

LOCAL BUILDING DEPARTMENT ROLE FOR ADMINISTERING CASp

Prepared for Orange Empire Chapter of ICC 5/20/10

Presented by:

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**Credit for material collected from Calbo ABM,
Memos/Blogs,
Senate Bill & CASI Questionnaires**

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

- SB 209 is a clean up Bill to SB 1608.
 - Confidentiality of CASp Report; only available to parties involved in lawsuit
 - Early evaluation/stay request- Judge will issue 90 day stay then both parties must disclose their grievances and reports.
 - 90 day stay may be rescinded by Judge if no progress is being made

SB 1608 Amends the California Business and Professions Code, Civil Code, Government Code and Health and Safety Code. It's 12 Sections generally cover the following categories

SB1608 Sections/Contents

- 1 Architect CEU's for renewal
- 2 "Money demand" for "claim"-attorney obligations
- 3 Definitions & CASp duties
- 4 Claims based on personally being denied access; not on # of violations
- 5 California is required to apply for DOJ Certification by 12-31-10 but not required to be **approved**

- 6 Funding DSA for the CASp program
- 7 Enables and formats California Commission on Disability Access (CCDA)
 - ❖ CCDA must develop a master checklist by 7-1-10
 - ❖ The CCDA is an independent commission answerable only to the legislature
- 8 8 of 45 hours/3 yr. period CEU's for access training for municipal employees. It doesn't specify only CASp municipal employees
- 9-12 Misc. items includes but not limited to-
 - a. Cities may charge for CASp services
 - b. Business helpline
<http://www.courtinfo.ca.gov/selfhelp> for court stays, responses etc...
 - c. CASp "Inspected" Report guidelines
 - d. CASp "Determination Pending" Report
Non-Compliant Report guidelines

Benefits of 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 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/>

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 no 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, a least one-half of the certified access specialists shall be building inspectors who are certified access specialists.

Civil Code 55.53(d)2 & 3

- 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(emphasis added) 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 this costs incurred to comply with this subdivision. A CASp inspection pursuant to subdivision (a) by a building inspector who is 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 an 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.

Government Code 8299.06

- The Commission (CCDA), as soon as practicable, but in no event later than July 1, 2010, shall develop, in consultation with the CBSC, a master checklist for disability access compliance that may be used by inspectors.

Response to Listserve Question

CALBO provided a presentation at the ABM on this very subject.

<http://www.calbo.org/Documents/CALBOABM2010CASPPProgram.pdf>

Calbo presentation was a result of investigating the legislative minutes as well as interviewing those involved with the original legislation in order to understand the 'intent'. The presentation can be down loaded from the members web site.

Calbo's presentation included the following points:

Civil Code 55.53 (d) applies to local building departments.

Civil Code 55.53 (e) applies to private CASp consultants.

There is no requirement on the part of building departments to perform the actions or provide the information required of private consultants found in Civil Code 55.53(e).

Sincerely,

Jay M. Salazar, MPA, P. E.

Chief Building Official

City of Vacaville

Response to Listserve Question

Hi Jay

Thank you for the excellent clarification. Until I went back to read the Civil Code 55.53 (d) & (e) again, I was under the misconception that building departments will need to provide services described under 55.53 (e) through a CASp that they hire or retain. But you are absolutely correct that 55.53 (d) states clearly that the building department's duties will stay the same as before except that we need to hire or retain at least one CASp so that we have a knowledgeable person on hand to make sure we are doing a descent job on what we have been doing relative to the State accessibility requirements.

Civil Code 55.53(b)

- State Code governs over federal and shall apply except when federal is more protective. Why not just say most restrictive governs?
 - Since federal is a guideline and state is emphasized, go with state, however, remember federal is retroactive and a building may not have had alteration that triggered C.B.C. but should have been retrofitted under ADA.
 - This may prove to make ratification under 109 CBC for “equivalent facilitation” per H & S Code 19957 important and possibly offer protection to business and building owners

What is CASI?

- Certified Access Specialist Institute
- Non-Profit 501(c) 6 Corporation which can legally lobby
- Designed to expand beyond California therefor it doesn't use CASp title
- CCDA relationship-postured to support

The following are Questions of the members for the CASI Professional Practice Committee

QUESTIONS REGARDING AN INSPECTION REQUEST

Q- A business owner calls and requests an access inspection. What do you tell him/her is the process for the services you regularly perform?

A-As a City's representative I advise about the law, what a CASp inspection is and how to find an available resource to do the inspection.

Q- Will you tailor those services based on the Owner's request or do you only provide your standard service? If yes, how do you deviate from your standard service? If no, why do you only provide the set standard?

A- I think all inspections should clearly scope what is being inspected and for what purpose.

Q- What information do you require from the Owner before performing an inspection?

A-I don't do inspections BUT depending on scope, purpose applicable law ie: federal or state, they should provide build date, history of improvement valuations and dates, and owners financial circumstances if ADA applies but T-24 doesn't.

Q-Do you provide private inspections? (i.e. The Owner requests that you perform an inspection. You tell him what needs improvement and do not provide a report or a determination. He/she does the improvements. You return to do an "official" inspection to find everything in compliance and issue an "official" CASp report with a determination of "CASp Inspected".) For both yes and no, explain why.

A-I don't do inspections BUT if I did a prelim. Inspection without a report and did one formal later, I would still keep a record of the prelim and would reveal that I did if asked by a Court.

Questions Regarding A CASp Survey

Q-Do you have a policy to perform inspections of the entire facility, or do you also perform inspections of a designated area of the facility as directed by the client / business owner? If an inspection of the entire facility is your requirement, explain why? If you permit inspections of part of a facility, how do you address this in your report?

A-A “scoped” report is as legitimate as designing alterations to only part of a building. Sometimes the owner or tenant will create a need for only a partial study or may have control over only part of a facility.

Q Do you have a requirement of performing an inspection of corrected work before issuance of a certificate? For both yes and no, explain why.

A I would, however, if needed for court purposes, a cert could be issued with a statement “survey performed; improvements pending”.

Q When you perform an inspection of an existing facility without alteration, do you inspect according to the most stringent standard between the CBC and the ADA-ABA or just the ADA-ABA?

A ADA-ABA: Actually just ADAAG since the ABA is pending adoption.

QUESTIONS REGARDING A CASp REPORT

Q-Do you provide a determination of "Readily Achievable Barrier Removal" for the Owner? If yes, how do you determine "readily achievable"?

A-This is a case that would require owner's legal counsel and/or CPA's involvement since financial status could have a bearing on it.

Q-Do you provide an itemized completion schedule for the Owner, or a general one? Explain why.

A-This Q. is a problematic area. Prioritization of improvements has logic but a timeline makes you a legal advisory/probation officer. There are no industry standard or statutory guidelines.

Q-When you issue a certificate, do you add additional information to the certificate? Please explain what additional information you add.

A-It should have address, scope clearly described, status of outcome, reference to Report dated _____, CASp name & cert. #, date, owner or tenant's name etc.

Q-When you issue a certificate, do you recommend that the Owner post the certificate? For both yes and no, explain why.

A-No. It solicits scrutiny, especially if facility is not 100% in compliance.

Webinar by Calbo on SB 1608 and how it affects building departments-5/26/10

calbo.org →

training institute and education→

classes (3rd from top)