§4594-G. Standards for facilities constructed or altered after March 15, 2012

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Alteration" means a change to a place of public accommodation or a commercial facility that affects or could affect the usability of the building or facility or any part of the building or facility, including, but not limited to, reconstruction, remodeling, rehabilitation, historic restoration, changes or rearrangement in structural parts or elements and changes or rearrangement in the plan configuration of walls and full-height partitions. Normal maintenance, reroofing, painting or wallpapering, asbestos removal or changes to mechanical and electrical systems are not alterations unless they affect the usability of the building or facility. [PL 2011, c. 322, §8 (NEW).]

B. "Builder" means the applicant for a building permit in a municipality that requires such permits or the owner of a property in a municipality that does not require building permits. [PL 2011, c. 322, §8 (NEW).]

C. "Commuter rail transportation" means short-haul rail passenger service operating in metropolitan and suburban areas, whether within or across the geographical boundaries of a state, usually characterized by reduced fare, multiple ride and commutation tickets and by morning and evening peak period operations. This term does not include light or rapid rail transportation. [PL 2011, c. 322, §8 (NEW).]

D. "Demand responsive system" means any system of transporting individuals, including the provision of designated public transportation service by public entities and the provision of transportation service by private entities, including but not limited to specified public transportation service, that is not a fixed-route system. [PL 2011, c. 322, §8 (NEW).]

E. "Designated public transportation" means transportation provided by a public entity other than public school transportation by bus, rail or other conveyance other than transportation by aircraft or intercity or commuter rail transportation that provides the general public with general or special service, including charter service, on a regular and continuing basis. [PL 2011, c. 322, §8 (NEW).]

F. "Facility" means all or any portion of buildings, structures, sites, complexes, equipment, rolling stock or other conveyances, roads, walks, passageways, parking lots or other real or personal property, including the site where the building, property, structure or equipment is located. [PL 2011, c. 322, §8 (NEW).]

G. "Fixed-route system" means a system of transporting individuals other than by aircraft, including the provision of designated public transportation service by public entities and the provision of transportation service by private entities, including, but not limited to, specified public transportation service, on which a vehicle is operated along a prescribed route according to a fixed schedule. [PL 2011, c. 322, §8 (NEW).]

H. "Intercity rail transportation" means transportation provided by the National Railroad Passenger Corporation, doing business as Amtrak. [PL 2011, c. 322, §8 (NEW).]

I. "New construction" includes, but is not limited to, the design and construction of a facility for first occupancy or an alteration if the cost of the alteration is 75% or more of the replacement cost of the completed facility. [PL 2011, c. 322, §8 (NEW).]

J. "Specified public transportation" means transportation by bus, rail or any other conveyance other than aircraft provided by a private entity to the general public, with general or special service, including charter service, on a regular and continuing basis. [PL 2011, c. 322, §8 (NEW).]

K. "Standards of construction" means:

(1) For a transportation facility, the accessibility standards adopted by the federal Department of Transportation, 49 Code of Federal Regulations, Sections 37.9, 37.41, 37.43 and 37.45 (2010);

(2) For a facility constructed or altered by, on behalf of or for the use of a public entity, other than a transportation facility, the 2010 ADA Standards for Accessible Design, 28 Code of Federal Regulations, Sections 35.104 and 35.151; and

(3) For a place of public accommodation or a commercial facility, other than a facility covered by subparagraph (1) or (2), the 2010 ADA Standards for Accessible Design, 28 Code of Federal Regulations, Section 36.104 and Sections 36.401 to 36.406. [RR 2011, c. 2, §3 (COR).]

L. "Transportation facility" means a facility constructed or altered by, on behalf of or for the use of:

(1) Any public entity that provides designated public transportation or intercity or commuter rail transportation;

(2) Any private entity that provides specified public transportation; or

(3) Any private entity that is not primarily engaged in the business of transporting people but operates a demand responsive system or fixed-route system. [PL 2011, c. 322, §8 (NEW).]
[RR 2011, c. 2, §3 (COR).]

2. Facilities attested. This section applies to new construction and alterations of transportation facilities, places of public accommodation and commercial facilities and facilities constructed or altered by, on behalf of or for the use of a public entity, if:

A. The last application for a building permit or permit extension is certified to be complete by the appropriate state, county or local government entity on or after March 15, 2012; [PL 2011, c. 322, §8 (NEW).]

B. In a jurisdiction where the government does not certify completion of applications, the last application for a building permit or permit extension is received by the appropriate state, county or local government entity on or after March 15, 2012; or [PL 2011, c. 322, §8 (NEW).]

C. If no permit is required, the start of physical construction or alterations occurs on or after March 15, 2012. [PL 2011, c. 322, §8 (NEW).]
[PL 2011, c. 322, §8 (NEW).]

3. Unlawful discrimination. In addition to failure to meet applicable accessible building requirements in subchapter 4, for purposes of this Act, unlawful discrimination includes, but is not limited to, the failure to meet the standards of construction for new construction or alterations subject to this section.
[PL 2011, c. 322, §8 (NEW).]

