

CALIFORNIA ARCHITECTS BOARD

FINAL STATEMENT OF REASONS

Subject Matter of Proposed Regulations: Disability Access Continuing Education for Architects

Section(s) Affected: Add Article 10, Section 165 to California Code of Regulations (CCR)¹, Title 16, Division 2.

Request for Early Effective Date:

The California Architects Board (Board) requests that this regulatory proposal become effective upon filing. Business and Professions Code (BPC) Section 5600.5 became effective January 1, 2022, and since that date the Board has required licensees seeking license renewal to show proof of compliance with the continuing education (CE) requirements imposed by BPC Section 5600.5. BPC Section 5600.5(a)(2)(A) instructs the Board to promulgate regulations establishing the qualifications for courses and course providers by January 1, 2023. Both architects renewing their licenses and disability access CE providers had expected these regulations would be in place by January 1, 2023. Staff has received a inquiries seeking clarification of the requirements, which are implemented and made specific in this rulemaking. Having to wait until the next quarterly effective date of April 1, 2023, would waste staff time and be a disservice to licensed architects and CE providers. For these reasons the Board respectfully requests an early effective date and that this rulemaking be implemented upon filing with the Secretary of State.

Updated Information:

The California Architects Board (CAB) Disability Access CE regulatory proposal was originally approved by the Board at its June 5, 2020 meeting. It was then brought back to the Board in September 2021 where the Board approved a change to the text to specify the precise amount of CE required for renewal.

The package was submitted to the Office of Administrative Law (OAL) on November 2, 2021, and [published](#) on November 12, 2021. In the Initial Statement of Reasons (ISOR), the Board cited to Civil Code section 55.52, but inadvertently did not include a copy of that statute. A copy of Civil Code section 55.52 has been added to the Rulemaking Binder as part of the Underlying Data relied upon by the Board.

The 45-day public comment period closed on December 27, 2021, and the Board received four comments raising concerns. In response to those concerns, the Board voted to modify the text and adopt the text with the modifications indicated at the June 8, 2022, Board meeting. The modifications to the text were as follows:

- In 16 CCR section 165(a)(2)(C), struck the term “Standards” from the phrase “California Building Standards Code,” as it is more correct, as was pointed out in a

¹ All CCR references are to title 16 unless otherwise noted.

- public comment.
- In CCR section 165(b) struck the phrase “For the purposes of section 5600.5 of the code,” and replaced it with “As a condition of renewal,” for clarity. Struck the second sentence, and struck the third sentence from the beginning up through “at the board’s request, either”. The Board added after the struck portion of the third sentence the following sentences: “The board shall consider CE coursework incomplete and the licensee not in compliance with this section if, within 15 days of the board’s notice of audit and written request, the licensee does not make available to the board the proof required by this section. For purposes of this section “proof” shall mean any of the following.” This language is more clear, and establishes a 15 day time limit by which a licensee must provide proof of compliance after receiving written notice of an audit. The Board chose the 15 day time limit to keep the audit process expeditious, while allowing at least 2 weeks for a licensee to comply.
 - In CCR section 165(b)(2) added “attendance or course completion” before the word “records” for clarity and added “from the course provider as” before “described in subsection (g), or,” to establish which records will be deemed authentic, and in CCR section 165(b)(3), struck the term “such” and added “other records of completion that contain the information specified in Section 5600.05 of the Code” striking the remainder of the sentence in CCR section 165(b)(3). These changes were made for clarity and the reference to the statutory requirement is made to clarify for CE providers what information is required by law.
 - In CCR Section 165(d) added after the word “participant” the phrase “who takes a pre-recorded course not presented live or presented by recorded webinar” to clarify what sort of courses require a participant pass a test for credit, and revised the rest of the sentence to read “upon the participant successfully passing a test of the participant’s knowledge and understanding of the CE coursework. “Successfully passing” shall mean a minimum cumulative passing score of at least seventy percent (70%).” These additional changes were made for clarity as the phrase “summative assessment” has far less common usage than the term “test,” and “successfully passing” as used in the previous sentence needed to be defined.
 - In CCR Section 165(e)(2), struck subparagraph (A), and renumbered the subsequent subparagraphs for clarity.
 - In CCR Section 165(e)(3), struck subparagraph (A) as had been recommended in a public comment which had stated that a Residential Building Inspector with an International Code Council certification was not qualified to teach disability access CE courses. The Board struck out that subparagraph as it agreed with the public comment.
 - In CCR Section 165(f) added at the end of the second sentence “of this section” for clarity
 - In CCR Section 165(g) added after “at least three years” the phrase “from the date of course completion” to clarify when the three year period begins and after “section 5600.05 of the code” added “for each CE participant” to clarify for providers that the records requirement is for each individual taking their course.
 - “In CCR Section 165(h) added and struck language so the paragraph reads: “Within ten business days from the completion of the course, or the passing of the

