

AMENDED IN ASSEMBLY JULY 13, 2015

AMENDED IN SENATE JUNE 2, 2015

AMENDED IN SENATE MAY 20, 2015

AMENDED IN SENATE MAY 4, 2015

SENATE BILL

No. 251

Introduced by Senator Roth
(Principal coauthor: Senator Galgiani)
(Coauthors: Senators Anderson and Nielsen)
(Coauthor: Assembly Member Cooper)

February 18, 2015

An act to amend ~~Section 55.32 of, and to add Sections 55.535 and 1938.5 to, Sections 55.32, 55.53, and 55.56, of the Civil Code, to amend Sections 4459.7, 4459.8, and 8299.06 of, to add Section 65941.6 to, and to add Article 4 (commencing with Section 65946) to Chapter 4.5 of Division 1 of Title 7 of, the Government Code, and to add and repeal Sections 17053.43 and 23643 of the Revenue and Taxation Code, relating to disability access.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 251, as amended, Roth. Civil rights: disability access.

(1) Existing law prohibits discrimination on the basis of various specified personal characteristics, including disability. The Construction-Related Accessibility Standards Compliance Act establishes standards for making new construction and existing facilities accessible to persons with disabilities and provides for construction-related accessibility claims for violations of those standards. Existing law requires that a demand letter alleging a violation of a construction-related accessibility standard or asserting a

construction-related accessibility claim include specified information, and that copies of the demand letter be sent to the ~~California Commission on Disability Access and the State Bar of California~~. Existing law repeals the requirement that a copy of a demand letter be sent to the State Bar of California on January 1, 2016.

This bill would extend the above-described January 1, 2016, repeal date, to January 1, 2019.

Existing law requires that a copy of the demand letter and the complaint be sent to the California Commission on Disability Access.

This bill would, in addition, require that information about the demand letter and the complaint be submitted to the commission in a standard format specified by the commission.

(2) Existing law ~~requires a certified access specialist (CASp), upon completion of an inspection of a site, to issue a written inspection report for the site, as specified. Existing law provides, upon being served with a summons and complaint asserting a construction-related accessibility claim, that a defendant may file a request for a court stay and early evaluation conference in the proceedings, as specified. Under existing law, a defendant is liable for actual damages plus minimum statutory damages for each instance of discrimination: specifies that a violation of construction-related accessibility standards personally encountered by a plaintiff may be sufficient to cause a denial of full and equal access if the plaintiff experienced difficulty, discomfort, or embarrassment because of the violation.~~

~~This bill would provide that a business, prior to the initiation of litigation, receipt of a demand letter, or a business that is otherwise on notice of a violation of a construction-related accessibility standard prior to a CASp inspection, is not liable for minimum statutory damages for violating a construction-related liability standard if the violation is corrected within 90 days of the date of an inspection by a CASp. The bill would also provide that a small business is not liable for minimum statutory damages for an alleged violation if the violation concerns interior or exterior signage, the color and condition of parking lot paint striping, or truncated domes and is corrected within 15 days of service of a summons and complaint in a construction-related accessibility claim or receipt of a written notice, whichever is earlier. exclude certain technical violations from the scope of this provision, if specified conditions are met.~~

(3) *Under existing law, a defendant is liable for actual damages plus minimum statutory damages for each instance of discrimination relating to a construction-related accessibility standard.*

This bill would exempt a defendant from liability for minimum statutory damages with respect to a structure or area inspected by a certified access specialist for a period of 120 days if specified conditions are met. The bill would require a defendant who claims the benefit of this provision, to disclose the date and findings of any certified access specialist (CASp) inspection to the plaintiff.

~~(3) Under existing federal law, a landlord and tenant are both responsible for compliance with the federal Americans with Disabilities Act of 1990 and implementing regulations. The parties to a lease agreement may allocate responsibility by the lease or other contract. Existing law requires a commercial property owner or lessor to state on every lease form or rental agreement executed on or after July 1, 2013, whether the property has been inspected by a CASp and, if so, whether or not the property has been determined to meet all applicable construction-related accessibility standards.~~

~~This bill would require a commercial property owner to state on every lease form or rental agreement executed on or after January 1, 2016, that the owner or lessor and the tenant are both responsible for compliance with the federal Americans with Disabilities Act of 1990 and that responsibility for compliance may be allocated between the parties by the terms of the lease or other contract.~~

(4) Existing law requires the State Architect to establish and publicize a program for the voluntary certification by the state of any person who meets specified criteria as a CASp. Existing law requires the State Architect to annually publish a list of CASps. Existing law requires each applicant for CASp certification or renewal to pay certain fees, and requires the State Architect to periodically review those fees, as specified. Existing law provides for the deposit of those fees into the Certified Access Specialist Fund, which is continuously appropriated for use by the State Architect to implement the CASp program.

This bill would additionally require the State Architect to publish, and ~~periodically~~ *regularly* update, ~~an easily accessible list lists~~ of businesses *that file prescribed notices of inspection, and businesses* which have been inspected by a CASp on or after January 1, 2016, including the date of the inspection. *The bill would require the State Architect to develop a process by which a small business may notify the State Architect that a structure or area has had a CASp inspection*

and to develop a form for businesses to notify the public that the business has obtained a CASp inspection. The bill would also require applicants for CASp certification or renewal to additionally provide to the State Architect the name of the city, county, or city and county in which the applicant intends to provide or has provided services, and would require the Division of the State Architect to post that information on its Internet Web site.

(5) Existing law establishes the California Commission on Disability Access for purposes of developing recommendations to enable persons with disabilities to exercise their right to full and equal access to public facilities and facilitating business compliance with applicable state and federal laws and regulations. Existing law sets forth the powers and duties of the commission, including developing educational materials and information for businesses, building owners, tenants, and building officials, posting that information on the commission's Internet Web site, and coordinating with other state agencies and local building departments to ensure that information provided to the public on disability access requirements is uniform and complete.

This bill would additionally require the commission to provide a link on its Internet Web site to the Internet Web site of the Division of the State Architect's CASp certification program, and make the commission's educational materials and information available to other state agencies and local building departments.

(6) The Planning and Zoning Law establishes procedures for the application, and review of an application, for a development project. Existing law requires a public agency to notify applicants for development permits of specified information, including the time limits established for the review and approval of development permits.

