

STATE OF CALIFORNIA
Budget Change Proposal - Cover Sheet
 DF-46 (REV 08/15)

Fiscal Year 2016-17	Business Unit 8790	Department California Commission on Disability Access	Priority No. 1
Budget Request Name 8790-001-BCP-BR-2016-GB		Program 10-SUPPORT	Subprogram

Budget Request Description
 Disability Access: Construction-related Accessibility Claims (AB 1521)

Budget Request Summary
 The California Commission on Disability Access is requesting an augmentation of \$100,000 General Fund and one position to implement and administer the provisions of Chapter 755, Statutes of 2015.

Requires Legislation <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Code Section(s) to be Added/Amended/Repealed	
Does this BCP contain information technology (IT) components? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <i>If yes, departmental Chief Information Officer must sign.</i>	Department CIO	Date

For IT requests, specify the date a Special Project Report (SPR) or Feasibility Study Report (FSR) was approved by the Department of Technology, or previously by the Department of Finance.

FSR SPR Project No. Date:

If proposal affects another department, does other department concur with proposal? Yes No
Attach comments of affected department, signed and dated by the department director or designee.

Prepared By	Date	Reviewed By	Date
Department Director <i>Angela Gammatt</i>	Date <i>1/5/2016</i>	Agency Secretary	Date

Department of Finance Use Only

Additional Review: Capital Outlay ITCU FSCU OSAE CALSTARS Dept. of Technology

BCP Type: Policy Workload Budget per Government Code 13308.05

PPBA <i>[Signature]</i>	Date submitted to the Legislature <i>1/7/16</i>
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Analysis of Problem

A. Budget Request Summary

The California Commission on Disability Access (Commission) requests an augmentation of \$100,000 General Fund and one position to implement and administer the provisions of Chapter 755, Statutes of 2015 (AB 1521). AB 1521 extends the requirements of an attorney who serves a complaint to notify the Commission within five days of judgment, settlement, or dismissal. AB 1521 imposes additional responsibilities on the Commission that cannot be fulfilled at the current staffing and funding levels, or through the continued use of volunteers and student assistants.

B. Background/History

With a view to developing recommendations that will enable persons with disabilities to exercise their right to full and equal access to public facilities and that will facilitate business compliance with the laws and regulations to avoid unnecessary litigation, Chapter 549, Statutes of 2008 created the Commission.

The Commission consists of 17 appointed commissioners: 11 public members, the State Architect, the Attorney General, and two members of both the Senate and the Assembly. The Commission is charged with studying and making reports on issues regarding compliance with state laws and regulations raised by persons with disabilities or businesses and any recommendations that promote access compliance. The Commission also determines the effectiveness of public and private inspection program and acts as an education center for state and local agencies on disability access compliance.

Commencing July 2013 and every six months thereafter, the Commission is required to collect demand letters and complaints and to post this information to its website. The Commission determines from this data the top 10 violations and identifies educational modules for each. The Commission began receiving letters and filing September 2012, receiving 250 items monthly, each requiring approximately 1.5 hours of staff time to process. Commission staff manually analyzes each demand letter and complaint (submitted via email, fax, or standard mail) to determine exactly which types of construction-related physical access violations are alleged for reporting purposes. One staff member (with the support of volunteer staffing) performs a comparative analysis to code the violations according to a categorized list, and then manually enters the data into an Excel spreadsheet. Each month the Commission receives 3-5 public record requests, which the Commission anticipates to increase due to the sensitivity of case resolution data collection. Currently, no other state agency is collecting this type of data.

The Commission reports to the Legislature, including the Chairs of the Senate and Assembly Committees on Judiciary, on its activities and efforts to implement Government Code sections 8299.05 and 8299.06. Commencing in 2014, the Commission shall compile the following data with respect to any demand letter or complaint sent to the commission pursuant to Section 53.32 of the Civil Code and post the information on its Internet Web site, pursuant to the following:

- (a) The commission shall identify the various types of construction-related physical access violations alleged in the demand letters and in the complaints, respectively, and shall tabulate the number of claims alleged for each type of violation in the demand letters and complaints, respectively. For purposes of this subdivision, any demand for money letters shall be grouped as demand letters.
- (b) Periodically, but not less than every six months beginning July 31, 2013, the commission shall post on its Internet Web site a list, by type, of the 10 most frequent types of accessibility violations alleged in the demand letters and in the complaints, respectively, and the numbers of alleged violations for each listed type of violation for the prior two quarters.
- (c) The commission shall, on a quarterly basis, identify and tabulate the number of demand letters and complaints received by the commission. The commission shall further ascertain whether a complaint was filed in state or federal court and tabulate the number of complaints filed in state or federal court, respectively. This data shall be posted on the commission's Internet Web site periodically, but not less than every six months beginning July 31, 2013.
- (d) Commencing in 2014, and notwithstanding Section 10231.5, the commission shall make an annual report to the Legislature and the Chairs of the Senate and Assembly Committees on Judiciary by January 31 of each year of the tabulated data for the preceding calendar year as set forth in subdivisions (a) to (c),

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inclusive. A report to be submitted pursuant to this subdivision shall be submitted in compliance with Section 9795.

