

Bills affecting SB and DVBE programs and bills related to ADA lawsuits against SBs

Here is an update on bills affecting the small business and DVBE programs, as well as ADA lawsuits against small businesses.

- The first list consists of SB/DVBE-related bills that were held on the suspense file of either the Assembly Appropriations Committee or the Senate Appropriations Committee, generally due to cost. These bills are not moving forward.
- The second list consists of SB/DVBE-related bills that are still active and moving forward.
- Per the Council's request, I have also included, as an appendix, a listing of bills related to ADA lawsuits against small businesses. Some of these bills are moving forward; others are "two-year bills," meaning they have missed a deadline to move forward this year, but might move forward next year.

SB/DVBE Bills Held on Suspense File (Not Moving Forward):

AB 351 (Jones-Sawyer): Public contracts: small business participation.

This bill codifies most, but not all, of the provisions of Executive Order S-02-06 on small business participation in state contracts. It codifies the 25 percent small business participation goal and makes it applicable to all state entities that receive state funds. This includes the University of California, California State University, and California Community Colleges, but these institutions are only required to meet the 25 percent goal for "state funding used in contracting."

Status: Held on Assembly Appropriations Committee suspense file.

AB 1125 (Weber): State agency contracts: small business.

This bill changes the dollar cap on the small business preference from \$50,000 per bid to \$100,000 per contract award and changes the dollar cap on all preferences combined from \$100,000 per bid to \$150,000 per contract award. ***Was handled by Joanna.***

Status: Held on Assembly Appropriations Committee suspense file.

AB 1445 (Brown): Public contracts: small business contracts.

This bill raises the existing dollar limit on contracts awarded using the Small Business/DVBE Option for goods, services, and IT from \$250,000 to

\$500,000.

Status: Held on Assembly Appropriations Committee suspense file.

SB/DVBE Bills Moving Forward:

AB 413 (Chávez): California Disabled Veteran Business Enterprise Program.

This bill authorizes a DVBE to continue bidding on new contracts as a DVBE for three years, under the majority ownership of a disabled veteran's child or spouse, following the death or permanent medical disability of the disabled veteran.

Status: Passed Assembly; in Senate; referred to Senate Veterans Affairs Committee; no hearing set.

AB 1029 (Frazier): Veterans: service providers.

This bill requires CDVA to operate a certification program for "certified California veteran service providers." It sets various requirements for such providers and, effective July 1, 2017, requires CDVA to adopt regulations and begin processing applications. It declares legislative intent that the Secretary of CDVA consider whether it would be beneficial to establish a preference program for these entities in state grants and contracts for providing support services to veterans or their families. It requires CDVA to post specified information on the certified providers on its website, and requires CDVA to prepare a legislative report.

Status: Passed Assembly; in Senate; referred to Senate Veterans Affairs Committee; no hearing set.

AB 1218 (Weber): Public contracts: disabled veteran business enterprise.

This bill implements several State Auditor recommendations related to the DVBE program, along with additional program changes. It provides that when the DVBE incentive is offered, a greater incentive should be offered to DVBE primes than to non-DVBE primes with DVBE subcontractors, and to DVBEs whose workforce is more than 50 percent veterans. It also imposes extensive tracking and recordkeeping requirements on CDVA and other departments with respect to firms that attend promotional events, including whether the firms subsequently become certified DVBEs, win prime contracts, or become subcontractors. It also sets recordkeeping requirements for contract files and requires DGS to establish guidelines for reporting multiyear contracts.

Status: Passed Assembly; in Senate, pending referral to committee.

AB 1430 (Cooper): California family owned businesses.

This bill enacts a definition of “California family owned business” within the Government Code for purposes of statutes that specifically reference the definition.

Status: Passed Assembly; hearing in Senate Business and Professions Committee pending.

SB 159 (Nielsen): California Disabled Veteran Business Enterprise Program: goal achievement.

This bill specifies that an awarding department’s DVBE goal attainment shall be measured based on expenditures, and states that it is clarifying and declaratory of existing law.

Status: Passed Senate; double-referred to Assembly Jobs and Veterans Affairs committee; to be heard June 23 in Assembly Jobs.

Bills Related to ADA Lawsuits Against Small Businesses

AB 52 (Gray): Public accommodations: construction-related accessibility claims.

This bill would have imposed additional limits on liability for violations of construction-related accessibility standards in places of public accommodation, such as stores. Under existing law, the minimum liability for each violation is \$4,000, with certain exceptions in which the minimum liability is reduced to \$2,000 or \$1,000. One of those exceptions is for small businesses with fewer than 25 employees and less than \$3.5 million in average annual gross receipts, if the business demonstrates that it has corrected all violations within 30 days. Under this bill, instead of a minimum liability of \$2,000, violations falling under the small business exception would incur a maximum liability of \$1,000. This bill would also expand the small business exception to cover any small business meeting DGS’ eligibility criteria for certification that demonstrates it has corrected all violations within 180 days. It also revised another exception that expires January 1, 2016, so that it would continue to exist in modified form.

