

Date of Hearing: March 22, 2022

ASSEMBLY COMMITTEE ON JUDICIARY  
Mark Stone, Chair  
AB 2164 (Lee) – As Introduced February 15, 2022

As Proposed to be Amended

**SUBJECT:** DISABILITY ACCESS: FUNDING

**KEY ISSUE:** SHOULD TEMPORARY FUNDING GENERATED BY SUPPLEMENTARY BUSINESS LICENSE FEES, SCHEDULED TO EXPIRE IN 2024, BE MADE PERMANENT; AND BE AUTHORIZED TO BE USED BY LOCAL GOVERNMENTS, AMONG OTHER REASONS, TO PROVIDE FINANCIAL ASSISTANCE TO SMALL BUSINESSES FOR CONSTRUCTION OF PHYSICAL ACCESSIBILITY IMPROVEMENTS?

**SYNOPSIS**

*Under the more than 30 year-old federal Americans with Disabilities Act (ADA), a business that constitutes a place of public accommodation (e.g., many places of lodging, entertainment, recreation, restaurants, bars, theaters, stores, health clubs, etc.) is prohibited from discriminating on the basis of disability if its operations affect interstate commerce. Compliance, something disabled consumers should be able to count on as they go about their daily lives, also has the added benefit to businesses of helping them to avoid ADA litigation. One significant way to increase compliance with state and federal construction-related accessibility standards is the Certified Access Specialist (CASP) program. In 2018, new financial resources were provided to the CASP program as the result of AB 1379 (Thurmond), Cap. 667, Stats. 2017, which made a fee on business licenses and building permits permanent and, on and after January 1, 2018, and until December 31, 2023, increased the amount of the fees from one dollar to four dollars.*

*In order to provide financial assistance for businesses that wish to bring their premises into compliance with construction-related accessibility standards and ultimately increase compliance with accessibility laws, 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. The author proposes amendments to define “small business” for purposes of the bill. The definition is incorporated into the summary of the bill and explained in the analysis. The analysis also explains additional amendments that the author may wish to consider adding to the bill as it moves forward. The bill is supported by the California Business Properties Association, California Chamber of Commerce, Consumer Attorneys of California, Disability Rights California, Fremont Chamber of Commerce, and San Jose Chamber of Commerce. There is no opposition on file.*

**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. Specifically, **this bill:**

- 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 (\$4) 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 each city, county, or city and county, commencing March 1, 2023, to provide an annual report to the California Commission on Disability Access, as well as to the Division of the State Architect, regarding the total fees collected in the previous calendar year and of its distribution; and requires the report to include 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 the 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."

**EXISTING LAW:**

- 1) Pursuant to federal law, under the Americans with Disabilities Act (ADA), provides that no individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases, or leases to, or operates a place of public accommodation. (42 U.S.C. Section 12182.)
- 2) Pursuant to the Unruh Civil Rights Act (Unruh), provides that all persons, regardless of sex, race, color, religion, ancestry, national origin, disability or medical condition, are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind; makes a violation of the ADA also constitutes a violation of Unruh; and subjects a person or entity in violation to actual damages incurred by an injured party, treble actual damages but not less than \$4,000, and any attorney's fees as the court may determine to be proper. (Civil Code Section 51 *et seq.*)
- 3) Provides, pursuant to the Disabled Persons Act, that individuals with disabilities or medical conditions have the same right as the general public to the full and free use of the streets,

highways, sidewalks, walkways, public buildings, medical facilities, including hospitals, clinics and physicians' offices, public facilities and other *public places*, and also provides that a violation of an individual's rights under the ADA constitutes a violation of state law. (Civil Code Section 54.)

