

Senate Bill No. 269

CHAPTER 13

An act to amend Sections 55.53 and 55.56 of the Civil Code, and 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, relating to disability access, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor May 10, 2016. Filed with
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legislative counsel's digest

SB 269, Roth. 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 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. 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, for claims filed on and after its effective date, establish a rebuttable presumption, for the purpose of an award of minimum statutory damages, that certain technical violations do not cause a plaintiff to experience difficulty, discomfort, or embarrassment, if specified conditions are met. This bill would also 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 exemption to disclose the date and findings of any certified access specialist (CASp) inspection to the plaintiff.

(2) 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 regularly update, easily accessible lists of businesses that file prescribed notices of inspection, and businesses which have been inspected by a CASp on or after January 1, 2017, 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.

(3) 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.

(4) The Permit Streamlining Act 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 would apply to charter cities and charter counties.

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

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 no reimbursement is required by this act for a specified reason.

(6) This bill would declare that it is to take effect immediately as an urgency statute.

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

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

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

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

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

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

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

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

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

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

(B) The date of the inspection.

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

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

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

(3) The CASp shall provide, within 30 days of the date of the inspection of a business that qualifies for the provisions of subparagraph (A) of paragraph (3) of subdivision (g) of Section 55.56, a copy of a report prepared pursuant to that subparagraph to the business.

(4) The CASp shall file, within 10 days of inspecting a business pursuant to subparagraph (A) of paragraph (3) of subdivision (g) of Section 55.56, a notice with the State Architect for listing on the State Architect’s Internet Web site, as provided by subdivision (d) of Section 4459.7 of the Government Code, indicating that the CASp has inspected the business, the name and address of the business, the date of the filing, the date of the inspection of the business, the name and license number of the CASp, and a description of the structure or area inspected by the CASp.

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

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

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

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

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

NOTICE TO PRIVATE PROPERTY OWNER/TENANT:

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

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

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

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

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

(2) Commencing January 1, 2014, a local agency shall employ or retain a sufficient number of building inspectors who are certified access specialists 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, including, but not limited to, projects relating to tenant improvements that may impact access. If a local agency employs or retains two or more certified access specialists to comply with this subdivision, at least one-half of the certified access specialists shall be building inspectors who are certified access specialists.

(3) If a permit applicant or member of the public requests consultation from a certified access specialist, the local agency may charge an amount limited to a reasonable hourly rate, an estimate of which shall be provided upon request in advance of the consultation. A local government may additionally charge or increase permitting, plan check, or inspection fees to the extent necessary to offset the costs of complying with this subdivision. Any revenues generated from an hourly or other charge or fee increase under this subdivision shall be used solely to offset the costs incurred to comply with this subdivision. A CASp inspection pursuant to subdivision (a) by a

building inspector who is a certified access specialist shall be treated equally for legal and evidentiary purposes as an inspection conducted by a private CASp. Nothing in this subdivision shall preclude permit applicants or any other person with a legal interest in the property from retaining a private CASp at any time.

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

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

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

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

SEC. 2. Section 55.56 of the Civil Code is amended to read:

55.56. (a) Statutory damages under either subdivision (a) of Section 52 or subdivision (a) of Section 54.3 may be recovered in a construction-related accessibility claim against a place of public accommodation only if a violation or violations of one or more construction-related accessibility standards denied the plaintiff full and equal access to the place of public accommodation on a particular occasion.

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

(c) A violation 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.

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

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

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

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

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

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

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

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

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

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

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

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

(3) This subdivision shall apply only to claims filed on or after the effective date of Senate Bill 269 of the 2015–16 Regular Session.

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

(g) (1) Notwithstanding any other law, a defendant’s liability for statutory damages in a construction-related accessibility claim against a place of public accommodation is reduced to a minimum of one thousand dollars (\$1,000) for each offense if the defendant demonstrates that it has corrected all construction-related violations that are the basis of a claim within 60 days of being served with the complaint, and the defendant demonstrates any of the following:

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

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

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

(D) The structure or area of the alleged violation was new construction or an improvement that was approved by, and passed inspection by, a local building department official who is a certified access specialist, and, to the

best of the defendant's knowledge, there were no modifications or alterations that affected compliance with respect to the plaintiff's claim that were completed or commenced between the completion date of the new construction or improvement and the particular occasion on which the plaintiff was allegedly denied full and equal access.

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

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

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

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

(i) The defendant is a business that, as of the date of inspection, has employed 50 or fewer employees on average over the past three years, or for the years it has been in existence if less than three years, as evidenced by wage report forms filed with the Employment Development Department.

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

(iii) The inspection predates the filing of the claim by, or receipt of a demand letter from, the plaintiff regarding the alleged violation of a construction-related accessibility standard, and the defendant was not on notice of the alleged violation prior to the CASp inspection.

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

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

(4) A defendant may claim the protection from liability for minimum statutory damages under paragraph (3) only once for each structure or area inspected by a CASp, unless the inspected structure or area has undergone modifications or alterations that affect the compliance with construction-related accessibility standards of those structures or areas after the date of the last inspection, and the defendant obtains an additional CASp inspection within 30 days of final approval by the building department or certificate of occupancy, as appropriate, regarding the modification or alterations.

