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MASSACHUSETTS STATE COLLEGE BUILDING AUTHORITY

November 9, 2015

Ms. Lisa Dixon
Special Counsel for Regulatory Reform
Executive Office for Administration and Finance
State House – Room 373
24 Beacon Street
Boston, MA 02133

RE: Executive Office for Administration and Finance – Regulation Review Project
Disabilities Listening Session – Rules and Regulations of the MA Architectural Access Board
521 CMR 3.00: Jurisdiction and Thresholds

Dear Ms. Dixon:

I appreciate this opportunity to provide the following recommendation regarding the calculation to determine whether an entire existing building must be made fully compliant with the Rules and Regulations of the Massachusetts Architectural Access Board (521 CMR). The Massachusetts State College Building Authority is an independent State authority that is responsible for financing and managing the design, construction, and operation of the revenue-funded facilities on the nine State University and 15 Community College campuses in the Commonwealth. The State provides neither an appropriation to the Authority nor does it guarantee its debt. Therefore, student rent revenue is the only source of funds to pay the costs of design, construction, operation, and renewal. To maintain affordable student rent, which is essential to providing a system of affordable public higher education in the Commonwealth, we believe the method of calculating the full compliance trigger needs to be changed, to exclude the value of otherwise exempted work.

The Authority houses 17,000 students in 100 buildings on nine campuses. Our newest building opened at Salem State last month and our oldest began operations at Bridgewater State in 1912. Over this past century many different building standards and regulations have shaped these facilities. Specifically, codes and expectations continue to evolve relative to accessibility, sustainability, indoor air quality, fire safety, energy conservation, hazardous materials, and water quality. Accordingly, the Authority is continually investing in its facilities to address changing standards. Unfortunately, the monetary threshold calculation of the Access Regulations requires that the value of certain exempted categories of work be *included* in the determination of the full compliance trigger for a building project.

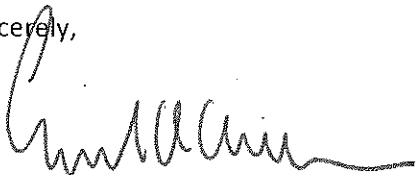
The Jurisdiction section of the Regulations (521 CMR 3.00) lists several categories of exempted work, which inherently do not affect access to, into, or within a building: alteration of electrical, mechanical, or plumbing systems; abatement of hazardous materials; retrofit of automatic sprinklers; roof repair or replacement; window repair or replacement; repointing and masonry repair work; and work relating to septic system repair. Presently, if the value of the work, **including the value of the exempted work**, amounts to 30% or more of the full and fair cash value of the building then the entire building must be made to be fully compliant with 521 CMR. [NOTE: At one point these exemptions were described in 521 CMR 3.3.2 (if the work is 30% or more of the building value) and are now located in 521 CMR 3.3.1 (if the work is less than 30% of the building value); this shift, along with the phrase "If the work performed, including the exempted work..." (which first appears in the 2006 version of the Regulations), has the effect of eliminating the exemptions – see attachments.]

We understand that one goal of these regulations is to ensure that all existing buildings are eventually fully accessible to all users. The concern, however, is that the inclusion of the value of the exempted work in the threshold calculation has the possibly unintended consequence of making other critical health and safety projects either more expensive than they otherwise would be, or of preventing them from being implemented altogether. As long as the cost of the exempted work is included in this calculation, the installation of fire sprinklers, the replacement of energy inefficient windows, the replacement of a leaking roof, the repair of deteriorated masonry, the abatement of hazardous materials, and the repair of failed septic systems only can be implemented if the cost of the work is less than 30% of the building value or if the owner also can afford to make the building fully accessible; otherwise these projects cannot be permitted, resulting in lost economic activity and disinvestment.

In the case of existing buildings, we propose that the value of the exempted work be excluded from the calculation of the ratio of the project cost to the building value. It should not be relevant if the cost of the 'exempted' work is greater or less than 30% of the building value for the purpose of determining accessibility thresholds, as this work does not affect access.

Thank you for this opportunity to present this concern and proposal. We believe that the revision of the compliance calculation (to exclude the cost of exempted work) would better balance the public policy of improving access for all with the benefits of other building safety and environmental concerns that are of vital interest to the Commonwealth and to its citizens. Please do not hesitate to contact me if you have any questions or require additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Edward H. Adelman", written in a cursive style.

Edward H. Adelman, AIA
Executive Director

3.1 SCOPE

All work performed on *public buildings* (see definition), including *construction, reconstruction, alterations, remodeling, additions, and changes of use* shall conform to 521 CMR.

- 3.1.1 To determine the scope of compliance, refer to 521 CMR 3.2, *New Construction* and 521 CMR 3.3, *Existing Buildings*. In the absence of jurisdiction by 521 CMR, 780 CMR, the State Building Code may apply.