- 4) Provides that individuals with disabilities shall be entitled to full and equal access *to public accommodations*, subject only to the conditions and limitations established by law, or state or federal regulation, and applicable alike to all persons. (Civil Code Section 54.1.)
- 5) Provides for a California Commission on Disability Access (CCDA), an independent state agency composed of 17 members, with the general responsibility for monitoring disability access compliance in California, and the authority to hold hearings and make recommendations to the Legislature for necessary changes to existing state law in order to facilitate implementation of state and federal laws on disability access. (Gov. Code Section 8299 *et seq.* All further statutory references are to the Government Code, unless otherwise indicated.)
- 6) Requires the CCDA to use its funding, as appropriate, to provide information about preventing or minimizing compliance problems among California businesses, and recommending programs to enable persons with disabilities to obtain full and equal access to public facilities. (Section 8299.05.)
- 7) Makes it a priority for the CCDA to provide educational resources to promote and facilitate disability access compliance. (Section 8299.06.)
- 8) Requires the DSA to establish the Certified Access Specialist (CAsp) Program and develop the specified criteria to have a person qualify as a CAsp. (Section 4459.5; Civil Code Section 55.52.)
- 9) Requires, on and after January 1, 2018, 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 (\$4) for that license, instrument, or permit, which shall be collected by the city, county, or city and county that issued the license, instrument, or permit. (Section 4467 (a)(2).)
- 10) Provides that on and after January 1, 2024, the following shall apply:
  - a) 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, shall pay an additional fee of one dollar (\$1) for that license, instrument, or permit, which shall be collected by the city, county, or city and county that issued the license, instrument, or permit.
  - b) In any city, county, or city and county that does not issue a business license or an equivalent instrument or permit, an applicant for a building permit shall pay an additional fee of one dollar (\$1) for that building permit, which the city, county, or city and county that issued the building permit shall collect. (Section 4467 (a)(3).)

- 11) Requires the city, county, or city and county that collects the fees described in 9) and 10) above to deposit the money in its CASp Certification and Training Fund. (Section 4467 (b)(1).)
- 12) Provides that the amount of fees collected in 9) and 10) above and retained by the city, county, or city and county shall be in the following amounts:
  - c) On and after January 1, 2018, through December 31, 2023, inclusive, 90 percent.
  - d) On and after January 1, 2024, 70 percent. (Section 4467 (b)(2).)
- 13) Provides that any remaining amount of the fees collected and not retained by the city, county, or city and county pursuant to 9) and 10) above shall be transmitted on a quarterly basis to the DSA for deposit in the DSA's Disability Access and Education Revolving Fund. (Section 4467 (c).)
- 14) Requires each city, county, or city and county to make an annual report, commencing March 1, 2014, to the DSA of the total fees collected in the previous calendar year and of its distribution, including the moneys spent on administrative services, the activities undertaken and moneys spent to increase CASp services, the activities undertaken and moneys spent to fund programs to facilitate accessibility compliance, and the moneys transmitted to DSA. (Section 4467 (d).)

**FISCAL EFFECT:** As currently in print this bill is keyed fiscal.

**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. 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.

**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 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), Chap. 667, Stats. 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.

***CCDA Role in Improving Access Compliance, Gathering Data about Construction-Related Accessibility Claims, and Supporting California Businesses.*** The California Commission on Disability Access (CCDA) was established pursuant to SB 1608 (Corbett, Chap. 549, Stats. 2008). The mission of the CCDA, according to the commission’s website, is to “promote disability access in California through dialogue and collaboration with stakeholders including, but not limited to, the disability and business communities as well as all levels of government.”

In order to achieve this purpose, the CCDA acts as an information resource; researches and prepares advisory reports of its findings to the Legislature on issues related to disability access, compliance inspections and continuing education; seeks to increase coordination between stakeholders; makes recommendations to promote compliance with federal, and state laws and regulations; and provides uniform information about programmatic and architectural disability access requirements to stakeholders. (See Sections 14985-14985.11.)

