

**CALIFORNIA COMMISSION ON DISABILITY ACCESS
FULL COMMISSION
MEETING MINUTES**

April 26, 2012

1. CALL TO ORDER

Vice Chair Dean called the meeting to order at 10:00 a.m. at the Department of Consumer Affairs, 1625 North Market Blvd., First Floor Hearing Room, Sacramento, California 95834.

ROLL CALL

Staff Member Jemmott called the roll.

Commissioners Present:

Rocky Burks, Chair
Michael Dean, Vice Chair
Margaret Jakobson-Johnson
Mark Martinez
Lillibeth Navarro
Anthony Seferian
Chester Widom
Betty Wilson

Commissioners Absent:

Tom Ammiano
Connie Conway
Ellen Corbett
Thomas Harman
Richard Luehrs
Mitchell Pomerantz
Pierce Welch

Staff Present:

James V. Vitale, Executive Director
Angela Jemmott, Program Analyst
Lavonia Wade, Office Administrator

Also Present:

Robert Chase, Division of the State Architect
Ruthee Goldkorn, Californians for Disability
Rights (Teleconference)
David Peters, Lawyers Against Lawsuit Abuse
Richard Skaff, Designing Accessible
Communities (Teleconference)

Staff Member Jemmott announced a quorum was present.

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PLEDGE OF ALLEGIANCE

Vice Chair Dean led the Commission in the Pledge of Allegiance.

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

Richard Skaff of Designing Accessible Communities, who has had thirty years' experience in many aspects of the disability community, expressed his concern over the failure of the system to ensure the environment is accessible to people with disabilities. Commissioner Burks asked Mr. Skaff to put together a succinct paper outlining his organization's analysis.

David Peters of Lawyers Against Lawsuit Abuse asked if CCDA's Master Checklist is in circulation yet. Commissioner Jakobson-Johnson stated the California Building Code is in the process of being revised. CCDA will create a Checklist when the new Code is out in 2013. In the meantime, three Checklists have been posted on the CCDA website. Executive Director Vitale stated that there is a ten-step list by which a building owner or operator can self-assess the accessibility of their place of business. There are links to websites to further explain these procedures based on the 2010 standards. There is also a downloadable, paper-format Checklist that was issued under federal direction by the New England ADA Center, which is under contract to the Federal Government as one of the DBTACs.

3. GENERAL BUSINESS ITEMS

a. Review/Approval of Meeting Minutes (January 30, 2012) – Action.

MOTION: Commissioner Jakobson-Johnson moved to approve the January 30, 2012, Meeting Minutes. Commissioner Wilson seconded. Motion carried unanimously.

b. Chair Election – Action

MOTION: Commissioner Jakobson-Johnson moved to elect Rocky Burks as the chair of the California Commission on Disability Access. Commissioner Martinez seconded. Motion carried unanimously.

c. Executive Director Evaluation Process – Closed Session – Personnel Matter (The Executive Director Evaluation Committee discussed recommendations of the performance evaluation for James Vitale, Executive Director for CCDA. This closed session is conducted as authorized by Government Code Section 11126(a))

d. CCDA Mission Statement – Action

MOTION: Vice Chair Dean moved to accept the Mission Statement as presented. Commissioner Wilson seconded. Motion carried unanimously.

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e. CCDA Legislation Protocol – Action

MOTION: Vice Chair Dean moved to accept the Legislation Protocol as presented. Commissioner Martinez seconded. Motion carried unanimously.

f. CCDA Logo – Action

MOTION: Commissioner Jakobson-Johnson moved to accept the CCDA Logo as presented. Commissioner Navarro seconded. Motion carried unanimously.

g. Executive Director’s Report

Executive Director Vitale stated this is the beginning of the fourth quarter of the 2011/2012 fiscal year. The Commission is well within the budget. The governor’s office has accepted the 2012/2013 fiscal year budget as submitted, with the directive of a fourteen percent reduction of monies received this year. This is being accommodated by a reduction in outlay of capital costs in the day-to-day staff operation of the business. The budget is still subject to legislative approval, as are all budgets in the state.

