

AMENDED IN ASSEMBLY APRIL 21, 2016

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, 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~~ CASps be building inspectors who are CASps.

This bill would require, commencing January 1, ~~2017~~, 2018, that all building inspectors employed or retained by a local agency *who 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, including, but not limited to, projects relating to tenant improvements that may impact access, be certified access specialists: CASps. 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~~ CASp with respect to access to buildings for persons with disabilities and to determine minimum criteria for certification.

This bill would require the minimum criteria to include familiarity with the applicability and content of various accessibility requirements, including but not limited to, 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, *by increasing the fee and by extending the fee indefinitely*, 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~~. *jurisdiction, making an appropriation by expanding the purposes for which the retained fee moneys are required to be spent.*

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: $\frac{2}{3}$. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: 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, if the CASp
7 determines the site meets all applicable construction-related
8 accessibility standards, the CASp shall provide a written inspection
9 report to the requesting party that includes both of the following:

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

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

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

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

21 (2) For a site that has been inspected by a CASp, if the CASp
22 determines that corrections are needed to the site in order for the
23 site to meet all applicable construction-related accessibility
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 (A) An identification and description of the inspected structures
28 and areas of the site.

29 (B) A statement that, in the opinion of the CASp, the inspected
30 structures and areas of the site need correction to meet
31 construction-related accessibility standards. This statement shall

1 clearly indicate whether the determination of the CASp includes
2 an assessment of readily achievable barrier removal.

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

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

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

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

18

19 NOTICE TO PRIVATE PROPERTY OWNER/TENANT:

20

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

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

32 IN ORDER TO REQUEST THE STAY AND EARLY
33 EVALUATION CONFERENCE, YOU WILL NEED TO VERIFY
34 THAT A CERTIFIED ACCESS SPECIALIST HAS INSPECTED
35 THE SITE THAT IS THE SUBJECT OF THE CLAIM. YOU
36 WILL ALSO BE REQUIRED TO PROVIDE THE COURT AND
37 THE PLAINTIFF WITH THE COPY OF A WRITTEN
38 INSPECTION REPORT BY THE CERTIFIED ACCESS
39 SPECIALIST, AS SET FORTH IN CIVIL CODE SECTION
40 55.54. THE APPLICATION FORM AND INFORMATION ON

1 HOW TO REQUEST A STAY AND EARLY EVALUATION
2 CONFERENCE MAY BE OBTAINED AT
3 www.courts.ca.gov/selfhelp-start.htm.

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

12
13 (d) (1) Commencing July 1, 2010, a local agency shall employ
14 or retain at least one building inspector who is a certified access
15 specialist. The certified access specialist shall provide consultation
16 to the local agency, permit applicants, and members of the public
17 on compliance with state construction-related accessibility
18 standards with respect to inspections of a place of public
19 accommodation that relate to permitting, plan checks, or new
20 construction, including, but not limited to, inspections relating to
21 tenant improvements that may impact access. If a local agency
22 employs or retains two or more certified access specialists to
23 comply with this subdivision, at least one-half of the certified
24 access specialists shall be building inspectors who are certified
25 access specialists.

26 (2) Commencing January 1, ~~2017~~, 2018, all building inspectors
27 employed or retained by a local agency ~~shall be certified access~~
28 ~~specialists~~ who conduct permitting and plan check services to
29 review for compliance with state construction-related accessibility
30 standards by a place of public accommodation with respect to new
31 construction, including, but not limited to, projects relating to
32 tenant improvements that may impact ~~access~~: *access, shall be*
33 *certified access specialists*.

34 (3) If a permit applicant or member of the public requests
35 consultation from a certified access specialist, the local agency
36 may charge an amount limited to a reasonable hourly rate, an
37 estimate of which shall be provided upon request in advance of
38 the consultation. A local government may additionally charge or
39 increase permitting, plan check, or inspection fees to the extent
40 necessary to offset the costs of complying with this subdivision.

