

AMENDED IN ASSEMBLY AUGUST 8, 2008

AMENDED IN ASSEMBLY JULY 2, 2008

AMENDED IN SENATE MAY 27, 2008

AMENDED IN SENATE MAY 6, 2008

AMENDED IN SENATE APRIL 21, 2008

SENATE BILL

No. 1608

Introduced by Senators Corbett, Harman, Steinberg, Runner, and Calderon

(Principal coauthors: Assembly Members Smyth and ~~Wolk~~, *Wolk*, and *Jones*)

February 22, 2008

An act to amend Section 5600 of the Business and Professions Code, to add Section 55.3 to, and to add Part 2.52 (commencing with Section 55.51) to Division 1 of, the Civil Code, to amend Section 4459.5 of, and to add Chapter 3.7 (commencing with Section 8299) to Division 1 of Title 2 of, the Government Code, and to amend Section 18949.29 of the Health and Safety Code, relating to disability access, *and making an appropriation therefor*.

LEGISLATIVE COUNSEL'S DIGEST

SB 1608, as amended, Corbett. Disabled persons: equal access rights: civil actions.

(1) Existing law provides for the licensure and regulation of persons engaged in the practice of architecture by the California Architects Board.

This bill would require a person licensed to practice architecture, as a condition of license renewal, to complete coursework regarding

disability access requirements, as specified, certify that completion to the California Architects Board, and provide specified documentation from the course provider.

(2) Existing law prohibits any person, firm, or corporation from denying or interfering with a disabled person's admittance to or enjoyment of public facilities, or from otherwise interfering with the rights of an individual with a disability, including the right to be accompanied by a guide dog, signal dog, or service dog, as specified. Existing federal law, the Americans with Disabilities Act of 1990, prohibits discrimination against an individual with a disability on the basis of that disability in specified situations, including employment opportunities and access to public accommodations, services, and transportation.

This bill would require an attorney to provide a specified written advisory to a building owner or tenant with each demand for money or complaint for any construction-related accessibility claim, as defined, in a form to be developed by the Judicial Council, and on a separate page clearly distinguishable from the demand for money, as specified.

(3) Existing law authorizes the State Architect to establish a program for voluntary certification by the state of any person who meets specified criteria as a certified access specialist with respect to access to buildings for persons with disabilities.

This bill would authorize the State Architect to implement that program with startup funds derived, as a loan, from the reserve of the Public School Planning, Design, and Construction Review Revolving Fund, upon appropriation by the Legislature, to be repaid as specified. The bill would enact the Construction-Related Accessibility Standards Compliance Act, which would provide for the inspection of sites by certified access specialists and the provision of specified certificates and reports regarding those inspections. The bill would require that, commencing July 1, 2009, all inspections of a place of public accommodation that relate to permitting, plan checks, or new construction be conducted by a building inspector who is a certified access specialist. It would require a local agency to employ or retain a sufficient number of building inspectors, and in no event less than one, who are certified access specialists. The bill would allow a local government to charge or increase inspection fees to the extent necessary to offset the costs of complying with these provisions. By imposing a new requirement on local agencies with respect to building inspectors, the bill would impose a state-mandated local program.

The bill would require a court, with respect to an action involving a construction-related accessibility claim, to issue an order that, among other things, grants a 90-day stay of the proceedings with respect to that claim and schedules an early evaluation conference if the defendant has satisfied certain requirements relating to inspection of the site at issue. The bill would require that early evaluation conferences be conducted by a superior court judge or commissioner, or a court early evaluation conference officer, as defined. The bill would provide that damages may be recovered for a violation of a construction-related accessibility standard that denied the plaintiff full and equal access only if that violation was personally encountered by the plaintiff on a particular occasion or deterred the plaintiff on a particular occasion.

(4) Existing law establishes various boards and commissions within state government.

The bill would establish the California Commission on Disability Access for certain purposes relating to disability access, and would require the commission to conduct studies and make reports to the Legislature, as specified. *The bill would provide that these provisions shall not be implemented, and shall not remain operative, unless funds are appropriated for that purpose. The bill would appropriate \$90,000 from the General Fund to the commission, which would be available May 1, 2009, to fund its startup, as specified.*

(5) Existing law requires all construction inspectors, plans examiners, and building officials to complete a minimum of 45 hours of continuing education for every 3-year period, as specified.

This bill would require that at least 8 of those hours of continuing education relate to disability access requirements, as specified. The bill would allow a local government to charge or increase inspection fees to the extent necessary to offset any added costs incurred in complying with these provisions.

~~(6) The bill would provide that certain provisions described above shall become operative only upon the funding, and commencement of operations, of the California Commission on Disability Access, and shall cease to be operative 60 days following the cessation of operations of the commission.~~

~~(7)~~

(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(7) The bill would provide that certain provisions described above shall become operative only upon the funding, and commencement of operations, of the California Commission on Disability Access, and shall cease to be operative 60 days following the cessation of operations of the commission.

Vote: ~~majority~~^{2/3}. Appropriation: ~~no~~-yes. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 5600 of the Business and Professions
 2 Code is amended to read:
 3 5600. (a) All licenses issued or renewed under this chapter
 4 shall expire at 12 midnight on the last day of the birth month of
 5 the licenseholder in each odd-numbered year following the issuance
 6 or renewal of the license.
 7 (b) To renew an unexpired license, the licenseholder shall,
 8 before the time at which the license would otherwise expire, apply
 9 for renewal on a form prescribed by the board and pay the renewal
 10 fee prescribed by this chapter.
 11 (c) The renewal form shall include a statement specifying
 12 whether the licensee was convicted of a crime or disciplined by
 13 another public agency during the preceding renewal period and
 14 that the licensee’s representations on the renewal form are true,
 15 correct, and contain no material omissions of fact, to the best
 16 knowledge and belief of the licensee.
 17 (d) (1) As a condition of license renewal, a licensee shall have
 18 completed coursework regarding disability access requirements
 19 pursuant to paragraphs (2) and (3). A licensee shall certify to the
 20 board, as a part of the license renewal process, that he or she has
 21 completed the required coursework prior to approval of his or her
 22 license renewal and shall provide documentation from the course
 23 provider that shall include the course title, subjects covered, name
 24 of provider and trainer or educator, date of completion, number
 25 of hours completed, and a statement about the trainer or educator’s
 26 knowledge and experience background.

1 (2) (A) For licenses renewed on and after July 1, 2009, and
2 before January 1, 2010, a licensee shall have completed one hour
3 of coursework.

4 (B) For licenses renewed on and after January 1, 2010, and
5 before January 1, 2011, a licensee shall have completed two and
6 one-half hours of coursework.

7 (C) For licenses renewed on and after January 1, 2011, a licensee
8 shall have completed five hours of coursework within the previous
9 two years.

10 (3) Coursework regarding disability access requirements shall
11 include information and practical guidance concerning
12 requirements imposed by the Americans with Disabilities Act of
13 1990 (Public Law 101-336; 42 U.S.C. Sec. 12101 et seq.), state
14 laws that govern access to public facilities, and federal and state
15 regulations adopted pursuant to those laws. Coursework provided
16 pursuant to this paragraph shall be presented by trainers or
17 educators with knowledge and expertise in these requirements.
18 The board shall ~~verify that a licensee has met~~ *require that a*
19 *licensee certify that he or she has satisfied* the requirements of this
20 subdivision as a condition of license renewal.