(5) If the defendant has failed to correct, within 120 days of the date of the inspection, all construction-related violations in the structure or area inspected by the CASp that are noted in the CASp report, the defendant shall not receive any protection from liability for minimum statutory damages pursuant to paragraph (3), unless a building permit is required for the repairs which cannot reasonably be completed by the defendant within 120 days and the defendant is in the process of correcting the violations noted in the CASp report, as evidenced by having, at least, an active building permit necessary for the repairs to correct the violation that was noted, but not corrected, in the CASp report and all of the repairs are completed within 180 days of the date of the inspection.

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

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

(8) This subdivision shall apply only to claims filed on or after the effective date of Chapter 383 of the Statutes of 2012, except for paragraphs (3), (4), and (5), which shall apply only to claims filed on or after the effective date of Senate Bill 269 of the 2015–16 Regular Session. Nothing in this subdivision is intended to affect a complaint filed before those dates, as applicable.

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

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

(j) For purposes of this section, the "structure or area inspected" means one of the following: the interior of the premises, the exterior of the premises, or both the interior and exterior.

SEC. 3. Section 4459.7 of the Government Code is amended to read:

4459.7. (a) (1) No later than October 31 of each year, the State Architect shall publish and make available to the public a list of certified access specialists who have met the requirements of Section 4459.5.

(2) The State Architect shall publish and regularly update on its Internet Web site easily accessible lists of all of the following:

(A) Businesses that have obtained a CASp inspection and have filed, or a CASp has filed on their behalf, a notice pursuant to paragraph (4) of subdivision (a) of Section 55.53 of the Civil Code.

(B) Businesses which have been inspected by a certified access specialist on or after January 1, 2017, including the date of the inspection.

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

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

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

(d) By January 1, 2017, the State Architect shall develop a process by which a certified access specialist (CASp) may notify the State Architect that a structure or area on the premises of a business has been inspected by a CASp and to notify the public that the business has a “CASp determination pending,” or has been “Inspected by a CASp,” as provided by paragraph (3) of subdivision (g) of Section 55.56 of the Civil Code, which shall include the name and address of the business, the date of the notification, the date of the inspection of the business, the name and license number of the CASp, and a description of the structure or area inspected by a CASp.

(e) By January 1, 2017, the State Architect shall develop a form for a business to notify the public that the business has obtained a CASp inspection pursuant to paragraph (3) of subdivision (g) of Section 55.56 of the Civil Code, which shall include the date of the notification, the date of the inspection, and a description of the structure or area inspected by a CASp.

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

SEC. 4. Section 4459.8 of the Government Code is amended to read:

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

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

(A) Pay fees, including an application and course fee and an examination fee, at a level sufficient to meet the costs of application processing, registration, publishing a list, and other activities that are reasonably

necessary to implement and administer the certified access specialist program.

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

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

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

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

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

(c) All fees collected pursuant to this section shall be deposited into the Certified Access Specialist Fund, which is hereby created in the State Treasury. Notwithstanding Section 13340, this fund is continuously appropriated without regard to fiscal years for use by the State Architect to implement Sections 4459.5 to 4459.8, inclusive.

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

SEC. 5. Section 8299.06 of the Government Code is amended to read:

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

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

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

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

(1) Educational materials and information that will assist building owners, tenants, building officials, and building inspectors to understand the disability

accessibility requirements and to facilitate compliance with disability access laws. The commission shall at least annually review the educational materials and information on disability access requirements and compliance available on the Internet Web site of other local, state, or federal agencies, including Americans with Disabilities Act centers, to augment the educational materials and information developed by the commission.

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

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

SEC. 6. Section 65941.6 is added to the Government Code, to read:

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

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

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

Article 4. Expedited Review

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

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

(2) “Construction-related accessibility standard” means a provision, standard, or regulation under state or federal law requiring compliance with standards for making new construction and existing facilities accessible to persons with disabilities, including, but not limited to, any provision, standard, or regulation set forth in Section 51, 54, 54.1, or 55 of the Civil Code, Section 19955.5 of the Health and Safety Code, the California Building Standards Code (Title 24 of the California Code of Regulations), the federal Americans with Disabilities Act of 1990 (Public Law 101-336; 42 U.S.C. Sec. 12101 et seq.), and the federal Americans with Disabilities Act Accessibility Guidelines (Appendix A to Part 36 of Title 28 of the Code of Federal Regulations).

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

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

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

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

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

SEC. 8. The Legislature finds and declares that Sections 6 and 7 of this act, pertaining to the review and approval of development permit applications, constitute matters of statewide concern, and shall apply to charter cities and charter counties. These sections shall supersede any inconsistent provisions in the charter of any city, county, or city and county.

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

SEC. 10. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

Recent data from the California Commission on Disability Access indicates that a handful of highly litigious plaintiffs and attorneys have targeted small businesses in the state, especially those without financial resources or sophistication, with lawsuits alleging violations of construction-related accessibility standards. The lawsuits appear to be motivated by a desire to obtain quick cash settlements with the businesses, rather than to improve access to public accommodations. As a result, small businesses are justifiably anxious about being sued, while disabled consumers are viewed with blame and suspicion, even though they have a right to full and equal access and should be able to expect all public accommodations to comply with the 25-year-old requirements of the Americans with Disabilities Act. It is necessary that this act go into immediate effect to ensure that small businesses have the information and resources they need in order to bring their properties into compliance with construction-related accessibility standards. It is also necessary that this act go into immediate effect to increase compliance with those standards for the benefit of the public, especially disabled consumers who have the right to go about their daily lives without difficulty, discomfort, or embarrassment,

and with the basic dignity that comes from having the same access to public accommodations that nondisabled persons enjoy.

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