This bill would additionally require local agencies to develop and provide to applicants materials relating to the requirements of the federal Americans with Disabilities Act of 1990, or to instead provide similar materials developed by the California Commission on Disability Access. The bill would require a local agency to notify an applicant that approval of a permit does not signify that the applicant has complied with that act. The bill would also require local agencies to expedite review of projects for which the applicant provides a copy of a disability access certificate, demonstrates that the project is necessary to address an alleged violation of a construction-related access standard or a violation noted in a CASp report, and, if project plans are necessary for approval, has had a CASp review the project plans for compliance with all

applicable construction-related accessibility standards. The bill would declare that these provisions constitute a matter of statewide concern and shall apply to charter cities and charter counties.

By imposing additional duties on local agencies with respect to the receipt and review of applications for development projects, this bill would impose a state-mandated local program.

(7) Existing federal law allows a credit against federal income taxes for eligible small businesses for eligible access expenditures, as those terms are defined, in an amount equal to 50% of eligible access expenditures for a taxable year that exceed \$250 but do not exceed \$10,250. The Personal Income Tax Law and the Corporation Tax Law allow a credit against the taxes imposed by those laws for the amount paid or incurred for eligible access expenditures in an amount equal to 50% of eligible access expenditures for a taxable year as do not exceed \$250, as specified.

This bill would, for taxable years beginning on or after January 1, 2016, and before January 1, 2023, allow to small businesses, as defined, a credit under both the Personal Income Tax Law and the Corporation Tax Law for eligible access expenditures in an amount equal to 50% of eligible access expenditures for a taxable year, as specified.

(8) 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. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

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

1 SECTION 1. Section 55.32 of the Civil Code, as added by
2 Section 5 of Chapter 383 of the Statutes of 2012, is amended to
3 read:

4 55.32. (a) An attorney who provides a demand letter, as defined
5 in subdivision (a) of Section 55.3, shall do all of the following:

6 (1) Include the attorney's State Bar license number in the
7 demand letter.

1 (2) Contemporaneously with providing the demand letter, send
2 a copy of the demand letter to the State Bar of California by
3 facsimile transmission at 1-415-538-2171, or by mail to 180
4 Howard Street, San Francisco, CA, 94105, Attention: Professional
5 Competence.

6 (3) Within five business days of providing the demand letter,
7 send a copy of the demand letter to the California Commission on
8 Disability Access.

9 (b) An attorney who sends or serves a complaint, as defined in
10 subdivision (a) of Section 55.3, shall send a copy of the complaint
11 to the California Commission on Disability Access within five
12 business days of sending or serving the complaint.

13 (c) A violation of paragraph (2) or (3) of subdivision (a) or
14 subdivision (b) shall constitute cause for the imposition of
15 discipline of an attorney where a copy of the complaint or demand
16 letter is not sent to the California Commission on Disability Access
17 within five business days, or a copy of the demand letter is not
18 sent to the State Bar within five business days. In the event the
19 State Bar receives information indicating that an attorney has failed
20 to send a copy of the complaint or demand letter to the California
21 Commission on Disability Access within five business days, the
22 State Bar shall investigate to determine whether paragraph (3) of
23 subdivision (a) or subdivision (b) has been violated.

24 (d) Notwithstanding subdivisions (a) and (b), an attorney is not
25 required to send to the State Bar of California or the California
26 Commission on Disability Access a copy of any subsequent
27 demand letter or amended complaint in the same dispute following
28 the initial demand letter or complaint, unless that subsequent
29 demand letter or amended complaint alleges a new
30 construction-related accessibility claim.

31 (e) A demand letter or complaint sent to the California
32 Commission on Disability Access shall be for the informational
33 purposes of Section 8299.08 of the Government Code. A demand
34 letter received by the State Bar from either the sender or recipient
35 of the demand letter shall be reviewed by the State Bar to determine
36 whether subdivision (b) or (c) of Section 55.31 has been violated.

37 (f) (1) Commencing July 31, 2013, and annually each July 31
38 thereafter, the State Bar shall report to the Legislature and the
39 Chairs of the Senate and Assembly Committees on Judiciary, both

1 of the following with respect to demand letters received by the
2 State Bar:

3 (A) The number of investigations opened to date on a suspected
4 violation of subdivision (b) or (c) of Section 55.31.

5 (B) Whether any disciplinary action resulted from the
6 investigation, and the results of that disciplinary action.

7 (2) A report to be submitted pursuant to this subdivision shall
8 be submitted in compliance with Section 9795 of the Government
9 Code.

10 (g) The California Commission on Disability Access shall
11 review and report on the demand letters and complaints it receives
12 as provided in Section 8299.08 of the Government Code.

13 (h) Paragraphs (2) and (3) of subdivision (a) and subdivision
14 (b) shall not apply to a demand letter or complaint sent or filed by
15 an attorney employed or retained by a qualified legal services
16 project or a qualified support center, as defined in Section 6213
17 of the Business and Professions Code, when acting within the
18 scope of employment in asserting a construction-related
19 accessibility claim. The Legislature finds and declares that qualified
20 legal services projects and support centers are extensively regulated
21 by the State Bar of California, and that there is no evidence of any
22 abusive use of demand letters or complaints by these organizations.
23 The Legislature further finds that, in light of the evidence of the
24 extraordinarily small number of construction-related accessibility
25 cases brought by regulated legal services programs, and given the
26 resources of those programs, exempting regulated legal services
27 programs from the requirements of this section to report to the
28 California Commission on Disability Access will not affect the
29 purpose of the reporting to, and tabulation by, the commission of
30 all other construction-related accessibility claims.

31 (i) This section shall become operative on January 1, 2013.

32 (j) This section shall remain in effect only until January 1, 2019,
33 and as of that date is repealed.

34 SEC. 2. Section 55.32 of the Civil Code, as added by Section
35 6 of Chapter 383 of the Statutes of 2012, is amended to read:

36 55.32. (a) An attorney who provides a demand letter, as defined
37 in subdivision (a) of Section 55.3, shall do all of the following:

38 (1) Include the attorney's State Bar license number in the
39 demand letter.

1 (2) Within five business days of providing the demand letter,
2 send a copy of the demand letter ~~to~~ *and submit information about*
3 *the demand letter in a standard format specified by the California*
4 *Commission on Disability Access. Access, to the commission.*

5 (b) An attorney who sends or serves a complaint, as defined in
6 subdivision (a) of Section 55.3, shall send a copy of the complaint
7 ~~to~~ *and submit information about the complaint in a standard format*
8 *specified by the California Commission on Disability Access to*
9 *the commission* within five business days of sending or serving
10 the complaint.

11 (c) A violation of paragraph (2) of subdivision (a) or subdivision
12 (b) shall constitute cause for the imposition of discipline of an
13 attorney if a copy of the demand letter or complaint is not sent to
14 the California Commission on Disability Access within five
15 business days. In the event the State Bar receives information
16 indicating that an attorney has failed to send a copy of the demand
17 letter or complaint to the California Commission on Disability
18 Access within five business days, the State Bar shall investigate
19 to determine whether paragraph (2) of subdivision (a) or
20 subdivision (b) has been violated.

