

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2021-2022 Regular Session**

AB 2164 (Lee)  
Version: May 19, 2022  
Hearing Date: June 28, 2022  
Fiscal: Yes  
Urgency: No  
TSG

**SUBJECT**

Disability access: certified access specialist program: funding

**DIGEST**

This bill extends, indefinitely, the four dollar surcharge on business license or building permit filings that funds a statewide disability access inspection fund. The bill also permits local jurisdictions to direct some of that revenue to financial assistance for small businesses undertaking disability access improvements.

**EXECUTIVE SUMMARY**

Under California's Certified Access Specialist Program (CASp), businesses can request a trained inspector to examine their establishment and point out any changes that are needed to ensure compliance with disability access standards. Provided that, if the business proceeds to undertake any necessary upgrades, the business receives temporary immunity from disability access lawsuits. The CASp program is funded through a four dollar surcharge that local jurisdictions are supposed to add onto the fees for any business license or, in places where no business license is required, the fees for building permits. Legislative authorization for that surcharge is set to expire in 2024. This bill would extend authorization for that surcharge indefinitely. At the same time, the bill allows local jurisdictions to direct some of the CASp funds they collect toward financial assistance to small businesses for making disability access improvements.

The bill is sponsored by the City of San Jose. Support comes from business associations and disability rights advocates who appreciate the CASp program's dual function of increasing disability access and reducing litigation. There is no known opposition. The bill passed out of the Senate Governmental Organization Committee by a vote of 14-0. If the bill passes out of this Committee, it will next be heard in the Senate Appropriations Committee.

**PROPOSED CHANGES TO THE LAW**

Existing law:

- 1) Provides, pursuant to the federal Americans with Disabilities Act (ADA), that no individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases, or leases to, or operates a place of public accommodation. (42 U.S.C. § 12182.)
- 2) Provides, pursuant to the Unruh Civil Rights Act (Unruh), that all persons, regardless of sex, race, color, religion, ancestry, national origin, disability or medical condition, are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind; makes a violation of the ADA also constitutes a violation of Unruh; and subjects a person or entity in violation to actual damages incurred by an injured party, treble actual damages but not less than \$4,000, and any attorney's fees as the court may determine to be proper. (Civ. Code §§ 51 *et seq.*)
- 3) Provides, pursuant to the Disabled Persons Act, that individuals with disabilities or medical conditions have the same right as the general public to the full and free use of the streets, highways, sidewalks, walkways, public buildings, medical facilities, including hospitals, clinics and physicians' offices, public facilities and other public places, and also provides that a violation of an individual's rights under the ADA constitutes a violation of state law. (Civ. Code § 54.)
- 4) Entitles individuals with disabilities to full and equal access to public accommodations, subject only to the conditions and limitations established by law, or state or federal regulation, and applicable alike to all persons. (Civ. Code § 54.1.)
- 5) Establishes the California Commission on Disability Access (CCDA), an independent state agency composed of 17 members, with the general responsibility for monitoring disability access compliance in California, and the authority to hold hearings and make recommendations to the Legislature for necessary changes to existing state law in order to facilitate implementation of state and federal laws on disability access. (Gov. Code §§ 8299 *et seq.*)
- 6) Requires the CCDA to use its funding, as appropriate, to provide information about preventing or minimizing compliance problems among California businesses and recommending programs to enable persons with disabilities to obtain full and equal access to public facilities. (Gov. Code § 8299.05.)