test of a recorded course, a provider shall issue a certificate of completion to each participant who successfully passes the test described in subsection (d). The certificate of completion shall include the information specified in section 5600.05(b) of the code.” The Board found that the requirement of five business days gave providers an unduly short timeframe in which to provide a certificate of completion, and chose instead to require certificates be provided within 10 days.

- In CCR Section 165(i), in the first sentence after the first word, “upon” added the word “written” to make certain licensees do not just claim they had asked for their record, but must have documentation to prove they did so, and changed “five business days of the request ” to read “ten days of the date of the request” to provide a more realistic timeframe for compliance. The Board also added at the end of the second sentence the following: “In addition, the licensee shall cooperate in the audit and investigation of the licensee’s compliance with this section, including taking all steps required by the CE provider to authorize the release of information to the Board, including signing any authorization or consent to release the licensee’s records of completion or coursework to the Board.” This was added to provide the Board with a method of enforcement should an licensee being audited refuse to cooperate with the audit by refusing to sign an authorization or consent.
- In CCR Section 165(j), added and struck language so the paragraph reads: “A licensee not in compliance with this section shall remedy any deficiency of the CE requirements of this section by completing the coursework prescribed by this section for the prior renewal period during the current renewal period, in addition to completing the CE coursework required in this section for the current renewal period. Before the end of the current renewal period, the licensee shall provide the board proof, as described in subsection (b), that the deficiency of CE credits has been remedied as prescribed by this section.” The Board added this language to incentivize licensees to complete the coursework as required in a timely fashion, and to remove the possibility of a licensee reducing the amount of coursework they must complete by delaying completion into the licensee’s next renewal period.

The Modified Text was sent out for public comment from June 27, 2022, to July 13, 2022. The Board received two public comments raising concerns from Janis Kent and Mark Christian, and a telephone message comment not directly relating to the modified text, to which the Board did not deem it necessary to respond. All comments were considered by the Board, and the Board two of the changes recommended by Janis Kent as well as by Mark Christian, and declined to adopt Janis Kent’s reiterated recommendation that the Board specify how providers should make the required test. The Board voted to approve the Second Modified Text at the September 16, 2022 Board meeting. The Second Modified Text was circulated for 15-day public comment period from September 16, 2022 to October 4, 2022 and made the following changes:

In CCR Section 165(d), struck and added language so the section reads: “A provider shall only issue a certificate of completion to a participant who: (1) completes an in-person or live webinar course, or (2) takes a recorded course not presented live or presented by recorded webinar and successfully passes a test of the participant’s knowledge and

understanding of the CE coursework at the end of the period of instruction (“post-course test”). “Successfully passing” shall mean a minimum cumulative passing score of at least eighty percent (80%).” The Board made the first changes regarding in-person or live webinars because it agreed with the public comments noting the language had inadvertently made attendees of live courses ineligible to receive a certificate of completion. The Board also added the language requiring the test be given at the end of the course to so that participants stay through the entire course, even if the participant is familiar enough with the topics to obtain a passing score if the test was given at an earlier time during the course. The Board wants all participants to be re-exposed to all of the course content, which could include updates that make only minor changes to the applicable laws and regulations.