21 (d) Notwithstanding subdivisions (a) and (b), an attorney is not
22 required to send to the California Commission on Disability Access
23 a copy of any subsequent demand letter or amended complaint in
24 the same dispute following the initial demand letter or complaint,
25 unless that subsequent demand letter or amended complaint alleges
26 a new construction-related accessibility claim.

27 (e) A demand letter sent to the California Commission on
28 Disability Access shall be for the informational purposes of Section
29 8299.08 of the Government Code. A demand letter received by
30 the State Bar from the recipient of the demand letter shall be
31 reviewed by the State Bar to determine whether subdivision (b)
32 or (c) of Section 55.31 has been violated.

33 (f) (1) Notwithstanding Section 10231.5 of the Government
34 Code, on or before July 31, 2019, and annually thereafter, the State
35 Bar shall report to the Legislature and the Chairs of the Senate and
36 Assembly Judiciary Committees, both of the following with respect
37 to demand letters received by the State Bar:

38 (A) The number of investigations opened to date on a suspected
39 violation of subdivision (b) or (c) of Section 55.31.

1 (B) Whether any disciplinary action resulted from the
2 investigation, and the results of that disciplinary action.

3 (2) A report to be submitted pursuant to this subdivision shall
4 be submitted in compliance with Section 9795 of the Government
5 Code.

6 (g) The California Commission on Disability Access shall
7 review and report on the demand letters and complaints it receives
8 as provided in Section 8299.08 of the Government Code.

9 (h) The expiration of any ground for discipline of an attorney
10 shall not affect the imposition of discipline for any act prior to the
11 expiration. An act or omission that constituted cause for imposition
12 of discipline of an attorney when committed or omitted prior to
13 January 1, 2019, shall continue to constitute cause for the
14 imposition of discipline of that attorney on and after January 1,
15 2019.

16 (i) Paragraph (2) of subdivision (a) and subdivision (b) shall
17 not apply to a demand letter or complaint sent or filed by an
18 attorney employed or retained by a qualified legal services project
19 or a qualified support center, as defined in Section 6213 of the
20 Business and Professions Code, when acting within the scope of
21 employment in asserting a construction-related accessibility claim.
22 The Legislature finds and declares that qualified legal services
23 projects and support centers are extensively regulated by the State
24 Bar of California, and that there is no evidence of any abusive use
25 of demand letters or complaints by these organizations. The
26 Legislature further finds that, in light of the evidence of the
27 extraordinarily small number of construction-related accessibility
28 cases brought by regulated legal services programs, and given the
29 resources of those programs, exempting regulated legal services
30 programs from the requirements of this section to report to the
31 California Commission on Disability Access will not affect the
32 purpose of the reporting to, and tabulation by, the commission of
33 all other construction-related accessibility claims.

34 (j) This section shall become operative on January 1, 2019.

35 ~~SEC. 3. Section 55.535 is added to the Civil Code, immediately~~
36 ~~following Section 55.53, to read:~~

37 ~~55.535. (a) A business, prior to the initiation of litigation,~~
38 ~~receipt of a demand letter, or that is otherwise on notice of a~~
39 ~~violation of a construction-related accessibility standard prior to~~
40 ~~a CASp inspection, shall not be liable for minimum statutory~~

1 damages for violating a construction-related liability standard, as
2 defined in Section 55.52, that is noted in the CASp report if the
3 violation is corrected within 90 days of the date of the CASp
4 inspection.

5 (b) A small business, as that term is defined in subparagraph
6 (B) of paragraph (2) of subdivision (f) of Section 55.56, shall not
7 be liable for minimum statutory damages for violating a
8 construction-related accessibility standard if both of the following
9 conditions are met:

10 (1) The alleged violation concerns interior or exterior signage,
11 the color or condition of parking lot paint striping, or truncated
12 domes.

13 (2) The violation is corrected within 15 days of the service of
14 a summons and complaint asserting a construction-related
15 accessibility claim or receipt of a written notice, whichever is
16 earlier.

17 SEC. 4. Section 1938.5 is added to the Civil Code, to read:

18 1938.5. A commercial property owner or lessor shall state on
19 every lease form or rental agreement executed on or after January
20 1, 2016, that, pursuant to Section 36.201 of Title 28 of the Code
21 of Federal Regulations, the owner or lessor and the tenant are both
22 responsible for compliance with the federal Americans with
23 Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.) and that
24 responsibility for compliance may be allocated between the parties
25 by the terms of the lease or other contract.

26 SEC. 3. Section 55.53 of the Civil Code is amended to read:

27 55.53. (a) For purposes of this part, a certified access specialist
28 shall, upon completion of the inspection of a site, comply with the
29 following:

30 (1) For a meets applicable standards site, if the CASp determines
31 the site meets all applicable construction-related accessibility
32 standards, the CASp shall provide a written inspection report to
33 the requesting party that includes both of the following:

34 (A) An identification and description of the inspected structures
35 and areas of the site.

36 (B) A signed and dated statement that includes both of the
37 following:

38 (i) A statement that, in the opinion of the CASp, the inspected
39 structures and areas of the site meet construction-related
40 accessibility standards. The statement shall clearly indicate whether

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

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

5 (2) For an inspected by a CASp site, if the CASp determines
6 that corrections are needed to the site in order for the site to meet
7 all applicable construction-related accessibility standards, the
8 CASp shall provide a signed and dated written inspection report
9 to the requesting party that includes all of the following:

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

12 (B) *The date of the inspection.*

13 ~~(B)~~

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

19 ~~(C)~~

20 (D) An identification and description of the structures or areas
21 of the site that need correction and the correction needed.

22 ~~(D)~~

23 (E) A schedule of completion for each of the corrections within
24 a reasonable timeframe.

25 (3) *The CASp shall provide, within 30 days of the date when it*
26 *is requested by a business that qualifies for the provisions of*
27 *subparagraph (A) of paragraph (3) of subdivision (g) of Section*
28 *55.56, a copy of a report prepared pursuant to that subparagraph*
29 *to the business that requested it.*

30 (4) *The CASp shall file, within ten days of inspecting a business*
31 *pursuant to subparagraph (A) of paragraph (3) of subdivision (g)*
32 *of Section 55.56, a notice with the State Architect for listing on*
33 *the State Architect's Internet Web site, as provided by subdivision*
34 *(d) of Section 4459.7 of the Government Code, indicating that the*
35 *CASp has inspected the business, the name and address of the*
36 *business, the date of the filing, the date of the inspection of the*
37 *business, the name and license number of the CASp, and a*
38 *description of the structure or area inspected by the CASp.*

39 (b) For purposes of this section, in determining whether the site
40 meets applicable construction-related accessibility standards when

1 there is a conflict or difference between a state and federal
2 provision, standard, or regulation, the state provision, standard, or
3 regulation shall apply unless the federal provision, standard, or
4 regulation is more protective of accessibility rights.

