



Date: August 29, 2012
To: State Legislative Committee
From: Patrick H. West, City Manager
Subject: Support for Senate Bill 1186 Disability Access

Attached for your information is a letter of support for SB 1186 (Steinberg). This bill would clarify the process for implementing Americans with Disabilities Act (ADA) requirements for businesses and governmental entities, while protecting the rights of the disabled community.

Should you have any questions, please contact Tom Modica, Director of Government Affairs and Strategic Initiatives at 8-5091.

cc: Mayor and Members of the City Council
Suzanne Frick, Assistant City Manager
Reginald Harrison, Deputy City Manager
Robert Shannon, City Attorney
Mike Conway, Director of Public Works
Amy Bodek, Director of Development Services
Tom Modica, Director of Government Affairs and Strategic Initiatives
Jyl Marden, Assistant to the City Manager
Mike Arnold and Associates

Attachment
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MAYOR BOB FOSTER

CITY OF LONG BEACH

August 29, 2012

The Honorable Darrell Steinberg
California State Senate Pro Tempore
State Capitol Building, Room 205
Sacramento, CA 95814

RE: Support for Senate Bill 1186: Disability Access

Dear Senator Pro Tempore Steinberg:

On behalf of the City of Long Beach, I am writing to express support for SB 1186 (Steinberg). This bill would clarify the process for implementing Americans with Disabilities Act (ADA) requirements for businesses and governmental entities, while protecting the rights of the disabled community.

Over the years, the City has heard from responsible local businesses of ADA issues that SB 1186 proposes to clarify. Provisions in this bill will help businesses meet ADA requirements, while ensuring the disabled community is provided access as prescribed under the law. Long Beach is committed to protecting the rights of persons who are disabled, and shares an interest in the establishment of a sufficient process for businesses and governmental entities to meet ADA requirements.

SB 1186 requires specificity in ADA demand letters and complaints, as well as reduces statutory damages and strengthens litigation protections for defendants who correct unintentional ADA violations within a specified time. These changes and others will bolster the credibility of claims made by credentialed lawyers and their clients, as well as protect responsible business owners.

Given these reasons, Long Beach supports SB 1186. Thank you for your leadership in the State Senate.

Sincerely,

Mayor Bob Foster
City of Long Beach

cc: The Honorable Rod Wright, State Senate, 25th District
The Honorable Alan Lowenthal, State Senate, 27th District
The Honorable Ted Lieu, State Senate, 28th District
The Honorable Isadore Hall III, State Assembly, 52nd District
The Honorable Bonnie Lowenthal, State Assembly, 54th District
The Honorable Warren Furutani, State Assembly, 55th District



SB 1186 (STEINBERG): ADA COMPLIANCE LEGISLATION

SEPTEMBER 13, 2012

Introduction

The following is an analysis of SB 1186 (Steinberg).

Background

This bill seeks to promote compliance with the state's disability access laws by maintaining the rights of the disabled community and offering protection to California businesses and public entities from demand for money letters and unscrupulous lawsuits. The bill encourages businesses to fix existing violations and comply with state law, and also establishes the Disability Access and Education Revolving Fund to assist cities and counties in compliance efforts.

Bill Summary

- 1. *Reduced statutory damages and litigation protections for defendants who correct violations***
 - Reduces a defendant's minimum liability for statutory from \$4,000 to \$1,000 against a place of public accommodation and to \$2,000 against a defendant that is a small business, for each unintentional offense if the defendant has corrected all construction related violations that are the basis of the claim within 60 days and 30 days of being served with the complaint respectively.
 - This provision would not apply to reduce statutory damages where the violation was intentional or where the defendant had made or knew of modifications made to the property that was the basis of the plaintiff's claim.
- 2. *New provisions to prevent stacking of multiple claims to increase statutory damages***
 - Requires that in assessing statutory damages in a deterrence claim, the reasonableness of the plaintiff's conduct in light of the plaintiff's obligation (if any) to mitigate damages must be considered by the court in any action alleging multiple claims for the same construction-related accessibility violation on different particular occasions.
- 3. *Ban on demands for money and new rules for demand letters***
 - Provides that a demand letter alleging a construction-related violation or asserting a claim may offer pre-litigation settlement negotiations, but may not include a specific request or demand for money or state any specific potential monetary liability for any asserted claim or claims. The letter may only state that the property owner, tenant or both may be civilly liable for actual and statutory damages.
- 4. *New specificity requirements for demand letters and complaints***
 - Requires any demand letter or complaint asserting a construction-related accessibility claim to state facts sufficient to allow the defendant to identify the basis for the claim, including an explanation of the specific barriers the individual encountered, the way in which the barrier interfered with the individual's full and equal access and the date or date's of each particular occasion on which the individual encountered the barrier.
- 5. *State Bar review of demand letters; violation of demand letter and demand for money provisions would be grounds for attorney discipline***
 - For a three-year period, requires any demand letter alleging a construction-related accessibility violation to be sent to the State Bar. Requires the demand letter to include the attorney's State Bar license number.
 - Requires an attorney to include his or her State Bar license number in a demand letter, and to submit copies of the demand letter to the California Commission on Disability Access (CCDA) and until January 1, 2016 to the State Bar.