- 7) Makes it a priority for the CCDA to provide educational resources to promote and facilitate disability access compliance. (Gov. Code § 8299.06.)
- 8) Requires the Department of the State Architect (DSA) to establish the Certified Access Specialist (CASP) Program and develop the specified criteria to have a person qualify as a CASP. (Gov. Code § 4459.5; Civ. Code § 55.52.)
- 9) Requires, on and after January 1, 2018, through December 31, 2023, any applicant for a local business license or equivalent instrument or permit, and any applicant for the renewal of a business license or equivalent instrument or permit, to 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 issued the license, instrument, or permit. (Gov. Code § 4467(a)(2).)
- 10) Provides that on and after January 1, 2024, the following shall apply:
  - a) any applicant for a local business license or equivalent instrument or permit, and 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 issued the license, instrument, or permit; and
  - b) in any city, county, or city and county that does not issue a business license or an equivalent instrument or permit, an applicant for a building permit shall pay an additional fee of one dollar (\$1) for that building permit, which the city, county, or city and county that issued the building permit shall collect. (Gov. Code § 4467(a)(3).)
- 11) Requires the city, county, or city and county that collects the fees described in (9) and (10), above, to deposit the money in its CASP Certification and Training Fund. (Gov. Code § 4467(b)(1).)
- 12) Provides that the amount of fees collected in (9) and (10) above and retained by the city, county, or city and county shall be in the following amounts:
  - a) on and after January 1, 2018, through December 31, 2023, inclusive, 90 percent; and
  - b) on and after January 1, 2024, 70 percent. (Gov. Code § 4467(b)(2).)
- 13) Provides that any remaining amount of the fees collected and not retained by the city, county, or city and county pursuant to (9) and (10), above, shall be transmitted on a quarterly basis to the DSA for deposit in the DSA's Disability Access and Education Revolving Fund. (Gov. Code § 4467(c).)
- 14) Requires each city, county, or city and county to make an annual report, commencing March 1, 2014, to the DSA 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 services, the activities undertaken and moneys spent to fund programs to facilitate accessibility compliance, and the moneys transmitted to DSA. (Gov. Code § 4467(d).)

This bill:

- 1) Removes the sunset on the additional fee of four dollars for a business license, instrument, or permit, or building permit issued by a city, county, or city and county, currently scheduled to expire on January 1, 2024, making the fee permanent.
- 2) Requires that a city, county, or city and county that collects the fee described above, to deposit those funds in a local “Accessibility Compliance Fund” and allows the funds to be used to provide financial assistance to small businesses for construction of physical accessibility improvements.
- 3) Allows funds collected in the DSA Disability Access and Education Revolving Fund to be used for the purpose of providing financial assistance to small businesses for constructions of physical accessibility improvements.
- 4) Requires the annual report now submitted by each city, county, or city and county to the DSA regarding the total fees they collect and distribute in the previous calendar year to also include the total amount of financial assistance provided to small businesses for construction of physical accessibility improvements and the number of small businesses that obtained financial assistance for construction of physical accessibility improvements.
- 5) Defines a “small business” to mean a business that 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 (EDD).

## COMMENTS

### 1. About the CASP program

Modern disability law requires that new construction and renovations of a certain scale ensure a certain level of accessibility to people of all physical ability and disability. The requirements vary according to a variety of factors. Even for experienced architects and builders, the rules can be complex. In 2003, responding to the need for specialists who could review existing facilities and assess the construction of new facilities, California enacted legislation creating the Certified Access Specialist Program, or CASp, under the auspices of the Division of the State Architect. (SB 262, Kuehl, Ch. 872, Stats. 2003.)

Under the CASp program anyone interested can seek state recognition as a certified access specialist by meeting certain specified criteria.

A CASp is a professional who has passed an examination and has been certified by the State of California to have specialized knowledge of the applicability of state and federal construction-related accessibility standards. A CASp will know which standards apply to a property based on the age of the facility and its history of improvements. Obtaining a CASp inspection thus allows a business owner to know whether the physical layout of the business complies with disability access laws and, if not, what adjustments need to be made to it. The program benefits the disabled community by increasing accessibility around the state. At the same time, the program assists businesses to avoid costly lawsuits by helping to ensure that the businesses are compliant with accessibility requirements.

## 2. Legal impact of the CASp program

Anti-discrimination laws allow aggrieved plaintiffs to sue businesses and other entities if their facilities violate building and construction codes that are designed to ensure accessibility to all, regardless of disability. On the one hand, these laws have sometimes been criticized for diverting resources to legal costs that could otherwise be spent on making the necessary changes. These criticisms have been exacerbated by the perception that some disability access attorneys engage in “gotcha” lawsuits, in which plaintiffs go out searching for even minor accessibility violations and then demand hefty penalties and fees in addition to accessibility upgrades. On the other hand, without some teeth behind these laws, the pace of progress toward greater disability access would almost certainly be slower.