In CCR Section 165(h), struck and added language so the paragraph reads: “Within ten business days from the completion of the course, a provider shall issue a certificate of completion to each participant, subject to the requirements in subsection (d). The certificate of completion shall include the information specified in section 5600.05(b) of the code.” The Board struck the two references to passing the test here and instead referred to the newly clarified language in subsection (d), for clarity.

During this second 15-day public comment period, the Board received three comments, none directly relating to the modified text. All comments were considered by the Board; however, no changes in the text were deemed necessary in response.

Local Mandate:

A local mandate is not imposed on local agencies or school districts.

Fiscal Impact:

The proposed regulations do not result in a fiscal impact to the state.

The Board has required licensees to complete CE courses, as specified, and ensured compliance since 2009, under statutory authority. This proposal updates the Board’s regulations consistent with the existing practice and procedures and current law. Since the Board already ensures compliance with the existing CE requirements for licensed architects, the proposed regulations regarding disability access CE will not impact the Board’s current workload for CE compliance. Moreover, since the regulatory proposal makes clear that licensees subject to a CE audit have the responsibility to maintain their CE records or obtain their disability access CE records of course completion, there is no added workload for the Board. As a result, no additional workload or costs are anticipated.

Consideration of Alternatives:

The Board has made an initial determination that no reasonable alternative to the regulatory proposal would be either more effective in carrying out the purpose for which the action is proposed or would be as effective or less burdensome to affected private persons and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific.

Objections or Concerns Received During 45-Day Public Comment Period and Board Responses:

The following objections or concerns were received regarding the proposed action during the 45-day public comment period. All comments were considered by the Board; and changes to the text were deemed necessary in response. The summarized comments and Board responses are as follows:

Summary of Comment One (1):

Mr. Gall recommends the Board revise 16 CCR section 165(a)(2)(C) to strike the word “Standards” from the phrase “California Building Standards Code.”

Board Response to Comment One (1): Mr. Gall’s comment correctly points out that as written, 16 CCR section 165(a)(2)(C) inaccurately cites to the “CA Building Standards Code” - a reference to all of Title 24, instead of just citing to the “California Building Code” which is Part 2 of Title 24 and the part the Board should be citing in this regulatory language. Staff recommends revising the text to remove the word “Standards” from that citation.

Summary of Comment Two (2):

Mr. Retondo recommends the Board limit the new CE requirement to two 5-hour courses if an architect is able to pass a written exam after those two sessions. Mr Retondo opines that requiring additional Disability Access CE courses beyond two 5-hour courses is a waste of time for an architect who is able to pass a written exam after those two sessions and an unreasonable burden that endows upon this particular aspect of code compliance an unwarranted priority above all others. Mr. Retondo also asserts that the ADA was passed in 1990, 31 years ago, and that the Board should not treat it as groundbreaking news.

Board Response to Comment Two (2):

In 2010, Business and Professions Code (BPC) section 5600.05 was adopted and it requires, as a condition of license renewal, that architects take 5 hours of coursework related to federal and state laws and regulations on disability access. With the passage of SB 608 (Glazer, Chapter 376, Statutes of 2019) amending BPC section 5600.05, the Board is required to promulgate regulations by January 1, 2023 regarding the disability access CE coursework required for license renewal. The amendments to BPC section 5600.05 also require the Board to audit at least three percent of renewed licenses each year for CE completion. The Board must follow and enforce the law for the protection of the public. Mr. Retondo’s comment asks the Board to place a limit on how many times a licensee must attend mandatory disability access CE, an action that would contradict the mandatory CE requirements in BPC section 5600.05.