The Commission is fully staffed and occupies a physical location at the Department of Rehabilitation, and has entered into discussions with the Real Estate Services Division about possible larger office space to accommodate future staff expansion. Executive Director Vitale commended his staff’s exemplary performance in their assistance to date in accomplishing the mandates given by the Legislature and the expectations of this Commission.

h. CCDA Establishment of 501(c)3

Executive Director Vitale stated he contacted the Legal Counsel for the State Treasurer and the United States Internal Revenue Service to verify that state government agencies already hold a nonprofit status with no requirement to do anything other than to register a number that can be assigned to any donations, grants, or other funds received. Chair Burks asked staff to post notification on the CCDA website that the Commission is able to accept tax-deductible funding from members of the public. Commissioner Martinez added that it is common for corporations to post the nonprofit designation letter.

i. DBTAC Presentation

Staff Member Jemmott introduced Jan Garrett, who is employed by the Public Health Institute in Oakland, California, where she serves as the program manager for the Pacific ADA Center.

Ms. Garrett stated that, immediately after the Americans with Disabilities Act (ADA) was signed into law in 1990, Congress identified the need for technical

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assistance on the ADA and for training and dissemination of materials, both for people with rights and for entities who have responsibilities under the ADA. The ADA National Network answers that need. The website for the ADA National Network is www.adata.org.

The ADA National Network is comprised of ten regional ADA centers, including the Pacific ADA Center, with over 2,200 affiliates at the local, state, and regional level. These centers have been set up to provide information, training, consultation, and technical assistance to businesses, state and local government, and disability communities regarding the rights and responsibilities under the ADA. The Pacific ADA Center works closely with many federal entities, including the Equal Employment Opportunity Commission, and the United States Departments of Labor, Justice, Education, and Transportation.

The mission of the Pacific ADA Center is to build a partnership between the disability and business communities and to promote full and unrestricted participation in society for persons with disabilities through education and technical assistance.

The ADA National Network provides technical assistance via a national toll free hotline: 1-800-949-4232. The line is answered in the region where the call originates. Technical assistance is provided through consultation, referrals, and dissemination of information by means of the website, email, and mail. This technical assistance is confidential and provided free of charge. The most common technical assistance issues are regarding service animals, reasonable accommodation, program accessibility, readily-achievable barrier removal, and transportation accessibility.

The ADA National Network disseminates accurate and up-to-date information and materials about the ADA and other disability civil rights laws. It offers one-on-one customized trainings, webinars, and an annual three-day ADA Symposium with seminars on different topics of the ADA. Details are on the website, www.adapacific.org.

Commissioner Navarro asked if answers to common questions go into a national achieve to become the standard implementation guideline. Ms. Garrett stated many answers are established by federal agencies or by the regulations themselves. All ADA Centers try to answer questions consistently.

Chair Burks asked how the more stringent California standards are addressed when giving technical advice about the ADA. Ms. Garrett stated callers are informed that there are state laws and given links to specific sections so they can document and refer back to them. Advisors explain that both the ADA and state law may apply to callers' situations and highlight the similarities and differences between the two.

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Chair Burks asked if Pacific ADA Center has a checklist that identifies Title 24 applications that may exceed the ADA accessibility guidelines. Ms. Garrett stated there is a checklist, updated for the 2010 standards, that is specific to readily-achievable barrier removal under the ADA. She also mentioned an internal checklist that is a side-by-side comparison of the ADA and sections of the California Building Code.

Public Comment

Ruthee Goldkorn, representing Californians for Disability Rights (CDR), asked about the process for being added to the referral resource list. Ms. Garrett stated a potential resource can send an email stating the area of specific expertise, and then they may be added to the list.

4. BUDGET

a. Fiscal Year 2011/2012 Budget

Executive Director Vitale referred to a spreadsheet on the expenditures for the second quarter, and noted approximately sixty-three percent of the budget is still available, with an expenditure of approximately forty-one percent to date. Other than the addition of support services from a negotiated MOU with the I.T. Department, the Commission is within the balances available in each expense category.

b. Status of Budget Change Proposal (BCP) for Fiscal Year 2012/2013

Executive Director Vitale stated the budget allocated from the Legislature has been reduced from \$439,000 to \$407,000 for the upcoming fiscal year. The budget request and appropriate paperwork have been accepted by the Department of Finance and are included on the governor's budget for approval for the 2012/2013 fiscal year.

Executive Director Vitale noted that the budget reduction came directly from the governor's office and is a statewide mandate to all agencies. At the time the budget was beginning to be drafted in September 2011, the Committees were not completely in place and could only anticipate what costs might be incurred. The Commission now has a better idea of what monies to request for the 2013/2014 fiscal year based upon the determined need for each Committee.

5. COMMITTEES

a. Committee Reports by Committee Chairpersons

The Accessibility Checklist Committee – Chair Burks stated, since Committee Chair Luehrs is not in attendance, this report will be held until the next meeting.

