

What Are We Missing?

by Brian Black



A few clicks on the ICC website reveals a map of the U.S. awash in green, indicating the states in which one or more of the *International Codes* are enforced statewide (www.iccsafe.org/government/adoption.html), and with recent adoptions by Massachusetts and California, the *International Building Code* (IBC) has become the *de facto* national building code. The resulting uniformity benefits the general public by providing a level of safety that is consistent from city to city and state to state. This broad uniformity also benefits professionals in the design community who develop projects in multiple jurisdictions as well as builders and property owners who enjoy the cost benefits of not having to comply with different sets of construction and maintenance requirements in every state and locality.

Unfortunately, that same map would become a rainbow quilt if adapted to depict state accessibility requirements for persons with disabilities. One can travel Interstate 95 from Florida to Maine and always be in an I-Codes jurisdiction, but nearly all of the 15 states traversed have different accessibility codes with distinct scoping provisions and unique technical requirements. To cite just two examples: a ramp that is legal in Georgia may not comply with the *Florida Accessibility Code for Building Construction*, and a platform lift that is permitted in Pennsylvania would be prohibited in North Carolina. It is no exaggeration to say that this level of disparity extends across the country.

Something is clearly missing when the growing national consensus regarding the design and construction of our built environment fails to encompass accessibility. Not only may designers, developers, builders and property owners face higher costs and possible legal action if complying with state access requirements leads to violations of federal laws, but people with disabilities are likely to suffer as the result of archaic requirements or different terminologies which lead to design flaws that reduce accessibility.

Is there a way to make the map more monochromatic when it comes to regulating barrier-free design in I-Codes jurisdictions?

Three Approaches

Setting aside those jurisdictions which have adopted the *Americans with Disabilities Act Accessibility Guidelines* (ADAAG) through legislation or reference, states that use the IBC have taken three basic approaches to regulating accessibility, as illustrated by the requirements of the Pennsylvania, New York and New Jersey codes.

Unamended adoption

The Commonwealth of Pennsylvania had no statewide building code until a few years ago but had a Universal Accessibility Law dating from the mid-1960s. As the state legislature moved to adopt the statewide *Uniform Construction Code* based on the IBC, many in the disability community advocated for dropping the Chapter 11 provisions and retaining the existing law, but those who favored the ICC approach to accessibility ultimately prevailed and the current Pennsylvania code references the 2006 IBC with no changes to the Chapter 11 requirements.

Adoption of Chapter 11 with Modifications

New York State previously had its own *Uniform Fire Prevention and Building Code* but decided to adopt a model code in the late 1990s. Representatives of the Eastern Paralyzed Veterans Association (now the United Spinal Association) sat on the state Code Council and, in light of the fact that the U.S. Department of Housing and Urban Development (HUD) had recently recognized the 2000 IBC with the *2001 Supplement to the International Codes* as a “safe harbor” for compliance with the *Fair Housing Accessibility Guidelines* (FHAG), advocated adopting the code with amendments to the scoping and technical provisions for Type B dwelling and sleeping units to reflect the 2001 changes.

In the end, the state council developed amendments for the new *Building Code of New York State* that “enhance” the Type B provisions by requiring at least one bathroom in a unit to meet the more restrictive requirements for Type A bathrooms and accessible maneuvering clearances at all interior doors.

Replacement of Chapter 11

New Jersey traditionally used the legacy *National Building Code* (NBC) but had its own *Barrier Free Subcode* since the mid-1970s. The state flirted with using model accessibility requirements briefly under the 1996 NBC but now uses the 2003 IBC minus Chapter 11, replacing it with its own homegrown provisions.

“New Jersey has a considerable number of state accessibility statutes that have to be addressed in the code,” explains New Jersey Department of Community Affairs Supervisor of Code Assistance John Terry. “The degree of modifications needed to make Chapter 11 work with our state laws was so substantial, we determined it was easier to do our own.”

Terry says that writing its own subcode allows the state to require more access than that required in the IBC.

“For example, we don’t recognize Type B: all of the units must meet the Type A requirements. Our philosophy is that adaptable housing should be truly usable, which you don’t get with the Type B units required in the IBC.”

New Jersey once promulgated its own technical requirements for accessible design but now references ICC/American National Standards Institute (ANSI) A117.1-2003. Terry reports that his department also plans to borrow more from Chapter 11 of the IBC, such as incorporating the site impracticality exceptions for accessible housing now found in Section 1107.

Pursuing the Gold Star

The ADA was passed in 1990, and the U.S. Department of Justice (DOJ) *ADA Standards for Accessible Design* were published in the Federal Register a year later. Referencing the U.S. Access Board’s 1991 ADAAG as amended through 1994, the *ADA Standards* cover most nonresidential construction. Numerous states, including some that already had their own accessibility laws or regulations, adopted the ADAAG by statute or referenced its provisions in their building codes, and the DOJ soon established a process whereby jurisdictions could submit their codes for certification as meeting or exceeding the *ADA Standards*. Many jurisdictions have done so, and five states are currently enforcing codes that have been DOJ certified. However, most of these codes are not based on the current requirements of IBC Chapter 11.

