

STATE BUILDING CODE INTERPRETATION NO. I-29-99

June 17, 1999

Question: Is it the intent of Section 1110.2.1, Exception 1, of the BOCA National Building Code/1996 portion of the 1999 State Building Code to mandate the expenditure of up to 20 percent of the cost of alterations affecting an area containing a primary function to provide an accessible route, including restrooms and drinking fountains, to the area containing the primary function in the same manner as Section 512.1.1.1, Exception 1, of the 1994 State Building Code?

Answer: Yes. Communications with Michael Pfeiffer of BOCA International indicate that the intent of Section 1110.2.1, Exception 1, is to require the spending of up to and including 20 percent of the total cost of alterations affecting a primary function area on providing an accessible route, including restrooms and drinking fountains, to the primary function area. In addition, I went to the Department of Justice Code of Federal Regulations 28 CFR Part 36 for guidance. Section 36.403 states, in part, "An alteration that affects...the usability of or access to an area of a facility that contains a primary function shall be made so as to ensure that, to the maximum extent feasible, the path of travel to the altered area and the restrooms, telephones and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless the cost and scope of such alterations is disproportionate to the cost of the overall alteration." This section goes on to define disproportionate costs as "when the cost exceeds 20 percent of the cost of the alteration to the primary function area", and further states "When the cost of alterations necessary to make the path of travel to the altered area fully accessible is disproportionate to the cost of the overall alteration, the path of travel shall be made accessible to the extent that it can be made accessible without incurring disproportionate costs."

If it were not mandatory to require the expenditure of up to 20 percent of the cost of alterations affecting a primary function to provide accessibility to that area, it would be possible for an owner of a building to schedule alteration projects in such a manner as to avoid providing an accessible route altogether, simply by controlling the cost of the alteration projects. This is contrary to the philosophy of the code with respect to alterations as stated in section 1110.2 of the BOCA National Building Code/1996 portion of the 1999 State Building Code: "Each element or space of a building or facility that is altered shall comply with these provisions, unless technically infeasible. Where full compliance is technically infeasible, the element or space shall be made accessible to the extent which it is not technically infeasible." By requiring the expenditure of up to 20 percent of the cost of each alteration affecting the primary function area, eventually an

accessible route, including restrooms and drinking fountains, will be created to serve that primary function area, unless it is determined to be technically infeasible. Keep in mind that accessibility exemptions can only be permitted when approved jointly by the State Building Inspector and the Executive Director of the Office of Protection and Advocacy for Persons with Disabilities.