

**TITLE II IMPACT – GUIDELINE**

**BCA DIRECTIVE -- 04**

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**A PURPOSE:**  
This **BCA Directive** addresses the most frequently raised issues in regard to the **28 CFR Part 35, (Nondiscrimination on the Basis of Disability on State and Local Government Services)**, Title II requirement for ADA accommodations.

Florida Statutes changes in 2011 in sections **F.S. Section 553.503 (Adoption of Federal Standards)** and **F.S. Section 553.513 (Enforcement)** assigns jurisdictional enforcement of Title II requirements as set forth in **28 CFR Parts 35 and 36**, and **49 CFR Part 37** to the Building Official.

The intent as established by **F.S. Section 553.502, (Adoption of Federal Standards)** is to maintain the US Department of Justice certification of the **Florida Accessibility Code for Building Construction (Code)** as substantially equivalent to the Federal ADA Standards; so that the compliance with the Code provides presumption of compliance with the Federal ADA Standards.

**B REQUIREMENTS:**

**1. Horizontal Dispersion:** FBC Accessibility Code, Section 221.2.3.1 (Wheelchair Spaces)  
Horizontal dispersion shall not be required in assembly areas with 300 or fewer seats if the companion seats required by **Section 221.3** and wheelchair spaces are located within the 2nd or 3rd quartile of the total row length. Intermediate aisles shall be included in determining the total row length.

**Vertical Dispersion:** FBC Accessibility Code, Section 221.2.3.2.(1) (Vertical Dispersion)  
The vertical dispersion shall not be required in assembly areas with 300 or fewer seats if the wheelchair spaces provide viewing angles that are equivalent to, or better than, the average viewing angle provided in the facility.

Access to lecture platform is required.

**Number of Wheelchair Spaces:** FBC Accessibility Code, Section 221.2.1.1 (General Seating)

Capacity in Assembly Areas	Number of Required Wheelchair Locations
4 to 25	1
26 to 50	2
51 to 150	4
151 to 300	5
301 to 500	6
501 to 5,000	6 + (1@ 150, between 501 to 5,000)
5,001 and over	36 + (1 @ 200, over 5,000)

**2. Disproportionality:** 28 CFR Part 35, Section 35.151 (New Constructions & Alterations)  
Alterations to provide accessible path of travel is deemed disproportionate when costs exceeds 20% of the overall cost of alterations. The disproportionality calculation shall be based on the accumulated cost of the **past three years of all alterations** completed for the facility. Following costs count toward the project costs that affect the amount determining disproportionality: alterations to the building including flooring changes, cosmetics upgrades except painting, new doors, entrances, etc. Costs that are excluded: "alterations to windows, hardware, controls, electrical outlets, and signage shall not be deemed to be alterations that affect usability of or access to an area containing a primary function." 28 CFR Part 35, Section 35.151.b.4.i.B

3. **Budget for ADA Compliance:** US Code 28 CFR Part 35, Section 35.151.b.4.iii.A (Disproportionality)  
**Mandatory 20% budget set aside for ADA compliance** is implied for any alteration work. If buildings are deemed to fully comply with ADA requirements, then no set aside budget for ADA accommodation is required. The cost all alterations is counted toward the 3 year accumulated cost.
4. **Duty:** US Code 28 CFR Part 35, Section 35.151.b.4.iv (Duty to Provide Accessible Features)  
The path of travel shall be made accessible to the extent that it can be made accessible without incurring disproportionate costs. In choosing which accessible elements to provide, priority should be given to those elements that will provide the greatest access, in the following order:
  - (1) An accessible entrance;
  - (2) An accessible route to the altered area;
  - (3) At least one accessible restroom for each sex or a single unisex restroom;
  - (4) Accessible telephones;
  - (5) Accessible drinking fountains; and
  - (6) When possible, additional accessible elements such as parking, storage, and alarms.
5. **Smaller Alterations:** US Code 28 CFR Part 35, Section 35.151.b.4.v (Series of Smaller Alterations)  
The obligation to provide accessible path of travel **may not be evaded or circumvented** by performing series of smaller alterations, if such alteration could have been performed in a single undertaking.
6. **Scope of Affected Work:** US Code 28 CFR Part 35, Section 35.151.b.4 (Path of Travel)  
An alteration that affects or could affect 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.

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