3.2 NEW CONSTRUCTION

All new construction of *public buildings* shall comply fully with 521 CMR.

3.3 EXISTING BUILDINGS

All *additions to, reconstruction, remodeling, and alterations or repairs* of existing *public buildings*, which require a building permit or which are so defined by a state or local inspector, shall be governed by all applicable subsections in 521 CMR 3, JURISDICTION.

For specific applicability of 521 CMR to existing multiple dwellings undergoing renovations, see 521 CMR 9.2.1.

- 3.3.1 If the work being performed amounts to less than 30% of the *full and fair cash value* of the *building* and

- a. if the work costs less than \$100,000, then only the work being performed is required to comply with 521 CMR

or

- b. if the work costs \$100,000 or more, then the work being performed is required to comply with 521 CMR. In addition, an *accessible public entrance* and an *accessible toilet room*, telephone, drinking fountain (if toilets, telephones and drinking fountains are provided) shall also be provided in compliance with 521 CMR.

Exception: General maintenance and on-going upkeep of existing, underground transit facilities will not trigger the requirement for an accessible entrance and toilet unless the cost of the work exceeds \$500,000 or unless work is being performed on the entrance or toilet.

- 3.3.2 If the work performed amounts to 30% or more of the *full and fair cash value* of the *building* the entire *building* is required to comply with 521 CMR.

- a. Where the cost of constructing an *addition* to a building amounts to 30% or more of the *full and fair cash value* of the *existing building*, both the *addition* and the *existing building* must be fully *accessible*.

Exceptions: Whether performed alone or in combination with each other, the following types of *alterations* are not subject to 521 CMR 3.3.1 and 3.3.2. (When performing exempted work, a memo stating the exempted work and its costs must be filed with the permit application or a separate building permit must be obtained.)

- a. *Curb Cuts*: The construction of *curb cuts* shall comply with 521 CMR 21.
- b. *Repairs*: *Ordinary repairs* as defined in 780 CMR, the State Building Code.
- c. Alteration work which is limited solely to electrical mechanical, or plumbing systems; to abatement of hazardous materials; to retrofit of automatic sprinklers and does not involve the *alteration* of any *elements or spaces* required to be *accessible* under 521 CMR. Where electrical outlets and controls are altered, they must comply with 521 CMR.
- d. Roof repair or replacement, window repair or replacement, repointing and masonry repair work.

JURISDICTION

- e. Work relating to septic system repairs, (including Title V, 310 CMR 15.00, improvements) site utilities and landscaping.
- 3.3.3 *Tenant vs. owner of building:* Alterations by a tenant do not trigger the requirements of 521 CMR 3.3.1.b. and 3.3.2 for the owner. Although tenants are not required to make changes in areas not under their control, any work that tenants perform or cause to be performed must comply with 521 CMR.
- 3.3.4 No alteration shall be undertaken which decreases or has the effect of decreasing accessibility or usability of a *building or facility* below the requirements for new *construction*.
- 3.3.5 If alterations of single *elements*, when considered together, amount to an alteration of a room or *space* in a *building or facility*, that *space* shall be made *accessible*.
- 3.3.6 No alteration of an existing *element, space, or area* of a *building or facility* shall impose a requirement for greater accessibility than that which would be required for new *construction*.

3.4 CHANGE IN USE

When the use of a building changes from a private use to one that is open to and used by the public, an accessible entrance must be provided, even if no work is being performed.

- 3.4.1 **RESERVED FOR FUTURE ACTION:** Changes in use, from private to public, in private residential homes where no work is being performed.

3.5 WORK PERFORMED OVER TIME

When the work performed on a *building* is divided into separate phases or projects or is under separate *building* permits, the total cost of such work in any 36 month period shall be added together in applying 521 CMR 3.3, Existing Buildings.

3.6 MULTIPLE USES

When a *building* is occupied by two or more uses, the Regulations which apply to each use shall apply to such parts of the *building* within that *use*.

- 3.6.1 521 CMR 3.3, Existing Buildings shall apply based upon each *use* and not on the entire *building*.

Example: If a three story *building* valued at \$300,000 has one floor of retail *use* and two floors of residential *use*, the *full and fair cash value* of the retail portion shall be 1/3 of the total value which would be \$100,000.

3.7 PARTIAL APPLICATION

When only a portion of a *building* is subject to 521 CMR, the *full and fair cash value* shall be prorated by the ratio of the square footage of that portion to the square footage of the whole *building*.

Example: Where the whole *building* is 100,000 square feet, the *full and fair cash value* is \$1,000,000, and the part subject to 521 CMR is 10,000 square feet (one-tenth of the total), then the *full and fair cash value* of the part subject to 521 CMR would be one-tenth of \$1,000,000 or \$100,000.

- 3.7.1 If the *Board* determines that such proration would cause an inequitable result, the *Board* may otherwise calculate the *full and fair cash value* of the portion of the *building*.