The bill proposes to provide additional information to the CCDA. Specifically, it would require local governments, commencing March 1, 2023, to provide the same annual report to the CCDA that they now provide to the DSA. The annual report by local governments currently includes information about the total fees collected in the previous calendar year and how those funds were

distributed, including the amounts spent on administrative services, the activities undertaken and moneys spent to increase CASp services, the activities undertaken and moneys spent to fund programs to facilitate accessibility compliance, and the moneys transmitted to the Disability Access and Education Revolving Fund. As proposed to be amended by the author, the bill would also require local governments 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. Ultimately, this information would help the CCDA provide more assistance to local governments and more information about statewide accessibility violations to the public and policymakers.

***Recent spike in disability access lawsuits filed in the Bay Area.*** According to CCDA’s most recent annual report to the Legislature, the city where the most construction-related accessibility claims were filed in 2020 is San Jose; and the top two cities (San Jose and Milpitas) are in the Bay Area. All of the other cities in the top ten cities identified by CCDA were in the Los Angeles area.

The recent spate of ADA complaints being filed in the Bay Area have all, according to press coverage, been filed by just one or two plaintiffs or law firms. Many of them have been filed by attorney Scott Johnson (see [The Man Who Filed More Than 180 Disability Lawsuits - The New York Times \(nytimes.com\)](#) and [CA serial ADA filer keeps filing lawsuits despite indictment | The Sacramento Bee \(sacbee.com\)](#)). Also: [Spate of ADA lawsuits hits hundreds of local businesses still reeling from pandemic | News | Palo Alto Online](#) and [ADA lawsuits hit hard in San Mateo County | Local News | smdailyjournal.com](#)).

The bill’s sponsor, the City of San Jose, notes this spike in litigation has affected local businesses, and how the fees generated by AB 1379, if lost, would hurt local governments:

The more than 1,400 recent disability access-related lawsuits in San José alone provide ample evidence that business accessibility remains a challenge. This projected decrease in available funds—coupled with inflation and rising costs—imperils local governments’ ability to stretch limited resources and continue successful accessibility compliance programs.

This 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.

***Author’s amendments.*** The author proposes minor, but important, amendments to the bill in print. First, the bill currently has no definition of the term “small business,” making the term open to interpretation and therefore meaningless. Therefore, the author wisely proposes to define the term “small business” in the bill. The following would be added to the bill at Page 4, between lines 12 and 13; and at Page 6, between lines 13 and 14:

***For purposes of this section, a “small business” is 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.*

Admittedly, this definition of “small business” applies to some larger businesses. The vast majority of businesses in California, according to the federal Small Business Administration, have either no employees, or fewer than 20 employees. In fact, 4.145 million of California’s 4.227 million “small businesses” (98%) have fewer than 20 employees.

<https://cdn.advocacy.sba.gov/wp-content/uploads/2021/08/30141145/Small-Business-Economic-Profile-CA.pdf>

Nevertheless, a 50-employee limit for preferred treatment of businesses seeking to remedy construction-related accessibility violations like the one proposed in the author’s definition is codified elsewhere. For example, a business with fewer than 50 employees is immune from liability for minimum statutory damages in a construction-related accessibility claim with respect to a violation noted in a report by a CASp in an inspection report for a period of 120 days after the date of the CASp inspection if the defendant demonstrates, among other things, that all of the violations noted in the CASp inspection report were corrected in those 120 days. (Civil Code 55.56 (g)(3)(A)(i).) It seems consistent with that provision to also allow businesses of that size to obtain funds to correct the violations noted in a CASp inspection report.

Second, in order to update the content of the annual report submitted by local governments to the DSA (and, as of 2024, to the CCDA), the following amendments are necessary to subdivision (d) of Section 4467:

(d) Each city, county, or city and county shall make an annual report, commencing March 1, 2014, to the Division of the State Architect, and, commencing March 1, 2023, to the California Commission on Disability Access, of the total fees collected in the previous calendar year and of its distribution, including the moneys spent on administrative services, the activities undertaken and moneys spent to increase CASp services, the activities undertaken and moneys spent to fund programs to facilitate accessibility compliance, **including 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,** and the moneys transmitted to the Disability Access and Education Revolving Fund.

