

**CALIFORNIA COMMISSION ON DISABILITY ACCESS  
CASP & EDUCATION COMMITTEE  
MEETING MINUTES**

**December 20, 2011**

**1. CALL TO ORDER**

Chair Burks called the meeting to order at 10:10 a.m. at the Department of Rehabilitation, 721 Capitol Mall, Room 242, Sacramento, California 95814.

**ROLL CALL**

Staff Member Jemmott called the roll.

*Commissioners Present:* Rocky Burks, Chair  
Mark Martinez

*Commission Staff Present:* James V. Vitale, Executive Director  
Angela Jemmott, CCDA Program Analyst  
Lavonia Wade, Office Technician

*Commissioners Absent:* Howard “Chip” Smith, Jr.

*Also Present:* Daniel Conway, Public Affairs Director of the California Restaurant Association  
Regina Dick-Endrizzi, Executive Director of the Office of Small Business with the City and County of San Francisco  
Brad Diede, Executive Director of the California Professional Association of Specialty Contractors  
Steve Dolim, Certified Access Specialist Institute  
Jennifer Guerrero, California Chamber of Commerce (Teleconference)  
Richard Markuson, American Society of Civil Engineers, Western Electrical Contractors Association, and Plumbing-Heating-Cooling Contractors of California  
Parke Terry, Greenberg Traurig Law Firm

Staff Member Jemmott stated that a quorum was present.

**2. COMMENTS FROM THE PUBLIC ON ISSUES NOT ON THIS AGENDA**

There were no comments from the public.

**3. GENERAL BUSINESS ITEMS**

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**a. Review meeting protocols**

There was no further discussion on meeting protocols after Chair Burks's review of protocols.

**b. Committee Membership**

The Committee Members introduced themselves, including their background, interest, and roles in this committee. Chair Burks stated that a new State Architect has been appointed, although the absent Commissioner Smith may continue in this capacity.

**c. Committee Mission/Purpose:**

- 1. Whether public and private inspection programs, including CASp, are meeting the business and disability community needs, including timely competent inspections that properly identify violations and provide appropriate remedial measures.**
- 2. Whether existing training and continuing education requirements for professionals involved in designing, plan checking, building or inspecting a structure are sufficient to provide the professional with sufficient knowledge of the state and federal disability access laws and regulations.**
- 3. Whether training and continuing education requirements should be enacted for landscape architects, professional engineers and contractors to provide these professionals with sufficient knowledge of the state and federal disability access laws and regulations.**

Chair Burks identified the three Mission/Purpose items as the primary responsibilities of this Committee – the State Legislature expects a full and complete assessment of compliance efforts based upon these three criteria.

Commissioner Martinez added that, since these three items are broad, it is important to include public comments in order to highlight the actual effects of the Committee's actions.

**Public Comment**

- Regina Dick-Endrizzi, Executive Director of the Office of Small Business with the City and County of San Francisco, voiced her concern over the large number of businesses that are facing lawsuits over accessibility. She stated the need for defining, documenting, and registering with the Department of Building Inspection any technically infeasible areas for accessibility improvements, in order to prevent businesses from being re-sued under unrealistic expectations. In addition to this, she noted that the local building department is enforcing Title 24, instead of the Federal Americans with Disabilities Act (ADA), and thus misinforming businesses as to their compliance.

Ms. Dick-Endrizzi suggested a mandate that will require contractors to go through the Certified Access Specialist Program (CASp) and all architects to be CASp-certified, and will make clear to business owners, when doing improvements under the

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Valuation Threshold, any issues with compliance to the Federal ADA and vulnerability for potential lawsuits.

Chair Burks, in response to Ms. Dick-Endrizzi's concerns, stated he would like to see representatives from the Division of the State Architect (DSA) and the Building Standards Commission (BSC) in attendance at CASp and Education Committee meetings to coordinate their responses.

- Parke Terry of the Greenberg Traurig Law Firm in Sacramento spoke on behalf of the California Landscape Contractors Association (CLCA). The CLCA is a volunteer association representing approximately 2,500 licensed landscape contractors in California. Mr. Terry addressed Item C3 . While recognizing the obligation to meet the ADA requirements, Mr. Terry expressed his concerns over the significant expense and time burden (he estimated some 300,000 contractors would require this continuing education) and unlawful competition from the underground economy due to underbidding of unlicensed contractors. Since not all landscape contractors will be engaged in disability access, he suggested adding a condition to bidding on a public works contract that requires the certification in advance.
- Brad Diede, Executive Director of the California Professional Association of Specialty Contractors (CALPASC), which includes both union and non-union commercial and residential construction trade contractors, addressed Item C3 in agreement with Mr. Terry's testimony. He declared that, over the past eighteen months, CALPASC has put together a coalition of about forty-five different groups of construction-related associations, both union and non-union. He stated his concern that properly law-compliant contractors have difficulty winning jobs in this economy.