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

10

11 NOTICE TO PRIVATE PROPERTY OWNER/TENANT:

12

13 YOU ARE ADVISED TO KEEP IN YOUR RECORDS ANY
14 WRITTEN INSPECTION REPORT AND ANY OTHER
15 DOCUMENTATION CONCERNING YOUR PROPERTY SITE
16 THAT IS GIVEN TO YOU BY A CERTIFIED ACCESS
17 SPECIALIST.

18

19 IF YOU BECOME A DEFENDANT IN A LAWSUIT THAT
20 INCLUDES A CLAIM CONCERNING A SITE INSPECTED
21 BY A CERTIFIED ACCESS SPECIALIST, YOU MAY BE
22 ENTITLED TO A COURT STAY (AN ORDER TEMPORARILY
23 STOPPING ANY LAWSUIT) OF THE CLAIM AND AN EARLY
24 EVALUATION CONFERENCE.

25

26 IN ORDER TO REQUEST THE STAY AND EARLY
27 EVALUATION CONFERENCE, YOU WILL NEED TO VERIFY
28 THAT A CERTIFIED ACCESS SPECIALIST HAS INSPECTED
29 THE SITE THAT IS THE SUBJECT OF THE CLAIM. YOU
30 WILL ALSO BE REQUIRED TO PROVIDE THE COURT AND
31 THE PLAINTIFF WITH THE COPY OF A WRITTEN
32 INSPECTION REPORT BY THE CERTIFIED ACCESS
33 SPECIALIST, AS SET FORTH IN CIVIL CODE SECTION
34 55.54. THE APPLICATION FORM AND INFORMATION ON
35 HOW TO REQUEST A STAY AND EARLY EVALUATION
36 CONFERENCE MAY BE OBTAINED AT
37 www.courts.ca.gov/selfhelp-start.htm.

38

39 YOU ARE ENTITLED TO REQUEST, FROM A CERTIFIED
40 ACCESS SPECIALIST WHO HAS CONDUCTED AN
41 INSPECTION OF YOUR PROPERTY, A WRITTEN
42 INSPECTION REPORT AND OTHER DOCUMENTATION AS
43 SET FORTH IN CIVIL CODE SECTION 55.53. YOU ARE ALSO

1 ENTITLED TO REQUEST THE ISSUANCE OF A DISABILITY
2 ACCESS INSPECTION CERTIFICATE, WHICH YOU MAY
3 POST ON YOUR PROPERTY.

4

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

18 (2) Commencing January 1, 2014, a local agency shall employ
19 or retain a sufficient number of building inspectors who are
20 certified access specialists to conduct permitting and plan check
21 services to review for compliance with state construction-related
22 accessibility standards by a place of public accommodation with
23 respect to new construction, including, but not limited to, projects
24 relating to tenant improvements that may impact access. If a local
25 agency employs or retains two or more certified access specialists
26 to comply with this subdivision, at least one-half of the certified
27 access specialists shall be building inspectors who are certified
28 access specialists.

29 (3) If a permit applicant or member of the public requests
30 consultation from a certified access specialist, the local agency
31 may charge an amount limited to a reasonable hourly rate, an
32 estimate of which shall be provided upon request in advance of
33 the consultation. A local government may additionally charge or
34 increase permitting, plan check, or inspection fees to the extent
35 necessary to offset the costs of complying with this subdivision.
36 Any revenues generated from an hourly or other charge or fee
37 increase under this subdivision shall be used solely to offset the
38 costs incurred to comply with this subdivision. A CASp inspection
39 pursuant to subdivision (a) by a building inspector who is a
40 certified access specialist shall be treated equally for legal and

1 evidentiary purposes as an inspection conducted by a private CASp.
2 Nothing in this subdivision shall preclude permit applicants or any
3 other person with a legal interest in the property from retaining a
4 private CASp at any time.

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

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

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

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

35 *SEC. 4. Section 55.56 of the Civil Code is amended to read:*

36 55.56. (a) Statutory damages under either subdivision (a) of
37 Section 52 or subdivision (a) of Section 54.3 may be recovered in
38 a construction-related accessibility claim against a place of public
39 accommodation only if a violation or violations of one or more
40 construction-related accessibility standards denied the plaintiff

1 full and equal access to the place of public accommodation on a
2 particular occasion.

3 (b) A plaintiff is denied full and equal access only if the plaintiff
4 personally encountered the violation on a particular occasion, or
5 the plaintiff was deterred from accessing a place of public
6 accommodation on a particular occasion.

7 (c) A violation personally encountered by a plaintiff may be
8 sufficient to cause a denial of full and equal access if the plaintiff
9 experienced difficulty, discomfort, or embarrassment because of
10 the violation.

11 (d) A plaintiff demonstrates that he or she was deterred from
12 accessing a place of public accommodation on a particular occasion
13 only if both of the following apply:

14 (1) The plaintiff had actual knowledge of a violation or
15 violations that prevented or reasonably dissuaded the plaintiff from
16 accessing a place of public accommodation that the plaintiff
17 intended to use on a particular occasion.

18 (2) The violation or violations would have actually denied the
19 plaintiff full and equal access if the plaintiff had accessed the place
20 of public accommodation on that particular occasion.

