AB-2873 Certified access specialists.(2015-2016)

AMENDED IN SENATE AUGUST 19, 2016

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CALIFORNIA LEGISLATURE— 2015–2016 REGULAR SESSION

ASSEMBLY BILL No. 2873

Introduced by Assembly Member Thurmond

February 19, 2016

An act to amend Section 55.53 of the Civil Code, and to amend Sections 4459.5 and 4467 of the Government Code, relating to public contracts, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 2873, as amended, Thurmond. Certified access specialists.

The Construction-Related Accessibility Standards Compliance Act establishes standards for making new construction and existing facilities accessible to persons with disabilities, including inspections by private persons or building inspectors who are certified access specialists (CASps), and provides for construction-

related accessibility claims for violations of those standards. That act requires a local agency, commencing January 1, 2014, to employ or retain a sufficient number of building inspectors who are CASps to conduct permitting and plan check services to review for compliance with state construction-related accessibility standards by a place of public accommodation with respect to new construction. The act requires, if a local agency employs or retains 2 or more CASps, that at least ~~half~~ *one-half* of the CASps be building inspectors who are CASps.

This bill would require, commencing January 1, 2021, that all building inspectors employed or retained by a local agency who conduct permitting and plan check services to review for compliance with state construction-related accessibility standards by a place of public accommodation with respect to new construction or renovations, including, but not limited to, projects relating to tenant improvements that may impact access, be CASps. The bill would also require all new employees employed or retained by a local agency on or after January 1, 2018, and who will conduct permitting and plan check services to review for compliance with state construction-related accessibility standards by a place of public accommodation, to be CASps within ~~24~~ *36* months of their initial date of employment. By adding to the duties of a local entity, this bill would impose a state-mandated local program.

Existing law requires the State Architect to establish a program for voluntary certification by the state of any person who meets specified criteria as a CASp with respect to access to buildings for persons with disabilities and to determine minimum criteria for certification.

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

Until December 31, 2018, existing law requires any applicant for a local business license or equivalent instrument or permit, or renewal of a local business license or equivalent instrument or permit, to pay an additional state fee of $1 for that license, instrument, or permit. Under existing law, the city, county, or city and county that collected the fee retains 70% of the fee, and the remaining 30% of the fee is deposited into the Disability Access and Education Revolving Fund, a continuously appropriated fund.

This bill, from January 1, 2017, through December 31, 2019, would increase that state fee to $4 and would require any applicant for a building permit in a city, county, or city and county that does not issue business licenses or an equivalent instrument or permit to pay an additional fee of $4 for that building permit. Beginning January 1, 2020, those fees would be reduced to $1. The bill, from January 1, 2017, through December 31, 2019, would increase the percentage of the fee retained by a local agency to 90% and the remaining 10% would be deposited into the Disability Access and Education Revolving Fund. Beginning January 1, 2020, those percentages would revert to 70% and 30%, respectively. By increasing revenue to a continuously appropriated fund, increasing the fee, extending the period of time during which the fee will be collected, and imposing an additional fee, this bill would make an appropriation. The bill would make an appropriation by authorizing local government entities to retain an increased percentage of the increased fee. The bill would require that the moneys retained by a local agency be placed in a special fund established by the local agency, to be known as the “CASp Certification and Training Fund.” The bill would require that fees collected in a CASp Certification and Training Fund be used for increased certified access specialist training and certification in the local jurisdiction, thereby making an appropriation by expanding the purposes for which the retained fee moneys are required to be spent.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

DIGEST KEY

Vote: 2/3 Appropriation: yes Fiscal Committee: yes Local Program: yes

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BILL TEXT

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 (CASp) shall, upon completion of the inspection of a site, comply with the following:

(1) For a site that meets applicable standards, 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 a site that has been inspected by a CASp, 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) (A) Commencing January 1, 2021, 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, including, but not limited to, projects relating to tenant improvements that may impact access, shall be certified access specialists.

(B) New employees employed or retained by a local agency on or after January 1, 2018, and who will conduct permitting and plan check services to review for compliance with state construction-related accessibility standards by a place of public accommodation shall be certified access specialists within ~~24~~ *36* months of their initial date of employment.

(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 4459.5 of the Government Code is amended to read:

4459.5.

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

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

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

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

SEC. 3.

Section 4467 of the Government Code is amended to read:

4467.

(a) (1) (A) On and after January 1, 2017, through December 31, 2019, any applicant for a local business license or equivalent instrument or permit, and ~~from~~ any applicant for the renewal of a business license or equivalent instrument or permit, shall pay an additional fee of four dollars ($4) for that license, instrument, or permit, which shall be collected by the city, county, or city and county that issues the license, instrument, or permit.

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

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

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

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

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

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

SEC. 4.

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