

2010 CALBO ABM

An Overview of SB1608 Local Roles & Responsibilities of Administering CASp

By: Tomas R. Garcia, P.E., CASp 031

Rev: 3/2/10

History of CASp

- CASp originated in 2003 through SB 262
 - SB262 set up the CASp as a voluntary program to allow individuals to demonstrate expertise in accessibility.
 - CASp regulations, effective July 30, 2008, are found in CCR, Title 21, Division 1
- SB1608 - Chaptered September 2008
 - Authorized State Architect to implement the CASp program and provided funds for the implementation.

Final Version of SB 1608

Senate Bill No. 1608

CHAPTER 549

An act to amend Section 5600 of the Business and Professions Code, to add Section 55.3 to, and to add Part 2.52 (commencing with Section 55.51) and Part 2.53 (commencing with Section 55.55) to Division 1 of, the Civil Code, to amend Sections 4450 and 4459.5 of, and to add Chapter 3.7 (commencing with Section 8299) to Division 1 of Title 2 of, the Government Code, and to amend Section 18949.29 of the Health and Safety Code, relating to disability access, and making an appropriation therefor.

[Approved by Governor September 28, 2008. Filed with
Secretary of State September 28, 2008.]

This document contains 30 pages separated into 12 sections.

SB1608

- An act to amend Section 5600 of the Business and Professions Code, to add Section 55.3 to, and to add Part 2.52 (commencing with Section 55.51) and Part 2.53 (commencing with Section 55.55) to Division 1 of, the Civil Code, to amend Sections 4450 and 4459.5 of, and to add Chapter 3.7 (commencing with Section 8299) to Division 1 of Title 2 of, the Government Code, and to amend Section 18949.29 of the Health and Safety Code, relating to disability access, and making an appropriation therefor

SB 1608 by Section

- Section 1: amend Section 5600 of the Business and Professions Code
- Section 2: add Section 55.3 to Div 1 of Civil Code
- Section 3: add Part 2.52 (commencing with Section 55.51) to Division 1 of, the Civil Code
- Section 4: add Part 2.53 (commencing with Section 55.55) to Division 1 of, the Civil Code
- Section 5: amend Section 4450 of Division 1 of Title 2 of, the Government Code
- Section 6: amend Section 4459.5 of Division 1 of Title 2 of, the Government Code
- Section 7: add Chapter 3.7 (commencing with Section 8299) to Division 1 of Title 2 of, the Government Code
- Section 8: amend Section 18949.29 of the Health and Safety Code, relating to disability access

SB 1608 by Section

- Section 9: provides clarification on the language added to Civil Code Sections 55.54, 55.55, and 55.56.
- Section 10: Clarifies that reimbursement is not required by this act of law because jurisdictions have the authority to levy service charges, fees, or assessments to pay for the program or level of service mandated by the act
- Section 11: Appropriated \$80,000 from the General Fund to fund the startup of the CCDA (amount to cover partial year)
- Section 12: Includes language to clarify what becomes of the provisions of this legislation should the CCDA lose funding or cease to exist. Effectively the majority of the mandated provisions become inoperative

SB 1608 Section 1

- Amends Section 5600 of the Business and Professions Code to require coursework regarding disability access as a condition of license renewal for licensed architects

SB 1608 Section 2

- Adds Section 55.3 to Div 1 of Civil Code which defines, for this section of law, “Complaint”, “Demand for money”, and “Construction-related accessibility claim”
- Section 55.3 requires that an attorney who submits a demand for money or complaint shall also provide a separate written advisory to tenants and owners that describes the tenant/owners obligations and legal rights

SB 1608 Section 3

(Page 6 through page 20 of Chapter 549)

- Adds Part 2.52 (commencing with Section 55.51) to Division 1 of, the Civil Code to be known as the “Construction-Related Accessibility Standards Compliance Act”
 - Provides 9 definitions including; CASp-inspected, CASp determination pending, and qualified defendant
 - Sets duties of CASp upon completion of inspection
 - Specifies local agency requirements: at least one CASp inspector by July 2010, a sufficient number of CASp by January 2014, provide consultation to public upon request, may charge fees
 - Specifies duties incumbent on an attorney filing a complaint
 - Provides details regarding a request for early evaluation by a “qualified defendant”

SB 1608 Section 4

Adds Part 2.53 (commencing with Section 55.55) to Division 1 of, the Civil Code

- Part 2.53 is titled “Attorney’s Fees and Statutory Damages in Construction-Related Accessibility Standards Claims”
 - In part this section clarifies that claims under this section of law apply: only to violation of construction related accessibility standard; only if a plaintiff personally encountered the violation; if the plaintiff experienced difficulty, discomfort, or embarrassment because of the violation
 - Damages may be assessed based on each particular occasion that the plaintiff was denied full and equal access not on the number of violations.

