

February 3, 2006

Hon. Bill Lockyer  
Attorney General  
1300 I Street, 17<sup>th</sup> Floor  
Sacramento, California 95814

Attention: Ms. Tricia Knight  
Initiative Coordinator

Dear Attorney General Lockyer:

Pursuant to Elections Code Section 9005, we have reviewed the proposed statutory initiative related to construction defects and accessibility (File No. SA2005RF0148).

## **Background**

*Residential Construction Defects.* In cases when residential property has construction defects, California property owners generally have up to ten years from the time of construction to seek compensation. Due to recent legislative changes, the procedures for seeking compensation are different depending on when the residence was constructed.

- *Pre-2003 Construction.* For residential properties built prior to 2003, current law allows homeowners to sue builders in cases of property damage or personal injury.
- *Recent Construction.* For residential properties built in 2003 or later, current law establishes specific construction standards that homes must meet. Before a lawsuit is filed regarding construction defects, specific procedures regarding notifications, inspections, repairs, and mediation must be followed. Conversions of apartment complexes to condominiums, however, are not subject to these new rules.

*Accessibility Standards.* Both California and federal law establish various standards for property owners to make their properties accessible to individuals with disabilities. In general, California law requires that disabled individuals have “full and equal access” as other individuals to facilities. When a property owner fails to meet these standards, an affected disabled individual can bring a lawsuit against the property owner. State and local governments also have the authority to enforce accessibility standards.

## Major Provisions

This statutory measure establishes a procedure for property owners and disabled individuals to address residential construction defects and violations of accessibility standards prior to litigation. An individual would be required to follow these procedures before filing a lawsuit. For both construction defect and accessibility issues, an individual would have to provide notification of the problem in writing to the property builder or owner. The measure establishes specific procedures and timelines for the notification and subsequent responses. A builder or owner receiving notification under the measure could choose not to follow the measure's prelitigation procedures (and continue to be governed by current law). The measure's specific provisions are described in more detail below.

*Residential Construction Defects.* This measure's provisions only apply to residential properties built prior to 2003 (and condominium conversions). Residential construction since that time would continue to be governed by current law. Once a builder was notified of a defect, the measure establishes procedures and timelines for the builder to inspect the property and submit an offer to remedy the situation (through financial payments and/or repairs).

*Accessibility Standards.* Upon notification of an accessibility standards violation, a property owner could, within 120 business days, make changes to the property or provide evidence that the property is already in compliance. The measure also establishes a procedure to resolve disputes over whether any property changes are sufficient to meet the accessibility standards, including the use of neutral accessibility experts.

## Fiscal Effect

*Court-Related Costs.* By adding additional requirements prior to the filing of lawsuits regarding residential construction defects and accessibility standards, this measure would likely reduce the number of lawsuits filed in these areas. While the court system does not track the number of lawsuits in these areas, such lawsuits generally are not a significant portion of courts' cases. Any such reduction, therefore, likely would not have a significant effect on courts' workload.

*Governments Involved With Lawsuits.* The measure could directly affect state and local governments involved with lawsuits in these areas. For example, the measure would impose new procedures before an individual could sue a government regarding the accessibility to a government building. By changing the procedures that governments follow, the measure could also change governments' costs. For instance, by making modifications to a building during the measure's prelitigation period, a government could avoid an expensive lawsuit. On the other hand, the measure's process could encourage some individuals to notify governments of violations of

accessibility standards in cases when they would not have pursued lawsuits. Such notifications could result in governments incurring additional costs to repair the violations. The net fiscal effect of any such changes is unknown. In some cases, the effect on individual local governments could be significant. We would not expect, however, a significant net fiscal effect on a statewide basis.

*Other Factors.* Currently, the state is responsible for administering the program that certifies accessibility experts. The measure's process for accessibility modifications allows the use of these experts to resolve disputes. If there is increased demand for these experts, the measure could result in an expansion of the certification program. Any state spending increase related to such an expansion would likely be minor and would be paid for by applicants seeking certification.

*Fiscal Summary.* This measure would have the following fiscal impact:

- Probably no significant net fiscal effect on state and local governments.

Sincerely,

---

Elizabeth G. Hill  
Legislative Analyst

---

Michael C. Genest  
Director of Finance