4. Barrier-free certification. If the costs of construction or alterations are at least $75,000, the builder of a facility to which this section applies must obtain a certification from an architect, professional engineer, certified interior designer or landscape architect who is licensed, certified or registered to practice under Title 32 and is practicing within the scope of that individual's profession that the plans meet the requirements of subsection 3. The builder shall provide the certification to the Office of the State Fire Marshal with the plans of the facility. The builder shall also provide the certification to the municipality where the facility exists or will be built. Nothing in this section may be construed to change the scope of practice of any individual licensed, certified or registered to practice under Title 32.
[PL 2011, c. 322, §8 (NEW).]

5. Training, education and assistance. The commission and the Office of the State Fire Marshal, with input from organizations representing persons with disabilities, shall develop, as necessary,

information packets, lectures, seminars and educational forums on barrier-free design for the purpose of increasing the awareness and knowledge of owners, architects, professional engineers, certified interior designers, landscape architects, code enforcers, building contractors, persons with disabilities and other interested parties.
[PL 2011, c. 322, §8 (NEW).]

6. Mandatory plan review; certification. A builder of a proposed public building shall submit plans to the Office of the State Fire Marshal prior to construction to ensure that the plans meet the standards of construction.

A. For purposes of this subsection, "public building" means any building or structure constructed, operated or maintained for use by the general public, including, but not limited to, all buildings or portions of buildings used for:

(1) State, municipal or county purposes;

(2) Education;

(3) Health care, residential care nursing homes or any facility licensed by the Department of Health and Human Services;

(4) Public assembly;

(5) A hotel, motel, inn or rooming or lodging house;

(6) A restaurant;

(7) Business occupancy of more than 3,000 square feet or more than one story; or

(8) Mercantile occupancy of more than 3,000 square feet or more than one story. [PL 2011, c. 322, §8 (NEW).]

B. The municipal authority having jurisdiction to issue building permits may not issue a building permit unless the Office of the State Fire Marshal approves the plans and certifies that the plans for the public building covered by this subsection meet the standards of construction. If the builder of a facility is required to obtain barrier-free certification, a permit for construction from the Office of the State Fire Marshal is also required. If no decision is rendered within 2 weeks of submission to the Office of the State Fire Marshal, the builder may submit the permit request directly to the municipality with an attestation from an architect or professional engineer licensed or registered to practice under Title 32 that the plans meet the standards of construction. [PL 2011, c. 322, §8 (NEW).]
[PL 2011, c. 322, §8 (NEW).]

7. Inspection. If officials of the municipality in which a restaurant, motel, hotel or inn; state, municipal or county building; or an elementary or secondary school covered by this subsection is constructed, renovated, remodeled or enlarged inspect buildings for compliance with construction standards, that inspection must include an inspection for compliance with plans certified by the Office of the State Fire Marshal or by a professional pursuant to subsection 4. The municipal officials shall require that a facility covered by this paragraph be inspected for compliance with the standards of construction required by subsection 3 before the municipal officials permit a facility covered by this paragraph to be occupied.
[PL 2011, c. 322, §8 (NEW).]

8. Voluntary plan review. Builders of facilities not governed by subsection 6 may submit plans to the Office of the State Fire Marshal to ensure that the plans meet the standards of construction required by subsection 3. Certification for a voluntary plan review may be provided by an architect, professional engineer, certified interior designer or landscape architect licensed, certified or registered to practice under Title 32 and practicing within the scope of that individual's profession.
[PL 2011, c. 322, §8 (NEW).]

9. Waivers; variance. Builders of facilities governed by subsection 6 may file a petition with the State Fire Marshal requesting a waiver or variance of the standards of construction. If a representative of the Office of the State Fire Marshal determines, in cases covered by mandatory plan review pursuant to subsection 6, that compliance with this section and its rules is structurally impracticable, the State Fire Marshal may provide for modification of, or substitution for, these standards. In all petitions for variance or waiver, the burden of proof is on the party requesting the variance or waiver to justify allowing the variance or waiver.
[PL 2011, c. 322, §8 (NEW).]

10. Appeals relating to mandatory plan reviews. Decisions of the State Fire Marshal on requests for waivers or variances in cases covered by mandatory plan review under subsection 6 are subject to review in Superior Court upon petition of the aggrieved party within 30 days after the issuance of the decision for which review is sought. The court may enter an order enforcing, modifying or setting aside the decision of the State Fire Marshal, or it may remand the proceeding to the State Fire Marshal for further action as the court may direct.
[PL 2011, c. 322, §8 (NEW).]

11. Fees. The Office of the State Fire Marshal shall establish fees for reviews, waivers or variances under this section. The Office of the State Fire Marshal shall pay all fees to the Treasurer of State to be used to carry out this subchapter. Any balance of these fees does not lapse but is carried forward as a continuing account to be expended for the same purposes in the following fiscal years.
[PL 2011, c. 322, §8 (NEW).]

12. Single-occupancy toilet facilities; qualifying new construction. Beginning January 1, 2020, new construction of a public building, as defined in subsection 6, must include single-occupancy toilet facilities that meet the standards of construction required by this section. This subsection applies to new construction for which the maximum occupant capacity exceeds 100 individuals.
[PL 2019, c. 516, §1 (NEW).]

SECTION HISTORY

RR 2011, c. 2, §3 (COR). PL 2011, c. 322, §8 (NEW). PL 2019, c. 516, §1 (AMD).

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