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THIRD READING

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Bill No: AB 2873  
Author: Thurmond (D)  
Amended: 8/15/16 in Senate  
Vote: 27

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SENATE JUDICIARY COMMITTEE: 5-2, 6/21/16  
AYES: Jackson, Hertzberg, Leno, Monning, Wieckowski  
NOES: Moorlach, Anderson

SENATE APPROPRIATIONS COMMITTEE: 5-2, 8/11/16  
AYES: Lara, Beall, Hill, McGuire, Mendoza  
NOES: Bates, Nielsen

ASSEMBLY FLOOR: 60-14, 6/2/16 - See last page for vote

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**SUBJECT:** Certified access specialists

**SOURCE:** Disability Rights California

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**DIGEST:** This bill, commencing January 1, 2020, requires that all building inspectors employed by a local agency who review for compliance with state construction-related accessibility standards be Certified Access Specialists, as specified. This bill also increases the fee, from January 1, 2017 through December 31, 2019, attached to an application for a local business license from \$1 to \$4. By removing an existing sunset, commencing January 1, 2020, this bill extends the \$1 fee indefinitely. This bill makes other conforming changes.

**ANALYSIS:**

Existing law:

- 1) Provides, in the Americans with Disabilities Act (ADA), that no individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who

owns, leases, or leases to, or operates a place of public accommodation. (42 U.S.C. Sec. 12182.)

- 2) Declares, in the Unruh Civil Rights Act, that all persons, regardless of sex, race, color, religion, ancestry, national origin, disability or medical condition, are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever, and entitles persons to \$4,000 minimum statutory damages for violations of Unruh. (Civ. Code Sec. 51 et seq.)
- 3) Provides that individuals with disabilities or medical conditions have the same right as the general public to the full and free use of the streets, highways, sidewalks, walkways, public buildings, medical facilities, including hospitals, clinics and physicians' offices, public facilities, and other public places. It also provides that a violation of an individual's rights under the ADA constitutes a violation of state law. (Civ. Code Secs. 54, 54.1.)
- 4) Provides that a violation of the ADA also constitutes a violation of Sections 54 or 54.1, and entitles a prevailing party to recover reasonable attorney's fees. (Civ. Code Sec. 55.)
- 5) Requires the State Architect to establish the Certified Access Specialist Program (CASp) and develop the specified criteria to have a person qualify as a certified access specialist. (Gov. Code Sec. 4459.5; Civ. Code Sec. 55.52.)
- 6) Reduces a defendant's minimum liability for statutory damages in a construction-related accessibility claim against a place of public accommodation to \$1,000 for each unintentional offense if the defendant has had a CASp inspection, or occupies a building constructed after 2008, and corrected all construction-related violations that are the basis of the claim within 60 days of being served with the complaint. (Civ. Code Sec. 55.56(f)(1).)
- 7) Provides that upon being served with a complaint asserting a construction-related accessibility claim, a defendant may move for a 90-day stay and early evaluation conference if the defendant is:
  - until January 1, 2018, a defendant whose site was constructed after January 1, 2008 and approved pursuant to the local building permit and inspection process and the defendant declares that all violations have been corrected, or will be corrected within 60 days of being served the complaint;
  - a defendant whose site had new construction or improvement that was approved by a local public building department inspector who is a CASp and

the defendant declares that all violations have been corrected, or will be corrected within 60 days of being served the complaint; or

- a defendant who is a small business, as described, and the process and the defendant declares that all violations have been corrected, or will be corrected within 30 days of being served the complaint. (Civ. Code Sec. 55.54.)

- 8) Requires a local agency to employ or retain at least one building inspector who is a CASp, commencing on January 1, 2014, to employ or retain a sufficient number of building inspectors who are CASp to conduct inspections with respect to new construction. (Civ. Code Sec. 55.53(d).)

This bill:

- 1) Commencing January 1, 2021, requires 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 renovation to be certified access specialists (CASps), as specified.
- 2) Requires all new employees employed or retained by a local agency on or after January 1, 2018, 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 months of their initial date of employment.
- 3) Increases, commencing January 1, 2017, the existing \$1 fee attached to an application for a local business license to \$4, and extends the current sunset on the fee authority for one year to December 31, 2019. Reduces the proportion of fee revenue to the Division of the State Architect (DSA) from 30 percent to 10 percent of collections.
- 4) Requires, from January 1, 2017, through December 31, 2019, in any city, county, or city and county that does not issue business licenses, any applicant for a building permit to pay an additional fee of \$4 for that permit, as specified.