21 SEC. 2. Section 55.3 is added to the Civil Code, to read:

22 55.3. (a) For purposes of this section, the following shall apply:

23 (1) “Complaint” means a civil complaint that is filed or is to be
24 filed with a court and is sent to or served upon a defendant on the
25 basis of one or more construction-related accessibility claims, as
26 defined in this section.

27 (2) “Demand for money” means a written document that is
28 provided to a building owner or tenant, or an agent or employee
29 of a building owner or tenant, that contains a request for money
30 on the basis of one or more construction-related accessibility
31 claims, as defined in paragraph (3).

32 (3) “Construction-related accessibility claim” means any claim
33 of a violation of any construction-related accessibility standard,
34 as defined by paragraph (6) of subdivision (a) of Section 55.52.
35 “Construction-related accessibility claim” does not include a claim
36 of interference with housing within the meaning of paragraph (2)
37 of subdivision (b) of Section 54.1, or any claim of interference
38 caused by something other than the construction-related
39 accessibility condition of the property, including, but not limited
40 to, the conduct of any person.

1 (b) An attorney shall provide a written advisory with each
2 demand for money or complaint sent to or served by him or her
3 upon a defendant, in the form described in subdivision (c), and on
4 a page or pages that are separate and clearly distinguishable from
5 the demand for money or complaint, as follows:

6
7
8
9

**IMPORTANT INFORMATION FOR BUILDING OWNERS
AND TENANTS**

10 This form is available in English, Spanish, Chinese,
11 Vietnamese, and Korean through the Judicial Council of
12 California. Persons with visual impairments can get assistance
13 in viewing this form through the Judicial Council Internet Web
14 site at <http://www.courtinfo.ca.gov>.

15 Existing law requires that you receive this information
16 because the demand for money or complaint you received with
17 this document claims that your building or property does not
18 comply with one or more existing construction-related
19 accessibility laws or regulations protecting the civil rights of
20 persons with disabilities to access public places.

21 **YOU HAVE IMPORTANT LEGAL OBLIGATIONS.**
22 Compliance with disability access laws is a serious and
23 significant responsibility that applies to all California building
24 owners and tenants with buildings open for business to the
25 public. You may obtain information about your legal
26 obligations and how to comply with disability access laws
27 through the Division of the State Architect. Commencing
28 September 1, 2009, information will also be available from
29 the California Commission on Disability Access Internet Web
30 site.

31 **YOU HAVE IMPORTANT LEGAL RIGHTS.** You are not
32 required to pay any money unless and until a court finds you
33 liable. Moreover, **RECEIPT OF THIS ADVISORY DOES**
34 **NOT NECESSARILY MEAN YOU WILL BE FOUND**
35 **LIABLE FOR ANYTHING.**

36 You may wish to promptly consult an attorney experienced
37 in this area of the law to get helpful legal advice or
38 representation in responding to the demand for money or
39 complaint you received. You may contact the local bar
40 association in your county for information on available

1 attorneys in your area. If you have insurance, you may also
2 wish to contact your insurance provider. You have the right
3 to seek assistance or advice about this demand for money or
4 complaint from any person of your choice, and no one may
5 instruct you otherwise. Your best interest may be served by
6 seeking legal advice or representation from an attorney.

7 If a complaint has been filed and served on you and your
8 property has been inspected by a Certified Access Specialist
9 (CASP; see www.dsa.dgs.ca.gov/casp), you may have the right
10 to a court stay (temporary stoppage) and early evaluation
11 conference to evaluate the merits of the construction-related
12 accessibility claim against you pursuant to Civil Code Section
13 55.54. At your option, you may be, but need not be,
14 represented by an attorney to file a reply and to file an
15 application for a court stay and early evaluation conference.
16 If you choose not to hire an attorney to represent you, you may
17 obtain additional information about how to represent yourself
18 and how to file a reply without hiring an attorney through the
19 Judicial Council Internet Web site at
20 <http://www.courtinfo.ca.gov/selfhelp/>. You may also obtain
21 a form to file your reply to the lawsuit, as well as the form and
22 information for filing an application to request the court stay
23 and early evaluation conference at that same Web site.

24 If you choose to hire an attorney to represent you, the
25 attorney who sent you the demand for money or complaint is
26 prohibited from contacting you further unless your attorney
27 has given the other attorney permission to contact you. If the
28 other attorney does try to contact you, you should immediately
29 notify your attorney.
30

31 (c) On or before July 1, 2009, the Judicial Council shall adopt
32 a form that may be used by attorneys to comply with the
33 requirements of subdivision (b). The form shall be in substantially
34 the same format and include all of the text set forth in subdivision
35 (b). The form shall be available in English, Spanish, Chinese,
36 Vietnamese, and Korean, and shall include a statement that the
37 form is available in additional languages, and the Judicial Council
38 Internet Web site address where the different versions of the form
39 may be located. The form shall include Internet Web site

1 information for the Division of the State Architect and, when
2 operational, the California Commission on Disability Access.

3 (d) Subdivision (b) shall apply only to a demand for money or
4 complaint made by an attorney. Nothing in this section is intended
5 to affect the right to file a civil complaint under any other law or
6 regulation protecting the physical access rights of persons with
7 disabilities. Additionally, nothing in this section requires a party
8 acting in propria persona to provide or send a demand for money
9 to another party before proceeding against that party with a civil
10 complaint.

11 SEC. 3. Part 2.52 (commencing with Section 55.51) is added
12 to Division 1 of the Civil Code, to read:

13
14 PART 2.52. CONSTRUCTION-RELATED ACCESSIBILITY
15 STANDARDS COMPLIANCE
16

17 55.51. This part shall be known, and may be cited, as the
18 Construction-Related Accessibility Standards Compliance Act.
19 Notwithstanding any other provision of law, the provisions of this
20 part shall apply to any construction-related accessibility claim, as
21 defined in this part, including, but not limited to, any claim brought
22 under Section 51, 54, 54.1, or 55.

23 55.52. (a) For purposes of this part, the following definitions
24 apply:

25 (1) “Construction-related accessibility claim” means any civil
26 claim in a civil action, including, but not limited to, a claim brought
27 under Section 51, 54, 54.1, or 55, based wholly or in part on an
28 alleged violation of any construction-related accessibility standard,
29 as defined in paragraph (6).

30 (2) “Application for stay and early evaluation conference” means
31 an application to be filed with the court that meets the requirements
32 of subdivision (c) of Section 55.54.

33 (3) “Certified access specialist” or “CASp” means any person
34 who has been certified pursuant to Section 4459.5 of the
35 Government Code.

36 (4) “CASp-inspected” means the site was inspected by a CASp
37 and determined to meet all applicable construction-related
38 accessibility standards pursuant to paragraph (1) of subdivision
39 (a) of Section 55.53.