Summary of Comment Three (3):

Ms. Moe questions the requirement of passing a summative assessment to receive credit for a training session, and recommends the Board use the assessment format employed

by the US Access Board in their Accessibility Online training sessions and allow participants in live webinars to receive a certificate of attendance without taking an exam. Ms Moe also urged the Board to reconsider allowing a residential building inspector to instruct disability access CE courses.

Board Response to Comment Three (3): The Board believes that the requirement that architects obtain at least an 80% score on a summative assessment at the conclusion of the course is necessary to both ensure and demonstrate that the licensee has understood and retains the information presented.

The US Access Board has a different objective than the Board. The US Access Board seeks to educate the public, which includes individuals of any and all professions about Disability Access standards. The Board is required to protect the public and enforce state and federal disability access laws and regulations applicable to the practice of architecture. The passage of SB 608 required the Board to promulgate regulations regarding the qualifications for CE courses and CE course providers. In passing SB 608, the legislature expressed concern that without the Board establishing standards for CE courses and course providers, architects were not getting the full benefit of the learning opportunity provided by the existing requirement to take Disability Access CE coursework as a condition of license renewal. The Board believes making receipt of credit contingent on obtaining a passing score on a summative assessment of 80% or higher will motivate licensees to get the full benefit of the statutorily mandated training.

As to Ms. Moe's comment about residential building inspectors, staff agrees and recommends revising the text to remove residential building inspectors from the list of approved disability access CE coursework instructors.

Summary of Comment Four (4):

Ms. Kent asserts in her comment that ADA is about civil rights and not strictly limited to the information listed in the applicable codes. Ms. Kent urges the Board to revise the regulation to:

1. Align with AIA requirements and accept on-demand or pre-recorded webinars where an individual has obtained a 70% passage rate for the test, which an individual must pass within 30 days and can retake the test as many times a necessary. Ms. Kent details the complex formula AIA applies to determine the minimum number of test questions required per hour of learning units and urges the Board to align the proposed regulation with the AIA's formula.
2. Accept live webinars, both those conducted in-person and online
3. Expand required topics from just codes and regulations
4. Expand those who can teach courses to include people who are in the medical professions or who do surveys of the population, and to expand those who can teach courses to include social workers, and people who work with the blind.

Board Response to Comment Four (4): Business and Professions Code (BPC) section [5600.05](#), requires licensees to complete continuing education coursework as specified in that section as a condition of license renewal. BPC 5600.05(a)(2)(A) concerns five hours of required disability access coursework and reads:

“The coursework shall include information and practical guidance concerning requirements imposed by the federal Americans with Disabilities Act of 1990 (Public Law 101-336; 42 U.S.C. Sec. 12101 et seq.), state laws that govern access to public facilities, and federal and state regulations adopted pursuant to those laws. Coursework provided pursuant to this subparagraph shall be presented by trainers or educators with knowledge and expertise in these requirements. The board shall promulgate regulations to establish qualifications for courses and course providers by January 1, 2023.”

The Board finds the AIA standards that imposes a complex formula to determine the minimum number of test questions required per hour of learning units to be unduly burdensome, and the AIA standard which allows an individual unlimited re-takings of the test for 30 days in order to obtain a passing score to be unduly permissive. Ms. Kent’s first and second points both presume that the Board will not accept on-demand or pre-recorded webinars, or live webinars taught in person or on-line. The proposed regulation does not specify how the required material is taught or “delivered” to licensees. The Board has simply established that certificates of completion should only be provided to participants who pass a summative assessment with a passing score of at least 80%. On-demand or pre-recorded webinars and live on-line webinars or in-person seminars are all equally acceptable, because it is up to the providers to determine how they will administer and grade the final summative assessment. On-line on-demand webinars can have the summative assessment at the end, and attendees will only be sent a certificate if they achieve an 80% passing score. Live webinars administered to groups as described in the comment could have proctored exams or could have all participants register on their smart phones and take the summative assessment on their individual phones. It is up to the providers to solve issues with the delivery of the class material and administration of the summative assessment. The 80% passing score was adopted by the Board to address concerns raised by the legislature in passing SB 608. The Board does not find that amendments to the proposed regulation are needed to address this concern raised in Ms. Kent’s public comment.

