

Date of Hearing: June 27, 2018

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

David Chiu, Chair

SB 721 (Hill) – As Amended June 20, 2018

SENATE VOTE: 30-7

SUBJECT: Building standards: decks and balconies: inspection

SUMMARY: Establishes minimum inspection requirements for the exterior elevated elements, including balconies and decks, of buildings with three or more multifamily dwelling units, as specified. Specifically, **this bill:**

- 1) Requires owners of all buildings containing three or more multifamily dwelling units to inspect exterior elevated elements that include load-bearing components.
- 2) Defines “exterior elevated element” as the following types of structures, including their supports and railings: balconies, decks, porches, stairways, walkways, and entry structures that extend beyond exterior walls of the building and which have a walking surface that is elevated more than six feet above ground level, are designed for human occupancy or use, and rely in whole or in substantial part on wood or wood-based products for structural support or stability of the exterior elevated element.
- 3) Defines “load-bearing components” as components that extend beyond the exterior walls of the building to deliver structural loads from the exterior elevated element to the building.
- 4) Defines “associated waterproofing elements” as flashings, membranes, coatings, and sealants that protect the load-bearing components of exterior elevated elements from exposure to water and the elements.
- 5) Requires the inspection to be performed by a licensed architect, licensed civil or structural engineer, a building contractor holding any or all of the “A,” “B,” or “C-5” license classifications issued by the Contractors’ State License Board, with a minimum of five years’ experience, as a holder of the aforementioned classifications or licenses, in constructing multistory wood frame buildings, or an individual certified as a building inspector or building official from a recognized state, national, or international association, as determined by the local jurisdiction. The inspectors must be hired by the building owner and may not be employed by the local jurisdiction while performing these inspections.
- 6) Specifies that the purpose of the inspection is to determine that exterior elevated elements and their associated waterproofing elements are in a generally safe condition, adequate working order, and free from any hazardous condition caused by fungus, deterioration, decay, or improper alteration to the extent that the life, limb, health, property, safety, or welfare of the public or the occupants is not endangered.
- 7) Requires the inspection to, at a minimum, include:

- a) Identification of each type of exterior elevated element that, if found to be defective, decayed, or deteriorated to the extent that it does not meet its load requirements, would, in the opinion of the inspector, constitute a threat to the health or safety of the occupants.
 - b) Assessment of the load-bearing components and associated waterproofing elements of a sample of at least 15 percent of each type of exterior elevated element using methods allowing for evaluation of their performance by direct visual examination or comparable means of evaluating their performance.
 - c) The evaluation and assessment must address each of the following as of the date of the evaluation:
 - i) The current condition of the exterior elevated elements.
 - ii) Expectations of future performance and projected service life.
 - iii) Recommendations of any further inspection necessary.
 - d) A written report of the evaluation stamped or signed by the inspector presented to the owner of the building or the owner's designated agent within 45 days of completion of the inspection, including the following:
 - i) Photographs, test results, and narrative sufficient to establish a baseline of the condition of the components inspected that can be compared to the results of subsequent inspections.
 - ii) Advice as to exterior elevated elements that pose an immediate threat to the safety of the occupants, and whether preventing occupant access or conducting emergency repairs, including shoring, are necessary.
- 8) Requires the initial inspection to be completed by January 1, 2025, and requires subsequent inspections every six years.
- 9) Requires the inspector conducting the inspection to produce an initial report and, if requested by the owner, a final report indicating that any required repairs have been completed. A copy of any report that recommends immediate repairs, advises that any building assembly poses an immediate threat to the safety of the occupants, or that preventing occupant access or emergency repairs, including shoring, are necessary, must be provided by the inspector to the owner of the building and to the local enforcement agency within 15 days of completion of the report. Subsequent inspection reports must incorporate the findings of prior inspections, including the locations of the exterior elevated elements inspected. Local enforcement agencies may determine whether any additional information is to be provided in the report and may require a copy of the initial or final reports to be submitted to the local jurisdiction. Copies of all inspection reports must be maintained in the building owner's permanent records for not less than two inspection cycles, and must be disclosed and delivered to the buyer at the time of any subsequent sale of the building.
- 10) Requires the inspection of buildings for which a building permit application has been submitted on or after January 1, 2019, to occur no later than six years following issuance of a certificate of occupancy from the local jurisdiction.