1 (5) “CASp determination pending” means the site was inspected
2 by a CASp and is pending a determination by the CASp that the
3 site meets applicable construction-related accessibility standards
4 pursuant to paragraph (2) of subdivision (a) of Section 55.53.

5 (6) “Construction-related accessibility standard” means a
6 provision, standard, or regulation under state or federal law
7 requiring compliance with standards for making new construction
8 and existing facilities accessible to persons with disabilities,
9 including, but not limited to, any such provision, standard, or
10 regulation set forth in Section 51, 54, 54.1, or 55 of this code,
11 Section 19955.5 of the Health and Safety Code, the California
12 Building Standards Code (Title 24 of the California Code of
13 Regulations), the Americans with Disabilities Act of 1990 (Public
14 Law 101-336; 42 U.S.C. Sec. 12101 et seq.), and the Americans
15 with Disabilities Act Accessibility Guidelines (Appendix A to Part
16 36, Title 28, Code of Federal Regulations).

17 (7) “Place of public accommodation” has the same meaning as
18 “public accommodation,” as set forth in Section 12181(7) of Title
19 42 of the United States Code and the federal regulations adopted
20 pursuant to that section.

21 (8) “Qualified defendant” means a defendant in an action that
22 includes a construction-related accessibility claim that is asserted
23 against a place of public accommodation that met the requirements
24 of “CASp-inspected” or “CASp determination pending” prior to
25 the date the defendant was served with the summons and complaint
26 in that action. To be a qualified defendant, the defendant is not
27 required to have been the party who hired any CASp, so long as
28 the basis of the alleged liability of the defendant is a
29 construction-related accessibility claim. To determine whether a
30 defendant is a qualified defendant, the court need not make a
31 finding that the place of public accommodation complies with all
32 applicable construction-related accessibility standards as a matter
33 of law. The court need only determine that the place of public
34 accommodation has a status of “CASp-inspected” or “CASp
35 determination pending.”

36 (9) “Site” means a place of public accommodation.

37 (b) Unless otherwise indicated, terms used in this part relating
38 to civil procedure have the same meanings that those terms have
39 in the Code of Civil Procedure.

1 55.53. (a) For purposes of this part, a certified access specialist
2 shall, upon completion of the inspection of a site, comply with the
3 following:

4 (1) For a CASp-inspected site, if the CASp determines the site
5 meets all applicable construction-related accessibility standards,
6 the CASp shall provide a written inspection report to the requesting
7 party that includes both of the following:

8 (A) An identification and description of the inspected structures
9 and areas of the site.

10 (B) A signed and dated statement of compliance that includes
11 both of the following:

12 (i) A statement that, in the opinion of the CASp, the inspected
13 structures and areas of the site meet construction-related
14 accessibility standards. The statement shall clearly indicate whether
15 the determination of the CASp includes an assessment of readily
16 achievable barrier removal.

17 (ii) If corrections were made as a result of the CASp inspection,
18 an itemized list of all corrections and dates of completion.

19 (2) For a CASp determination pending site, if the CASp
20 determines that corrections are needed to the site in order for the
21 site to meet all applicable construction-related accessibility
22 standards, ~~the CASp shall do both of the following:~~

23 ~~(A) Provide a signed and dated written inspection report to the~~
24 ~~standards, the CASp shall provide a signed and dated written~~
25 ~~inspection report to the~~ requesting party that includes all of the
26 following:

27 ~~(i)~~

28 (A) An identification and description of the inspected structures
29 and areas of the site.

30 ~~(ii)~~

31 (B) A statement that, in the opinion of the CASp, the inspected
32 structures and areas of the site need correction to meet
33 construction-related accessibility standards. This statement shall
34 clearly indicate whether the determination of the CASp includes
35 an assessment of readily achievable barrier removal.

36 ~~(iii)~~

37 (C) An identification and description of the structures or areas
38 of the site that need correction and the correction needed.

39 ~~(iv)~~

1 (D) A schedule of completion for each of the corrections within
2 a reasonable timeframe.

3 ~~(B) Monitor the progress of corrections to ensure reasonably~~
4 ~~timely completion no less than once every 90 days and, if~~
5 ~~applicable, provide a signed and dated statement of progress that~~
6 ~~includes both of the following:~~

7 ~~(i) A statement indicating whether, in the opinion of the CASp,~~
8 ~~progress toward completion of the corrections is being made in a~~
9 ~~reasonably timely fashion.~~

10 ~~(ii) If applicable, an updated schedule for completion of~~
11 ~~corrections within a reasonable timeframe.~~

12 (b) For purposes of this section, in determining whether the site
13 meets applicable construction-related accessibility standards when
14 there is a conflict or difference between a state and federal
15 provision, standard, or regulation, the state provision, standard, or
16 regulation shall apply unless the federal provision, standard, or
17 regulation is more protective of accessibility rights.

18 (c) Every CASp who conducts an inspection of a place of public
19 accommodation shall, upon completing the inspection of the site,
20 provide the building owner or tenant who requested the inspection
21 with the following notice, which the State Architect shall make
22 available as a form on the State Architect's Internet Web site:

23

24 NOTICE TO PRIVATE PROPERTY OWNER/TENANT:

25 YOU ARE ADVISED TO KEEP IN YOUR RECORDS
26 ANY WRITTEN INSPECTION REPORT AND ANY OTHER
27 DOCUMENTATION CONCERNING YOUR PROPERTY
28 SITE THAT IS GIVEN TO YOU BY A CERTIFIED ACCESS
29 SPECIALIST.

30 IF YOU BECOME A DEFENDANT IN A LAWSUIT
31 THAT INCLUDES A CLAIM CONCERNING A SITE
32 INSPECTED BY A CERTIFIED ACCESS SPECIALIST,
33 YOU MAY BE ENTITLED TO A STAY (TEMPORARY
34 STOPPAGE) OF THE CLAIM AND AN EARLY
35 EVALUATION CONFERENCE.

36 IN ORDER TO REQUEST THE STAY AND EARLY
37 EVALUATION CONFERENCE, YOU WILL NEED TO
38 VERIFY THAT A CERTIFIED ACCESS SPECIALIST HAS
39 INSPECTED THE SITE THAT IS THE SUBJECT OF THE
40 CLAIM. YOU WILL ALSO BE REQUIRED TO PROVIDE

1 THE COURT AND THE PLAINTIFF WITH A COPY OF A
2 WRITTEN INSPECTION REPORT BY THE CERTIFIED
3 ACCESS SPECIALIST, AS SET FORTH IN CIVIL CODE
4 SECTION 55.54. THE APPLICATION FORM AND
5 INFORMATION ON HOW TO REQUEST A STAY AND
6 EARLY EVALUATION CONFERENCE MAY BE
7 OBTAINED AT <http://www.courtinfo.ca.gov/selfhelp/>.