## **Background**

Since 1969, persons with disabilities have enjoyed protection under Civil Code Sections 54 and 54.1, which entitle individuals with disabilities and medical conditions to full and free access to and use of roadways, sidewalks, buildings and facilities open to the public, hospitals and medical facilities, and housing. After

Congress enacted the ADA in 1990, the state made a violation of the ADA also a violation of Section 54 or 54.1. The state protections provided to disabled persons are comparatively higher than those provided under the ADA and are independent of the ADA. Additionally, under the Unruh Civil Rights Act, all persons, regardless of sex, race, color, religion, ancestry, national origin, disability or medical condition, are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever. (Civ.1 Code Sec. 51.) A violation of the ADA also constitutes a violation of Section 51.

In 2003 and 2005, several bills were introduced after multiple lawsuits were filed in state court by a few plaintiffs and attorneys against business owners and operators for allegedly technical violations of the state's access or ADA regulations. (SB 69 (Oller, 2003), AB 209 (Leslie, 2003), AB 20 (Leslie, 2005), SB 855 (Poochigian, 2005).) Three of those bills would have required a plaintiff to undertake pre-litigation steps prior to the filing of a complaint, including providing notice to the owner of the property or business of the alleged violations, and provided a specified time period for the owner or business to cure the violations. One bill, (AB 20, Leslie, 2005) would have precluded an action for damages for a de minimus violation, allowing only injunctive relief and attorney's fees. All of those bills failed passage in the Judiciary Committees of their respective houses. In 2008, two bills were introduced relating to disability access. AB 2533 (Keene, 2008) and SB 1766 (McClintock, 2008) would have both imposed pre-litigation hurdles on plaintiffs claiming violations of construction-related disability access laws. Both of these bills failed in the Judiciary Committees of their respective houses. In 2011, SB 783 (Dutton, 2011) would have established notice requirements for an aggrieved party to follow before he or she can bring a disability access suit and given the business owner a 120-day time period to remedy the violation. That bill failed passage in the Senate Judiciary Committee.

Alternatively, SB 1608 (Corbett et al., Chapter 549, Statutes of 2008), which took effect January 1, 2009, did not create any pre-litigation hurdles for a person with a disability but instead, among other things, provided for an early evaluation of a filed complaint if the defendant is a qualified defendant who had the identified place of public accommodation inspected and determined to meet applicable physical access standards by a state Certified Access Specialist (CASp) prior to the filing of the complaint. In 2012, Senators Steinberg and Dutton authored SB 1186 (Chapter 383, Statutes of 2012) which sought to comprehensively address continued issues with disability litigation.

Last year a number of bills were introduced to further combat perceived issues with disability litigation. AB 1521 (Committee on Judiciary, Ch. 755, Stats. 2015) created a new class of plaintiff, a “high frequency litigant,” upon which it imposed additional costs and procedural burdens. Two bills, one which created a tax credit for certain access expenditures to businesses, and the other that would have provided funding to the Commission on Disability Access, were vetoed by Governor Brown who stated that such legislation is more appropriately considered in the annual budget process (SB 251 (Roth) and AB 1342 (Steinorth)).

This bill, seeking to ensure consistency in local building inspections and increase the availability of CASp inspectors, requires that all inspectors employed by a local agency are CASps, and makes other conforming changes.

**FISCAL EFFECT:** Appropriation: Yes Fiscal Com.: Yes Local: Yes

According to the Senate Appropriations Committee:

- *CASp mandate:* Potential major increase in future ongoing local agency costs in the millions of dollars related to the imposition of CASp certification for all applicable building inspectors and new/retained employees within specified timeframes, potentially state-reimbursable if not fully covered by the short-term fee increase and the ongoing fee authority. To the extent the bill creates a higher level of service on local agencies due to mandating CASp-certification for all building inspectors and new/retained employees, local agencies could claim reimbursement for those increased costs not covered by fees. At an average cost of \$4,500 for CASp certification, certification costs for every 1,000 new CASps would cost \$4.5 million. These costs do not reflect the larger impact associated with ongoing compensation for more highly trained personnel.
- *State fee revenue:* Short-term net increase in fee revenues of about \$200,000 (Special Fund\*) to the DSA through 2019, due to the fee increase from \$1 to \$4 on business license applications which is partially offset by the reduced proportion (from 30 percent to 10 percent) of fee revenue to DSA. The amount of fee revenue generated by the new \$4 fee imposed on building permits in local jurisdictions that do not issue business licenses is unknown, but not anticipated to be significant.
- *Local fee revenue:* Short-term net increase in fee revenues (Local Funds) of \$6 million through 2019 due to the fee increase from \$1 to \$4 on business license applications and the increased share from 70 percent to 90 percent of total fees collected. Additional fee revenues due to the new \$4 fee imposed on building permits of an unknown, but potentially significant amount.

