CHAPTER 5

Construction and Renovation of Public Buildings and Other Projects

ARTICLE 3

Construction Of Public Buildings For Access By Persons With Disabilities

**SECTION 10‑5‑210.** Declaration of intent.

 The General Assembly declares that the policy of this State is to enable persons with disabilities to achieve maximum personal independence; to use and enjoy governmental and public buildings and facilities; and to participate fully in all aspects of society. The General Assembly resolves to enact legislation necessary to implement this policy and the purpose of this article is to begin this implementation.

HISTORY: 1962 Code Section 1‑491; 1974 (58) 2794; 2000 Act No. 303, Section 1.

CROSS REFERENCES

Professional and occupational licensing boards incorporated into the Department of Labor, Licensing, and Regulation, see Section 1‑30‑65.

Provisions of bill of rights for handicapped persons, see Section 43‑33‑510 et seq.

Regulations pertaining to the South Carolina Barrier Free Building Design Standard, see S.C. Code of Regulations R. 19‑400 et seq.

Rights of physically disabled persons, see Sections 43‑33‑10 to 43‑33‑70.

Special motor vehicle license tag for persons required to use wheelchairs or disabled by impairment in mobility, see Section 56‑3‑1910.

**SECTION 10‑5‑220.** Definitions.

 As used in this article:

 (1) “Governmental buildings” means all buildings, structures, and facilities used by the public that are constructed, purchased, leased, or rented in whole or in part by the federal, state, county, or municipal government or any political subdivision of the State.

 (2) “Public buildings” means all buildings, structures, and facilities used by the public that are constructed, purchased, leased, or rented by the use of private funds, including rental apartment complexes of twenty units or more and temporary lodging facilities of twenty units or more, except that the provisions of this article apply to only five percent of those units or a minimum of one unit, whichever is the greater, and provided, further, that the provisions of this article do not apply to a private residence.

 (3) “Facilities” means all building elements defined or specified by ANSI A117.1.

 (4) “ANSI” means the American National Standards Institute.

 (5) “Building Code” means the building code adopted by Section 6‑9‑50(A).

 (6) “Board” means the Accessibility Committee for the South Carolina Building Codes Council as established in this chapter.

HISTORY: 1962 Code Section 1‑492; 1974 (58) 2794; 1991 Act No. 82, Section 1; 2000 Act No. 303, Section 1.

Editor’s Note

Under the provisions of Chapter 34, Title 1, an agency is required to adopt the latest edition of a nationally recognized code which it is charged by statute or regulation with enforcing by giving notice in the State Register.

CROSS REFERENCES

Regulations pertaining to the South Carolina Barrier Free Building Design Standard, see S.C. Code of Regulations R. 19‑400 et seq.

**SECTION 10‑5‑230.** Accessibility Committee for the South Carolina Building Codes Council created; membership; terms; vacancies.

 There is created the Accessibility Committee for the South Carolina Building Codes Council, composed of nine members, six to be appointed by the Governor for terms of four years and until their successors are appointed and qualify. No fewer than two appointed members of the board must have mobility impairments, one appointed member must be a building official, and one appointed member must be a licensed architect. Vacancies on the board must be filled in the same manner as the original appointment for the remainder of the unexpired term. In addition to the appointed members, the following three ex officio members shall serve on the board:

 (1) the Director of the Department of Labor, Licensing and Regulation;

 (2) the Director of the State Department of Vocational Rehabilitation; and

 (3) the State Engineer employed by the Department of Administration.

 The ex officio members may appoint proxies for their respective offices. The ex officio members and their proxies have all the powers, privileges, and duties of the appointed members.

HISTORY: 1962 Code Section 1‑493; 1974 (58) 2794; 1990 Act No. 400, Section 1; 1990 Act No. 422, Section 1; 1993 Act No. 181 Section 80; 2000 Act No. 303, Section 1.

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015.

CROSS REFERENCES

Regulations pertaining to the South Carolina Barrier Free Building Design Standard, see S.C. Code of Regulations R. 19‑400 et seq.

Library References

States 45, 47.

Westlaw Topic No. 360.

C.J.S. States Sections 88, 145 to 147, 157 to 161, 249.

**SECTION 10‑5‑235.** South Carolina Board for Barrier‑Free Design abolished; Accessibility Committee for the South Carolina Building Codes Council created; transition of funding, powers and duties.

 (A) There is created the Accessibility Committee for the South Carolina Building Codes Council. The committee must be composed of the members of the South Carolina Building Codes Council in the positions of the person with a disability, the architect, the municipal administrator, the public member, and the State Engineer. The accessibility committee shall advise the Building Codes Council on all matters concerning accessibility to buildings, structures, and facilities by persons with disabilities including, but not limited to, amendments to state and federal statutes, regulations, or standards, education of the general public, and local enforcement.

 (B) As of June 30, 2002, all references to the Board for Barrier‑Free Design must be construed to mean the Accessibility Committee for the South Carolina Building Codes Council, and where practical and efficient to do so, the Code Commissioner for the Legislative Council shall change statutory references to conform to the provisions of this section.