21 (e) (1) *The following technical violations are presumed to not*
22 *cause a person difficulty, discomfort, or embarrassment for the*
23 *purpose of an award of minimum statutory damages in a*
24 *construction-related accessibility claim, as set forth in subdivision*
25 *(c), where the defendant is a small business as described by*
26 *subparagraph (B) of paragraph (2) of subdivision (g), the*
27 *defendant has corrected, within 15 days of the service of a*
28 *summons and complaint asserting a construction-related*
29 *accessibility claim or receipt of a written notice, whichever is*
30 *earlier, all of the technical violations that are the basis of the*
31 *claim, and the claim is based on one or more of the following*
32 *violations:*

33 (A) *Interior signs, other than directional signs or signs that*
34 *identify the location of accessible elements, facilities, or features,*
35 *when not all such elements, facilities, or features are accessible.*

36 (B) *The lack of exterior signs, other than parking signs and*
37 *directional signs, including signs that indicate the location of*
38 *accessible pathways or entrance and exit doors when not all*
39 *pathways, entrance and exit doors are accessible.*

1 (C) *The order in which parking signs are placed or the exact*
2 *location or wording of parking signs, provided that the parking*
3 *signs are clearly visible and indicate the location of accessible*
4 *parking and van-accessible parking.*

5 (D) *The color of parking signs, provided that the color of the*
6 *background contrasts with the color of the information on the sign.*

7 (E) *The color of parking lot striping, provided that it exists and*
8 *provides sufficient contrast with the surface upon which it is*
9 *applied to be reasonably visible.*

10 (F) *Faded, chipped, damaged, or deteriorated paint in otherwise*
11 *fully compliant parking spaces and passenger access aisles in*
12 *parking lots, provided that it indicates the required dimensions of*
13 *a parking space or access aisle in a manner that is reasonably*
14 *visible.*

15 (G) *The presence or condition of detectable warning surfaces*
16 *on ramps, except where the ramp is part of a pedestrian path of*
17 *travel that intersects with a vehicular lane or other hazardous*
18 *area.*

19 (2) *The presumption set forth in paragraph (1) affects the*
20 *plaintiff's burden of proof and is rebuttable by evidence showing,*
21 *by a preponderance of the evidence, that the plaintiff did, in fact,*
22 *experience difficulty, discomfort, or embarrassment on the*
23 *particular occasion as a result of one or more of the technical*
24 *violations listed in paragraph (1).*

25 (e)

26 (f) Statutory damages may be assessed pursuant to subdivision
27 (a) based on each particular occasion that the plaintiff was denied
28 full and equal access, and not upon the number of violations of
29 construction-related accessibility standards identified at the place
30 of public accommodation where the denial of full and equal access
31 occurred. If the place of public accommodation consists of distinct
32 facilities that offer distinct services, statutory damages may be
33 assessed based on each denial of full and equal access to the distinct
34 facility, and not upon the number of violations of
35 construction-related accessibility standards identified at the place
36 of public accommodation where the denial of full and equal access
37 occurred.

38 (f)

39 (g) (1) Notwithstanding any other law, a defendant's liability
40 for statutory damages in a construction-related accessibility claim

1 against a place of public accommodation is reduced to a minimum
2 of one thousand dollars (\$1,000) for each offense if the defendant
3 demonstrates that it has corrected all construction-related violations
4 that are the basis of a claim within 60 days of being served with
5 the complaint, and the defendant demonstrates any of the following:

6 (A) The structure or area of the alleged violation was determined
7 to be “CASp-inspected” or “meets applicable standards” and, to
8 the best of the defendant’s knowledge, there were no modifications
9 or alterations that impacted compliance with construction-related
10 accessibility standards with respect to the plaintiff’s claim that
11 were completed or commenced between the date of that
12 determination and the particular occasion on which the plaintiff
13 was allegedly denied full and equal access.

14 (B) The structure or area of the alleged violation was the subject
15 of an inspection report indicating “CASp determination pending”
16 or “Inspected by a CASp,” and the defendant has either
17 implemented reasonable measures to correct the alleged violation
18 before the particular occasion on which the plaintiff was allegedly
19 denied full and equal access, or the defendant was in the process
20 of correcting the alleged violation within a reasonable time and
21 manner before the particular occasion on which the plaintiff was
22 allegedly denied full and equal access.

23 (C) For a claim alleging a construction-related accessibility
24 violation filed before January 1, 2018, the structure or area of the
25 alleged violation was a new construction or an improvement that
26 was approved by, and passed inspection by, the local building
27 department permit and inspection process on or after January 1,
28 2008, and before January 1, 2016, and, to the best of the
29 defendant’s knowledge, there were no modifications or alterations
30 that impacted compliance with respect to the plaintiff’s claim that
31 were completed or commenced between the completion date of
32 the new construction or improvement and the particular occasion
33 on which the plaintiff was allegedly denied full and equal access.

34 (D) The structure or area of the alleged violation was new
35 construction or an improvement that was approved by, and passed
36 inspection by, a local building department official who is a certified
37 access specialist, and, to the best of the defendant’s knowledge,
38 there were no modifications or alterations that affected compliance
39 with respect to the plaintiff’s claim that were completed or
40 commenced between the completion date of the new construction

1 or improvement and the particular occasion on which the plaintiff
2 was allegedly denied full and equal access.

3 (2) Notwithstanding any other law, a defendant's liability for
4 statutory damages in a construction-related accessibility claim
5 against a place of public accommodation is reduced to a minimum
6 of two thousand dollars (\$2,000) for each offense if the defendant
7 demonstrates both of the following:

8 (A) The defendant has corrected all construction-related
9 violations that are the basis of a claim within 30 days of being
10 served with the complaint.

11 (B) The defendant is a small business that has employed 25 or
12 fewer employees on average over the past three years, or for the
13 years it has been in existence if less than three years, as evidenced
14 by wage report forms filed with the Economic Development
15 Department, and has average annual gross receipts of less than
16 three million five hundred thousand dollars (\$3,500,000) over the
17 previous three years, or for the years it has been in existence if
18 less than three years, as evidenced by federal or state income tax
19 returns. The average annual gross receipts dollar amount shall be
20 adjusted biannually by the Department of General Services for
21 changes in the California Consumer Price Index for All Urban
22 Consumers, as compiled by the Department of Industrial Relations.
23 The Department of General Services shall post that adjusted
24 amount on its Internet Web site.

25 (3) (A) *Notwithstanding any other law, a defendant shall not*
26 *be liable for minimum statutory damages in a construction-related*
27 *accessibility claim, with respect to a violation noted in a report*
28 *by a certified access specialist (CASp), for a period of 120 days*
29 *following the date of the inspection if the defendant demonstrates*
30 *compliance with each of the following:*

31 (i) *The defendant is a business that has employed 100 or fewer*
32 *employees on average over the past three years, or for the years*
33 *it has been in existence if less than three years, as evidenced by*
34 *wage report forms filed with the Employment Development*
35 *Department.*

36 (ii) *The structure or area of the alleged violation was the subject*
37 *of an inspection report indicating "CASp determination pending"*
38 *or "Inspected by a CASp."*

39 (iii) *The inspection predates the filing of the claim by, or receipt*
40 *of a demand letter from, the plaintiff regarding the alleged*

1 violation of a construction-related accessibility standard, and the
2 defendant was not on notice of the alleged violation prior to the
3 CASp inspection because of a previous CASp inspection of the
4 premises, or other reasons.