In 2014, the Commission reported to the Legislature that more than one-half (54 percent) of all construction-related accessibility complaints filed between 2012 and 2014, were filed by two law firms. 46 percent of all complaints were filed by a total of 14 parties. Therefore, a minimal number of plaintiffs have filed a disproportionately large number of construction-related accessibility claims in the state. On average, the Commission receives 300 filings per month. In January 2015, the Commission reported over 2,500 ADA individual complaints received. These types of lawsuits are frequently filed against small businesses on the basis of boilerplate complaints, seeking expedited cash settlements rather than correction of the accessibility violation.

The missing data component is the outcome of state and federal cases and the linkage between the demand letters to the cases. Acquiring this data would provide a picture of how and to what level violations are resolved. AB 1521 assists in closing that gap.

Resource History (Dollars in thousands)

Program Budget	PY - 4	PY - 3	PY - 2	PY - 1	PY
Authorized Expenditures	500	364	402	415	511
Actual Expenditures	500	364	402	415	511
Revenues	-	-	-	-	-
Authorized Positions	2.5	2.6	2.8	2.8	4.0
Filled Positions	3.0	3.0	3.0	3.0	4.0
Vacancies	-	-	-	-	-

C. State Level Considerations

Success of the Commission will serve to encourage and create a more accessible California for all citizens. As a result, there will be fewer lawsuits filed against businesses, redirection of resources, and concurrent improvement in the economy. The Commission is currently the only state agency that collects data on the impact of access non-compliance, and currently the only agency that focuses on the educational and resource needs and responsibilities of businesses and property owners related to access compliance and their legal liability.

D. Justification

The Americans with Disabilities Act (ADA) of 1990 and the California Building Standards Code require buildings, structures, and facilities that are made available to the public (i.e., restaurants, retail stores, office buildings) to be accessible to and usable by persons with disabilities. The ADA allows for persons with disabilities who are denied access to such public accommodations to file civil complaints and obtain injunctive relief to ensure full and complete access to those accommodations as well as recovery of reasonable attorney's fees and costs. This proposal serves to:

- Slow the incidence of legal findings related to access, and
- Create tools, training, and resources for business owners.

Currently, two agencies address the needs of the disabled in the built environment. The Division of the State Architect is responsible for the development and maintenance of access regulations contained in California Building Standards, and the Department of Rehabilitation, in partnership with consumers and other stakeholders, provides services and advocacy resulting employment, independent living and equality for individuals with disabilities. The Commission serves to help consumers, business owners and operators, and persons with disabilities understand the responsibilities under the ADA and California regulations in order to create accessible environments while protecting themselves from lawsuits.

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Currently, the Commission maintains a budget of approximately \$526,000 General Fund and four staff positions (Executive Director, Associate Governmental Program Analyst (2), and Office Technician). The problems faced by the California businesses statewide addressed by the Commission are substantial, requiring a much more robust effort to create partnerships, educational materials, and expand outreach.

E. Outcomes and Accountability

The Commission was established during a difficult fiscal environment. A modest increase to the Commission's resources would assure success with the data collection necessary to best understand the state's ADA challenges, and would further assist in improving compliance in construction-related accessibility claims.

F. Analysis of All Feasible Alternatives

Alternative 1: Maintain the status quo.

The Commission consists of 17 members and maintains two standing committees; the Education and Outreach Committee and the Executive Committee. The Commission also establishes task groups as needed. The Commission maintains four staff positions. The primary activity currently for staff is Commission and committee management and clerical support leaving little time for program development. Maintaining the status quo would continue this program pattern and produce limited external stakeholder value to persons with disabilities and the business community, and would allow for minimal coverage to accomplish the increased workload as a result of AB 1521. The Commission has been fortunate to have received volunteer support for its projects, but finds that this method is neither reliable nor sustainable.

PRO: Cost to the taxpayer and impact on the budget remains the same.

CON: The Commission runs the risk of creating a backlog and being in non-compliance with mandated reporting requirements.

Alternative 2: Increase staff and related expenses.

This proposal increases the Commission' authorized positions by one staff person, adding skill and expertise and effectiveness to further the Commission's efforts in carrying out its core mission and to support the additional workload of AB 1521. This is the lowest cost proposal, and assures reliability over time.

PRO: This proposal allows for a minimal team to manage activities of the Commission, consultants, and outreach to other state agencies as well as stakeholders throughout the state.

CON: Increasing staff on a permanent basis creates a long-term budget liability to the state.

Alternative 3: Increase consultant services.

Expert consultant resources would replace the additional staff and associated costs.

PRO: The work of the Commission would be supported with on-call external consultants and the best resources would be identified and retained.

CON: There are additional expenses associated with scoping services, advertising and contracting, and managing consultants. Easily resolved problems requiring expertise not resident within the Commission would result in unnecessarily delayed resolution.

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G. Implementation Plan

Effective July 1, 2016, the Commission will use the increased funding and additional staff to implement AB 1521.

H. Supplemental Information

The equipment costs for this proposal consist of the standard complement which includes a workstation, computer, telephone, and filing cabinets.

I. Recommendation

Approve Alternative #2 to augment the Commission's resources by \$100,000 General Fund and one position to implement and administer the provisions of AB 1521.

