

AMENDED IN ASSEMBLY MARCH 18, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2873

Introduced by Assembly Member Thurmond

February 19, 2016

An act to amend Section 55.3 of the Civil Code, and to amend Sections 4459.5 and 4467 of the Government Code, relating to public ~~contracts~~; contracts, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 2873, as amended, Thurmond. Certified access specialists.

The Construction-Related Accessibility Standards Compliance Act establishes standards for making new construction and existing facilities accessible to persons with disabilities, including inspections by private persons or building inspectors who are certified access specialists (CASps), and provides for construction-related accessibility claims for violations of those standards. That act requires a local agency, commencing January 1, 2014, to employ or retain a sufficient number of building inspectors who are CASps to conduct permitting and plan check services to review for compliance with state construction-related accessibility standards by a place of public accommodation with respect to new construction. The act requires, if a local agency employs or retains 2 or more CASps, that at least half of the certified access specialists be building inspectors who are CASps.

This bill would require, commencing January 1, 2017, that all building inspectors employed or retained by a local agency be certified access specialists. By adding to the duties of a local entity, this bill would impose a state-mandated local program.

Existing law requires 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. Existing law authorizes the State Architect to implement the 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: *disabilities and to determine minimum criteria for certification.*

~~This bill would make a nonsubstantive change to those provisions: require the minimum criteria to include familiarity with the applicability and content of various accessibility requirements, including but not limited to, specific federal and state requirements.~~

~~Until December 31, 2018, existing law requires any applicant for a local business license or equivalent instrument or permit, or renewal of a local business license or equivalent instrument or permit, to pay an additional state fee of \$1 for that license, instrument, or permit. Under existing law, the city, county, or city and county that collected the fee retains 70% of the fee, and the remaining 30% of the fee is deposited into the Disability Access and Education Revolving Fund, a continuously appropriated fund.~~

~~This bill would increase that state fee from \$1 to \$4 and would delete the December 31, 2018, termination date. The bill would increase the percentage of the fee retained by a local agency to 90% and the remaining 10% would be deposited into the Disability Access and Education Revolving Fund. By increasing revenue to a continuously appropriated fund, this bill would make an appropriation. The bill would make an appropriation by authorizing local government entities to retain an increased percentage of the increased fee. The bill would require that the moneys retained by a local agency be placed in a special fund established by the local agency, to be known as the “CASp Certification and Training Fund.” The bill would require that fees collected in a CASp Certification and Training Fund be used for increased certified access specialist training and certification in the local jurisdiction.~~

~~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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

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

1 SECTION 1. Section 55.53 of the Civil Code is amended to
2 read:

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

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

11 (A) An identification and description of the inspected structures
12 and areas of the site.

13 (B) A signed and dated statement that includes both of the
14 following:

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

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

22 (2) For ~~an inspected by a CASp site~~, *a site that has been*
23 *inspected by a CASp*, if the CASp determines that corrections are
24 needed to the site in order for the site to meet all applicable
25 construction-related accessibility standards, the CASp shall provide
26 a signed and dated written inspection report to the requesting party
27 that includes all of the following:

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

30 (B) A statement that, in the opinion of the CASp, the inspected
31 structures and areas of the site need correction to meet

1 construction-related accessibility standards. This statement shall
2 clearly indicate whether the determination of the CASp includes
3 an assessment of readily achievable barrier removal.

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

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

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

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

19

20 NOTICE TO PRIVATE PROPERTY OWNER/TENANT:

21

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

27 IF YOU BECOME A DEFENDANT IN A LAWSUIT THAT
28 INCLUDES A CLAIM CONCERNING A SITE INSPECTED
29 BY A CERTIFIED ACCESS SPECIALIST, YOU MAY BE
30 ENTITLED TO A COURT STAY (AN ORDER TEMPORARILY
31 STOPPING ANY LAWSUIT) OF THE CLAIM AND AN EARLY
32 EVALUATION CONFERENCE.

33 IN ORDER TO REQUEST THE STAY AND EARLY
34 EVALUATION CONFERENCE, YOU WILL NEED TO VERIFY
35 THAT A CERTIFIED ACCESS SPECIALIST HAS INSPECTED
36 THE SITE THAT IS THE SUBJECT OF THE CLAIM. YOU
37 WILL ALSO BE REQUIRED TO PROVIDE THE COURT AND
38 THE PLAINTIFF WITH THE COPY OF A WRITTEN
39 INSPECTION REPORT BY THE CERTIFIED ACCESS
40 SPECIALIST, AS SET FORTH IN CIVIL CODE SECTION

1 55.54. THE APPLICATION FORM AND INFORMATION ON
2 HOW TO REQUEST A STAY AND EARLY EVALUATION
3 CONFERENCE MAY BE OBTAINED AT
4 www.courts.ca.gov/selfhelp-start.htm.