HISTORY: 2000 Act No. 303, Section 1; 2005 Act No. 67, Section 1.

**SECTION 10‑5‑240.** Officers of board; meetings; quorum; compensation; office space.

 The board shall elect a chairman and vice‑chairman to serve for terms of two years and until their successors are elected and qualify. The board may adopt rules for the purpose of governing its internal proceedings. The board shall meet at least once annually and at those other times as may be designated by the chairman but in no event more than twice a month. Five members of the board constitute a quorum at all meetings. All members of the board must be paid the usual per diem, mileage, and subsistence as provided by law for members of boards, committees, and commissions for days on which they are on official business of the board, to be paid from the general fund of the State. The board must be administered by the Department of Labor, Licensing and Regulation which shall provide administrative support services, such as office space, clerical assistance, and other facilities as may be required by the board to perform its prescribed functions.

HISTORY: 1962 Code Section 1‑494; 1974 (58) 2794; 1978 Act No. 540 Section 1; 1990 Act No. 400, Section 2; 1993 Act No. 181, Section 81; 2000 Act No. 303, Section 1.

CROSS REFERENCES

Regulations pertaining to the South Carolina Barrier Free Building Design Standard, see S.C. Code of Regulations R. 19‑400 et seq.

Library References

States 67.

Westlaw Topic No. 360.

C.J.S. States Sections 224 to 227, 249 to 251, 253.

**SECTION 10‑5‑250.** Building code and rental unit accessibility requirements; promulgation of regulations.

 (A) The requirements for accessibility for people with disabilities contained within the building code and ANSI A117.1, with such modifications as the board considers appropriate, are adopted as minimum standards for compliance with this chapter. Notwithstanding any other provision of law, rental apartment complexes of twenty units or more and temporary lodging facilities of twenty units or more shall provide for not less than five percent of all units or a minimum of one unit, whichever is greater, to be accessible for use by people with disabilities.

 (B) The board may promulgate regulations to enforce the provisions of this article and the standards provided for in subsection (A).

HISTORY: 1962 Code Section 1‑495; 1974 (58) 2794; 1978 Act No. 540, Section 2; 2000 Act No. 303, Section 1.

Editor’s Note

Under the provisions of Chapter 34, Title 1, an agency is required to adopt the latest edition of a nationally recognized code which it is charged by statute or regulation with enforcing by giving notice in the State Register.

CROSS REFERENCES

Adoption of model codes, see S.C. Code of Regulations R. 8‑604.

Building Codes Council, application, South Carolina Barrier Free Building Design, see S.C. Code of Regulations R. 8‑702.

Building Codes Council, administration, South Carolina Barrier Free Building Design, see S.C. Code of Regulations R. 8‑703.

Office of General Services, South Carolina Barrier Free Building Design Standard, see S.C. Code of Regulations R. 19‑400 et seq.

Library References

Civil Rights 1021.

Westlaw Topic No. 78.

C.J.S. Civil Rights Sections 80 to 84, 104.

Attorney General’s Opinions

Actions of the Barrier‑Free Design Board, such as setting standards for the elimination of architectural barriers and other regulations, require the approval of the Division of General Services prior to their effectiveness. 1976 S.C. Op.Atty.Gen. 346, 1976 S.C. Op.Atty.Gen. No. 4487, (Oct. 12, 1976) 1976 WL 23104.

**SECTION 10‑5‑260.** Buildings required to be in compliance; responsibility of owners and occupants.

 No person may construct or alter a building, structure, or facility of any occupancy classification, with exception of detached one and two family dwellings, unless the construction or areas being altered are designed in compliance with the standards and requirements adopted pursuant to the chapter. If the occupancy, as defined by the building code, of an existing building is changed, that building must be made to conform to the requirements of this chapter for the new occupancy. If the occupancy of a portion of an existing building is changed, only the portion that is changed shall be required to comply.

 It is the responsibility of the owner or the occupant of property which contains structural or building elements or components required to be in compliance with this article, to continuously maintain these elements and components in a condition that is safe and usable by persons with disabilities at all times.

 Nothing in this chapter affects in any way government buildings, public buildings, or facilities exempted by any federal law, including the Americans with Disabilities Act of 1990, as amended.

HISTORY: 1962 Code Section 1‑496; 1974 (58) 2794; 1990 Act No. 400, Section 3; 2000 Act No. 303, Section 1.

CROSS REFERENCES

Regulations pertaining to the South Carolina Barrier Free Building Design Standard, see S.C. Code of Regulations R. 19‑400 et seq.

Federal Aspects

Americans with Disabilities Act of 1990 (ADA) Pub.L. 101‑336, July 26, 1990, 104 Stat. 327, see 42 U.S.C.A. Section 12101 et seq.

Library References

Civil Rights 1021.

Westlaw Topic No. 78.

C.J.S. Civil Rights Sections 80 to 84, 104.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Action Section 14, Determination of Private Rights.

S.C. Jur. Architects and Engineers Section 14, Code Compliance and Other Standards.