- 11) Provides that, if the property was inspected within three years prior to January 1, 2019, by an authorized inspector and a report of that inspector was issued stating that the exterior elevated elements and associated waterproofing elements are in proper working condition and do not pose a threat to the health and safety of the public, no new inspection is required until January 1, 2025.
- 12) Requires the building owner to correct an exterior elevated element found by the inspector to be in need of repair or replacement. Prohibits recommended repairs from being performed by a licensed contractor serving as the inspector. All necessary permits for repair or replacement must be obtained from the local jurisdiction. All repair and replacement work must be performed by a qualified and licensed contractor in compliance with all of the following:
 - a) The recommendations of a specified licensed professional.
 - b) Any applicable manufacturer's specifications.
 - c) Applicable building standards.
 - d) Local jurisdictional requirements.
- 13) Specifies that an exterior elevated element that the inspector advises poses an immediate threat to the safety of the occupants, or finds preventing occupant access or emergency repairs, including shoring, or both, are necessary, is considered an emergency condition and the owner of the building must perform required preventive measures immediately. Immediately preventing occupant access to the exterior elevated element until emergency repairs can be completed constitutes compliance. Repairs of emergency conditions must comply with the requirements of this bill, be inspected by the inspector, and be reported to the local enforcement agency.
- 14) Specifies that the owner of the building requiring corrective work to an exterior elevated element that, in the opinion of the inspector, does not pose an immediate threat to the safety of the occupants, must apply for a permit within 120 days of receipt of the inspection report. Once the permit is approved, the owner of the building has 120 days to make the repairs unless an extension of time is granted by the local enforcement agency.
- 15) Specifies that the owner of the building is responsible for complying with the requirements of this bill, including the continued and ongoing maintenance of exterior elevated elements in a safe and functional condition in compliance with the provisions of this bill.
- 16) Requires the inspector, if the owner of the building does not comply with the repair requirements within 180 days, to the local enforcement agency and the owner of the building. If within 30 days of the date of the notice the repairs are not completed, the owner of the building is to be assessed a civil penalty based on the fee schedule set by the local authority of not less than \$100 nor more than five hundred dollars \$500 per day until the repairs are completed, unless an extension of time is granted by the local enforcement agency.
- 17) Authorizes, in the event that a civil penalty is assessed pursuant to this requirement, the recording of a building safety lien in the county recorder's office by the local jurisdiction in the county in which the parcel of land is located and from the date of recording has the force, effect, and priority of a judgment lien.

- 18) Requires a building safety lien to specify the amount of the lien, the name of the agency on whose behalf the lien is imposed, the street address, the legal description and assessor's parcel number of the parcel on which the lien is imposed, and the name and address of the recorded owner of the building.
- 19) Specifies that, in the event that the lien is discharged, released, or satisfied, either through payment or foreclosure, notice of the discharge must be recorded by the governmental agency. A safety lien and the release of the lien must be indexed in the grantor-grantee index.
- 20) Authorizes a building safety lien to be foreclosed by an action brought by the appropriate local jurisdiction for a money judgment.
- 21) Authorizes the county recorder to impose a fee on the city to reimburse the costs of processing and recording the lien and providing notice to the owner of the building. A city may recover from the owner of the building any costs incurred regarding the processing and recording of the lien and providing notice to the owner of the building as part of its foreclosure action to enforce the lien.
- 22) Authorizes local enforcement agencies to recover enforcement costs associated with the requirements of this bill.
- 23) Authorizes the governing body of any city, county, or city and county, to enact ordinances or laws imposing requirements greater than those imposed by this bill.

EXISTING LAW:

- 1) Provides for the regulation of buildings used for human habitation under the State Housing Law, including the erection or construction of buildings or structures and the use, maintenance, and change of occupancy for hotels, motels, lodging houses, apartment houses, and dwellings, and their accessory buildings and structures, except as specified. (Health and Safety Code (HSC) §§ 17910-17998.3)
- 2) Establishes the California Building Standards Commission (CBSC) within the Department of General Services to administer the building code adoption process, including petitions, appeals, and the Building Standards Administration Fund. (HSC §§ 18920-18934.9)
- 3) Requires the Department of Housing and Community Development (HCD) to propose new building standards to the California Building Standards Commission, to protect occupants and the public through the adoption of regulations pursuant to the State Housing Law, and to enforce building standards, the State Housing Law, and related regulations. (HSC § 17921(a))
- 4) Defines "enforcement" as the diligent effort to secure compliance, including review of plans and permit applications, response to complaints, citation of violations, and other legal process, as specified. (HSC § 17920(e))
- 5) Requires the designated local enforcement agency of a city or county, or the HCD if the city or county has no local enforcement agency, to enforce within its jurisdiction all building standards, the State Housing Law, and related regulations pertaining to the erection,

construction, reconstruction, movement, enlargement, conversion, alteration, repair, removal, demolition, or arrangement of apartment houses, hotels, or dwellings. (HSC § 17960)