5 (iv) Within ten days of the date of the inspection, the CASp files
6 a notice with the State Architect for listing on the State Architect's
7 Internet Web site, stating that the defendant has obtained a CASp
8 inspection, the date of the filing, and the date of the inspection.

9 (v) The CASp posted the notice described in clause (iv), in a
10 form prescribed by the State Architect, in a conspicuous location
11 within five feet of all public entrances to the building on the date
12 of the inspection and the defendant kept it in place until the earlier
13 of either of the following:

14 (I) One hundred twenty days after the date of the inspection.

15 (II) The date when all of the construction-related violations in
16 the structure or area inspected by the CASp are corrected.

17 (vi) The defendant has corrected, within 120 days of the date
18 of the inspection, all construction-related violations in the structure
19 or area inspected by the CASp that are noted in the CASp report
20 that are the basis of the claim.

21 (B) Notwithstanding any other law, a defendant who claims the
22 benefit of the reduction of minimum statutory damages under this
23 subdivision shall disclose the date and findings of any CASp
24 inspection to a plaintiff if relevant to a claim or defense in an
25 action.

26 (4) A defendant may assert the reduction of minimum statutory
27 damages under this subdivision only once for each structure or
28 area inspected by a CASp, unless the inspected structure or area
29 has undergone modifications or alterations that affect the
30 compliance with construction-related accessibility standards of
31 those structures or areas after the date of the last inspection, and
32 the defendant obtains an additional CASp inspection within 30
33 days of final approval by the building department or certificate of
34 occupancy, as appropriate, regarding the modification or
35 alterations.

36 (5) If the defendant has failed to correct, within 120 days of the
37 date of the inspection, all construction-related violations in the
38 structure or area inspected by the CASp that are noted in the CASp
39 report, the defendant shall not receive any reduction of minimum
40 statutory damages, unless a building permit is required for the

1 *repairs which cannot reasonably be completed by the defendant*
 2 *within 120 days and the defendant is in the process of correcting*
 3 *the violations noted in the CASp report, as evidenced by having,*
 4 *at least, an active building permit necessary for the repairs to*
 5 *correct the violation that was noted, but not corrected, in the CASp*
 6 *report and all of the repairs are completed within 180 days of the*
 7 *date of the inspection.*

8 ~~(3)~~

9 (6) This subdivision shall not be applicable to intentional
 10 violations.

11 ~~(4)~~

12 (7) Nothing in this subdivision affects the awarding of actual
 13 damages, or affects the awarding of treble actual damages.

14 ~~(5)~~

15 (8) This subdivision shall apply only to claims filed on or after
 16 the effective date of Senate Bill 1186 of the 2011–12 Regular
 17 Session of the ~~Legislature~~. *Legislature, except that for paragraphs*
 18 *(3), (4), and (5), which shall apply to claims filed on or after*
 19 *January 1, 2016.* Nothing in this subdivision is intended to affect
 20 a complaint filed before that date.

21 ~~(g)~~

22 (h) This section does not alter the applicable law for the
 23 awarding of injunctive or other equitable relief for a violation or
 24 violations of one or more construction-related accessibility
 25 standards, nor alter any legal obligation of a party to mitigate
 26 damages.

27 ~~(h)~~

28 (i) In assessing liability under subdivision (d), in an action
 29 alleging multiple claims for the same construction-related
 30 accessibility violation on different particular occasions, the court
 31 shall consider the reasonableness of the plaintiff’s conduct in light
 32 of the plaintiff’s obligation, if any, to mitigate damages.

33 (j) *For purposes of this section, the “structure or area*
 34 *inspected” means one of the following: the interior of the premises,*
 35 *the exterior of the premises, or both the interior and exterior.*

36 SEC. 5. Section 4459.7 of the Government Code is amended
 37 to read:

38 4459.7. (a) (1) No later than October 31 of each year, the
 39 State Architect shall publish and make available to the public a

1 list of certified access specialists who have met the requirements
2 of Section 4459.5.

3 (2) The State Architect shall publish ~~an~~ *and regularly update*
4 *on its Internet Web site* easily accessible ~~list of businesses~~ *lists of*
5 *all of the following:*

6 (A) *Businesses that have obtained a CASp inspection and have*
7 *filed, or a CASp has filed on their behalf, a notice pursuant to*
8 *paragraph (3) of subdivision (g) of Section 55.56 of the Civil Code.*

9 (B) *Businesses* which have been inspected by a certified access
10 specialist on or after January 1, 2016, including the date of the
11 inspection. ~~The State Architect shall periodically update this list.~~

12 (3) The lists required pursuant to this section shall include a
13 written disclaimer of liability as specified in subdivision (b).

14 (b) Notwithstanding any other provision of law, a state agency
15 or employee of a state agency may not be held liable for any injury
16 or damages resulting from any service provided by a certified
17 access specialist whose name appears on the list published pursuant
18 to subdivision (a).

19 (c) The State Architect may perform periodic audits of work
20 performed by a certified access specialist as deemed necessary to
21 ensure the desired standard of performance. A certified access
22 specialist shall provide an authorized representative of the State
23 Architect with complete access, at any reasonable hour of the day,
24 to all technical data, reports, records, photographs, design outlines
25 and plans, and files used in building inspection and plan review,
26 with the exception of proprietary and confidential information.

27 (d) *By January 1, 2016, the State Architect shall develop a*
28 *process by which a certified access specialist (CASp) may notify*
29 *the State Architect that a structure or area on the premises of a*
30 *business has been inspected by a CASp and to notify the public*
31 *that the business has a "CASp determination pending," or has*
32 *been "Inspected by a CASp," as provided by paragraph (3) of*
33 *subdivision (g) of section 55.56 of the Civil Code, which shall*
34 *include the date of the notification, the date of the inspection, and*
35 *a description of the structure or area inspected by a CASp.*

36 (e) *By January 1, 2016, the State Architect shall develop a form*
37 *for a business to notify the public that the business has obtained*
38 *a CASp inspection pursuant to paragraph (3) of subdivision (g)*
39 *of Section 55.56 of the Civil Code, which shall include the date of*

1 *the notification, the date of the inspection, and a description of*
2 *the structure or area inspected by a CASp.*

3 *(f) For purposes of this section, the “structure or area*
4 *inspected” means one of the following: the interior of the premises,*
5 *the exterior of the premises, or both the interior and exterior.*

6 SEC. 6. Section 4459.8 of the Government Code is amended
7 to read:

8 4459.8. (a) The certification authorized by Section 4459.5 is
9 effective for three years from the date of initial certification and
10 expires if not renewed. The State Architect, upon consideration of
11 any factual complaints regarding the work of a certified access
12 specialist or of other relevant information, may suspend
13 certification or deny renewal of certification.