Ms Kent’s third point urges the Board to broaden the required topics to embrace civil rights and place greater emphasis on teaching licensees about the individual experiences and challenges of different groups of disabled persons. While the proposed regulation specifically lists federal and state laws to be covered, nowhere in the regulation are there limits upon how that information is taught and the inclusion of Ms. Kent’s suggested topics is not forbidden by this rulemaking. In fact, as those topics could be considered relevant as “practical guidance” concerning the laws, the Board could not promulgate regulations that forbid teaching those topics. Ms. Kent urges the Board to amend the regulation to explicitly include a broader view of what is entailed in the CE coursework on disability access laws, which the Board declines to do, as it is already covered in the statute.

Ms. Kent’s fourth point urges the Board to place greater emphasis on the “practical guidance” aspect of disability access by amending the list of approved providers to include people in the medical profession, those who survey the population of disabled persons, social workers, or those who work with the blind. While those individuals may

provide useful perspectives and insight on the broader topic of “practical guidance” about disability access, the Board believes licensees must have a foundational familiarity with the applicable state and federal laws and regulations; the approved providers reflect this. Any approved provider can, and is encouraged to, integrate “practical guidance” information from the individuals discussed in Ms. Kent’s comment. Such a disability access CE course will meet the requirements of this rulemaking, and the Board believes, will have greater appeal to licensees seeking to fulfill this CE requirement. Knowing the applicable laws and regulations is foundational for licensees’ understanding of issues within disability access design. That is why the Board has listed persons with expertise in the applicable laws and regulations as acceptable providers on the topic. The regulation as written does not bar a CE provider from supplementing their instruction on the applicable laws and regulations with additional “practical guidance” material from the sources mentioned in Ms. Kent’s comment. The Board does not find the regulation needs to be amended to allow a broader variety of additional individuals to teach disability access CE coursework, and thus declines to do so.

During the 15-day public comment period, the Board received two comments expressing concerns with the proposal and a Second Modified Text was approved by the Board.

Summary of Comment Five (5):

Ms. Kent’s comment raised three concerns regarding the modified text. Her first concern asks that the Board revise 16 CCR section 165(d) to strike the phrase “or presented by recorded webinar” for clarity. Ms. Kent’s next concern asks the Board to revise 16 CCR section 165(h) in an unspecified manner to clarify that those taking in-person or live webinars do not need to pass a test to be provided a certificate of completion. Ms. Kent’s final concern asserts that the Board should require that a test given to those taking pre-recorded courses not presented live be based on the AIA National formula for Self-Assessment or equivalent.

Board Response to Comment Five (5): Ms. Kent’s first and second concerns assert that as written, CCR section 165(d) could be misread to indicate that providers are not to issue certificates of completion to those who take in-person or live webinars. Should the Board agree with Ms. Kent’s comment, the proposed regulatory language could be modified for a second time to address this concern. Ms. Kent’s last concern would have the Board direct course providers to follow the AIA formula for Self-assessment or equivalent when creating the test for a pre-recorded seminar or webinar. The Board does not want to direct providers on how to create their tests as a part of this rulemaking and opts not to modify the text.

Summary of Comment Six (6):

Mr. Christian’s comment asserts that the modified text at CCR section 165(d) only allows pre-recorded courses to qualify for the accessibility CE credit and that those attending in-person or live webinars are ineligible for a certificate of completion.

Board Response to Comment Six (6): Should the Board agree with Mr. Christian’s comment, the proposed Second Modified Text addresses Mr. Christian’s concern.

During the second 15-day public comment period, the Board received three comments, none directly relating to the modified text. All comments were considered by the Board; however, no changes in the text were deemed necessary in response.