1 Any revenues generated from an hourly or other charge or fee
2 increase under this subdivision shall be used solely to offset the
3 costs incurred to comply with this subdivision. A CASp inspection
4 pursuant to subdivision (a) by a building inspector who is a
5 certified access specialist shall be treated equally for legal and
6 evidentiary purposes as an inspection conducted by a private CASp.
7 Nothing in this subdivision shall preclude permit applicants or any
8 other person with a legal interest in the property from retaining a
9 private CASp at any time.

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

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

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

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

1 SEC. 2. Section 4459.5 of the Government Code is amended
2 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. No
6 later than January 1, 2005, the State Architect shall determine
7 minimum criteria a person is required to meet to be a certified
8 access specialist, which may include knowledge sufficient to
9 review, inspect, or advocate universal design requirements,
10 completion of specified training, and testing on standards governing
11 access to buildings, including but not limited to housing, for
12 persons with disabilities. The minimum criteria shall include
13 familiarity with the applicability and content of various
14 accessibility requirements, including but not limited to, to the
15 federal requirements described in subdivision (c) of Section 4459
16 and the state standards established in Chapter 11A (commencing
17 with Section 1101A) and Chapter 11B (commencing with *Section*
18 11B-101) of Title 24 of the California Code of Regulations.

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

25 SEC. 3. Section 4467 of the Government Code is amended to
26 read:

27 4467. (a) On and after January 1, 2017, any applicant for a
28 local business license or equivalent instrument or permit, and from
29 any applicant for the renewal of a business license or equivalent
30 instrument or permit, shall pay an additional fee of four dollars
31 (\$4) for that license, instrument, or permit, which shall be collected
32 by the city, county, or city and county that issued the license,
33 instrument, or permit.

34 (b) The city, county, or city and county shall retain 90 percent
35 of the fees collected under this section, of which up to 5 percent
36 of the retained moneys may be used for related administrative costs
37 of this chapter. The remaining moneys shall be placed by the city,
38 county, or city and county in a special fund established by city,
39 county, or city and county, to be known as the "CASp Certification
40 and Training Fund." The fees collected in a CASp Certification

1 and Training Fund shall be used for increased certified access
2 specialist training and certification in that local jurisdiction and to
3 facilitate compliance with construction-related accessibility
4 requirements. The highest priority shall be given to the training
5 and retention of certified access specialists to meet the needs of
6 the public in the jurisdiction as provided in Section 55.53 of the
7 Civil Code.

8 (c) The remaining 10 percent of all fees collected under this
9 section shall be transmitted on a quarterly basis to the Division of
10 the State Architect for deposit in the Disability Access and
11 Education Revolving Fund established under Sections 4465 and
12 4470. The funds shall be transmitted within 15 days of the last day
13 of the fiscal quarter. The Division of the State Architect shall
14 develop and post on its Internet Web site a standard reporting form
15 for use by all local jurisdictions. Up to 75 percent of the collected
16 funds in the Disability Access and Education Revolving Fund shall
17 be used to establish and maintain oversight of the CASp program
18 and to moderate the expense of CASp certification and testing.

19 (d) Each city, county, or city and county shall make an annual
20 report, commencing March 1, 2014, to the Division of the State
21 Architect of the total fees collected in the previous calendar year
22 and of its distribution, including the moneys spent on administrative
23 services, the activities undertaken and moneys spent to increase
24 CASp training, certification, and services, the activities undertaken
25 and moneys spent to fund programs to facilitate accessibility
26 compliance, and the moneys transmitted to the Disability Access
27 and Education Revolving Fund.

28 SEC. 4. If the Commission on State Mandates determines that
29 this act contains costs mandated by the state, reimbursement to
30 local agencies and school districts for those costs shall be made
31 pursuant to Part 7 (commencing with Section 17500) of Division
32 4 of Title 2 of the Government Code.