Status: Two-year bill. The bill was referred to the Assembly Judiciary Committee, but the hearing was canceled at the author’s request. The committee’s analysis recommended that the bill’s entire text be deleted and replaced with new language that would require the Judicial Council to update

the existing notice that plaintiff's attorneys are required to provide to building owners and tenants, and to create a new form that the building owner or tenant can use to craft a response. The committee subsequently introduced its own bill, AB 1521 (Committee on Judiciary), with language similar to what it had proposed for this bill.

AB 54 (Olson): Public accommodations: construction-related accessibility standards: tax credit.

Existing law provides a tax credit for business owners for costs incurred complying with the Americans with Disabilities Act. The credit is equal to 50 percent of the amount paid up to \$250 (for a maximum credit of \$125). This bill would make the cost of a CASp inspection eligible for that tax credit.

Status: Two-year bill. Passed Assembly Judiciary Committee; pending in Assembly Revenue and Taxation Committee.

AB 1342 (Steinorth): Disability access.

This bill requires commercial property owners or lessors, starting July 1, 2016, to provide additional information to the lessee or tenant regarding the property's compliance with disability access standards before executing a lease or rental agreement. If the property does not have a current disability access inspection certificate, the owner or lessor would be required to offer the tenant the option to have a Certified Access Specialist (CASp) inspect the property at the tenant's expense. The bill also requires applicants for CASp certification to provide information about the city or county in which they intend to provide services and, for certification renewals, the city or county in which they have provided services. This information would be posted on the Division of the State Architect's website. The bill also eliminates the December 31, 2018, sunset date on the \$1 fee on local business licenses to support the CASp program and local efforts to facilitate compliance with construction-related accessibility requirements. Finally, the bill requires the California Commission on Disability Access to create two outreach positions, provides a \$120,000 appropriation for the current fiscal year, and requires the commission to provide additional information on its website.

Status: Passed Assembly. In Senate, pending assignment to committee.

AB 1521 (Committee on Judiciary): Disability access: construction-related accessibility claims.

Existing law requires an attorney, when sending a demand letter or serving a civil complaint regarding a construction-related accessibility claim, as defined, to include a written advisory prescribed by statute. This bill would

revise the written advisory to include additional information, including information for commercial tenants about types of violations that may be the landlord's responsibility, and for small business owners (under the \$3.5 million/25 employee definition) about options to reduce their damages by correcting the violations within 30 days. The bill would require the Judicial Council to update the written advisory form by July 1, 2016, and would also require the Judicial Council to develop a plain-language form that the defendant could use to respond to the complaint.

Status: Passed Assembly. In Senate, pending assignment to committee.

SB 67 (Galgiani): Disability access: statutory damages.

This bill would exempt small businesses (under the \$3.5 million/25 employee definition) from statutory damages arising from construction-related accessibility claims, limiting their liability to injunctive relief and reasonable attorney's fees. It also expands an existing exception under which statutory damages are reduced to a minimum of \$1,000 for violations found in locations previously inspected by a CASp or local building official and meeting other specified criteria, if the violations are corrected within 60 days of being served with a lawsuit. Under this bill, the exception would apply if the violations are corrected within 120 days of being served with the lawsuit.

Status: Two-year bill. Assigned to Senate Judiciary Committee; never heard. Committee hearing was canceled at author's request.

SB 251 (Roth): Civil rights: disability access.

This bill provides that a business is not liable for the minimum statutory damages for violations of construction-related accessibility standards if, prior to litigation or the receipt of a demand letter, the business was inspected by a Certified Access Specialist (CASp) and the violation is corrected within 90 days after the inspection. It also provides that a small business (under the \$3.5 million/25 employee definition) is not liable for the minimum statutory damages if the violation concerns interior or exterior signage, the color or condition of parking lot paint striping, or truncated domes, and the violation is corrected within 15 days after the first written notice or complaint. It requires local agencies to expedite project applications if the applicant provides a disability access inspection certificate from a CASp, demonstrates that the project is necessary to address a violation or alleged violation of accessibility-related construction standards, and, if the plans must be submitted for approval, has had a CASp review the plans for compliance. It authorizes a tax credit for small businesses (again, under the \$3.5 million/25 employee definition) for eligible access-related expenditures. It creates various

additional requirements for commercial property owners, local agencies, the Division of the State Architect, and the California Commission on Disability Access to provide information to lessees, permit applicants, and the general public. Finally, it extends the sunset date on a requirement for attorneys to send copies of demand letters for construction-related accessibility claims to the State Bar from January 1, 2016, to January 1, 2019.

Status: Passed Senate. In Assembly, pending assignment to committee.