SB 1608 Section 5

- Amends Section 4450 of Division 1 of Title 2 of, the Government Code
 - Language was added to require that on or before December 31, 2010 the Division of the State Architect (DSA) to submit to the United States Department of Justice for certification that the State of California commercial accessibility standards are consistent with Federal accessibility standards.

DSA states that they will do this by fall of 2010. DSA actually first submitted for certification in 2002

This section does not require DSA to obtain certification, only to submit.

Certification may never be obtained due to the ideological differences - Within CA the BO is the interpretive authority, and under the federal regulations the courts are the interpretive authority.

SB 1608 Section 6

- Amends Section 4459.5 of Division 1 of Title 2 of, the Government Code
 - Provided startup funds in the form of a loan from the Public Schools Planning, Design, and Construction Review Revolving Fund so that DSA could implement CASp testing and certification. The loan is to be paid back from funds charged to test and certify CASp individuals (ref: Gov Code 4459.8).

Note that Gov Code 4459.8 (not part of SB 1608) states “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. ”

SB 1608 Section 7

- Adds Chapter 3.7 (commencing with Section 8299) to Division 1 of Title 2 of, the Government Code
 - This chapter enables the California Commission on Disability Access as outlined in the following 5 slides.
 - <http://www.bsc.ca.gov/CCDA/default.htm>

Note that the CCDA is an independent commission answerable only to the legislature.

California Commission on Disability Access (CCDA)

- Title 2 of Gov Code, Division 1, Ch 3.7, Section 8299
 - 8299.01 – Establishes membership of CCDA
 - 8299.02 – sets guidelines for the chair, vice-chair, and per diem
 - 8299.03 – Specifies that meetings shall be subject to Bagley-Keene Open Meeting Act
 - 8299.04 – outlines that CCDA shall have powers and authority to carry out the duties imposed by this section of law.

California Commission on Disability Access (CCDA)

– 8299.05 – states that CCDA shall study and make reports to legislature on:

- Issues regarding compliance with accessibility laws
- Whether private and public inspection programs (including CASp) are meeting the needs of the business and disabled community
- Whether existing training and education is sufficient
- Whether training and education should be required for landscape architects, engineers, and contractors

California Commission on Disability Access (CCDA)

– 8299.05 – also states that the CCDA

- Shall act as an information center and shall publish a biennial (odd numbered years starting w/2011) report on the status of disability access in the private and public sector.
- May recommend, develop, or coordinate materials, projects, or other activities as appropriate, relating to any subject within its jurisdiction.
- Shall provide technical information regarding preventing or minimizing problems of compliance by businesses by engaging in educational outreach and by hosting on its website a Guide to Compliance with State Accessibility Laws.
- Shall recommend programs to enable persons with disabilities to obtain full and equal access to public facilities
- Shall make reports of its activities to the legislature from time to time but not less than biennially.

California Commission on Disability Access (CCDA)

- 8299.06 – states that CCDA shall (no later than July 1, 2010) develop a master checklist for disability access compliance that may be used by building inspectors
- 8299.07 – states the commission shall study the operation of Civil Code Section 55.54 (Early Evaluation process) and report to the legislature
- 8299.08 Expressly authorizes the CCDA to inform the legislature on the CCDA position related to pending legislation and to propose appropriate legislation

California Commission on Disability Access (CCDA)

- 8299.09 – states that CCDA is an advisory commission only and that the State is not obligated to implement the findings of the commission without further legislation.
- 8299.10 – states that the CCDA shall hire or contract for expert, technical, or professional services that may be required for the completion of tasks or studies authorized by this chapter.
- 8299.11 – States that the legislature must appropriate funds through the annual Budget Act to keep the CCDA active.

SB 1608 Section 8

- Amends Section 18949.29 of the Health and Safety Code, relating to disability access
 - This amendment adds the requirement that construction inspectors, plans examiners, and building officials complete at least eight hours of continuing education related to disability access requirements. This training is part of the existing 45 hour requirement. The training shall be provided by trainers or educators with knowledge and expertise in disability access.

SB 1608 by Section 9-12

- Section 9: provides clarification on the language added to Civil Code Sections 55.54, 55.55, and 55.56 ([Section 3 &4](#)).
- Section 10: Clarifies that reimbursement is not required by this act of law because jurisdictions have the authority to levy service charges, fees, or assessments to pay for the program or level of service mandated by the act.
- Section 11: Appropriated \$80,000 from the General Fund to fund the startup of the CCDA. The 80k was to fund a partial year (2008-2009). Additional funding has not been appropriated yet.
- Section 12: Includes language to clarify what becomes of the provisions of this legislation should the CCDA lose funding or cease to exist. Effectively the majority of the mandated provisions become inoperative.

