

## ASSEMBLY THIRD READING

AB 2164 (Lee)

As Amended May 19, 2022

2/3 vote

**SUMMARY**

Provides permanent funding to local governments, generated by fees on business licenses, and authorizes funds to be used, among other reasons, to provide financial assistance to small businesses for construction of physical accessibility improvements.

**Major Provisions**

- 1) Allows funds collected in the Division of the State Architect's (DSA) Disability Access and Education Revolving Fund to be used for the purpose of providing financial assistance to small businesses for construction of physical accessibility improvements.
- 2) 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, so that the fee would be collected on a permanent basis.
- 3) Requires that a city, county, or city and county that collects the fee described in 2), 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.
- 4) Requires the annual report now submitted by each city, county, or city and county to the State Architect regarding the total fees they collect and distribute in the previous calendar year to also include, commencing March 1, 2023, 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) Provides that no reimbursement is required by this bill because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.
- 6) Defines a "small business" for purposes of this bill 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."

**COMMENTS**

In order to provide financial assistance for small businesses that wish to bring their premises into compliance with construction-related accessibility standards, this bill, sponsored by the City of San Jose, seeks to 1) make permanent the temporary additional funds generated by a four dollar business license fee that is scheduled to expire in 2024, and 2) authorize funds generated by the fees to be used, among other reasons, to provide financial assistance to small businesses for construction of physical accessibility improvements.

These funds should ultimately increase compliance by California businesses with construction-related accessibility standards and reduce the risk of civil liability and litigation to businesses.

*Background – the CASp Program and Business License Fees That Support it.* The Certified Access Specialist Program (CASp) is a program that trains and certifies specialists in assessing whether physical structures such as schools, parks, and shopping malls, comply with the applicable disability access laws.

According to the Department of General Services, 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 your property based on the age of your 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.

The CASp program is funded through a fee on local business licenses, permits, or equivalent instruments. Until recently, the law required anyone taking out or renewing a local business license, permit, or equivalent instrument, to pay a one additional dollar fee for the license or permit. (See Government Code Section 4467 (a).) The city, county, or city and county, until recently, would retain 70 percent of the resulting revenue, which could be used primarily to train and retain certified access specialists in that jurisdiction. (*Ibid.*) The remaining 30 percent of the revenue would go to the DSA for deposit into the Disability Access and Education Revolving Fund. (*Ibid.*) These laws were originally set to expire on December 31, 2018.

In 2017, AB 1379 (Thurmond), Chapter 667, Statutes of 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.

*This bill.* The bill seeks to make permanent the temporary additional funds that were generated by the four dollar business license fee in AB 1379 that is scheduled to expire in 2024. These funds generated by the fees could increase the availability of CASp services as the fees authorized by AB 1379 did. But in a new twist, the funds could also be used to provide financial assistance to small businesses for construction-related accessibility improvements. Like AB 1379, the bill should help improve compliance with state and federal construction-related accessibility standards.

It also proposes to provide additional information to the DSA. Specifically, it would require the annual report submitted by local governments to DSA, which currently includes information about the total fees collected in the previous calendar year and how those funds were distributed, to also include information about 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. Ultimately, this information likely will provide more information accessibility improvements to the public and policymakers.

### **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.

### **Arguments in Support**

The City of San José, sponsor of this bill, writes the following:

AB 2164 . . . will allow local jurisdictions to continue programs ensuring that Californians with disabilities have barrier-free access to businesses. For Californians with disabilities, barrier-free access to businesses and other facilities is a constant concern. Federal, state, and local governments provide some resources to help businesses comply with these accessibility requirements and reduce barriers for patrons with disabilities. . . . 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 a joint letter of support, the California Chamber of Commerce and the California Business Properties Association observe the following:

The bill will provide small businesses with access to funds from the Disability Access and Education Revolving Fund to be used for construction of accessibility improvements. 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.

### **Arguments in Opposition**

No opposition on file.

## **FISCAL COMMENTS**

According to the Assembly Appropriations Committee:

- 1) Costs (General Fund) possibly in the hundreds of thousands dollars to the DSA to develop procedures to evaluate small business applicants for assistance with construction-related

accessibility improvements and determine eligibility for funding from the Disability Access and Education Revolving Fund.

- 2) Possibly significant non-reimbursable staff workload costs to local public entities to provide an annual report to both the California Commission on Disability Access (CCDA) and DSA detailing the total fees collected in the previous calendar year and total amount of financial assistance given to small businesses for construction-related disability access. Existing law requires local agencies report to CCDA the total amount of fees collected in the prior calendar year and how those funds were distributed. This bill, however, requires local agencies to report information about 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.
- 3) No costs to the CCDA to accept annual reports from local agencies.

## **VOTES**

### **ASM JUDICIARY: 8-1-0**

**YES:** Stone, Cunningham, Davies, Holden, Kalra, Maienschein, Reyes, Robert Rivas

**NO:** Kiley

### **ASM APPROPRIATIONS: 14-1-1**

**YES:** Holden, Bryan, Calderon, Carrillo, Davies, Mike Fong, Fong, Gabriel, Eduardo Garcia, Levine, Quirk, Robert Rivas, Akilah Weber, Wilson

**NO:** Bigelow

**ABS, ABST OR NV:** Megan Dahle

## **UPDATED**

VERSION: May 19, 2022

CONSULTANT: Alison Merrilees / JUD. / (916) 319-2334

FN: 0002545