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CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2873

Introduced by Assembly Member Thurmond

February 19, 2016

An act to amend Section 55.53 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~~ *one-half* of the CASps be building inspectors who are CASps.

This bill would require, commencing January 1, 2021, 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 or renovations, including, but not limited to, projects relating to tenant improvements that may impact access, be CASps. The bill would also require all new employees employed or retained by a local agency on or after January 1, 2018, and who will conduct permitting and plan check services to review for compliance with state construction-related accessibility standards by a place of public accommodation, to be CASps within ~~24~~ 36 months of their initial date of employment. 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 CASp with respect to access to buildings for persons with disabilities and to determine minimum criteria for certification.

This bill would require the State Architect, on or before January 1, 2018, to commence testing and certification of building inspectors as CASps, as specified.

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, from January 1, 2017, through December 31, 2019, would increase that state fee to \$4 and would require any applicant for a building permit in a city, county, or city and county that does not issue business licenses or an equivalent instrument or permit to pay an additional fee of \$4 for that building permit. Beginning January 1, 2020, those fees would be reduced to \$1. The bill, from January 1, 2017, through December 31, 2019, 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.

Beginning January 1, 2020, those percentages would revert to 70% and 30%, respectively. By increasing revenue to a continuously appropriated fund, increasing the fee, extending the period of time during which the fee will be collected, and imposing an additional fee, 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, thereby 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 (CASp) shall, upon completion of the inspection of a site, comply
5 with the 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:

- 1 (i) A statement that, in the opinion of the CASp, the inspected
2 structures and areas of the site meet construction-related
3 accessibility standards. The statement shall clearly indicate whether
4 the determination of the CASp includes an assessment of readily
5 achievable barrier removal.
- 6 (ii) If corrections were made as a result of the CASp inspection,
7 an itemized list of all corrections and dates of completion.
- 8 (2) For a site that has been inspected by a CASp, if the CASp
9 determines that corrections are needed to the site in order for the
10 site to meet all applicable construction-related accessibility
11 standards, the CASp shall provide a signed and dated written
12 inspection report to the requesting party that includes all of the
13 following:
- 14 (A) An identification and description of the inspected structures
15 and areas of the site.
- 16 (B) The date of the inspection.
- 17 (C) A statement that, in the opinion of the CASp, the inspected
18 structures and areas of the site need correction to meet
19 construction-related accessibility standards. This statement shall
20 clearly indicate whether the determination of the CASp includes
21 an assessment of readily achievable barrier removal.
- 22 (D) An identification and description of the structures or areas
23 of the site that need correction and the correction needed.
- 24 (E) A schedule of completion for each of the corrections within
25 a reasonable timeframe.
- 26 (3) The CASp shall provide, within 30 days of the date of the
27 inspection of a business that qualifies for the provisions of
28 subparagraph (A) of paragraph (3) of subdivision (g) of Section
29 55.56, a copy of a report prepared pursuant to that subparagraph
30 to the business.
- 31 (4) The CASp shall file, within 10 days of inspecting a business
32 pursuant to subparagraph (A) of paragraph (3) of subdivision (g)
33 of Section 55.56, a notice with the State Architect for listing on
34 the State Architect's Internet Web site, as provided by subdivision
35 (d) of Section 4459.7 of the Government Code, indicating that the
36 CASp has inspected the business, the name and address of the
37 business, the date of the filing, the date of the inspection of the
38 business, the name and license number of the CASp, and a
39 description of the structure or area inspected by the CASp.

1 (5) The CASp shall post the notice described in paragraph (4),
2 in a form prescribed by the State Architect, in a conspicuous
3 location within five feet of all public entrances to the building on
4 the date of the inspection and instruct the business to keep it in
5 place until the earlier of either of the following:

6 (A) One hundred twenty days after the date of the inspection.

7 (B) The date when all of the construction-related violations in
8 the structure or area inspected by the CASp are corrected.

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

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

20

21 NOTICE TO PRIVATE PROPERTY OWNER/TENANT:

22

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

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

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

1 SPECIALIST, AS SET FORTH IN CIVIL CODE SECTION
2 55.54. THE APPLICATION FORM AND INFORMATION ON
3 HOW TO REQUEST A STAY AND EARLY EVALUATION
4 CONFERENCE MAY BE OBTAINED AT
5 www.courts.ca.gov/selfhelp-start.htm.

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

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

28 (2) (A) Commencing January 1, 2021, all building inspectors
29 employed or retained by a local agency who conduct permitting
30 and plan check services to review for compliance with state
31 construction-related accessibility standards by a place of public
32 accommodation with respect to new construction or renovation,
33 including, but not limited to, projects relating to tenant
34 improvements that may impact access, shall be certified access
35 specialists.

