

**NOTICE OF PROPOSED ACTION
TO
BUILDING STANDARDS
OF THE
DIVISION OF THE STATE ARCHITECT (DSA-AC)

REGARDING THE CALIFORNIA BUILDING CODE
CALIFORNIA CODE OF REGULATIONS, TITLE 24, PART 2

2010 CALIFORNIA BUILDING CODE**

Notice is hereby given that the California Building Standards Commission (CBSC) on behalf of the Division of the State Architect proposes to adopt, approve, codify, and publish changes to building standards contained in the California Code of Regulations (CCR), Title 24, Part 2. The DSA-AC is proposing building standards related to the 2013 California Building Code.

PUBLIC COMMENT PERIOD

A public hearing has not been scheduled; however, written comments will be accepted from October 5, 2012, until 5:00 pm on November 19, 2012. Please address your comments to:

California Building Standards Commission
2525 Natomas Park Drive, Suite 130
Sacramento, CA 95833
Attention: Jim McGowan, Executive Director

Written Comments may also be faxed to (916) 263-0959 or E-mailed to CBSC@dgs.ca.gov.

Pursuant to Government Code Section 11346.5 (a) 17, any interested person or his or her duly authorized representative may request, no later than 15 days prior to the close of the written comment period, that a public hearing be held.

POST-HEARING MODIFICATIONS TO THE TEXT OF THE REGULATIONS

Following the public comment period, the CBSC may adopt the proposed building standards substantially as proposed in this notice or with modifications that are sufficiently related to the original proposed text and notice of proposed changes. If modifications are made, the full text of the proposed modifications, clearly indicated, will be made available to the public for at least 15 days prior to the date on which the CBSC adopts, amends, or repeals the regulation(s). CBSC will accept written comments on the modified building standards during the 15-day period.

NOTE: To be notified of any modifications, you must submit written/oral comments or request that you be notified of any modifications.

AUTHORITY AND REFERENCE

The California Building Standards Commission proposes to adopt these building standards under the authority granted by Health and Safety Code Section 18928.

For DSA-AC the purpose of these building standards is to implement, interpret, and make specific the provisions of Government Code Sections (GC§§) 4450 through 4461, 12955.1 and 14679; Health and

Safety Code Section (H&SC§) 18949.1 and 19952 through 19959; and Vehicle Code Section 22511.8. DSA-AC is proposing this regulatory action based on GC§ 4450.

INFORMATIVE DIGEST

An informative digest drafted in plain English in a format similar to the Legislative Counsel's Digest shall include the following:

Summary of Existing Laws

Government Code Section 4450 authorizes the State Architect to develop regulations for making buildings, structures, sidewalks, curbs, and related facilities accessible to and usable by persons with disabilities.

Summary of Existing Regulations

Existing regulations are applicable to:

- 1) Publicly funded buildings, structures, sidewalks, curbs and related facilities;
- 2) All privately funded public accommodations, and commercial facilities; and
- 3) Public housing and private housing available for public use.
- 4) Any portable buildings leased or owned by a school district, and
- 5) Temporary and emergency buildings and facilities.

Existing California state regulations incorporate standards that are:

- 1) Not aligned nor consistent with those regulations published in the Federal Register on September 15, 2010 by the United States Department of Justice for Titles II and III of the Americans with Disabilities Act of 1990 for barrier-free design under:
 - 2010 Standards for State and Local Government Facilities: Title II (28 CFR part 35.151 New Construction and Alterations);
 - 2010 Standards for Public Accommodations and Commercial Facilities: Title III (28 CFR part 36 Subpart D, New Construction and Alteration);
 - 2010 Standards for Titles II and II Facilities: 2004 ADAAG (36 CFR part 1191, appendices B and D).
- 2) Based on the Fair Housing Amendments Act of 1988, and
- 3) Based on the 2009 International Building Code.

Summary of Effect

The Division of the State Architect has initially determined no adverse impact on small business. The proposed modifications will benefit small and large businesses by eliminating forced violations of the federal 2010 ADA Standards, thus minimizing the potential for disputes, claims and litigation. They will also provide clarity of expectations for these accessibility items and allow businesses to proceed with needed improvements without fear they will need to be redone when the 2013 CBC goes into effect.

Comparable Federal Statute or Regulations

Revised regulations for Title II and Title II of the Americans with Disabilities Act of 1990 as adopted by the US Department of Justice. The regulations provide revised enforceable standards for accessible design, known as the 2010 ADA Standards for Accessible Design in three parts:

- 2010 Standards for State and Local Government Facilities: Title II Regulations at 28 CFR Part 35.151;
- 2010 Standards for Public Accommodations and Commercial Facilities: Title III Regulations at 28 CFR Part 36, Subpart D;
- 2010 Standards for Title II and II Facilities: 2004 ADAAG

Policy Statement Overview

After March 15, 2012, compliance with the 2010 Americans with Disabilities Act Standards became the sole option for complying with national accessibility requirements. The Division of the State Architect Access Compliance unit is working to update its regulations with the most stringent requirements of either the State or federal standards, but until the 2013 California Building Code is adopted and becomes effective on January 1st, 2014 there will be differences and conflicts between the State and federal standards. This rulemaking package addresses the limited number of conflicts where compliance with the State standards forces a violation of the corresponding federal standards.