8 YOU ARE ENTITLED TO REQUEST, FROM A
9 CERTIFIED ACCESS SPECIALIST WHO HAS
10 CONDUCTED AN INSPECTION OF YOUR PROPERTY,
11 A WRITTEN INSPECTION REPORT AND OTHER
12 DOCUMENTATION AS SET FORTH IN CIVIL CODE
13 SECTION 55.53. YOU ARE ALSO ENTITLED TO
14 REQUEST THE ISSUANCE OF A DISABILITY ACCESS
15 INSPECTION CERTIFICATE, WHICH YOU MAY POST
16 ON YOUR PROPERTY IF IT IS FOUND TO MEET
17 APPLICABLE CONSTRUCTION-RELATED
18 ACCESSIBILITY STANDARDS.

19
20 (d) Commencing July 1, 2009, all inspections of a place of
21 public accommodation that relate to permitting, plan checks, or
22 new construction, including, but not limited to, inspections relating
23 to tenant improvements that may impact access, shall be conducted
24 by a building inspector who is a certified access specialist. To
25 timely comply with this provision, a local agency shall employ or
26 retain a sufficient number of building inspectors, and in no event
27 less than one, who are certified access specialists. A local
28 government may charge or increase inspection fees to the extent
29 necessary to offset the costs of complying with this subdivision,
30 and revenues generated from the charge or increase shall be used
31 solely to offset the costs incurred to comply with this subdivision.
32 An inspection by a building inspector who is certified as an access
33 specialist shall be treated the same as any other inspection by a
34 CASp and shall not be entitled to any additional legal significance.

35 (e) (1) Every CASp who completes an inspection of a place of
36 public accommodation shall, upon a determination that the site
37 meets applicable construction-related accessibility standards
38 pursuant to paragraph (1) of subdivision (a), provide the building
39 owner or tenant requesting the inspection with a numbered
40 disability access inspection certificate indicating that status. The

1 disability access inspection certificate shall be dated and signed
2 by the CASp inspector, and shall contain the inspector's name and
3 license number. Upon issuance of a certificate, the CASp shall
4 record the issuance of the numbered certificate and the name and
5 address of the recipient in a record book the CASp shall maintain
6 for that purpose.

7 (2) Beginning March 1, 2009, the State Architect shall make
8 available for purchase by any local building department or CASp
9 sequentially numbered disability access inspection certificates that
10 are printed with a watermark or other feature to deter forgery. The
11 certificate shall be in substantially the following form:

These premises have been inspected
by a Certified Access Specialist



ACCESS

Inspection Date: _____ Inspected By: _____

www.dsa.dgs.ca.gov/casp

1 (3) The disability access inspection certificate may be posted
2 on the premises of the place of public accommodation, unless,
3 following the date of inspection, the inspected site has been
4 modified or construction has commenced to modify the inspected
5 site in a way that may impact compliance with construction-related
6 accessibility standards.

7 (f) Nothing in this section or any other provision of law is
8 intended to require a property owner or tenant to hire a CASp. A
9 property owner's or tenant's election not to hire a CASp shall not
10 be admissible to prove that person's lack of intent to comply with
11 the law.

12 55.54. (a) (1) An attorney who causes a summons and
13 complaint to be served in an action that includes a
14 construction-related accessibility claim, including, but not limited
15 to, a claim brought under Section 51, 54, 54.1, or 55, shall, at the
16 same time, cause to be served a copy of the application form
17 specified in subdivision (c) and a copy of the following notice to
18 the defendant on separate papers that shall be served with the
19 summons and complaint:

20
21 NOTICE TO DEFENDANT

22
23 YOU MAY BE ENTITLED TO ASK FOR A STAY
24 (TEMPORARY STOPPAGE) AND EARLY EVALUATION
25 CONFERENCE IN THIS LAWSUIT.

26 If the construction-related accessibility claim pertains to a
27 site that has been inspected by a Certified Access Specialist
28 (CASp) and you have an inspection report for that site, you
29 may make an immediate request for a court stay and early
30 evaluation conference in the construction-related accessibility
31 claim by filing the attached application form with the court.
32 You may be entitled to the court stay and early evaluation
33 conference regarding the accessibility claim only if ALL of
34 the statements in the application form are true.

35 The court will schedule the conference to be held within 50
36 days after you file the attached application form. The court
37 will also issue an immediate stay of the proceedings unless
38 the plaintiff has obtained a temporary restraining order in the
39 construction-related accessibility claim. At your option, you
40 may be, but need not be, represented by an attorney to file the

1 application to request the early evaluation conference. You
2 may obtain a copy of the application form, filing instructions,
3 and additional information about the stay and early evaluation
4 conference through the Judicial Council Internet Web site at
5 <http://www.courtinfo.ca.gov/selfhelp/>.

6 You may file the application after you are served with a
7 summons and complaint, but no later than your first court
8 pleading or appearance in this case, which is due within 30
9 days after you receive the summons and complaint. If you do
10 not have an attorney, you will need to file the application
11 within 30 days after you receive the summons and complaint
12 to request the stay and early evaluation conference. If you do
13 not file the application, you will still need to file your reply
14 to the lawsuit within 30 days after you receive the summons
15 and complaint to contest it. You may obtain more information
16 about how to represent yourself and how to file a reply without
17 hiring an attorney at <http://www.courtinfo.ca.gov/selfhelp/>. If
18 a plaintiff representing himself or herself hires an attorney
19 after the case is filed, you will have 30 days to file an
20 application for a court stay and early evaluation conference
21 after you receive a Notice of Substitution of Counsel, unless
22 an early evaluation conference or settlement conference has
23 already been held.

24 You may file the application form without the assistance of
25 an attorney, but it may be in your best interest to immediately
26 seek the assistance of an attorney experienced in disability
27 access laws when you receive a summons and complaint. You
28 may make an offer to settle the case, and it may be in your
29 interest to put that offer in writing so that it may be considered
30 under Civil Code Section 55.55.

31
32 (2) An attorney who files a Notice of Substitution of Counsel
33 to appear as counsel for a plaintiff who, acting in *propria persona*,
34 had previously filed a complaint in an action that includes a
35 construction-related accessibility claim, including, but not limited
36 to, a claim brought under Section 51, 54, 54.1, or 55, shall, at the
37 same time, cause to be served a copy of the application form
38 specified in subdivision (c) and a copy of the notice specified in
39 paragraph (1) upon the defendant on separate pages that shall be
40 attached to the Notice of Substitution of Counsel.

1 (b) (1) Notwithstanding any other provision of law, upon being
2 served with a summons and complaint asserting a
3 construction-related accessibility claim, including, but not limited
4 to, a claim brought under Section 51, 54, 54.1, or 55, a qualified
5 defendant may file a request for a court stay and early evaluation
6 conference in the proceedings of that claim prior to or simultaneous
7 with the qualified defendant’s responsive pleading or other initial
8 appearance in the action that includes the claim. If the qualified
9 defendant filed a timely request for stay and early evaluation
10 conference before a responsive pleading was due, the period for
11 filing a responsive pleading shall be tolled until the stay is lifted.
12 Any responsive pleading filed simultaneously with a request for
13 stay and early evaluation conference may be amended without
14 prejudice, and the period for filing that amendment shall be tolled
15 until the stay is lifted.