The CASp program is part of an ongoing state effort to incentivize and facilitate California businesses and other entities to take proactive steps to ensure full accessibility, rather than merely responding to litigation. The availability of certified access specialists enables businesses to check for themselves whether or not their facilities are fully compliant with the applicable accessibility laws, rather than finding out through a lawsuit. Originally, having a CASp inspection only benefited businesses and entities by informing them of any violations, thus enabling them to take steps to cure them. More recent laws have gone farther and connected CASp inspections with certain legal benefits. Specifically, undergoing a CASp inspection now entitles the business to “qualified defendant” status, which can reduce the business’ liability exposure in the event that the business is sued in relation to disability access. (Civ. Code Sec. 55.56(g).)

## 3. How the CASp program is funded

The CASp program is funded through a fee on local business licenses, permits, or equivalent instruments. Originally, that fee was a single dollar, but in order to increase

revenues for CASp programming, the Legislature temporarily increased that amount to four dollars in 2017. (AB 1379, Thurmond, Ch. 667, Stats. 2017.) This bill would make that fee hike permanent.

The revenue generated from the CASp fees all supports the CASp program. However, the destination of the funding is split. Originally, the locals kept only 70 percent of the fees received and sent the remainder to the DSA to help fund CASp programming at the state level. The Legislature temporarily increased the proportion of CASp revenue that locals could keep in 2017, raising it to 90 percent. This bill would make that higher local share permanent as well.

#### 4. Newly authorized financial assistance to small businesses

In light of the common complaint that compliance with disability access law may be too expensive for many small businesses to afford, the bill also allows local jurisdictions to divert some of the revenue generated by CASp fees towards financial assistance for small businesses who propose to undertake required upgrades. The bill defines small businesses, for this purpose, as businesses employing 50 or fewer people, on average, over the last three years.

In order to monitor how much financial assistance goes to small businesses through this new program, the bill obligates the local programs to include information about these grants as a new part of the annual reports they are already mandated to send to the DSA each year detailing their CASp activities and funding.

#### 5. Arguments in support of the bill

According to the author:

Accessibility of businesses remains a major concern despite existing legal protections and government assistance programs. . . . AB 2164 supports local jurisdictions with sustained funding to improve accessibility in their regions by: (1) removing the January 1, 2024 fee sunset, enabling local governments to collect the \$4.00 business license fee indefinitely; and (2) clarifying local jurisdictions' ability to use these funds for small business accessibility related grants.

As sponsor of the bill, the City of San Jose writes:

Some businesses struggle to understand the complex requirements and to raise funding for necessary physical improvements. Compliance can be particularly challenging for small business owners with limited English proficiency and restricted access to financial resources [...]. AB 2164 supports local jurisdictions by

sustaining funding to improve accessibility in their regions. The bill removes the January 1, 2024 fee sunset, enabling local governments to collect the \$4.00 fee indefinitely. Additionally, AB 2164 would also clarify the ability for local jurisdictions to use these funds for grants to small businesses to fund accessibility-related certification, inspections, design, construction, and permitting fees.

In support, Disability Rights Advocates writes:

For Californians with disabilities, barrier-free access to businesses and other facilities is a constant concern and the ongoing goal should be simplicity of compliance without being overly burdensome to small businesses that have already been hit hard by the COVID-19 pandemic.

In further support, the California Chamber of Commerce writes:

This proposal will assist businesses who are trying to ensure they are compliant with the law from being subject to frivolous claims or litigation. It will also allow such businesses the opportunity to dedicate their financial resources to improving accessibility for their customers rather than litigation costs.

### **SUPPORT**

City of San Jose (sponsor)  
Association of Regional Center Agencies  
Brea Chamber of Commerce  
California Apartment Association  
California Building Industry Association  
California Business Properties Association  
California Chamber of Commerce  
California Hotel and Lodging Association  
California Restaurants Association  
Carlsbad Chamber of Commerce  
CAWA - Representing the Automotive Parts Industry Auto Care Association  
Cities Association of Santa Clara County  
City of Belmont  
City of Los Altos  
City of San Jose  
Consumer Attorneys of California  
Corona Chamber of Commerce  
Cupertino Chamber of Commerce  
Danville Area Chamber of Commerce