- 6) Requires the HCD to enforce applicable building standards, the State Housing Law, or relevant regulations in city or county that fails to enforce the standards, as specified. (HSC § 17952)
- 7) Defines “substandard building” as a building or portion of a building, including a dwelling unit, guestroom or suite of rooms, or the premises on which they are located, in which there are the following conditions, among others, to the extent the condition endangers the life, limb, health, property, safety, or welfare of the public or the occupants:
 - a) Inadequate sanitation, including, but not limited to, infestation of insects, vermin, or rodents, specified visible mold growth, and general dilapidation or improper maintenance. (HSC § 17920.3(a))
 - b) Structural hazards, including, but not limited to, defective, deteriorated, or inadequate floor supports, vertical supports, and roof and ceiling supports. (HSC § 17920.3(b))
 - c) Faulty weather protection, as specified. (HSC § 17920.3(g))
 - d) A building or portion of a building that is determined to be an unsafe building due to inadequate maintenance, in accordance with the latest edition of the Uniform Building Code. (HSC § 17920.3(k))
- 8) Authorizes an officer, employee, or agent of an enforcement agency to enter and inspect any building or premises whenever necessary to secure compliance with, or prevent a violation of, building standards, the State Housing Law, and other rules and regulations which the enforcement agency has the power to enforce. (§ 17970)
- 9) Authorizes the owner, or authorized agent of any owner, of any building or premises to enter the building or premises whenever necessary to carry out any instructions, or perform any work required to be done pursuant to the building standards published in the State Building Standards Code, and other rules and regulations. (HSC § 17971)
- 10) Provides for a statewide program for the adoption, review, and updating of building codes under the California Building Standards Law. (HSC §§ 18901-18949.31)

FISCAL EFFECT: Unknown.

COMMENTS:

Background: This bill was introduced in response to the 2015 Berkeley balcony collapse. The balcony collapse incident, due to decayed wooden joists, killed six young adults and injured seven others, mostly Irish citizens, visiting California as part of a summer exchange program. The incident occurred at the Library Gardens apartment complex, located near the University of California, Berkeley campus.

Ultimately, the Contractor’s State License Board revoked the license of Segue Construction, Inc., the general contractor responsible for building the apartment complex where the collapse occurred, as it was alleged that the contractor company “willfully departed from or disregarded

building plans or specifications, and willfully departed from accepted trade standards for good and workmanlike construction.”

As a result of that collapse, SB 465 (Hill) Chapter 372, Statutes of 2016, in addition to requiring additional oversight for contractors, also required the CBSC to establish a working group to study the failure of exterior elevated elements and to submit a report to the Legislature containing findings and possible recommendations for statutory or other changes to the California Building Standards Code. In 2017, the CBSC approved emergency regulations to accelerate the adoption of higher construction standards.

This bill seeks to further increase safety and oversight by requiring existing exterior elevated elements, as defined, in certain building, as specified, to be inspected at least every six years by certain licensed persons, to determine that the exterior elevated elements and their associated waterproofing elements are in a generally safe conditions, adequate working order, and free from any hazardous conditions, as specified. This bill also requires any identified repairs to be made within a designated timeframe and provides penalties for building owners who do not complete the required repairs.

Arguments in support: BlackRock Realty writes in support, “as you may know, a real estate investment fund managed by BlackRock Realty owns a building in Berkeley where a balcony collapsed in June of 2015 tragically resulting in the deaths of six young people and seriously injuring seven others.... While inspections were conducted by or on behalf of the owner and the property manager, they did not identify the latent wood rot or construction defects which existed prior to the collapse. As a result of this tragic accident, BlackRock has adopted procedures to inspect similar balconies on the properties owned by its funds on a periodic basis. We believe that public safety warrants similar actions by other property owners and that increased focus on the inspection of enclosed wooden balconies and other similar structures as described in [this bill] for life-safety issues may save lives.”

Arguments in opposition: Opponents representing apartment owners write in opposition to the bill, “inconclusive inspection reports will be problematic and are not addressed in the bill. [This bill] requires owners to fix any decks or balconies that are in need of repair or replacement as determined by an inspector. In many cases, however, the need for repair will be inconclusive because the structure is hidden behind a wall. Inspectors will likely report their determinations as inconclusive followed by a statement indicating that further testing, including destructive testing, is required to make a determination. Destructive testing is incredibly expensive and intrusive because it literally requires destroying and tearing down walls. The bill does not address inconclusive inspections and reports. If owners will be required to conduct destructive testing every time a report is inconclusive, the time and expense will be extraordinary. We oppose such intrusive testing based on inconclusiveness.”

Technical amendment:

Amendments taken in the Committee on Business and Professions deleted the following language which would make clear that common interest developments which are multi-family units with three or more units are not subject to Section 1 of the bill.

Add the following to the bill: *“(m) This section shall not apply to a common interest development, as defined in Section 4100 of the Civil Code.”*

Double referred: This bill is double referred. It was heard in the Assembly Committee on Business and Professions and passed out on a vote of 15-2 on June 19, 2018.

Support

BlackRock Realty
California Building Officials
Center for Public Interest Law
Consumer Attorneys of California
Greystar Management Services
Jesse Arreguin, Mayor, City of Berkeley

Opposition

Apartment Association of Orange County
Apartment Association, California Southern Cities
East Bay Rental Housing Association
North Valley Property Owners Association
Individual (1)

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