5 YOU ARE ENTITLED TO REQUEST, FROM A CERTIFIED
6 ACCESS SPECIALIST WHO HAS CONDUCTED AN
7 INSPECTION OF YOUR PROPERTY, A WRITTEN
8 INSPECTION REPORT AND OTHER DOCUMENTATION AS
9 SET FORTH IN CIVIL CODE SECTION 55.53. YOU ARE ALSO
10 ENTITLED TO REQUEST THE ISSUANCE OF A DISABILITY
11 ACCESS INSPECTION CERTIFICATE, WHICH YOU MAY
12 POST ON YOUR PROPERTY.

13
14 (d) (1) Commencing July 1, 2010, a local agency shall employ
15 or retain at least one building inspector who is a certified access
16 specialist. The certified access specialist shall provide consultation
17 to the local agency, permit applicants, and members of the public
18 on compliance with state construction-related accessibility
19 standards with respect to inspections of a place of public
20 accommodation that relate to permitting, plan checks, or new
21 construction, including, but not limited to, inspections relating to
22 tenant improvements that may impact access. If a local agency
23 employs or retains two or more certified access specialists to
24 comply with this subdivision, at least one-half of the certified
25 access specialists shall be building inspectors who are certified
26 access specialists.

27 (2) ~~Commencing January 1, 2014, a local agency shall employ~~
28 ~~or retain a sufficient number of building inspectors who are 2017,~~
29 ~~all building inspectors employed or retained by a local agency~~
30 ~~shall be certified access specialists to who conduct permitting and~~
31 ~~plan check services to review for compliance with state~~
32 ~~construction-related accessibility standards by a place of public~~
33 ~~accommodation with respect to new construction, including, but~~
34 ~~not limited to, projects relating to tenant improvements that may~~
35 ~~impact access. If a local agency employs or retains two or more~~
36 ~~certified access specialists to comply with this subdivision, at least~~
37 ~~one-half of the certified access specialists shall be building~~
38 ~~inspectors who are certified access specialists.~~

39 (3) If a permit applicant or member of the public requests
40 consultation from a certified access specialist, the local agency

1 may charge an amount limited to a reasonable hourly rate, an
2 estimate of which shall be provided upon request in advance of
3 the consultation. A local government may additionally charge or
4 increase permitting, plan check, or inspection fees to the extent
5 necessary to offset the costs of complying with this subdivision.
6 Any revenues generated from an hourly or other charge or fee
7 increase under this subdivision shall be used solely to offset the
8 costs incurred to comply with this subdivision. A CASp inspection
9 pursuant to subdivision (a) by a building inspector who is a
10 certified access specialist shall be treated equally for legal and
11 evidentiary purposes as an inspection conducted by a private CASp.
12 Nothing in this subdivision shall preclude permit applicants or any
13 other person with a legal interest in the property from retaining a
14 private CASp at any time.

15 (e) (1) Every CASp who completes an inspection of a place of
16 public accommodation shall, upon a determination that the site
17 meets applicable standards pursuant to paragraph (1) of subdivision
18 (a) or is inspected by a CASp pursuant to paragraph (2) of
19 subdivision (a), provide the building owner or tenant requesting
20 the inspection with a numbered disability access inspection
21 certificate indicating that the site has undergone inspection by a
22 certified access specialist. The disability access inspection
23 certificate shall be dated and signed by the CASp inspector, and
24 shall contain the inspector's name and license number. Upon
25 issuance of a certificate, the CASp shall record the issuance of the
26 numbered certificate, the name and address of the recipient, and
27 the type of report issued pursuant to subdivision (a) in a record
28 book the CASp shall maintain for that purpose.

29 (2) Beginning March 1, 2009, the State Architect shall make
30 available for purchase by any local building department or CASp
31 sequentially numbered disability access inspection certificates that
32 are printed with a watermark or other feature to deter forgery and
33 that comply with the information requirements specified in
34 subdivision (a).

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

1 (f) Nothing in this section or any other law is intended to require
2 a property owner or tenant to hire a CASp. A property owner's or
3 tenant's election not to hire a CASp shall not be admissible to
4 prove that person's lack of intent to comply with the law.

