

Date of Hearing: March 11, 2020

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

David Chiu, Chair

AB 2044 (Voepel) – As Introduced February 3, 2020

SUBJECT: Building standards: energy design rating: accessory dwelling units

SUMMARY: Exempts certain accessory dwelling units (ADUs) from the California Energy Code. Specifically, **this bill:**

- 1) Establishes that an ADU must not be considered to be a newly constructed building for purposes of Section 150.1(b) of the 2019 California Energy Code (Part 6 (commencing with Section 100.0) of Title 24 of the California Code of Regulations), as that section read on January 1, 2020, or any successor to that provision.
- 2) Defines “ADU” to mean a detached accessory dwelling unit that is created pursuant to Section 65852.2 of the Government Code, or a local ordinance implementing that section, or any similar detached residential dwelling unit that is constructed on the same lot as a proposed or existing primary residence.
- 3) Requires the California Energy Commission (CEC) to propose, and the California Building Standards Commission (CBSC) to adopt, approve, codify, and publish, building standards to implement this section in accordance with this chapter.

EXISTING LAW:

- 1) Authorizes CBSC to approve and adopt building standards. Every three years building standards rulemaking is undertaken to revise and update the California Building Standards Code (BSC). (Title 24 of the California Code of Regulations)
- 2) Directs the California Energy Commission (CEC) to reduce the wasteful, uneconomic, inefficient, or unnecessary consumption of energy through the several actions, including regulation of lighting, insulation climate control system, and other building design and construction standards that increase the efficiency in the use of energy and water for new residential and new nonresidential buildings. (Public Resources Code §25402)
- 3) Includes various specific standards and requirements for the CBSC to examine and or enact in subsequent adoption processes (Health & Safety Code Section 18935 et seq.)
- 4) Requires the provision of photovoltaic systems for newly constructed low-rise residential buildings with annual electrical output equal to or greater than the dwelling’s annual electrical usage, with specified exemptions (Section 150.1(c)(14) of the 2019 California Energy Code).
- 5) Exempts alterations, additions to existing buildings, and conversions of existing structures from the requirement for photovoltaic systems (Section 150.2(a) of the 2019 California Energy Code).

- 6) Defines “newly constructed building” to mean a building that has never been used or occupied for any purpose (Section 100.1 of the 2019 California Energy Code).
- 7) Defines “photovoltaic system” to mean the complete set of all components for converting sunlight into electricity through the photovoltaic process, including the array of panels, inverter(s) and the balance of system components required to enable the system to effectively deliver power to reduce a building’s consumption of electricity from the utility grid (Section 100.1 of the 2019 California Energy Code).
- 8) Defines “accessory dwelling unit” to mean an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multifamily dwelling is or will be situated. An accessory dwelling unit also includes an efficiency unit and a manufactured home, as defined in Section 18007 of the Health and Safety Code.

FISCAL EFFECT: Unknown

COMMENTS:

Author’s Statement: According to the author, “AB 2044 would prohibit a newly constructed Accessory Dwelling Unit (ADU) from being required to have solar panels. My district as well as many throughout the state heavily rely on ADUs also known as granny flats, as housing for their families or even to make extra revenue. ADUs are also a solution towards helping ease California’s housing crisis. ADUs are a less expensive way to house a family who is trying to get back on their feet, looking for a home, as well as older/ younger family members who can’t afford their own rent. Renewable energy is important, but the costs that go along with it can be exorbitant. The State should not be discouraging people from building ADUs by adding excess costs.”

Background:

Building Code Standard Process: The California Building Standards Law establishes the CBSC and the process for adopting state building standards. Statewide building standards are intended to provide uniformity in building across the state. State law specifies which departments are responsible for developing and proposing building standards. When there is no designated department then the CBSC is responsible. HCD is responsible for single family and multi-family dwellings.

Solar Mandate: In 2018, CEC proposed and the CBSC adopted a requirement that new homes be equipped with photovoltaic systems (also known as solar panels) to provide solar power. In doing so, California became the first state with such a requirement. The standards also include improved thermal building envelope standards (i.e., insulating the interior), residential and nonresidential ventilation requirements, and nonresidential lighting requirements. For residential buildings, the standards will result in about 53 percent less energy use than under the 2016 standards. The CEC further estimates that the new standards will reduce greenhouse gas (GHG) emissions by 700,000 metric tons over three years.

CEC's standards must be "cost-effective." On average, a photovoltaic system adds about \$9,500 to the cost of a new home and will result in a savings of \$19,000 in energy costs over 30 years. The up-front costs for solar are expected to continue to decrease as they have over the past several years. Given the fixed costs associated with their installation, the per square foot cost of a photovoltaic system is higher on smaller residential units than larger ones.

