

January 19, 2016

Hon. Kamala D. Harris
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Ashley Johansson
Initiative Coordinator

Dear Attorney General Harris:

Pursuant to Elections Code Section 9005, we have reviewed the proposed constitutional initiative regarding pre-litigation procedures for construction-related accessibility claims (A.G. File No. 15-0113).

Background

Federal Accessibility Laws. Under the federal Americans with Disabilities Act (ADA), any person or business that owns, leases, or operates a place that is generally open to the public (such as a restaurant, office building, school, recreation facility, or doctor's office) must provide full and equal access to those with disabilities. Federal law allows private parties to file claims through the court system in order to compel individuals or businesses to remove physical barriers to accessibility and pay for attorney fees.

State Accessibility Laws. A violation of the federal ADA also constitutes a violation of state law. State law provides additional protections and remedies to those with disabilities. For example, state law allows private parties to receive compensation for violations of construction-related accessibility standards, including penalties for damages incurred by an injured party—subject to statutory minimums—and attorney fees.

Under state law, plaintiffs can generally file construction-related accessibility complaints in court immediately upon discovering a violation. Based on data from the California Commission on Disability Access, we estimate that about 1,500 construction-related accessibility cases were filed in state court in 2014.

Proposal

Under the measure, a person or business would have 90 days after receiving a notice to correct a construction-related accessibility claim before a lawsuit could be filed under state law. Additionally, if the violation is corrected within the 90 days, the person or business would not be liable for damages or attorney fees under state law. The measure would also require local

jurisdictions to prioritize permits for persons or businesses attempting to make accessibility-related modifications to their properties.

Fiscal Effect

Court Savings. This measure could result in individuals filing fewer civil claims related to accessibility in state court because people or businesses would be given 90 days to address violations before such claims could be filed. To the extent there are fewer court filings, there could be a reduction in state court costs from reduced workload. The actual reduction in costs would depend on the number of claims that are no longer filed in state court and how long such claims take to process. Thus, the decrease in state court costs is uncertain, but could potentially be in the range of a few million dollars annually. In many cases, however, these resources would likely be redirected to other court activities.

Summary of Fiscal Effect. We estimate that this measure would have the following major fiscal effect, which could vary depending on how private parties and the courts respond to the measure.

- Potential reduction in state court costs related to civil claims, which could be in the range of a few million dollars annually.

Sincerely,

Mac Taylor
Legislative Analyst

Michael Cohen
Director of Finance