Anyone who has attended a code hearing in the past few years knows that ICC has been diligently working to establish code requirements that meet or exceed the *ADA Standards*. The problem is that the IBC is currently written to harmonize with the 2004 ADAAG but the DOJ still references the 1991 edition. In short: the I-Codes are harmonized, the feds are not. The “gold star” of DOJ certification has thus provided a strong incentive to not adopt Chapter 11 of the IBC. For example, Georgia

recently adopted the 2006 IBC but chose not to amend the *Georgia Accessibility Code* until the DOJ makes the decision to enforce the new ADAAG.

In some cases, the promise of DOJ certification and attempts to mimic the current ADAAG requirements have led to state codes that provide far less accessibility than the IBC. One of the more glaring examples is that Chapter 11 currently requires far more multistory buildings to have elevators than does the ADA, leaving most new two-story buildings with no vertical access to the second story where an elevator would have been required by the IBC.

The drive to reflect the ADA in state codes has also led to the neglect of the FHAG requirements, particularly where they require access in Group I-1 and I-2 occupancies. Even in some states with DOJ-certified codes, building to those codes will fail to meet Fair Housing Act mandates if the guidelines are not taken into account. As previously noted, the 2003 IBC has been designated by HUD as being a safe harbor for FHAG compliance (as has the 2006 edition of the code).

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Accessibility in ICC Jurisdictions

IBC CHAPTER 11 BASED	SEPARATE STATE ACCESSIBILITY CODE	ADAAG OR ADAAG BASED
Alaska	California	District of Columbia
Connecticut	Florida	Columbia
Idaho	Georgia	Hawaii
Indiana	Illinois	Iowa
Michigan	Massachusetts	Kansas
New York	New Jersey	Louisiana
Pennsylvania	North Carolina	Nebraska
Oregon	Texas	Vermont
Utah		
Wisconsin		

DOJ Certified

STATE REQUIREMENTS	STATES CURRENTLY SEEKING DOJ CERTIFICATION
Florida	California
Maine	Indiana
Maryland	Michigan
North Carolina	Utah
Texas	Washington

What Are We Missing? (continued)

What Can We Do?

Ideally, code officials, architects, building developers and disability advocates would all agree that the IBC's accessibility requirements are sufficient and jurisdictions would adopt them without amendment. Realistically speaking, however, that is not going to happen, and the hundreds of change proposals considered by ICC voting members every code development cycle attest to the fact that no portion of the codes is immune from refinement based on innovations in research or new technology.

What ICC and its members can do is advocate for the use of Chapter 11 as a baseline in every jurisdiction that adopts the IBC. Amendments will be inevitable, whether they be enhancements like those introduced in New York or modifications needed due to statutory limitations like those in New Jersey. Still, using the IBC to form the foundation for barrier-free design would mean that the vast majority of the accessibility provisions of each ICC jurisdiction would be uniform in format, terminology, application of scoping and technical criteria.

Clearly, the best opportunity to accomplish this goal will arise once the DOJ begins enforcing the 2004 ADAAG. Every accessibility code based on the old guidelines—including those now certified by the DOJ—will suddenly become out-of-date, whereas ICC's efforts to harmonize both the technical requirements of the A117.1 standard and the scoping provisions of the I-Codes will provide states and localities an accessibility code package that reflects over 95 percent of the new standards.

Lessons from California

A major impediment to this goal is a history of mistrust by disability advocates of the code enforcement process. ICC needs to redouble its efforts to reach out to this constituency and demonstrate its willingness to work with state and local representatives on accessibility issues.

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"My understanding is that many disability advocates perceived that building code officials in California were not very cooperative and were difficult to work with on state accessibility issues," she says. "Because of this, a number of influential advocates supported adoption of a different code."

Although the 2006 IBC was finally adopted (effective in January 2008), California's disability advocates were successful in deleting Chapter 11 and retaining the existing accessibility requirements.

The Michigan Model

When the IBC was being considered as the basis of the new *Michigan Building Code*, that state also had barrier free design mandates based on an existing statute and careful consideration was given as to how best to proceed.

"We wanted state provisions that were consistent with the ADA," recalls Michigan Bureau of Construction Codes Executive Director Henry L. Green. "There was no sense in rewriting our state requirements to account for the ADA when there was a national model available, so we decided to show how we could achieve the same or better access by using the ICC codes and developed a side-by-side analysis that demonstrated how this would be achieved."

Seeking to avoid a potential battle of designers versus builders versus disability advocates, Green had his staff develop the analysis without outside input. In the end, there was no resistance when the IBC access requirements were adopted with very few state amendments (some of which were required for the code to reflect other existing state laws).

Conclusion

For those concerned with providing better accessibility within the built environment for persons with disabilities, the *International Codes* remain the best-kept secret in far too many jurisdictions. Beyond the comprehensive requirements for barrier-free design in the codes themselves, ICC provides training, technical assistance, support materials and certification as an Accessibility Inspector/Plans Examiner for both the design and construction requirements of the I-Codes and the technical specifications of ICC/ANSI A117.1.

While waiting for the DOJ to begin enforcement of the new ADAAG, ICC and other interested parties have an opportunity to reach out to individuals with disabilities and their organizations in I-Codes jurisdictions across the country, show them how the IBC can provide access that meets or exceeds that required by federal law, and convince them that partnering with ICC in their states and localities will ultimately benefit persons with disabilities. ♦

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