16 (2) Notwithstanding any other provision of law, if the plaintiff
17 had acted in propia persona in filing a complaint that includes a
18 construction-related accessibility claim, including, but not limited
19 to, a claim brought under Section 51, 54, 54.1, or 55, a qualified
20 defendant who is served with a Notice of Substitution of Counsel
21 shall have 30 days to file an application for a stay and an early
22 evaluation conference. The application may be filed prior to or
23 after the defendant’s filing of a responsive pleading or other initial
24 appearance in the action that includes the claim, except that an
25 application may not be filed in a claim in which an early evaluation
26 conference or settlement conference has already been held on the
27 claim.

28 (c) (1) An application for an early evaluation conference and
29 stay shall include a signed declaration that declares both of the
30 following:

31 (A) The site identified in the complaint has been
32 CASp-inspected or is CASp determination pending and, if the site
33 is CASp-inspected, there have been no modifications completed
34 or commenced since the date of inspection that may impact
35 compliance with construction-related accessibility standards.

36 (B) An inspection report pertaining to the site has been issued
37 by a CASp. The inspection report shall be provided to the court
38 and the plaintiff at least 15 days prior to the court date set for the
39 early evaluation conference.

- 1 (2) The following provisional request form may be used and
- 2 filed by a qualified defendant until a form is adopted by the Judicial
- 3 Council for that purpose pursuant to subdivision (k):

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number if attorney, and address): TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____ STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____	
PLAINTIFF: _____ DEFENDANT: _____	
DEFENDANT'S APPLICATION FOR STAY AND EARLY EVALUATION CONFERENCE PURSUANT TO CIVIL CODE SECTION 55.54 (CLAIM OF ACCESSIBILITY)	CASE NUMBER: _____

(Information about this application and the filing instructions may be obtained at [http:// www.courtinfo.ca.gov/selfhelp/](http://www.courtinfo.ca.gov/selfhelp/).)

1. Defendant (name) _____ requests a stay of proceedings and early evaluation conference pursuant to Civil Code Section 55.54.
2. The complaint in this case alleges an accessibility claim as defined under Civil Code Section 55.52(a)(1).
3. The claim concerns a site that (check the box if the statement is true):
 - a. _____ Has been inspected by a Certified Access Specialist (CASp) or has a Certified Access Specialist (CASp) determination pending, and
 - b. _____ An inspection report by a Certified Access Specialist (CASp) relating to the site has been issued.
 (Both (a) and (b) must be met for the court to order a Stay and Early Evaluation Conference.)
4. I am requesting the court to:
 - a. Stay the proceedings relating to the accessibility claim.
 - b. Schedule an early evaluation conference.
 - c. Order Defendant to file a copy of the Certified Access Specialist (CASp) report with the court and serve a copy of the report on the Plaintiff at least 15 days before the early evaluation conference date.
 - d. Order Plaintiff to file the statement required by Civil Code Section 55.54(d)(5)(A)-(D) with the court and serve a copy of the statement on the Defendant at least 15 days before the date of the early evaluation conference.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME OF DECLARANT)

(SIGNATURE OF DECLARANT)

(TITLE OF DECLARANT)

DEFENDANT'S APPLICATION FOR EARLY EVALUATION CONFERENCE AND STAY OF PROCEEDINGS
(Claim of Accessibility) Provisional Form

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number if attorney, and address): TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____ STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF: DEFENDANT:	
NOTICE AND ORDER OF STAY OR PROCEEDINGS AND EARLY EVALUATION CONFERENCE (CLAIM OF ACCESSIBILITY)	CASE NUMBER:

Stay of Proceeding

For a period of 90 days from the date of the filing of this court notice, unless otherwise ordered by the court, the parties are stayed from taking any further action relating to the claim or claims of accessibility in this case.

This stay does not apply to an accessibility claim in which the plaintiff has obtained temporary injunctive relief that is still in place.

Notice of Early Evaluation Conference

1. This action includes an accessibility claim under Civil Code Section 55.52(a)(1) or other provision of law.
2. A defendant has requested an early evaluation conference and a stay of proceedings under Civil Code Section 55.54.
3. The early evaluation conference is scheduled as follows:

a. Date:	Time:	Dept.	Room:
----------	-------	-------	-------

- b. The conference will be held at _____, the court address shown above, or _____ at:
4. The plaintiff and defendant shall attend with any other person needed for settlement of the case.
5. The defendant who requested the conference and stay of proceedings shall file with the court and serve on all parties a copy of the CASp report for the site that is the subject of the accessibility claim at least 15 days before the date set for the early evaluation conference.
6. The plaintiff shall file with the court and serve on all parties at least 15 days before the date set for the early evaluation conference a statement, to the extent known, of all of the following:
 - a. An itemized list of specific conditions on the subject premises that are the basis of the claimed accessibility violations in the plaintiff's complaint;
 - b. The amount of damages claimed;
 - c. The amount of attorney's fees and costs incurred to date, if any, that are being claimed; and
 - d. Any demand for settlement of the case in its entirety.

7. A copy of this Notice and Order and the Defendant's Application shall be served on the plaintiff or plaintiff's attorney by hand delivering it or mailing it to the address listed on the complaint on the same date that the court issues this Notice and Order of Stay of Proceedings and Early Evaluation Conference.

Date: _____ Clerk, by _____, Deputy

More information about this Notice and Order and the defendant's application, and instructions to assist plaintiffs and defendants in complying with this Notice and Order, may be obtained at <http://www.courtinfo.ca.gov/selfhelp>

Requests for Accommodation

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least 5 days before the date on which you are to appear. Contact the clerk's office or go to www.courtinfo.ca.gov/forms for Request for Accommodations by Persons with Disabilities and Order (form MC-410). (Civil Code Section 54.8)

Proof of Service

(Required from Defendant Filing Application for Stay and Early Evaluation Conference)

I served a copy of the defendant's Application For Stay and Early Evaluation Conference Pursuant To Civil Code Section 55.54 and the court Notice and Order of Stay of Proceedings and Early Evaluation Conference (check one):

_____ On the Plaintiff's attorney

_____ On the Plaintiff who is not represented by an attorney

By hand delivering it or mailing it to the address listed on the complaint on the day the court signed this Notice and Order of Stay of Proceedings and Early Evaluation Conference.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct.

Date: _____

Type or Print Name

Signature

Address of named person

1 (3) The provisional form and any replacement Judicial Council
2 form shall also provide space for the court’s order pursuant to
3 subdivision (d), the defendant’s declaration of proof of service of
4 the application, and the notice of the court’s order.

5 (d) Upon the filing of an application for stay and early evaluation
6 conference by a qualified defendant, the court shall immediately
7 issue an order that does all of the following:

8 (1) Grants a 90-day stay of the proceedings with respect to the
9 construction-related accessibility claim, unless the plaintiff has
10 obtained temporary injunctive relief that is still in place for the
11 construction-related accessibility claim.

12 (2) Schedules a mandatory early evaluation conference for a
13 date as soon as possible from the date of the order, but in no event
14 later than 50 days after issuance of the order, and in no event earlier
15 than 21 days after the filing of the request.