Benefits to Business

- May allow for a court stay (temporary stoppage) and early evaluation conference to evaluate the merits of claims when a property has been previously inspected by a CASp.
- Allows the option of being represented by an attorney to file a reply and an application for a court stay and early evaluation.
- Self help information available at <http://www.courtinfo.ca.gov/selfhelp/>

CASp Compliant Report

(CASp Inspected)

- Identification and description of inspected structures and areas.
- Signed and dated statement of compliance.
- A statement that structures and areas inspected meet construction-related accessibility standards. The statement shall indicate if a review of readily achievable barrier removal was included in the determination.
- Itemized list of corrections and dates of completion.

CASp Non-Compliant Report

(CASp Determination Pending)

- Identification and description of inspected structures and areas.
- Statement that corrections are required.
- Indication of whether readily achievable barrier removal was assessed.
- Itemized list of necessary corrections.
- A schedule of completion for each of the corrections within a reasonable time frame.

Important Points

- SB 1608 adds and amends several specific sections of law as outlined in previous slides
- SB 1608 establishes and funds the CCDA
- The CCDA must remain funded for the majority of the mandates put in place to remain operative.

Important Points:

- Architects must complete disability access coursework.
- Attorneys must provide a specified written advisory with each demand for money or complaint.
- By July 1, 2010 local building departments must employ or retain at least one certified access specialist (Casp) to provide consultation.

Important Points:

- By January 1, 2014 local building departments must employ or retain a sufficient number of certified access specialists to “conduct permitting and plan check services to review for compliance”.
- For construction inspectors, plan examiners and building officials (Includes those that are not CASp), at least 8 hours of the 45 hours of continuing education, required every 3 years, must be related to disability access.

What SB 1608 Does Not Do

- SB 1608 does not create a ‘safe-harbor’.
- SB 1608 does not create a ‘right-to-cure’ of any period.
- SB 1608 is not a pre-lawsuit notification bill and does not set up constraints on important civil rights laws.
- Under SB 1608, unchanged from existing law, there are no pre-conditions a person with a disability or his or her attorney must meet in order to file a civil rights action for a disability access violation.

What SB 1608 Does Not Do

- The CASp inspection and report does not bind a court in any way. In fact, a business facility that has been CASp inspected can still be sued if there is indeed an access violation on the property.
- The CASp inspection and report do not prevent a recovery of damages for a person with a disability who is unable to access a place of public accommodation because of an access violation.

What SB 1608 Does Not Do

- Does not require a local building department to provide CASp inspections.

Civil Code 55.53(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.

Civil Code 55.53(d)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.

Civil Code 55.53(d)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.

Building Official Liability

(Gov Code Section 818.6)

- **818.6.** A public entity is not liable for injury caused by its failure to make an inspection, or by reason of making an inadequate or negligent inspection, of any property, other than its property (as defined in subdivision (c) of Section 830), for the purpose of determining whether the property complies with or violates any enactment or contains or constitutes a hazard to health or safety.

Online References

SB 1608

http://info.sen.ca.gov/pub/07-08/bill/sen/sb_1601-1650/sb_1608_bill_20080928_chaptered.pdf

SENATE BILL 1608 (SB 1608)- Commentary by CALBO

<http://www.calbo.org/documents/SB%201608%20-%20Overview.pdf>

The SB 1608 Law, Disability Access Continuing Education Requirement for California Architects – FAQ by AIACC

http://www.aiacc.org/site/docs/1608_FQ.pdf

Online References

SB 1608 Disability Access Law Reform: How Does It Help Business Owners? By CalChambers

<http://www.calchamber.com/Headlines/Pages/SB1608DisabilityAccessLawReformHowDoesItHelpBusinessOwners.aspx>

Letter to the Editor: SB 1608, ADA Civil Litigation

<http://cssrc.us/web/35/news.aspx?id=4176&AspxAutoDetectCookieSupport=1>

SB 1608 (Corbett, Harman, Steinberg, Runner & Calderon; Smyth & Wolk) Fact Sheet, Izor Associates

http://www.izorarch.com/SB1608_files/SB_1608_FACT_SH_EET.pdf

Online References

Reforms Help Businesses Avoid ADA Pitfalls, by
HRCalfironia

<https://www.calbizcentral.com/HRC/News/Articles/WhatsNew/Pages/NewLawHelpsBusinessesAvoidADAPitfalls.aspx>

CASpInspections.com- Informational about CASp

<http://www.caspinspections.com/>

Citizens Against Lawsuit Abuse- Commentary on New
ADA Reform Law

<http://www.occala.org/pdf/SB1608Information.pdf>

Office of Administrative Law

<http://www.oal.ca.gov/>