

Date of Hearing: June 20, 2018

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

David Chiu, Chair

SB 1226 (Bates) – As Amended May 3, 2018

**SENATE VOTE:** 39-0

**SUBJECT:** Building standards: building permits

**SUMMARY:** Requires the Department of Housing and Community Development (HCD) to propose the adoption of a building standard to authorize a local enforcement official to determine the date of construction of a residential unit, apply the building standards in effect of that date of construction, and issue a retroactive building permit when a record of the issuance of a building permit for the construction of an existing residential unit does not exist. Specifically, **this bill:**

- 1) States that the Legislature finds and declares the following:
  - a) Pursuant to existing law and the California Building Standards Code (CBSC), building officials have broad authority, as part of their enforcement authority to render interpretations of the code and to adopt policies and procedures to clarify the application of its provisions; and
  - b) A building official has the discretion to apply the building standards that were in effect at the time a residential unit was constructed.
- 2) State that it is the intent of the Legislature, to clarify that when a building permit for a residential unit does not exist the building office may make a determination of when a residential unit was constructed and then apply the CBSC and other specified rules and regulations in effect when the residential unit was determined to be constructed for purposes of issuing a building permit for the residential unit.
- 3) Requires the HCD to propose the adoption of a building standard to authorize a local enforcement official to determine the date of construction of a residential unit, apply the building standards in effect of that date of construction, and issue a retroactive building permit when a record of the issuance of a building permit for the construction of an existing residential unit does not exist

**EXISTING LAW:**

- 1) Authorizes a local agency to adopt an ordinance providing for the creation of accessory dwelling units (ADUs).
- 2) Establishes the State Housing Law, which sets forth construction and occupancy standards for buildings used for human habitation.
- 3) Requires HCD to propose the adoption, amendment, or repeal of building standards to the Building Standards Commission (BSC) and to adopt, amend, and repeal other rules and regulations to protect the health, safety, and welfare of occupants and to the public. These regulations become part of the California Building Standards Code.

- 4) Authorizes local governments to modify building standards based on findings of local climatic, geological, or topographical conditions. The local government must first make an express finding that the change or modification is necessary and must be filed with the BSC.
- 5) Authorizes a building department of any local government to approve an alternate material, appliance, installation, device, arrangement, method, or work on a case-by-case basis if it finds that the proposed design is satisfactory and the alternative used is the equivalent of that prescribed in the Building Standards Code or in the State Housing Law in performance and safety.
- 6) Authorizes, under the Building Standards Code, a building official, as part of his or her enforcement authority to render interpretations of the code and to adopt policies and procedures to clarify the application of its provisions. Such interpretations, policies and procedures shall be in compliance with the intent and purpose of the code and shall not have the effect of waiving requirements in the code.
- 7) Authorizes, under the Building Standards Code, a building official, where there are practical difficulties involved in carrying out the provisions of the building standards code, to grant modifications for individual cases provided the building official first find that special individual reasons makes the strict letter of the law impractical, the modification is in compliance with the intent of the code, and that the modification does not lessen health, accessibility, life, and fire safety or structural requirements.

**FISCAL EFFECT:** Unknown.

**COMMENTS:**

*Background:* Last year, Senator Bates introduced SB 431, which sought to assist with bringing unpermitted ADUs out of the shadows. That bill would have permitted a locality to waive, for five years following the enactment of an ordinance, some or all requirements of an applicable building code for the purpose of issuing a building permit for an otherwise unauthorized accessory dwelling unit (ADU) that was constructed prior to 2008. Out of a concern for public safety, the author opted to hold the bill in the Senate Transportation and Housing Committee to continue a longer discussion for how to address the issue.

Over the last year, the author and sponsor learned that building officials — through provisions in the California Health and Safety Code and the California Building Code — have broad authority as part of his or her enforcement authority to render interpretations of the code and to adopt policies and procedures to clarify the application of its provisions. While generally, the building standards in place at the time a permit is issued apply, a building official may, at their discretion, apply the building standards that were in effect at the time a residential unit was constructed. This is permissible under authority to grant modifications on a case-by-case basis and that a building department may approve a material, appliance, installation, device, arrangement, or method if it finds that the design is satisfactory and equivalent to the building standards code. The sponsor believes this authority is not clear, and learned that other jurisdictions, including Poway, Santee, Lemon Grove, Del Mar, Solana Beach, Oceanside, and Pismo Beach, were similarly unaware or feel that the authority is not clear.

This bill would clarify, in statute, that when a building permit for a residential unit does not exist, the appropriate enforcement official may make a determination of when the unit was constructed and then apply the California Building Standards Code and other specified rules and regulations in effect when the unit was determined to be constructed for purposes of issuing a building permit for that unit.

*Arguments in opposition:* The California Building Officials are opposed because they think this authority already exists in the California Building Code and Health and Safety Code. They believe the problem is a lack of education of the existing authority.

#### **REGISTERED SUPPORT / OPPOSITION:**

##### **Support**

City of Encinitas (sponsor)  
American Planning Association, California Chapter  
Bay Area Council

##### **Opposition**

California Building Officials  
California Fire Chiefs Association  
Fire Districts Association of California

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