S.C. Jur. Medical and Health Professionals Section 39, South Carolina Tort Claims Act.

S.C. Jur. Negligence Section 43, Duty as to Invitees.

S.C. Jur. Torts Section 3, Elements of a Tort ‑Duty and Breach of Duty.

NOTES OF DECISIONS

In general 1

1. In general

Accessibility Act did not establish a higher duty of care than common law in regard to foreign substances on floor; duty extended to safety of structural elements of floor, not to presence of a foreign object on surface. Olson v. Faculty House of Carolina, Inc. (S.C. 2003) 354 S.C. 161, 580 S.E.2d 440, rehearing denied. Negligence 1025; Negligence 1079

**SECTION 10‑5‑270.** Compliance review and approval.

 (A) All plans for buildings, structures, and facilities to be constructed or altered must be reviewed and approved for compliance with this chapter and must be submitted to one of the following officials for approval:

 (1) for state owned or leased facilities, to the State Engineer, Office of General Services, Department of Administration;

 (2) for elementary and secondary public schools, to the Director, Office of Facilities Management, State Department of Education;

 (3) for health care facilities, to the Director, Bureau of Health Facilities Construction, Licensing and Certification, State Department of Health and Environmental Control;

 (4) for buildings not covered by this subsection or subsections (B) or (C), to the local building officials appointed by a municipal or county government within their respective jurisdictions;

 (5) in jurisdictions without building officials, to the Administrator, Building Codes Council.

 (B) Plans for all construction or alterations affected by this chapter must be submitted to the appropriate official by the project owner, architect, or contractor for preconstruction review and approval. Each submittal shall consist of at least one set of project drawings and specifications, project name or description, street address or location, and the owner’s name and address.

 (C) Compliance with this article, including conducting compliance investigations, must be carried out by the officials, enumerated in this section, within their respective jurisdictions.

HISTORY: 1962 Code Section 1‑497; 1974 (58) 2794; 1978 Act No. 540 Section 3; 1990 Act No. 400, Section 4; 1993 Act No. 181, Section 82; 2000 Act No. 303, Section 1.

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015.

CROSS REFERENCES

Regulations pertaining to the South Carolina Barrier Free Building Design Standard, see S.C. Code of Regulations R. 19‑400 et seq.

Library References

Civil Rights 1021.

Westlaw Topic No. 78.

C.J.S. Civil Rights Sections 80 to 84, 104.

**SECTION 10‑5‑280.** Display of international symbol.

 The international symbol of access for people with disabilities must be permanently displayed at the entrance of buildings, structures, and facilities that are in compliance with the standards established pursuant to this article.

HISTORY: 1962 Code Section 1‑498; 1974 (58) 2794; 2000 Act No. 303, Section 1.

CROSS REFERENCES

Regulations pertaining to the South Carolina Barrier Free Building Design Standard, see S.C. Code of Regulations R. 19‑400 et seq.

Library References

Civil Rights 1021.

Westlaw Topic No. 78.

C.J.S. Civil Rights Sections 80 to 84, 104.

**SECTION 10‑5‑290.** Action for violation of regulations.

 A person who is denied access to buildings, structures, or facilities, or is otherwise deprived of rights as a citizen as declared in the statement of state policy set forth in Section 10‑5‑210 may enforce these rights by injunction and recover damages in a proper case in the court of common pleas.

HISTORY: 1962 Code Section 1‑499; 1974 (58) 2794; 1990 Act No. 400, Section 6; 2000 Act No. 303, Section 1.

CROSS REFERENCES

South Carolina Barrier Free Building Design Standard regulations, see S.C. Code of Regulations R. 19‑400 et seq.

Library References

Civil Rights 1762.

Westlaw Topic No. 78.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Injunctions Section 41, Enforcement of Welfare Regulations by Private Citizens.

**SECTION 10‑5‑320.** Suits for injunction against noncompliance; accessibility of meetings and conferences with state agencies.

 The official having jurisdiction pursuant to Section 10‑5‑270 to enforce the provisions of this article shall notify the owner of property in violation of this article to comply with its provisions and make the necessary changes or corrections within a reasonable time. In the event of noncompliance after a reasonable time, the official may bring suit before an Administrative Law Judge as provided under Article 5 of Chapter 23 of Title 1 to enjoin further construction or use of the building, structure, or facility until it is in compliance with this article.

 All meetings and conferences of an agency of this State, in which participation by the public is invited or desirable, must be held in a place and manner that is accessible to persons with disabilities.

HISTORY: 1962 Code Section 1‑499.3; 1974 (58) 2794; 1990 Act No. 400, Section 9; 1993 Act No. 181, Section 84; 2000 Act No. 303, Section 1.

CROSS REFERENCES

South Carolina Barrier Free Building Design Standard regulations, see S.C. Code of Regulations R. 19‑400 et seq.

Library References

Civil Rights 1762.

Westlaw Topic No. 78.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Injunctions Section 40, Enforcement of Regulations Regarding Public Welfare.