Disability Rights California  
El Dorado County Chamber of Commerce  
El Dorado Hills Chamber of Commerce  
Elk Grove Chamber of Commerce  
Family Business Association of California  
Folsom Chamber of Commerce  
Fountain Valley Chamber of Commerce  
Fremont Chamber of Commerce  
Fresno Chamber of Commerce  
Gilroy Chamber of Commerce  
Greater Conejo Valley Chamber of Commerce  
Greater High Desert Chamber of Commerce  
Imperial Valley Regional Chamber of Commerce  
La Cañada Flintridge Chamber of Commerce  
Laguna Niguel Chamber of Commerce  
League of California Cities  
Long Beach Area Chamber of Commerce  
Mission Viejo Chamber of Commerce  
National Federation of Independent Business  
Newport Beach Chamber of Commerce  
Official Police Garages of Los Angeles  
Rancho Cordova Area Chamber of Commerce  
Roseville Area Chamber of Commerce  
San Jose Chamber of Commerce  
Santa Ana Chamber of Commerce  
Santa Clarita Valley Chamber of Commerce  
Santa Maria Valley Chamber of Commerce  
Simi Valley Chamber of Commerce  
Tulare Chamber of Commerce  
United Chamber Advocacy Network  
Valley Industry & Commerce Association  
West Ventura County Business Alliance  
Yuba Sutter Chamber of Commerce

**OPPOSITION**

None known

**RELATED LEGISLATION**

Pending Legislation: None known.

Prior Legislation:



AB 3002 (Grayson, Ch. 680, Stats. 2018) promoted disability access at commercial businesses and places of public accommodation by requiring local government agencies to provide building permit applicants with an advisory about federal and state disability access laws, encouragement to obtain an inspection from a CASp, information about how to contact a CASp, and notice regarding the availability of state and federal programs to assist small businesses with disability access expenditures.

AB 1379 (Thurmond, Ch. 667, Stats. 2017) increased CASp funding by requiring, on January 1, 2018 and through December 31, 2023, any applicant for a local business license or equivalent instrument or permit, and any applicant for the renewal of a business license or equivalent instrument or permit, to pay an additional fee of four dollars (rather than one dollar) for that license, instrument, or permit, in order to fund CASp services by the city, county, or city and county that issued the license, instrument, or permit. At the same time, the bill allowed local jurisdictions to retain a larger percentage of the revenue – 90 percent -- generated by the fees for CASp training and disability access purposes. Finally, where the local jurisdiction did not charge for business licenses, AB 1379 imposed a fee on building permits. After five years, the fees were scheduled to revert back to the pre-AB 1379 amount of one dollar and the local rate of retention would return to the pre-AB 1379 amount of 70 percent. The goal of AB 1379 was to increase the availability of CASp services and ultimately improve overall business compliance with state and federal construction-related accessibility standards.

SB 269 (Roth, Ch. 13, Stats. 2016) protected a business with 50 or fewer employees from liability for minimum statutory damages in a construction-related accessibility claim during the 120-day period immediately after the business has obtained an inspection of its premises by a CASp. SB 269 also established a presumption that certain “technical violations” of construction-related accessibility standards (such as faded paint on parking spaces or missing signage) do not constitute grounds for a complaint under the Unruh Civil Rights Act or the Disabled Persons Act as long as those violations are corrected within 15 days of notification to the business owner.

AB 2093 (Steinorth Ch. 379, Stats. 2016) increased the information available to the public and to prospective tenants of commercial property about the ADA and a commercial property’s compliance with construction-related accessibility standards and creates a presumption that the responsibility for making any repairs or modifications necessary to correct violations of construction-related accessibility standards that are noted in a CASp report is the responsibility of the commercial property owner or lessor, unless otherwise mutually agreed upon by the commercial property owner or lessor and the lessee or tenant.

SB 1186 (Steinberg, Ch. 383, Stats. 2012) required a \$1 additional fee to be paid by any applicant for a local business license, permit, or similar instrument when it is issued or renewed.

SB 1608 (Corbett, Ch. 549, Stats. 2008) enacted the CDA and various other reforms intended to increase voluntary compliance with longstanding state and federal laws requiring access to the disabled in any place of public accommodation.

SB 262 (Kuehl, Ch. 872, Stats. 2003) required the DSA to establish and publicize the CASp Program for voluntary certification by the state of any person who meets specified criteria as a CASp.

**PRIOR VOTES:**

Senate Governmental Organization Committee (Ayes 14, Noes 0)

Assembly Floor (Ayes 69, Noes 0)

Assembly Appropriations Committee (Ayes 14, Noes 1)

Assembly Judiciary Committee (Ayes 8, Noes 1)

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