16 (3) Directs the parties, and any other person whose authority is
17 required to negotiate and enter into settlement, to appear in person
18 at the time set for the conference. Appearance by counsel shall not
19 satisfy the requirement that the parties or those with negotiation
20 and settlement authority personally appear, provided, however,
21 that the court may allow a plaintiff who is unable to attend in
22 person due to his or her disability to participate in the hearing by
23 telephone or other alternative means or through a representative
24 authorized to settle the case.

25 (4) Directs the defendant to file with the court and serve on the
26 plaintiff a copy of any relevant CASp inspection report at least 15
27 days before the date of the conference.

28 (5) Directs the plaintiff to file with the court and serve on the
29 defendant at least 15 days before the date of the conference a
30 statement that includes, to the extent reasonably known, for use
31 solely for the purpose of the early evaluation conference, all of the
32 following:

33 (A) An itemized list of specific conditions on the subject
34 premises that are the basis of the claimed violations of
35 construction-related accessibility standards in the plaintiff’s
36 complaint.

37 (B) The amount of damages claimed.

38 (C) The amount of attorney’s fees and costs incurred to date, if
39 any, that are being claimed.

40 (D) Any demand for settlement of the case in its entirety.

1 (e) (1) A party failing to comply with any court order may be
2 subject to court sanction at the court’s discretion.

3 (2) The court shall lift the stay when the defendant has failed
4 to file and serve the CASp inspection report prior to the early
5 evaluation conference and has failed also to produce the report at
6 the time of the early evaluation conference, unless the defendant
7 shows good cause for that failure.

8 (3) The court may lift the stay at the conclusion of the early
9 evaluation conference upon a showing of good cause by the
10 plaintiff. Good cause may include the defendant’s failure to make
11 reasonably timely progress toward completion of corrections noted
12 by a CASp.

13 (f) All discussions at the early evaluation conference shall be
14 subject to Section 1152 of the Evidence Code. It is the intent of
15 the Legislature that the purpose of the evaluation conference shall
16 include, but not be limited to, evaluation of all of the following:

17 (1) Whether the defendant is entitled to the 90-day stay for some
18 or all of the identified issues in the case, as a qualified defendant.

19 (2) The current condition of the site and the status of any plan
20 of corrections, including whether the qualified defendant has
21 corrected or is willing to correct the alleged violations, and the
22 timeline for doing so.

23 (3) Whether the case, including any claim for damages or
24 injunctive relief, can be settled in whole or in part.

25 (4) Whether the parties should share other information that may
26 facilitate early evaluation and resolution of the dispute.

27 (g) Nothing in this section precludes any party from making an
28 offer to compromise pursuant to Section 998 of the Code of Civil
29 Procedure.

30 (h) The court may schedule additional conferences and may
31 extend the 90-day stay for good cause shown, but not to exceed
32 one additional 90-day extension.

33 (i) Early evaluation conferences shall be conducted by a superior
34 court judge or commissioner, or a court early evaluation conference
35 officer. A commissioner shall not be qualified to conduct early
36 evaluation conferences pursuant to this subdivision unless he or
37 she has received training regarding disability access requirements
38 imposed by the Americans with Disabilities Act of 1990 (Public
39 Law 101-336;; 42 U.S.C. Sec. 12101 et seq.), state laws that govern
40 access to public facilities, and federal and state regulations adopted

1 pursuant to those laws. For purposes of this subdivision, a “court
2 early evaluation conference officer” means an attorney employed
3 by the court who has received training regarding disability access
4 requirements imposed by the Americans with Disabilities Act of
5 1990, state laws that govern access to public facilities, and federal
6 and state regulations adopted pursuant to those laws. Attorneys
7 serving in this capacity may also be utilized by the court for other
8 purposes not related to these proceedings.

9 (j) Nothing in this part shall be deemed to make any inspection
10 report, opinion, statement, certificate, or other finding or conclusion
11 of a CASp binding on the court, or to abrogate in any manner the
12 ultimate authority of the court to make all appropriate findings of
13 fact and law.

14 (k) Nothing in this part shall be construed to invalidate or limit
15 any California construction-related accessibility standard that
16 provides greater or equal protection for the rights of individuals
17 with disabilities than is afforded by the Americans with Disabilities
18 Act (Public Law 101-336; 42 U.S.C. Sec. 12101 et seq.) and the
19 federal regulations adopted pursuant to that act.

20 (l) (1) The Judicial Council shall prepare and post on its Internet
21 Web site instructions and a form for a qualified defendant to use
22 to file an application for stay and early evaluation conference as
23 provided in subdivisions (b) and (c), and a form for the court’s
24 notice of stay and early evaluation conference. Until those forms
25 are adopted, the Judicial Council shall post on its Internet Web
26 site the provisional forms set forth in subdivision (c).

27 (2) The Judicial Council shall also prepare and post on its
28 Internet Web site instructions and a cover page to assist plaintiffs
29 and defendants, respectively, to comply with their filing
30 responsibilities under subdivision (d). The cover page shall also
31 provide for the party’s declaration of proof of service of the
32 pertinent document served under the court order.

33 (m) The stay provisions shall not apply to any
34 construction-related accessibility claim in which the plaintiff has
35 been granted temporary injunctive relief that remains in place.

36 55.55. Notwithstanding subdivision (f) of Section 55.54, in
37 determining an award of reasonable attorney’s fees and recoverable
38 costs in any construction-related accessibility claim, the court may
39 consider, along with other relevant information, written settlement
40 offers made and rejected by the parties. Nothing in this section

1 affects or modifies the inadmissibility of evidence regarding offers
2 of compromise pursuant to Section 1152 of the Evidence Code,
3 including, but not limited to, inadmissibility to prove injury or
4 damage.

5 55.56. Damages may be recovered for a violation of a
6 construction-related accessibility standard that denied the plaintiff
7 full and equal access only if that violation was personally
8 encountered by the plaintiff on a particular occasion or deterred
9 the plaintiff on a particular occasion. Evidence that the violation
10 was personally encountered by the plaintiff on a particular occasion
11 may include, but is not limited to, evidence that the plaintiff
12 experienced difficulty, discomfort, or embarrassment because of
13 the violation. A plaintiff shows that he or she was deterred on a
14 particular occasion if he or she had actual knowledge of a violation,
15 which deterred the plaintiff from visiting or otherwise using a place
16 of public accommodation that the plaintiff would have made use
17 of but for the violation.

18 55.57. This part shall apply only to claims filed on or after
19 January 1, 2009. Nothing in this part is intended to affect litigation
20 filed before that date, and no inference shall be drawn from
21 provisions contained in this part concerning the state of the law as
22 it existed prior to January 1, 2009.

23 SEC. 4. Section 4459.5 of the Government Code is amended
24 to read:

25 4459.5. (a) The State Architect shall establish and publicize
26 a program for voluntary certification by the state of any person
27 who meets specified criteria as a certified access specialist. No
28 later than January 1, 2005, the State Architect shall determine
29 minimum criteria a person is required to meet in order to be a
30 certified access specialist, which may include knowledge sufficient
31 to review, inspect, or advocate universal design requirements,
32 completion of specified training, and testing on standards governing
33 access to buildings for persons with disabilities.