Evaluation of consistency

There are no inconsistent or incompatible regulations proposed.

OTHER MATTERS PRESCRIBED BY STATUTE APPLICABLE TO THE AGENCY OR TO ANY SPECIFIC REGULATION OR CLASS OF REGULATIONS

There are no other matters prescribed by statute applicable to the Division of the State Architect, or to any specific regulation or class of regulations.

MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The DSA-AC has determined that the proposed regulatory action would not impose a new mandate on local agencies or school districts.

ESTIMATE OF COST OR SAVINGS

(Government Code Section 11346.5(a)(6)) An estimate, prepared in accordance with instructions adopted by Department of Finance, of cost or savings to any state agency, local agency, or school district. Provide a copy of the "Economic and Fiscal Impact Statement" (Form 399)

- A. Cost or Savings to any state agency: **NO**
- B. Cost to any local agency required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4: **NO**
- C. Cost to any school district required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4: **NO**
- D. Other nondiscretionary cost or savings imposed on local agencies: **NO**
- E. Cost or savings in federal funding to the state: **NO**

INITIAL DETERMINATION OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESSES

DSA-AC has made an initial determination that the adoption of this regulation will not have a significant statewide adverse economic impact on businesses, including the ability of California businesses to compete with business in other states.

DECLARATION OF EVIDENCE

No facts, evidence, documents, testimony or other evidence has been relied upon to support the initial determination of no effect.

FINDING OF NECESSITY FOR THE PUBLIC'S HEALTH, SAFETY, OR WELFARE

The proposed action does not require a report by any business or agency, so the Division of the State Architect has not made a finding of necessity for public's health, safety or welfare.

COST IMPACT ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS

DSA-AC is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

ASSESSMENT OF EFFECT OF REGULATIONS UPON JOBS AND BUSINESS EXPANSION, ELIMINATION OR CREATION

DSA-AC has assessed whether or not and to what extent this proposal will affect the following:

- The creation or elimination of jobs within the State of California.
DSA-AC has determined that the proposed action has no effect.
- The creation of new businesses or the elimination of existing businesses within the State of California.
DSA-AC has determined that the proposed action has no effect.
- The expansion of businesses currently doing business with the State of California.
DSA-AC has determined that the proposed action has no effect.
- The benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment.

The DSA has determined that the proposal establishes minimum requirements to safeguard the public health, safety and general welfare through structural strength, means of egress facilities, stability, access to persons with disabilities, sanitation, adequate lighting and ventilation, and energy conservation; safety to life and property from fire and other hazards attributed to the built environment; and to provide safety to fire fighters and emergency responders during emergency operations.

INITIAL DETERMINATION OF SIGNIFICANT EFFECT ON HOUSING COSTS

DSA-AC has made an initial determination that this proposal would not have a significant effect on housing costs.

CONSIDERATION OF ALTERNATIVES

DSA-AC has determined that no reasonable alternative considered by the state agency or that has otherwise been identified and brought to the attention of DSA-AC would be more effective in carrying out the purpose for which the action is proposed, or would be as effective as and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law.

AVAILABILITY OF RULEMAKING DOCUMENTS

All of the information upon which the proposed regulations are based is contained in the rulemaking file, which is available for public review, by contacting the person named below. This notice, the express terms and initial statement of reasons can be accessed from the California Building Standards Commission website:

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

Interested parties may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or at the California Building Standards Commission website.

CBCS CONTACT PERSON FOR PROCEDURAL AND ADMINISTRATIVE QUESTIONS

General questions regarding procedural and administrative issues should be addressed to:

Enrique M. Rodriguez, Associate Construction Analyst
Michael Nearman, Deputy Executive Director

2525 Natomas Park Drive, Suite 130
Sacramento, CA 95833

Telephone No.: (916) 263-0916
Facsimile No.: (916) 263-0959

PROPOSING STATE AGENCY CONTACT PERSON FOR SUBSTANTIVE AND/OR TECHNICAL QUESTIONS ON THE PROPOSED CHANGES TO BUILDING STANDARDS

Specific questions regarding the substantive and/or technical aspects of the proposed changes to the building standards should be addressed to:

Dennis J. Corelis, Deputy State Architect Ph. (916) 445-4167 Dennis.Corelis@dgs.ca.gov
Derek M. Shaw, Associate Architect Ph. (916) 324-7178 Derek.Shaw@dgs.ca.gov

Division of the State Architect – Headquarters
1102 Q Street, Suite 5100
Sacramento, CA 95811
DSA Facsimile No: (916) 445-7658