6. ***Mandatory evaluation conference at option of either defendant of plaintiff***
 - Allows either party to request a mandatory evaluation conference (MEC) conducted by the court within 90 to 120 days of the request. Similar to the early evaluation conference (EEC) under existing law.
 - These defendants would not be eligible for a court stay of the proceedings.
7. ***Mandatory notice to property tenant of Certified Access Specialist (CASp) status of the property***
 - Requires a commercial property owner to state on a lease form or rental agreement executed on or after July 1, 2013, if the property being leased or rented has undergone inspection by a CASp and if so, the property has or has not been determined to meet all applicable construction-related accessibility standards.
8. ***CCDA to tabulate data on top ten types of alleged violations***
 - Requires a copy of any demand letter and any complaint filed in state or federal court that alleges a construction-related accessibility violation to be sent to CCDA for the purposes of tabulating the types and frequency of violations alleged and compiling a top ten list of frequently alleged violations. The CCDA would post top ten list on its website and would be directed to report the tabulated data to the Legislature.
9. ***Promote accessibility compliance***
 - Makes it a priority of the CCDA to develop and disseminate educational materials and information to promote and facilitate disability access compliance including working with other government agencies to gather, develop, and post education materials on its website.
10. ***Required information regarding disability access compliance to businesses upon renewal of business license***
 - Requires the local entity to inform a licensee with information about compliance with disability access where to find necessary information.
11. ***New add-on fee of \$1 to business license fee to strengthen CASp program and develop educational and training resources at state and local level to promote compliance***
 - Requires cities and counties to collect a \$1 fee upon issuance or renewal of a business license or similar instrument to fund the continuously appropriated Disability Access and Education Revolving Fund. Local entities would be authorized to retain 70 percent of the fees collected for the purposes increasing disability access and compliance with construction-related accessibility requirements and developing educational resources for businesses to facilitate compliance with applicable federal and state laws, including the ability to pay for additional CASp in local building departments, to reduce the costs of CASp testing and certification.
 - Reduces the application fee for a licensed architect, landscape architect, civil engineer, or structural engineer to a maximum of \$250.

Analysis of Local Impact

Monies collected from the \$1 fee will be split 70 percent to local agencies, 30 percent to Division of State Architect (DSA). Local public entities will be able to use five percent of monies for administration costs and the rest would go to pay for hiring and training of more CASp for local building departments. The other 30 percent would go to newly created Disability Access and Education revolving fund in DSA for the purposes noted above. Requires the State Architect to periodically review the CASp certification and examination fees to ensure they are not excessive, while still covering the cost to administer the program.

Support and Opposition

Supporters argue that the bill maintains the hard-fought civil rights of the disabled community while helping to protect California businesses from predatory demand for money letters and lawsuits. Additionally, supporters claim that the bill would ban the practice of 'demand for money' letters and stop the stacking of claims based on alleged repeat violations to force a business into a quick settlement.

Support: Civil Justice Association of California
California Chamber of Commerce
Long Beach Chamber of Commerce
American Institute of Architects, California Council
California Citizens Against Law Suit Abuse
California Council of the Blind
California Grocers Association

Opponents on the other hand are generally concerned that the bill impairs basic rights and imposes increased procedural requirements on people with disabilities. Additionally, opponents have argued that offering reduced statutory damages and litigation protections to certain small businesses undermines the Construction Related Accessibility Standards Compliance Act.

Opposition: Disability Rights Education and Defense Fund
California for Disability Rights
California Foundation for Independent Living Centers

Legislative Status

SB 1186 was delivered to the Governor's desk on September 7, 2012. It is pending a decision by the Governor.