ADUs: ADUs are additional living quarters that are independent of the primary dwelling unit on the same lot. ADUs are either attached or detached to the primary dwelling unit, and provide complete independent living facilities for one or more person, including separate access from the property's primary unit. This includes permanent provisions for living, sleeping, eating, cooking, and sanitation.

ADUs have been identified as an important piece of the solution to California's housing crisis. According to the Turner Center for Housing Innovation at UC Berkeley, the average cost to build an ADU is relatively inexpensive at \$156,000. Because of their size and lower cost to construct, the Turner Center found that 58% of ADUs are rented out at below market rate. Over the past few years, the legislature has passed a number of bills to ease zoning restrictions and expedite approval processes at the local level, which has contributed to the increased supply of ADUs throughout the state.

Most ADUs are exempt from the state's solar mandate, including alternations of existing buildings, additions to existing buildings, and conversions of existing buildings to ADUs. However, newly constructed detached ADUs are not. Newly constructed attached ADUs would also be subject to the solar mandate as applied to the primary dwelling unit.

Summary of the Bill: The bill requires the CEC to propose, and the CBSC to adopt, approve, codify, and publish, building standards that would exempt newly constructed detached ADUs from all energy code requirements for newly constructed buildings, including requirements regarding insulation, fenestration, ventilation, heating, cooling, and photovoltaic systems.

Committee Comments:

Broader than Intended: The author's statement and supporting materials to the bill speak to its intent to narrowly address building code requirements as they relate to photovoltaic systems (i.e., solar panels). However, as written, the bill would exempt detached ADUs from all energy code standards, which is a substantial expansion of scope. **To address this issue, the Committee may wish to consider amending the bill to limit the scope of the bill to photovoltaic systems.**

Study v. Mandate: Building standards, technologies, and practices are always evolving. In recognition of this, at least once every three years the state building code is updated. The process involves a range of stakeholders with a wide range of expertise, and is generally accepted as best practice. As written, the bill would mandate a change to the building code to exempt ADUs from building standards. Even if amended to narrowly focus on photovoltaic systems (as recommended above), the process of updating the building code should be left to the existing process. **To address this issue, the Committee may wish to consider amending the bill to remove the mandate to change the building code, and instead require the CEC to study the issue of photovoltaic systems on detached ADUs and determine whether or not to propose changes for adoption and approval by CSBC.**

Defining ADU: There is already an existing definition of ADUs in the Government Code. The bill includes its own definition of an ADU, specifying that for purposes of the law this would include detached ADUs as well as “any similar detached residential dwelling unit”. The use of the term “similar” is likely to create confusion in the implementation of any standards. **To address this issue, the Committee may wish to consider amending the bill to utilize the existing definition of ADUs in the Government Code.**

Committee Amendments: To address the issues raised about the committee may wish to consider the following amendments:

- Limit the bill to only address photovoltaic systems;
- Remove the mandate to amend the building code to exempt ADUs from photovoltaic requirements, and instead require CEC to study the issue; and
- Utilize the existing definition of ADUs rather than developing a new one.

Arguments in Support: According to the California Building Officials (CALBO), “Exempting ADUs from the installation of solar panels can exponentially reduce the cost of creating this affordable housing alternative, allowing more property owners the chance to build and convert unused space. As public safety officers, Building Officials agree that this particular exemption would not negatively affect the health and safety of inhabitants, which is CALBO’s number one concern when creating affordable housing.”

Arguments in opposition: According to the Natural Resources Defense Council, “Weakening building code requirements specifically intended to save consumers money on heating, cooling and lighting bills; reduce wasteful energy consumption; and improve air quality is both counterproductive and unnecessary. AB 2044 provides no evidence that building codes adversely impact ADU development. If homes are rebuilt to outdated building code standards, they will lock their occupants into higher energy bills for decades, and in turn, hurt housing affordability.”

Related Legislation:

AB 69 (Ting) (2019): This bill would have required the Department of Housing and Community Development to create building standards for ADUs and small homes. This bill is in the Senate Floor Inactive File.

AB 178 (Dahle), Chapter 259, Statutes of 2019: This bill exempts, for three years, residential construction repaired after a declared emergency from the building code’s photovoltaic requirements.

SB 71 (Wiener) (2017): This bill would have required the CEC to consider requiring installation of a solar energy generation system on all new buildings. This bill was amended to no longer include this provision.

Double Referred: This bill was also referred to the Assembly Committee on Natural Resources where it will be heard should it pass out of this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Building Officials

Opposition

Natural Resources Defense Council

Sierra Club California

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