***Additional Amendments the Author May Wish to Consider:***

- 1) *Prioritizing more needy businesses for scarce funds.* Given that the funds raised from the fee proposed by the bill may be insufficient to satisfy the demand from businesses for those funds, the author may wish to consider how scarce funds could and should be prioritized. The author could consider, for example, allowing (or even mandating) local governments to prioritize the smallest “microbusinesses,” for example. Governments could also prioritize small businesses that suffered most during the COVID-19 pandemic.

The California Microbusiness COVID-19 Relief Grant Program (Section 12100.93(a)(4)) established such priorities for COVID-related assistance. It prioritized factors such as the owner being a member of a group that has faced historic barriers in accessing capital; the business being operated on a daily basis by women, minorities or persons of color, veterans, undocumented individuals, and individuals living in low-wealth or rural areas on low

incomes; and has suffered economic impacts or revenue losses due to the COVID-19 pandemic. It could be a model for this bill.

- 2) *A cap on the amount of grants provided to small businesses.* The California Microbusiness COVID-19 Relief Grant Program, discussed above, also sets a limit of two thousand five hundred dollars (\$2,500) for individual grants. (See Section 12100.93(a)(2).) This limit is not an isolated example. Most codified grant programs seem to set either an amount, or a limit, on the amount of money that a grant recipient obtains in a grant program. (See, *e.g.* Section 12100.93 [Child Development Teacher and Supervisor Grant Program: (\$2,000 for a participant who is enrolled at a four-year institution; \$1,000 for a participant at a two-year institution); Health & Safety Code Section 25244.8 [Hazardous waste reduction, recycling, and treatment technology grants of \$25,000 - \$100,000]; Health & Safety Code Section 25299.107 [grants of \$3,000 - \$70,000 for Replacing, Removing, or Upgrading Underground Storage Tanks].) Therefore, in order to preserve funds and allow them to be used by more businesses, the author may wish to place a limit on, or specify a specific dollar amount for the financial assistance provided to each small business under the bill.

**ARGUMENTS IN SUPPORT:** The City of San José, sponsor of the 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. . . . Despite these legal protections and government assistance programs, business accessibility remains a concern. Some businesses struggle to understand the complex requirements and to raise funding for necessary physical improvements. Compliance can be particularly challenging for small business owners with limited English proficiency and restricted access to financial resources. . . . 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.

**Prior Related Legislation:** AB 3002 (Grayson) Disability access: information to applicants for building permits and business licenses. This bill promotes disability access at commercial businesses and places of public accommodation by requiring local government agencies to provide building permit applicants with an advisory about federal and state disability access laws, encouragement to obtain an inspection from a Certified Access Specialist (CASP), information about how to contact a CASp, and notice regarding the availability of state and



federal programs to assist small businesses with disability access expenditures. Status: Chap. 680, Stats. 2018.

AB 2093 (Steinorth) Disability access. Increases the information available to the public, and to prospective tenants of commercial property, about the Americans with Disabilities Act and a commercial property's compliance with construction-related accessibility standards and creates a presumption that the responsibility for making any repairs or modifications necessary to correct violations of construction-related accessibility standards that are noted in a CAsp report is the responsibility of the commercial property owner or lessor, unless otherwise mutually agreed upon by the commercial property owner or lessor and the lessee or tenant. Status: Chap. 379, Stats. 2016.

**REGISTERED SUPPORT / OPPOSITION:****Support**

City of San Jose (sponsor)  
California Business Properties Association  
California Chamber of Commerce  
Consumer Attorneys of California  
Disability Rights California  
Fremont Chamber of Commerce  
San Jose Chamber of Commerce

**Opposition**

None on file

**Analysis Prepared by:** Alison Merrilees / JUD. / (916) 319-2334