36 (B) New employees employed or retained by a local agency on
37 or after January 1, 2018, and who will conduct permitting and plan
38 check services to review for compliance with state
39 construction-related accessibility standards by a place of public

1 accommodation shall be certified access specialists within ~~24~~ 36
2 months of their initial date of employment.

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

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

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

39 (3) The disability access inspection certificate may be posted
40 on the premises of the place of public accommodation, unless,

1 following the date of inspection, the inspected site has been
2 modified or construction has commenced to modify the inspected
3 site in a way that may impact compliance with construction-related
4 accessibility standards.

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

9 SEC. 2. Section 4459.5 of the Government Code is amended
10 to read:

11 4459.5. (a) The State Architect shall establish and publicize
12 a program for voluntary certification by the state of any person
13 who meets specified criteria as a certified access specialist. No
14 later than January 1, 2005, the State Architect shall determine
15 minimum criteria a person is required to meet to be a certified
16 access specialist, which may include knowledge sufficient to
17 review, inspect, or advocate universal design requirements,
18 completion of specified training, and testing on standards governing
19 access to buildings, including but not limited to housing, for
20 persons with disabilities.

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

27 (c) The State Architect is authorized to work with various
28 training organizations to ensure an adequate level of training and
29 educational efforts are provided on a statewide basis to prepare
30 individuals to become access specialists as required by paragraph
31 (2) of subdivision (d) of Section 55.53 of the Civil Code.

32 (d) On or before January 1, 2018, the State Architect shall
33 commence testing and certification of individuals as certified access
34 specialists at a level commensurate with the demand attributed to
35 compliance with paragraph (2) of subdivision (d) of Section 55.53
36 of the Civil Code.

37 SEC. 3. Section 4467 of the Government Code is amended to
38 read:

39 4467. (a) (1) (A) On and after January 1, 2017, through
40 December 31, 2019, any applicant for a local business license or

1 equivalent instrument or permit, and ~~from~~ any applicant for the
2 renewal of a business license or equivalent instrument or permit,
3 shall pay an additional fee of four dollars (\$4) for that license,
4 instrument, or permit, which shall be collected by the city, county,
5 or city and county that issues the license, instrument, or permit.

6 (B) On and after January 1, 2017, through December 31, 2019,
7 in any city, county, or city and county that does not issue business
8 licenses or an equivalent instrument or permit, any applicant for
9 a building permit shall pay an additional fee of four dollars (\$4)
10 for that building permit, which shall be collected by the city,
11 county, or city and county that issued the building permit.

12 (2) (A) On and after January 1, 2020, any applicant for a local
13 business license or equivalent instrument or permit, and ~~from~~ any
14 applicant for the renewal of a business license or equivalent
15 instrument or permit, shall pay an additional fee of one dollar (\$1)
16 for that license, instrument, or permit, which shall be collected by
17 the city, county, or city and county that issues the license,
18 instrument, or permit.

19 (B) On and after January 1, 2020, in any city, county, or city
20 and county that does not issue business licenses or an equivalent
21 instrument or permit, any applicant for a building permit shall pay
22 an additional fee of one dollar (\$1) for that building permit, which
23 shall be collected by the city, county, or city and county that issued
24 the building permit.

25 (b) On and after January 1, 2017, through December 31, 2019,
26 the city, county, or city and county shall retain 90 percent, and on
27 and after January 1, 2020, the city, county, or city and county shall
28 retain 70 percent, of the fees collected under this section, of which
29 up to 5 percent of the retained moneys may be used for related
30 administrative costs of this chapter. The remaining moneys shall
31 be placed by the city, county, or city and county in a special fund
32 established by the city, county, or city and county, to be known as
33 the “CASp Certification and Training Fund.” The fees collected
34 in a CASp Certification and Training Fund shall be used for
35 increased certified access specialist training and certification in
36 that local jurisdiction and to facilitate compliance with
37 construction-related accessibility requirements. The highest priority
38 shall be given to the training and retention of certified access
39 specialists to meet the needs of the public in the jurisdiction as
40 provided in Section 55.53 of the Civil Code.

1 (c) On and after January 1, 2017, through December 31, 2019,
2 the remaining 10 percent of all fees collected under this section,
3 and on and after January 1, 2020, the remaining 30 percent of all
4 fees collected under this section, shall be transmitted on a quarterly
5 basis to the Division of the State Architect for deposit in the
6 Disability Access and Education Revolving Fund established under
7 Sections 4465 and 4470. The funds shall be transmitted within 15
8 days of the last day of the fiscal quarter. The Division of the State
9 Architect shall develop and post on its Internet Web site a standard
10 reporting form for use by all local jurisdictions. Up to 75 percent
11 of the collected funds in the Disability Access and Education
12 Revolving Fund shall be used to establish and maintain oversight
13 of the CASp program and to moderate the expense of CASp
14 certification and testing.

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

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