuals with disabilities if the criteria are necessary for the safe operation of a motor vehicle. Notwithstanding any other provision of law, the Commission must discuss any complaint involving a driver's license with the Secretary of State prior to the initiation of formal investigatory procedures.

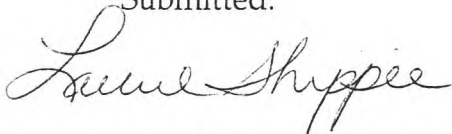
The Secretary of State resolved its concerns regarding Maine Human Rights jurisdiction over complaints against the Bureau of Motor Vehicle when the subcommittee agreed on this language.

It was also agreed to include language authorized by federal regulations that provides specific defenses for public entities in making reasonable modifications in policies, practices or procedures in order to make them accessible.

We discussed the public transportation provisions of Title II and determined that new enforcement authorities would have to be created for these to be included in Maine law. We consulted with the Department of Transportation which has prepared draft language, but there continues to be dual jurisdiction issues between DOT and the MHRC. It is this subcommittee's recommendation that if the transportation provisions are to be addressed, that they be referred to the committee on transportation to pursue.

A draft of the language being proposed by the subcommittee is not included with this report because it is not yet available. It has taken a considerable amount of time to acquire a copy of the Maine Human Rights Act in disk form from the Revisor's Office. Draft legislation will be forwarded within several days of this report.

Submitted:



Laurel Shippee, Chairperson

Members:

Pauline Lamontagne
Marianne McGettigan
William Nye
Margaret Rice
William Dowling
Mary Edgerton
Geoff Herman
Patricia Ender

FINAL REPORT OF THE VERTICAL ACCESS COMMITTEE

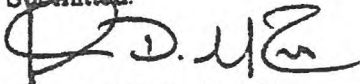
People With Disabilities Access Commission

The Vertical Access Committee was established at the suggestion of the Judiciary Committee to research the ways in which the codes and regulations governing vertical lifts in Maine might be changed to allow a broader, more affordable set of options to public occupancies wishing to provide handicapped access to second and third floor spaces. For decades, the code governing such lifts, administered by the Bureau of Boiler, Elevator and Tramway Safety, has precluded any public occupancy from installing anything smaller or less expensive than a 2500 LB capacity, commercial duty elevator in a fully enclosed and rated shaft, with a typical two-floor, two-stop installation costing approximately \$50,000. The committee hoped to identify safe and reliable alternatives that could be installed for less than half this amount.

To be most effective, the Vertical Access Committee invited Bill Peabody, Deputy Director of the Bureau of Boiler, Elevator and Tramway Safety and Bob Weber, President of Weber Accessibility, a major supplier and installer of vertical lifts, to join the committee as *ad hoc* members. Their subsequent contributions proved absolutely essential to its success. Through them, the committee became initially familiar with the Elevator Board's concerns and the many products now available. Learning that Canada had developed a code in 1981 to deal specifically with vertical lifts, one of its principal authors was invited to discuss it with the Committee. Provincial officials and Canadian user groups were contacted and asked to comment on pros and cons of the CSA B355 code through questionnaires developed and sent by committee members.

After careful study, the Committee has concluded that the CSA B355 code can meet all the defined objectives: The code addresses all product concerns, has an established 14-year track record, is recognized and understood by US, Canadian and European manufacturers, and can be adapted for use in Maine with minimal alteration. After receiving a determination from the Attorney General's office that the State can adopt a foreign code so long as it is readily available to the public, the Committee assembled a brief list of amendments it feels need to be included in a "Maine Addendum" and obtained the full endorsement of the Commission for its adoption.

Submitted:



John D. Morris, II, AIA
Chairman

Members:

Ron Hanson	John Morris
Steve Dodge	Jim McGregor
Jack Kelly	Nancy Gray
George Soucy	
Kim Wallace	

Ad Hoc Members:

Bill Peabody, Maine Bureau of Labor Standards
Bob Weber, Weber Accessibility Systems

16 January 1996