Further, CALPASC has found that there are many licensed contractors who are out of compliance and do not properly put the cost of compliance into their bids for contracts. He added that few inspections take place to hold contractors accountable. He stated the need for legitimate contractors to have non-mandated, cost-effective education made available to them, which will allow them to perform their jobs in compliance with the law; however, he felt that mandated education will create difficulties for many workers in the construction community.

Commissioner Vitale emphasized the licensed responsibility of contractors, architects, and design professionals in California to uphold codes and regulations regarding their projects. The responsibility of the Commission is not only to consider non-compliance with mandated requirements, but also to ensure that building officials can inspect projects regardless of project delivery methods. He mentioned that some free education programs have been offered with little result.

Mr. Diede responded that CALPASC has been advocating an increase in inspections to prevent violation of the mandated requirements. Chair Burks cited Senate Bill 1608, which mandates that building departments have CASp members on staff who will carry out inspections. This process is slowly getting underway.

Mr. Diede also advocated greater awareness and publicity. He stated many contractors in California are not certified, despite requirements, and these contractors

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continue to get jobs because owners are not aware of the consequences. Publicity will help encourage education and compliance.

Chair Burks stated the Contractors State License Board (CSLB) is intended to enforce compliance among general and specialty contractors. However, when owners hire noncertified contractors, encouraging noncompliance, they will face the responsibility in the event that injury occurs. This Committee, therefore, needs to address the issue of informing owners of their responsibility as well as the issue of implementing methods with the CSLB to reduce litigation.

Commissioner Martinez stated the compliance issue is important to report to the Full Commission. In addition, the Commission needs to be aware of the effects of these decisions upon the building industry, specifically how community development departments will handle the CASp responsibility with reduced staffing.

Mr. Terry said that increased involvement of local building inspectors will be beneficial in this instance; their enforcement will help them determine whether workers in the construction industry are properly licensed or engaging in unlawful activities. When asked by Chair Burks if he had spoken with the local building officials' organization, the California Association of Building Officials (CALBO), Mr. Terry stated his organization is working with the CSLB, the Department of Industrial Relations (DIR), Cal/OSHA, the California Department of Insurance (CDI) – all agencies that have a role in the enforcement of contract law.

Mr. Diede and Mr. Terry both cited local attempts to increase accountability, the former mentioning the Workers' Compensation Insurance requirement in Butte County, and the latter mentioning Fresno County's contractors' license vehicle sticker program.

Executive Director Vitale stated the vehicle sticker system has worked well in Beverly Hills, and the Workers' Compensation Insurance is enacted in Los Angeles. However, projects in Management and Operations contracting or costing under \$500 are frequently unregulated; this is where many business owners fall into noncompliance without realizing it. He agreed with Mr. Diede's previous suggestion to inform and educate business owners. The Commission is, for the first time, empowered to reach the public with this information, and even to receive voluntary support from other agencies; the Commission can hold webcasted community workshops in multiple locations to help identify and resolve the issues the public faces. He stated the transfer of information to business owners and construction and design professionals can be streamlined into a simple, cost-effective process. He suggested that renewal notices and voluntary programs, such as San Francisco County has enacted, be used to minimize costs to the state government while providing a regular reminder to professionals.

Ms. Dick-Endrizzi said that the Department of Building Inspection in San Francisco has one certified CASp inspector at this time. She suggested that the Committee receive reports from Departments of Building Inspections regarding the number of CASp inspectors and their plans to utilize them, since this will emphasize the

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importance of their role. Chair Burks added that the CASp-certified employees within the building departments need to be readily available to their jurisdictions.

- Steve Dolim, representing the Certified Access Specialist Institute (CASI), a recently formed body of 150 practicing CASp specialists, agreed to the need for a standard of detail levels for CASp inspections. He noted that Senate Bill 1608 needs to be clearly enforced; whether that responsibility falls to this Committee remains to be seen. On behalf of CASI, he stated continued education would be beneficial to all practicing professionals in the construction community, as it can improve accessibility for their future projects. He also suggested the creation of a database to make ADA guidelines publicly available.
- Richard Markuson, the representative of three different groups, approached the discussion from the viewpoint of each:
  - The American Society of Civil Engineers (ASCE) advocates continuing education after licensing for civil engineers. Since there is no current requirement in California law for this, he stated an appropriate level of training should be established.
  - The Western Electrical Contractors Association (WECA), unlike the ASCE, does have a continuing education requirement by law: electricians have a statutory requirement under the Labor Code to complete thirty-two hours of continuing education every two years before they can be relicensed by the Division of Apprenticeship Standards (DAS). However, Mr. Markuson stated it would be beneficial to set an appropriate level of training for electricians beyond the current requirements of the National Electric Code (NEC).
  - The Plumbing-Heating-Cooling Contractors of California (PHCC) have no continuing education requirement for plumbing contractors or individual employees; the PHCC is interested in setting a requirement, since a continuing education mandate improves the quality of work in terms of access.