14 (b) (1) The State Architect shall require each applicant for
15 certification as a certified access specialist to do both of the
16 following:

17 (A) Pay fees, including an application and course fee and an
18 examination fee, at a level sufficient to meet the costs of application
19 processing, registration, publishing a list, and other activities that
20 are reasonably necessary to implement and administer the certified
21 access specialist program.

22 (B) Provide to the State Architect the name of the city, county,
23 or city and county in which the applicant intends to provide
24 services.

25 (2) The State Architect shall require each applicant for renewal
26 of certification to do both of the following:

27 (A) Pay a fee sufficient to cover the reasonable costs of
28 reassessing qualifications of renewal applicants.

29 (B) Provide to the State Architect the name of the city, county,
30 or city and county in which the applicant has provided services
31 since the last day of certification by the State Architect.

32 (3) The State Architect shall periodically review its schedule
33 of fees to ensure that its fees for certification are not excessive
34 while covering the costs to administer the certified access specialist
35 program. The application fee for a California licensed architect,
36 landscape architect, civil engineer, or structural engineer shall not
37 exceed two hundred fifty dollars (\$250).

38 (c) All fees collected pursuant to this section shall be deposited
39 into the Certified Access Specialist Fund, which is hereby created
40 in the State Treasury. Notwithstanding Section 13340, this fund

1 is continuously appropriated without regard to fiscal years for use
2 by the State Architect to implement Sections 4459.5 to 4459.8,
3 inclusive.

4 (d) The State Architect shall post on his or her Internet Web
5 site the name of the city, county, or city and county in which each
6 certified access specialist provides or intends to provide services.

7 SEC. 7. Section 8299.06 of the Government Code is amended
8 to read:

9 8299.06. (a) A priority of the commission shall be the
10 development and dissemination of educational materials and
11 information to promote and facilitate disability access compliance.

12 (b) The commission shall work with other state agencies,
13 including the Division of the State Architect and the Department
14 of Rehabilitation, to develop educational materials and information
15 for use by businesses to understand its obligations to provide
16 disability access and to facilitate compliance with
17 construction-related accessibility standards.

18 (c) The commission shall develop and make available on its
19 Internet Web site, or make available on its Internet Web site if
20 developed by another governmental agency, including Americans
21 with Disabilities Act centers, toolkits or educational modules to
22 assist a California business to understand its obligations under the
23 law and to facilitate compliance with respect to the top 10 alleged
24 construction-related violations, by type, as specified in subdivision
25 (a) of Section 8299.08. Upon completion of this requirement, the
26 commission shall develop and make available on its Internet Web
27 site, or work with another agency to develop, other toolkits or
28 educational modules that would educate businesses of the
29 accessibility requirements and to facilitate compliance with that
30 requirement.

31 (d) The commission shall post the following on its Internet Web
32 site:

33 (1) Educational materials and information that will assist
34 building owners, tenants, building officials, and building inspectors
35 to understand the disability accessibility requirements and to
36 facilitate compliance with disability access laws. The commission
37 shall at least annually review the educational materials and
38 information on disability access requirements and compliance
39 available on the Internet Web site of other local, state, or federal
40 agencies, including Americans with Disabilities Act centers, to

1 augment the educational materials and information developed by
2 the commission.

3 (2) A link to the Internet Web site of the Division of the State
4 Architect’s certified access specialist (CASp) program to assist
5 building owners and tenants in locating or hiring a CASp.

6 (e) The commission shall, to the extent feasible, coordinate with
7 other state agencies and local building departments to ensure that
8 information provided to the public on disability access requirements
9 is uniform and complete, and make its educational materials and
10 information available to those agencies and departments.

11 SEC. 8. Section 65941.6 is added to the Government Code, to
12 read:

13 65941.6. (a) Each local agency shall develop materials relating
14 to the requirements of the federal Americans with Disabilities Act
15 of 1990 (42 U.S.C. Sec. 12101 et seq.). The local agency shall
16 provide these materials to an applicant along with notice that
17 approval of a permit does not signify that the applicant has
18 complied with the federal Americans with Disabilities Act of 1990.

19 (b) For the purposes of complying with the requirements of
20 subdivision (a), a local agency may, in lieu of developing its own
21 materials, provide applicants with those materials which the
22 California Commission on Disability Access has developed and
23 made available pursuant to Section 8299.06.

24 SEC. 9. Article 4 (commencing with Section 65946) is added
25 to Chapter 4.5 of Division 1 of Title 7 of the Government Code,
26 to read:

27
28 Article 4. Expedited Review

29
30 65946. (a) For the purposes of this section, the following
31 definitions shall apply:

32 (1) “Certified access specialist” or “CASp” means any person
33 who has been certified pursuant to Section 4459.5.

34 (2) “Construction-related accessibility standard” means a
35 provision, standard, or regulation under state or federal law
36 requiring compliance with standards for making new construction
37 and existing facilities accessible to persons with disabilities,
38 including, but not limited to, any provision, standard, or regulation
39 set forth in Section 51, 54, 54.1, or 55 of the Civil Code, Section
40 19955.5 of the Health and Safety Code, the California Building

1 Standards Code (Title 24 of the California Code of Regulations),
2 the federal Americans with Disabilities Act of 1990 (Public Law
3 101-336; 42 U.S.C. Sec. 12101 et seq.), and the federal Americans
4 with Disabilities Act Accessibility Guidelines (Appendix A to Part
5 36 of Title 28 of the Code of Federal Regulations).

6 (3) “Written inspection report” means the CASp report required
7 to be provided pursuant to subdivision (a) of Section 55.53 of the
8 Civil Code.

9 (b) A local agency shall expedite review of a project application
10 if the project applicant meets all of the following conditions:

11 (1) The applicant provides a copy of a disability access
12 inspection certificate, provided by a CASp pursuant to subdivision
13 (e) of Section 55.53 of the Civil Code, pertaining to the site of the
14 proposed project.

15 (2) The applicant demonstrates that the proposed project is
16 necessary to address either an alleged violation of a
17 construction-related accessibility standard or a violation noted in
18 a written inspection report.

19 (3) If project plans are necessary for the approval of a project,
20 the applicant has had a CASp review the project plans for
21 compliance with all applicable construction-related accessibility
22 standards.

23 SEC. 10. Section 17053.43 is added to the Revenue and
24 Taxation Code, to read:

25 17053.43. (a) (1) For each taxable year beginning on or after
26 January 1, 2016, and before January 1, 2023, there shall be allowed
27 to a taxpayer that is a small business a credit against the “net tax,”
28 as defined in Section 17039, for the amount paid or incurred for
29 eligible access expenditures in excess of two hundred fifty dollars
30 (\$250).