5 *SEC. 2. Section 4459.5 of the Government Code is amended*
6 *to read:*

7 4459.5. (a) The State Architect shall establish and publicize
8 a program for voluntary certification by the state of any person
9 who meets specified criteria as a certified access specialist. No
10 later than January 1, 2005, the State Architect shall determine
11 minimum criteria a person is required to meet ~~in order~~ to be a
12 certified access specialist, which may include knowledge sufficient
13 to review, inspect, or advocate universal design requirements,
14 completion of specified training, and testing on standards governing
15 access to ~~buildings~~ *buildings, including but not limited to housing,*
16 *for persons with disabilities. The minimum criteria shall include*
17 *familiarity with the applicability and content of various*
18 *accessibility requirements, including but not limited to, the federal*
19 *requirements described in subdivision (c) of Section 4459 and the*
20 *state standards established in Chapter 11A (commencing with*
21 *Section 1101A) and Chapter 11B (commencing with 11B-101) of*
22 *Title 24 of the California Code of Regulations.*

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

29 *SEC. 3. Section 4467 of the Government Code is amended to*
30 *read:*

31 4467. (a) On and after January 1, ~~2013, and until December~~
32 ~~31, 2018, 2017,~~ any applicant for a local business license or
33 equivalent instrument or permit, and from any applicant for the
34 renewal of a business license or equivalent instrument or permit,
35 shall pay an additional fee of ~~one dollar (\$1)~~ *four dollars (\$4)* for
36 that license, instrument, or permit, which shall be collected by the
37 city, county, or city and county that issued the license, instrument,
38 or permit.

39 (b) The city, county, or city and county shall retain ~~70~~ *90* percent
40 of the fees collected under this section, of which up to 5 percent

1 of the retained moneys may be used for related administrative costs
 2 of this chapter. The remaining moneys shall be used to fund
 3 ~~increased certified access specialist (CASp) services in that~~
 4 ~~jurisdiction for the public and to facilitate compliance with~~
 5 ~~construction-related accessibility requirements.~~ *placed by the city,*
 6 *county, or city and county in a special fund established by city,*
 7 *county, or city and county, to be known as the “CASp Certification*
 8 *and Training Fund.” The fees collected in a CASp Certification*
 9 *and Training Fund shall be used for increased certified access*
 10 *specialist training and certification in that local jurisdiction and*
 11 *to facilitate compliance with construction-related accessibility*
 12 *requirements.* The highest priority shall be given to the training
 13 and retention of certified access specialists to meet the needs of
 14 the public in the jurisdiction as provided in Section 55.53 of the
 15 Civil Code.

16 (c) The remaining ~~30~~ 10 percent of all fees collected under this
 17 section shall be transmitted on a quarterly basis to the Division of
 18 the State Architect for deposit in the Disability Access and
 19 Education Revolving Fund established under Sections 4465 and
 20 4470. The funds shall be transmitted within 15 days of the last day
 21 of the fiscal quarter. The Division of the State Architect shall
 22 develop and post on its Internet Web site a standard reporting form
 23 for use by all local jurisdictions. Up to 75 percent of the collected
 24 funds in the Disability Access and Education Revolving Fund shall
 25 be used to establish and maintain oversight of the CASp program
 26 and to moderate the expense of CASp certification and testing.

27 (d) Each city, county, or city and county shall make an annual
 28 report, commencing March 1, 2014, to the Division of the State
 29 Architect of the total fees collected in the previous calendar year
 30 and of its distribution, including the moneys spent on administrative
 31 services, the activities undertaken and moneys spent to increase
 32 CASp *training, certification, and services, the activities undertaken*
 33 *and moneys spent to fund programs to facilitate accessibility*
 34 *compliance, and the moneys transmitted to the Disability Access*
 35 *and Education Revolving Fund.*

36 *SEC. 4. If the Commission on State Mandates determines that*
 37 *this act contains costs mandated by the state, reimbursement to*
 38 *local agencies and school districts for those costs shall be made*
 39 *pursuant to Part 7 (commencing with Section 17500) of Division*
 40 *4 of Title 2 of the Government Code.*

1 SECTION 1. ~~Section 4459.5 of the Government Code is~~
2 ~~amended to read:~~

3 ~~4459.5. (a) The State Architect shall establish and publicize~~
4 ~~a program for voluntary certification by the state of any person~~
5 ~~who meets specified criteria as a certified access specialist. The~~
6 ~~State Architect shall determine minimum criteria a person is~~
7 ~~required to meet in order to be a certified access specialist, which~~
8 ~~may include knowledge sufficient to review, inspect, or advocate~~
9 ~~universal design requirements, completion of specified training,~~
10 ~~and testing on standards governing access to buildings for persons~~
11 ~~with disabilities.~~

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

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