- *DSA administrative costs*: One-time costs ranging from \$750,000 to \$1 million (Special Fund\*\*) to (1) upgrade its existing database system to accommodate the significant expansion of the program, and, (2) revise and transition the CASp exam to an electronic-based format. Additionally, ongoing resource costs of \$230,000 (Special Fund\*\*) to manage administration of the examination and certification renewals for the larger program. The current fees for CASp examinations and renewals are estimated to maintain cost-neutrality for the ongoing costs of the program.

\*Disability Access and Education Revolving Fund

\*\*Certified Access Specialist (CASp) Fund – staff notes the CASp Fund has experienced a slowly growing reserve balance over the past three years, with a projected balance of \$1.7 million ending FY 2016-17, due to the CASp program operating on a largely cost-neutral basis. However, the potentially significant expansion of the program will likely necessitate budget authority to invest additional funds on a one-time basis to accommodate the changes needed to address the influx of applicants necessitated by the mandate for CASp certification.

**SUPPORT:** (Verified 8/12/16)

Disability Rights California (source)

Consumer Attorneys of California

Autism Society of Los Angeles

ARC of California

California Association of Public Authorities for IHSS

Californians for Disability Rights, Inc.

California Foundation for Independent Living Centers

California Respite Association

California Supported Living Network

Disability Rights Education and Defense Fund

Special Needs Network

United Cerebral Palsy California

Western Center on Law and Poverty

**OPPOSITION:** (Verified 8/12/16)

California Association Building Officials

**ARGUMENTS IN SUPPORT:** The Consumer Attorneys of California, in support, write:

It doesn't make any sense, for neither the business nor those who want or need to access a building that a building inspector can sign off on a business inspection when the inspector doesn't know the legal requirements for accessibility standards. AB 2873 is a step in the right direction to ensure that businesses can comply with the law and that all can enter those businesses, regardless of disability.

**ARGUMENTS IN OPPOSITION:** The California Building Officials writes:

Despite the recent amendments, the bill, as amended, will place cities and counties out of compliance with the law in 2020 when the bill is to go into effect. The CASp certification process is cost prohibitive (upwards of \$1,600 per test, typically reimbursed only once passed), the test has a low passage rate (28%, taking individuals on average three attempts to pass) and currently, there are few incentives for individuals to become certified.

**ASSEMBLY FLOOR:** 60-14, 6/2/16

**AYES:** Alejo, Arambula, Atkins, Baker, Bloom, Bonilla, Bonta, Brown, Burke, Calderon, Campos, Chau, Chiu, Chu, Cooley, Cooper, Dababneh, Daly, Dodd, Eggman, Cristina Garcia, Eduardo Garcia, Gatto, Gipson, Gomez, Gonzalez, Gordon, Gray, Grove, Roger Hernández, Holden, Irwin, Jones-Sawyer, Kim, Lackey, Levine, Linder, Lopez, Low, Maienschein, McCarty, Medina, Mullin, Nazarian, O'Donnell, Olsen, Quirk, Ridley-Thomas, Rodriguez, Salas, Santiago, Mark Stone, Thurmond, Ting, Wagner, Weber, Wilk, Williams, Wood, Rendon

**NOES:** Achadjian, Travis Allen, Brough, Chang, Chávez, Dahle, Gallagher, Harper, Jones, Mathis, Melendez, Obernolte, Patterson, Waldron

**NO VOTE RECORDED:** Bigelow, Frazier, Beth Gaines, Hadley, Mayes, Steinorth

Prepared by: Nichole Rapier / JUD. / (916) 651-4113  
8/15/16 19:40:00

\*\*\*\* END \*\*\*\*