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The Accessibility Enhancement Committee – Committee Chair Navarro stated the Committee added a member, Mr. Donald Parks. The Committee has drafted a timeline and Mission Statement and asked for the Commission’s approval. Chair Burks will determine the necessity of the Commission’s approval for the Mission Statement. Commissioner Martinez asked to change “Committee will study and make reports” to “Commission will study and make reports” in the second paragraph.

The proposed Mission Statement for the AEC reads as follows: “The Accessibility Enhancement Committee assists the California Commission on Disability Access to be a bridge between the disability and business communities in the creation of a more accessible environment for people with disabilities by initiating a statewide survey of public and private compliance. The Committee shall verify that guidelines and information distributed by state and local agencies related to access to public and private programs, goods, and services accessible to or useable by persons with disabilities are clear and consistent. The Commission will study and make reports to the Legislature no later than January 1, 2013, to act as an information center on the status of compliance in California with state laws and regulations providing persons with disabilities full and equal access to public facilities.”

The CASp & Education Committee – Chair Burks stated Commissioner Martinez has accepted the position of Vice Chair of the CASp and Education Committee. Due to the ability and labor-intensive demands that would be required, the Committee determined a survey would be more appropriate in trying to address CASp and education issues. As such, the Committee has contacted the League of California Cities and will approach the California State Association of Counties about networking capabilities. SB 1608 requires this Commission to address the effectiveness of the CASp program, both in the public and private sectors. Effective the first of last year, the public sector has a duty and obligation to have access to a CASp, and in 2014, the requirement will be to have an adequate representation of CASps. The number of “adequate” has yet to be determined. A survey will help this Committee understand the current scope of this issue. Chair Burks stated it would be prudent that the Committees work together to select a survey tool and coordinate the surveys.

Association representatives in attendance at the Committee meetings universally requested this Commission not require continuing education for their members. Commissioner Martinez addressed the concern over giving businesses an uncompetitive advantage through potential underground economy, which Chair Burks defined as illegal and potentially non-licensed people doing construction work that violates construction and bidding components and affects the ability of properly-licensed persons to competitively bid and/or receive available contract relationships with

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respective clients. Clearly, ongoing education costs, lost time and productivity, excessive fees, and the recovering economy would be a burden on the membership of organizations and business enterprises. This Committee, in order to address litigation with people who are certified or licensed, will compile the facts and information gathered in the survey to better understand the scope of this underground economy and its effects on the affiliates of associations such as the League of California Cities and the California State Association of Counties.

Public Comment

Mr. Peters stated that access litigation cases are being filed due to CASps' failure to follow regulations. Chair Burks thanked Mr. Peters for pointing out the issue of CASps exacerbating existing problems and asked to discuss this further at a later time.

The Civil Enforcement Committee – Vice Chair Dean stated the Committee has shifted emphasis. After further discussion, it was determined that, instead of holding a series of public hearings, a better way to gather information from those who have been involved in access litigation is to initially survey interested individuals and groups, and then possibly follow up with a couple of public hearings. To this end, the Committee has asked staff to research service providers, such as Survey Monkey, and the approximate cost of conducting a survey. It was determined a separate survey will go to the following groups: attorneys that have been involved in access litigation, judges of both state and federal courts, businesses, and CASps. The goal is to agree on specific content and ways of dissemination of these surveys in the upcoming June 26, 2012, Committee meeting.

6. DISABLED ACCESS LEGISLATIVE AND REGULATORY DEVELOPMENTS

- a. AB 1610 – R. Wagner; AB 1878 – B. Gaines; AB 1879 – B. Gaines; AB 1914 – R. Garrick; AB 1994 – D. Huber; AB 2030 – R. Olsen; AB 2041 – D. Swanson; AB 2282 – B. Berryhill; AB 2325 – R. Norby; AB 2338 – D. Chesbro; SB 1163 – R. Walters; SB 1186 – R. Dutton

Chair Burks asked Executive Director Vitale to advise the Commission of these legislations, briefly listing the existing statute in the regulation, and their proposals. Executive Director Vitale referenced a bill-tracking summary that was prepared and distributed.