31 (2) (A) The credit shall be in an amount equal to 50 percent of
32 the difference between the total eligible access expenditures
33 incurred by a taxpayer that is a small business that do not exceed
34 ten thousand two hundred fifty dollars (\$10,250) and two hundred
35 fifty dollars (\$250).

36 (B) In the case of a partnership, the limitation under this
37 paragraph shall apply with respect to the partnership and each
38 partner. A similar rule shall apply in the case of an “S” corporation.

39 (b) For the purposes of this section, the following definitions
40 shall apply:

1 (1) “Eligible access expenditures” has the same meaning as
2 defined in Section 44(c) of the Internal Revenue Code, except that
3 the amounts may be paid or incurred by a taxpayer other than an
4 eligible small business.

5 (2) (A) “Small business” means a trade or business that, in the
6 three immediately preceding taxable years, had average gross
7 receipts, less returns and allowances reportable to this state, of less
8 than three million five hundred thousand dollars (\$3,500,000) and
9 employed 25 or fewer full-time employees.

10 (B) For the purposes of this paragraph, “gross receipts, less
11 returns and allowances reportable to this state” means the sum of
12 the gross receipts from the production of business income, as
13 defined in subdivision (a) of Section 25120, and the gross receipts
14 from the production of nonbusiness income, as defined in
15 subdivision (d) of Section 25120.

16 (C) For the purposes of this paragraph, “full-time employee”
17 means an employee of the taxpayer who works at least 30 hours
18 per week.

19 (c) In the case where the credit allowed by this section exceeds
20 the “net tax,” the excess may be carried over to reduce the “net
21 tax” in the following year, and the succeeding six years, if
22 necessary, until the credit is exhausted.

23 (d) The credit allowed by this section may be claimed only on
24 a timely filed original return of the taxpayer.

25 (e) In the case of a credit allowed under this section, the
26 following shall apply:

27 (1) A deduction or credit shall not be allowed for that amount
28 under any other provision of this part.

29 (2) An increase in the adjusted basis of any property shall not
30 result from that amount.

31 (f) The Franchise Tax Board may prescribe rules, guidelines,
32 or procedures necessary or appropriate to carry out the purposes
33 of this section, including any guidelines regarding the
34 substantiation of the credit allowed by this section. Chapter 3.5
35 (commencing with Section 11340) of Part 1 of Division 3 of Title
36 2 of the Government Code does not apply to any rule, guideline,
37 or procedure prescribed by the Franchise Tax Board pursuant to
38 this section.

39 (g) This section shall remain in effect only until December 1,
40 2023, and as of that date is repealed.

1 SEC. 11. Section 23643 is added to the Revenue and Taxation
2 Code, to read:

3 23643. (a) (1) For each taxable year beginning on or after
4 January 1, 2016, and before January 1, 2023, there shall be allowed
5 to a taxpayer that is a small business a credit against the “tax,” as
6 defined in Section 23036, for the amount paid or incurred for
7 eligible access expenditures in excess of two hundred fifty dollars
8 (\$250).

9 (2) (A) The credit shall be in an amount equal to 50 percent of
10 the difference between the total eligible access expenditures
11 incurred by a taxpayer that is a small business that do not exceed
12 ten thousand two hundred fifty dollars (\$10,250) and two hundred
13 fifty dollars (\$250).

14 (B) In the case of a partnership, the limitation under this
15 paragraph shall apply with respect to the partnership and each
16 partner. A similar rule shall apply in the case of an “S” corporation.

17 (b) For the purposes of this section, the following definitions
18 shall apply:

19 (1) “Eligible access expenditures” has the same meaning as
20 defined in Section 44(c) of the Internal Revenue Code, except that
21 the amounts may be paid or incurred by a taxpayer other than an
22 eligible small business.

23 (2) (A) “Small business” means a trade or business that, in the
24 three immediately preceding taxable years, had average gross
25 receipts, less returns and allowances reportable to this state, of less
26 than three million five hundred thousand dollars (\$3,500,000) and
27 employed 25 or fewer full-time employees.

28 (B) For the purposes of this paragraph, “gross receipts, less
29 returns and allowances reportable to this state” means the sum of
30 the gross receipts from the production of business income, as
31 defined in subdivision (a) of Section 25120, and the gross receipts
32 from the production of nonbusiness income, as defined in
33 subdivision (d) of Section 25120.

34 (C) For the purposes of this paragraph, “full-time employee”
35 means an employee of the taxpayer who works at least 30 hours
36 per week.

37 (D) The dollar amount specified in subparagraph (A) shall apply
38 to the gross receipts of all taxpayers required or authorized to be
39 included on a combined report pursuant to Section 25101 or
40 25101.15.

1 (c) In the case where the credit allowed by this section exceeds
2 the “tax,” the excess may be carried over to reduce the “tax” in
3 the following year, and the succeeding six years, if necessary, until
4 the credit is exhausted.

5 (d) The credit allowed by this section may be claimed only on
6 a timely filed original return of the taxpayer.

7 (e) In the case of a credit allowed under this section, the
8 following shall apply:

9 (1) A deduction or credit shall not be allowed for that amount
10 under any other provision of this part.

11 (2) An increase in the adjusted basis of any property shall not
12 result from that amount.

13 (f) The Franchise Tax Board may prescribe rules, guidelines,
14 or procedures necessary or appropriate to carry out the purposes
15 of this section, including any guidelines regarding the
16 substantiation of the credit allowed by this section. Chapter 3.5
17 (commencing with Section 11340) of Part 1 of Division 3 of Title
18 2 of the Government Code does not apply to any rule, guideline,
19 or procedure prescribed by the Franchise Tax Board pursuant to
20 this section.

21 (g) This section shall remain in effect only until December 1,
22 2023, and as of that date is repealed.

23 SEC. 12. The Legislature finds and declares that Sections 8
24 and 9 of this act, pertaining to the review and approval of
25 development permit applications, constitute matters of statewide
26 concern, and shall apply to charter cities and charter counties.
27 These sections shall supersede any inconsistent provisions in the
28 charter of any city, county, or city and county.

29 SEC. 13. It is the intent of the Legislature to make the findings
30 required by Section 41 of the Revenue and Taxation Code with
31 respect to the tax credits allowed by Sections 10 and 11 of this act.

32 SEC. 14. If the Commission on State Mandates determines
33 that this act contains costs mandated by the state, reimbursement
34 to local agencies and school districts for those costs shall be made
35 pursuant to Part 7 (commencing with Section 17500) of Division
36 4 of Title 2 of the Government Code.

O