34 (b) The State Architect may implement the program described
35 in subdivision (a) with startup funds derived, as a loan, from the
36 reserve of the Public School Planning, Design, and Construction
37 Review Revolving Fund, upon appropriation by the Legislature.
38 That loan shall be repaid when sufficient fees have been collected
39 pursuant to Section 4459.8.

1 SEC. 5. Chapter 3.7 (commencing with Section 8299) is added
2 to Division 1 of Title 2 of the Government Code, to read:

3
4 CHAPTER 3.7. THE CALIFORNIA COMMISSION ON DISABILITY
5 ACCESS
6

7 8299. The Legislature finds and declares that, despite the fact
8 that state law has provided ~~individuals~~ *persons* with disabilities
9 the right to full and equal access to public facilities since 1968,
10 and that a violation of the right of any ~~individual~~ *person* under the
11 Americans with Disabilities Act of 1990 (Public Law 101-336; 42
12 U.S.C. Sec. 12101 et seq.) has also constituted a violation of the
13 Unruh Civil Rights Act (Section 51 of the Civil Code) since 1992,
14 ~~individuals~~ *persons* with disabilities are still being denied full and
15 equal access to public facilities in many instances. The Legislature
16 further finds and declares that businesses in California have the
17 responsibility to provide full and equal access to public facilities
18 as required in the laws and regulations, but that compliance may
19 be thwarted in some cases by conflicting state and federal
20 regulations, which in turn results in unnecessary litigation. With
21 a view to developing recommendations that will enable ~~individuals~~
22 *persons* with disabilities to exercise their right to full and equal
23 access to public facilities, and that will facilitate business
24 compliance with the laws and regulations to avoid unnecessary
25 litigation, the Legislature has created the California Commission
26 on Disability Access.

27 8299.01. (a) There shall be established in the state government,
28 on or before May 1, 2009, the California Commission on Disability
29 Access. The commission shall consist of 11 public members, and
30 six ex officio nonvoting members, appointed as follows:

31 (1) Two public members appointed by the Senate Committee
32 on Rules, with one appointee from the business community and
33 one appointee from the disability community. The Senate
34 Committee on Rules shall request and consider nominations from
35 the business community and the disability community for these
36 appointments.

37 (2) Two public members appointed by the Speaker of the
38 Assembly, with one appointee from the business community and
39 one appointee from the disability community. The Speaker of the

1 Assembly shall request and consider nominations from the business
2 community and the disability community for these appointments.

3 (3) Seven public members appointed by the Governor, with the
4 consent of the Senate. Four of the Governor’s appointees shall be
5 from the disability community and shall represent a cross section
6 of that community, including a person with a physical disability,
7 a person who is visually impaired or blind, a person with a
8 cognitive disability, and a person who is hard of hearing or deaf.

9 Three appointees shall be from the business community, including
10 an appointee representative from either the California Chamber
11 of Commerce or an association representing commercial building
12 owners *the California Business Properties Association*. The

13 Governor shall request and consider nominations from the business
14 community and the disability community for these appointments.

15 (4) The State Architect, or his or her representative, as a
16 nonvoting ex officio member.

17 (5) The Attorney General, or his or her representative, as a
18 nonvoting ex officio member.

19 (6) Two members of the Senate, appointed by the Senate
20 Committee on Rules as nonvoting ex officio members. One
21 member shall be from the majority party and one member shall be
22 from the minority party.

23 (7) Two members of the Assembly, appointed by the Speaker
24 of the Assembly, as nonvoting ex officio members. One member
25 shall be from the majority party, and one member shall be from
26 the minority party.

27 (b) It is the intent of this section that the commission shall be
28 broadly representative of the ethnic, gender, and racial diversity
29 of the population of California. *It is further the intent of this section*
30 *that the appointees from the disability community shall be persons*
31 *with a disability relating to, but not limited to, vision, hearing,*
32 *mobility, breathing, speech, cognitive, cardiac, emotional,*
33 *developmental, learning, psychological, or immunological*
34 *disabilities.*

35 (c) Public members shall be appointed for three-year terms,
36 except that, with respect to the initial appointees, the Governor
37 shall appoint three members for a one-year term, two members for
38 a two-year term, and two members for a three-year term. The
39 Senate Committee on Rules and the Speaker of the Assembly shall
40 each initially appoint one member for a two-year term and one

1 member for a three-year term. Public members may be reappointed
2 for additional terms.

3 (d) Vacancies shall be filled by the appointing authority for the
4 unexpired portion of the terms.

5 8299.02. (a) Public members of the commission shall receive
6 one hundred dollars (\$100) per diem while on official business of
7 the commission, not to exceed 12 days per year. Each member of
8 the commission shall also be entitled to receive his or her actual
9 necessary traveling expenses while on official business of the
10 commission.

11 (b) The commission shall select annually from its membership
12 ~~a chairperson and a vice chairperson.~~ *a chairperson who shall be*
13 *a representative from the disability community, and a vice*
14 *chairperson who shall be a representative from the business*
15 *community.*

16 8299.03. Meetings of the commission shall be subject to the
17 Bagley-Keene Open Meeting Act (Article 9 (commencing with
18 Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2).

19 8299.04. The commission shall have the powers and authority
20 necessary to carry out the duties imposed upon it by this chapter,
21 including, but not limited to, the following:

22 (a) To employ any administrative, technical, or other personnel
23 that may be necessary for the performance of its powers and duties.

24 (b) To hold hearings, make and sign any agreement, and do or
25 perform any act, *including the collection of relevant information,*
26 *that may be necessary, desirable, or proper to carry out the purposes*
27 *of this chapter.*

28 (c) To cooperate with, and secure the cooperation of, any
29 department, division, board, bureau, commission, or other agency
30 of the state to facilitate the proper execution of its powers and
31 duties under this chapter.

32 (d) To appoint advisers or advisory committees from time to
33 time when the commission determines that the experience or
34 expertise of those advisers or advisory committees is needed for
35 projects of the commission. Section 11009 shall apply to advisers
36 or advisory committees.

37 (e) To accept any federal funds granted by an act of Congress
38 or by executive order for any purpose of this chapter.

39 (f) To accept any gift, donation, grant, or bequest for any
40 purpose of this chapter.

1 8299.05. (a) The commission shall study and make reports to
2 the Legislature on the following:

3 (1) Issues regarding compliance with state laws and regulations
4 ~~that are raised by either individuals with disabilities or businesses.~~

5 ~~(2) State laws and regulations that promote equal access for~~
6 ~~individuals with disabilities, and whether there are conflicting~~
7 ~~federal laws and regulations that might create compliance issues.~~
8 *that are raised by either persons with disabilities or businesses,*
9 *and any recommendations that would promote compliance.*

10 (2) *Whether conflicting federal laws and regulations create*
11 *compliance issues with state laws and regulations that promote*
12 *equal access for persons with disabilities, and any*
13 *recommendations that would promote consistency.*

14 (3) Whether public and private inspection programs, including
15 the Certified Access Specialist Program, are meeting the needs of
16 both the business community and the disability community,
17 *including* by the provision of timely, competent inspections that
18 properly identify violations and ~~order~~ *recommend* appropriate
19 remedial measures.