521 CMR: ARCHITECTURAL ACCESS BOARD

521 CMR 3.00: **JURISDICTION**

3.1 SCOPE

All work performed on *public buildings or facilities* (see **521 CMR 5.00: DEFINITIONS**), including *construction, reconstruction, alterations, remodeling, additions, and changes of use* shall conform to 521 CMR.

3.1.1 To determine the scope of compliance, refer to **521 CMR 3.2, New Construction** and **521 CMR 3.3, Existing Buildings**. In the absence of jurisdiction by 521 CMR, 780 CMR: the State Building Code may apply.

3.2 NEW CONSTRUCTION

All new construction of *public buildings/facilities* shall comply fully with 521 CMR.

3.3 EXISTING BUILDINGS

All *additions to, reconstruction, remodeling, and alterations or repairs* of existing *public buildings or facilities*, which require a building permit or which are so defined by a state or local inspector, shall be governed by all applicable subsections in **521 CMR 3.00: JURISDICTION**.

For specific applicability of 521 CMR to existing multiple dwellings undergoing renovations, see **521 CMR 9.2.1**.

3.3.1 If the work being performed amounts to less than 30% of the *full and fair cash value* of the *building* and

a. if the work costs less than \$100,000, then only the work being performed is required to comply with 521 CMR

or

b. if the work costs \$100,000 or more, then the work being performed is required to comply with 521 CMR. In addition, an *accessible public entrance* and an *accessible toilet room, telephone, drinking fountain* (if toilets, telephones and drinking fountains are provided) shall also be provided in compliance with 521 CMR.

Exception: General maintenance and on-going upkeep of existing, underground transit facilities will not trigger the requirement for an *accessible entrance* and toilet unless the cost of the work exceeds \$500,000 or unless work is being performed on the *entrance* or toilet.

Exception: Whether performed alone or in combination with each other, the following types of *alterations* are not subject to **521 CMR 3.3.1**, unless the cost of the work exceeds \$500,000 or unless work is being performed on the entrance or toilet. (When performing exempted work, a memo stating the exempted work and its costs must be filed with the permit application or a separate building permit must be obtained.)

a. **Curb Cuts:** The construction of *curb cuts* shall comply with **521 CMR 21.00: CURB CUTS**.

521 CMR: ARCHITECTURAL ACCESS BOARD

3.00: JURISDICTION

- b. *Alteration* work which is limited solely to electrical mechanical, or plumbing systems; to abatement of hazardous materials; or retrofit of automatic sprinklers **and** does not involve the *alteration* of any *elements* or *spaces* required to be *accessible* under 521 CMR. Where electrical outlets and controls are altered, they must comply with 521 CMR.
- c. Roof repair or replacement, window repair or replacement, repointing and masonry repair work.
- d. Work relating to septic system repairs, (including Title V, 310 CMR 15.00, improvements) site utilities and landscaping.

3.3.2 If the work performed, including the exempted work, amounts to 30% or more of the *full and fair cash value* (see **521 CMR 5.00**) of the *building* the entire *building* is required to comply with 521 CMR.

- a. Where the cost of constructing an *addition* to a building amounts to 30% or more of the *full and fair cash value* of the existing *building*, both the *addition* and the existing *building* must be fully *accessible*.

3.3.3 Alterations by a tenant do not trigger the requirements of **521 CMR 3.3.1b and 3.3.2** for other tenants. However, *alterations, reconstruction, remodeling, repairs, construction, and changes in use* falling within **521 CMR 3.3.1b and 3.3.2**, will trigger compliance with **521 CMR** in areas of *public use*, for the owner of the *building*.

3.3.4 No *alteration* shall be undertaken which decreases or has the effect of decreasing accessibility or usability of a *building* or *facility* below the requirements for new *construction*.

3.3.5 If *alterations* of single *elements*, when considered together, amount to an alteration of a room or *space* in a *building* or *facility*, that *space* shall be made *accessible*.

3.3.6 No *alteration* of an existing *element*, *space*, or area of a *building* or *facility* shall impose a requirement for greater accessibility than that which would be required for new *construction*.

3.4 CHANGE IN USE

When the use of a *building* changes from a private use to one that is open to and used by the public, an *accessible entrance* must be provided, even if no work is being performed. When a portion of a *building* changes use from a private use to one that is open to and used by the public, then an *accessible route* must be provided from an *accessible entrance* even if no work is being performed.

3.4.1 RESERVED FOR FUTURE ACTION: Changes in use, from private to public, in private residential homes where no work is being performed.

3.5 WORK PERFORMED OVER TIME

When the work performed on a *building* is divided into separate phases or projects or is under separate *building* permits, the total cost of such work in any 36 month period shall be added together in applying **521 CMR 3.3, Existing Buildings**.