Mr. Markuson stated his intentions to incorporate accessibility training into the future agenda for continuing education, to make it available for electrical contractors at the least.

He additionally suggested incorporating a safe harbor in legislation following Senate Bill 1608, in order to prevent a business owner from making changes based upon a CASp inspection only to be sued over those changes later. He emphasized the importance of having common understanding and agreement on what safe harbor and right to cure protections might be for someone trying to comply.

Chair Burks recognized the variability of interpretations and the variability of inspections identified and discussed in this Committee meeting, and emphasized the need for the continuing education process in terms of CASp & Education capabilities.

Mr. Markuson stated his clients communicate monthly with approximately 30,000 engineers and contractors and would be willing, on behalf of his clients, to make

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those media available to this Committee to reach them with information and feedback.

- Daniel Conway, Public Affairs Director of the California Restaurant Association (CRA), stated his industry and its members seek the certainty this Commission can facilitate. He voiced his concern over the degree of subjectivity involved in inspections and the variability of interpretations of what constitutes compliance. The CRA regularly communicates with its members and would be willing to distribute materials created by this Committee in order to help members comply.

Executive Director Vitale expressed his appreciation for the public in attendance. He expressed his desire for open communication with stakeholder groups regarding resolution of these issues. He also expressed his appreciation for those in attendance who have offered to distribute educational materials to their members.

Executive Director Vitale stated the large volume of retirements, the decrease in vocational education, and the decrease in apprenticeship programs have created a gap in knowledge. He suggested a way to regain this lost technical knowledge by voluntarily informing memberships of the need to revive vocational education and apprenticeship programs.

He expressed the need for awareness. The federal government has relied on the states to empower and enact the civil rights requirements, in a manner that is seen fit by each individual state. This Commission is a focal point or platform to present these things. They will be included in reports and recommendations that the Commission will carry forward. Executive Director Vitale restated his appreciation to those in attendance for the information that they brought before this Committee. He declared that this is only the beginning and ensured that the Commission will move as rapidly as possible to resolve these issues.

Chair Burks added his appreciation for those in attendance and asked that they report to this Committee the actions of their leadership and membership organizations, if anything, to meet the requirements under state and federal accessibility compliance, in order to help the Committee gain understanding.

Commissioner Martinez additionally testified to the willingness of this Committee to act, but requested the help of those in attendance. He stated his interest to increasing the Committee meetings from quarterly to monthly in order to facilitate the resolution to these issues.

Chair Burks referred to Item C3 and informed those present that a document, dated May 16, 2011, was created based upon some questions about the Certified Access Specialist Program and the progress with the DSA. This document identifies the following:

- The number of candidate applicants that have applied for the CASp examination
- Those eligible or ineligible for the CASp examination
- The dates of, locations of, and number of candidates at each examination

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- The number of candidate applicants passing or failing the exam at each date and location
- The number of no-shows
- The pass and fail point for each exam taken
- The total number of candidate applicants passing the exam
- The total number of candidates that requested CASp certification
- The total number of disability access inspections issued
- The CASp receipts the DSA has received over the duration through May 16, 2011.

Chair Burks stated his wish to get this information out to the public and said it will be updated on a continuous basis with added input from the new State Architect.

Chair Burks responded to Mr. Markuson's request for exam qualifications and for how the \$1.2 million is spent. The DSA developed their rules and regulations through the Office of Administrative Law (OAL). Those elements are statutorily on the DSA's website. This Committee will look into how this money is spent, but it is supposed to be a self-sustaining program with no profit to the State of California.

**d. Discuss committee coordination with other CCDA committee(s)**

Chair Burks stated, based upon what has been shared today, there will need to be coordination efforts among the Checklist for Access Compliance Committee, the Civil Enforcement Committee, and the Accessibility Enhancement Committee as to what enhancement opportunities this Commission can provide.

**4. FUTURE COMMITTEE MEETINGS**

Chair Burks recommended learning from the State Architect, who will continue attending the Committee meetings. He mentioned that the Committee is in receipt of several applications from the public for appointment to this Committee. The Committee appointment protocols will be part of next month's agenda.

**5. FUTURE AGENDA ITEMS**

Executive Director Vitale noted that, based upon the extent of the subcategories discussed in this meeting, it may be necessary to expand the amount of time available.

Mr. Dolim reemphasized his concern over uniformity and standards of practice, and Chair Burks assured that this will be addressed in coordination with other Committees and that this concern has been elevated to the DSA's office.

**6. ADJOURN**

Chair Burks adjourned the meeting at 12:00 p.m.