20 (4) Whether existing training and continuing education
21 requirements for personnel involved in designing, plan checking,
22 building, or inspecting a structure are sufficient to provide the
23 personnel with sufficient knowledge of the state *and federal*
24 disability access laws and regulations.

25 (5) Whether training and continuing education requirements
26 should be enacted for landscape architects, professional engineers,
27 and contractors to provide these professionals with sufficient
28 knowledge of the state and federal disability access laws and
29 regulations. This study and report shall be completed and delivered
30 to the Legislature no later than ~~July 1, 2010~~ *January 1, 2011*.

31 (b) (1) The commission shall act as an information center on
32 the status of compliance in California with state laws and
33 regulations providing ~~individuals~~ *persons* with disabilities full and
34 equal access to public facilities. To this end, it shall publish ~~an~~
35 ~~annual~~ *a biennial* report, which may be combined with the biennial
36 report required in odd-numbered years pursuant to subdivision (e),
37 on the state of disability access compliance by both the public and
38 private sector. The report shall be written in general terms and
39 shall not identify any particular violators.

1 (2) The commission shall, to the extent feasible, coordinate with
2 other state agencies and local building departments to ensure that
3 information provided to the public on disability access requirements
4 ~~are~~ *is* uniform and complete.

5 (c) The commission ~~shall~~ *may* recommend, develop, prepare,
6 or coordinate materials, projects, or other activities, as appropriate,
7 relating to any subject within its jurisdiction.

8 (d) The commission shall provide, within its resources, technical
9 ~~and consultative advice to public or private groups or persons~~
10 ~~concerned with information regarding~~ any of the following:

11 (1) Preventing or minimizing problems of compliance by
12 California businesses by engaging in educational outreach efforts
13 and by preparing and hosting on its Internet Web site a Guide to
14 Compliance with State Laws and Regulations Regarding Disability
15 Access Requirements.

16 (2) Recommending programs to enable ~~individuals~~ *persons* with
17 disabilities to obtain full and equal access to public facilities.

18 (e) The commission shall make reports on its activities, findings,
19 and recommendations to the Legislature from time to time, but not
20 less often than once during every odd-numbered year.

21 8299.06. The commission, as soon as practicable, but in no
22 event later than July 1, 2010, shall develop, in consultation with
23 the staff of the California Building Standards Commission, a master
24 checklist for disability access compliance that may be used by
25 building inspectors.

26 8299.07. The commission shall study the operation of Section
27 55.54 of the Civil Code to assess whether it is operating to achieve
28 its desired goal of reducing unnecessary civil actions that seek
29 attorney's fees and damages but that do not facilitate compliance
30 with state laws and regulations governing disability access, and
31 whether that section is unduly impacting claims brought to facilitate
32 compliance. The commission shall report its findings and any
33 recommendations to the Legislature no earlier than July 1, 2013,
34 and no later than July 1, 2014.

35 8299.08. (a) The commission, *within its purview*, is expressly
36 authorized to inform the Legislature of its position on any
37 legislative proposal pending before the Legislature and to urge the
38 introduction of legislative proposals.

1 (b) The commission is expressly authorized to state its position
2 and viewpoint on issues developed in the performance of its duties
3 and responsibilities as specified in this chapter.

4 8299.09. With respect to its duties, the commission shall be
5 an advisory commission only, and there shall be no right or
6 obligation on the part of the state to implement the findings of the
7 commission without further legislation that specifically authorizes
8 that the evaluations, determinations, and findings of the
9 commission be implemented.

10 8299.10. The commission shall hire staff or contract for those
11 experts or technical and professional services that may be required
12 for the completion of ~~any study required by Section 8299.05~~ *task*
13 *authorized or study required by this chapter*. Staff hired pursuant
14 to this section shall be hired in compliance with the State Civil
15 Service Act (Part 2 (commencing with Section 18500) of Division
16 5 of Title 2). Contracts awarded pursuant to this section shall be
17 in compliance with Section 19130. *The commission is expressly*
18 *encouraged and authorized to seek the technical and legal*
19 *assistance of other state agencies and departments in fulfilling its*
20 *statutory responsibilities.*

21 8299.11. This chapter shall not be implemented, *and shall not*
22 *remain operative*, unless funds are appropriated for that purpose
23 by the Legislature in the annual Budget Act or another statute.

24 SEC. 6. Section 18949.29 of the Health and Safety Code is
25 amended to read:

26 18949.29. (a) All construction inspectors, plans examiners,
27 and building officials shall complete a minimum of 45 hours of
28 continuing education for every three-year period, with at least eight
29 hours regarding disability access requirements pursuant to
30 subdivision (d). A local government may charge or increase
31 inspection fees to the extent necessary to offset any added costs
32 incurred in complying with this section.

33 (b) Providers of continuing education may include any
34 organizations affiliated with the code enforcement profession,
35 community colleges, or other providers of similar quality, as
36 determined by the local agency.

37 (c) For purposes of this section, “continuing education” is
38 defined as that education relating to the enforcement of Title 24
39 of the California Code of Regulations, and any other locally
40 enforced building and construction standards, including, but not

1 limited to, the model uniform codes adopted by the state. When a
2 local agency selects a model code organization as a provider of
3 continuing education or certification programs regarding the
4 enforcement of a model code adopted by the state, the local agency
5 shall give preference to the organization responsible for
6 promulgating or drafting that model code.

7 (d) Continuing education regarding disability access
8 requirements shall include information and practical guidance
9 concerning requirements imposed by the Americans with
10 Disabilities Act of 1990 (Public Law 101-336; 42 U.S.C. Sec.
11 12101 et seq.), state laws that govern access to public facilities,
12 and federal and state regulations adopted pursuant to those laws.
13 Continuing education provided pursuant to this subdivision shall
14 be presented by trainers or educators with knowledge and expertise
15 in these requirements.

16 *SEC. 7. No reimbursement is required by this act pursuant to*
17 *Section 6 of Article XIII B of the California Constitution because*
18 *a local agency or school district has the authority to levy service*
19 *charges, fees, or assessments sufficient to pay for the program or*
20 *level of service mandated by this act, within the meaning of Section*
21 *17556 of the Government Code.*

22 *SEC. 8. There is hereby appropriated ninety thousand dollars*
23 *(\$90,000) from the General Fund to the California Commission*
24 *on Disability Access, which shall be available May 1, 2009, to*
25 *fund the startup of the commission pursuant to Section 8299.01 of*
26 *the Government Code.*

27 ~~SEC. 7.~~

28 *SEC. 9. Sections 2 and 3 of this act shall become operative*
29 *only upon the funding, and commencement of operations, of the*
30 *California Commission on Disability Access, and shall cease to*
31 *be operative 60 days following the cessation of operations of the*
32 *commission.*

33 ~~SEC. 8. No reimbursement is required by this act pursuant to~~
34 ~~Section 6 of Article XIII B of the California Constitution because~~
35 ~~a local agency or school district has the authority to levy service~~
36 ~~charges, fees, or assessments sufficient to pay for the program or~~
37 ~~level of service mandated by this act, within the meaning of Section~~
38 ~~17556 of the Government Code.~~

O