- AB 1610 – R. Wagner, special access: liability. This bill has been dropped.
- AB 1878 – B. Gaines, disability access: liability. This bill seeks to establish notice requirements for a party to follow or bring an action against a micro-business as a category. The definition of the term "micro-business" as specified in the Government Code is a business that has less than \$2.5 million gross income over a three-year period. Approximately eighty-eight

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percent or four million businesses are presently classed as micro-businesses in California. This bill would require that the responsible party respond within thirty days with a rebuttal to the allegations. If the responsible party elects to fix the alleged violation, the bill would provide 120 days to apply for any necessary permits and to remedy the alleged violation.

- AB 1879 – B. Gaines, disability access: State Architect. This bill would require the State Architect to prepare a report noting any state disability access regulations that are in direct conflict with federal access regulations. This issue is presently being addressed by the California Code Commission and is in suspense pending information on the update to the 2013 Building Code.
- AB 1914 – R. Garrick, status: agency reports due. This bill does not affect this Commission from an accessibility standpoint. This bill would require each agency to give a status report on a yearly basis. In the event that those reports are not done in a timely fashion, funding can be withheld for not responding.
- AB 1994 – D. Huber, disability access: causes of action. This bill has been dropped.
- AB 2030 – R. Olsen, building standards: press boxes. This bill would require the Commission to adopt, approve, and codify standards regarding press boxes and stadium bleachers. It asks to add an exemption to the present law and Code for press boxes, in certain circumstances.
- AB 2041 – D. Swanson, regulations: adoption: disability access communications. This bill, for the benefit of the disabled community, would ensure that participants and members of the public with disabilities receive communications effectively. It would require agencies to include a specified statement, within a notice of a proposed action, regarding the availability of narrative descriptions for persons with visual or other specified disabilities. This bill contains other current laws as well.
- AB 2282 – B. Berryhill, personal rights: violations: standings have been introduced. This bill will authorize a person aggrieved by a violation of any of the above-described provisions to bring action seeking relief only if that person has suffered an injury. This bill is asking for something that is not found in the ADA or the Civil Rights Act.
- AB 2325 – R. Norby, special access: liability. This bill has been dropped.
- AB 2338 – D. Chesbro, developmental services: employment first policy. This bill, for the benefit of the disabled community, would require regional standards to ensure consumers beginning at 16 years of age and, where

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- appropriate, unspecified persons are provided with information about the employment first policy. It would authorize the department to request information from regional centers on current and planned activities related to the employment first policy. This bill contains other current laws.
- SB 1163 – R. Walters, special access: liability. This bill mirrors two previous bills already mentioned from the Assembly. It would establish notice requirements for an aggrieved party before bringing an action against a business for an alleged violation of provisions. The party is to respond within thirty days. If the business elects to fix the alleged violation, the bill would provide 120 days to do so.
 - SB 1186 – R. Dutton, special access: liability. This bill contains similar language to SB 1163. Responsible parties respond within thirty days. If the business elects to fix the alleged violation, the bill would provide ninety days to do so.

This constitutes the bills currently before the Legislature and being discussed in various hearings.

Commissioner Wilson asked if the Commission is going to give an opinion on or recommendation for any of these bills. Vice Chair Dean answered that the Commission, due to the large number of bills, needs time to prepare and voice its concerns over such questions as the definition of injury in AB 2282. Commissioner Martinez agreed that the Commission should work with the authors of the bills in order to develop a position before attending a hearing. Executive Director Vitale stated staff have written regarding some of these questions, in order to put the authors on notice and introduce the Commission. Chair Burks consented to follow up with informal communication with authors, sponsors, and their staff to explain their intent, gather information, and request clarification before the Commission takes a position.

Chair Burks asked for clarification regarding AB 2030, whether press boxes will no longer be available or will not be required to be accessible. Executive Director Vitale stated that, while present Code requires newly-constructed press boxes to be accessible, some entities refuse to update preexisting, noncompliant structures, claiming that compliance only applies to new constructions. Chair Burks answered that this appears to be in violation of the State Building Code, the ADA, and federal law. However, it is more appropriate to put accessibility requirements in a regulatory setting than in a statute, as the former can be more easily modified as technology advances. Chair Burks and Executive Director Vitale will contact DSA to find out the position they are taking on this bill.

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Public Comment

Ms. Goldkorn has been authorized by the CDR Legislative Committee to collaborate with this Commission, specifically regarding their three-point strategy for handling upcoming bills. Chair Burks requested that she forward her information to staff.

7. FUTURE AGENDA ITEMS

Chair Burks asked that future agenda items be given to staff.

8. ADJOURNMENT OF CCDA MEETING

Chair Burks adjourned the meeting at 4:00 p.m.