
SENATE COMMITTEE ON TRANSPORTATION AND HOUSING

Senator Jim Beall, Chair

2017 - 2018 Regular

Bill No:	SB 721	Hearing Date:	4/25/2017
Author:	Hill		
Version:	4/17/2017 Amended		
Urgency:	No	Fiscal:	Yes
Consultant:	Mikel Shybut		

SUBJECT: Contractors: decks and balconies: inspection.

DIGEST: This bill requires the regular inspection by a licensed individual of specified building assemblies such as decks and balconies with load-bearing components such as jousts or posts in a building with three or more multifamily units.

ANALYSIS:

Existing law:

- 1) Permits any 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, the building standards in the State Building Standards Code and other rules and regulations that they enforce.
- 2) Permits the owner, or authorized agent of an owner, to enter the building or premises whenever necessary to perform any work required pursuant to the State Building Standards Code and other rules and regulations.
- 3) Creates the California Building Standards Commission (BSC) under the Department of General Services. Provides that the BSC review the building standards of adopting state agencies and either approve, return with recommended changes, or reject the standards.
- 4) Provides that all construction or work for which a permit is required be subject to inspection by the designated enforcement agency.
- 5) Establishes that, if required, the inspection must be conducted after the structure is completed and ready for occupancy and requires structures of conventional or simple construction to be inspected at a single inspection.

- 6) Requires the enforcement agency to issue a Certificate of Occupancy for dwellings after the structure is completed for occupancy and any inspections required by the enforcing agency have been conducted and work approved.

This bill:

- 1) Requires an inspection of specified building assemblies such as balconies or decks that contain specified load-bearing components such as joists or posts in buildings with three or more multifamily dwelling units.
- 2) Requires the owner of the building to hire an inspector who is a licensed architect, civil engineer, structural engineer, or a certified construction inspector, building official, or other licensee approved by the Department of Consumer Affairs (DCA).
- 3) Provides that the purpose of the inspection is to verify that all building assemblies, including load-bearing components and their associated waterproofing elements, are in safe working condition and free from any hazardous condition caused by fungus, decay, or improper alteration to the extent that the safety of the public or the occupants is not endangered.
- 4) Requires, at minimum, each inspection to include:
 - a) Identification of each building assembly that constitutes a threat to the health or safety of the occupants
 - b) Assessment of the load-bearing components and the waterproofing elements of each building assembly
 - c) A representative sampling of building assembly components that are not directly visible but show no exterior damage
 - d) Evaluation of the load-bearing components and waterproofing elements that addresses the following:
 - i) Current condition of the building assembly
 - ii) Whether the current condition meets its load requirements
 - iii) Projected future performance and service life
 - iv) Recommendations for further inspections, if any
 - v) Recommendations for necessary repair/replacement
 - vi) An estimated cost of the repair/replacement
 - e) A written report stamped and signed by the inspector and presented to the owner of the building or owner designate within 45 days of completion, including photos and test results and indicating any

necessary emergency repairs.

- 5) Requires inspections be completed by January 1, 2022, or no later than five years after issuance of the certificate of occupancy for building permit applications submitted on or after February 1, 2017, unless already inspected within three years prior to January 1, 2018, and then by January 1 every five years after the initial inspection.
- 6) Requires that all permits for building assemblies that are in need of repair/replacement be obtained from the local jurisdiction and that all work be performed in compliance with the following:
 - a) The inspector's recommendations
 - b) Any manufacturer's specifications
 - c) The latest California Building Standards Code
 - d) All local jurisdictional requirements
- 7) Requires an owner to make emergency repairs immediately and requires, for non-emergency corrective work, an owner to apply for a permit within 60 days after receiving the inspection report and to make the repairs within 90 days of receiving the permit.
- 8) Requires an inspector to notify the enforcement agency if the owner does not make the repairs within 90 days, which will send a 30-day corrective notice to the owner, who, if not compliant with the 30-day notice, is required to pay \$200 per day until the repairs are completed.
- 9) Allows for the authorization of a building safety lien in the event of a civil penalty assessment, as specified and allows local enforcement agencies to recover inspection enforcement costs.
- 10) Requires the board of directors of a common interest development to conduct inspections of building assemblies that the homeowners association is obligated to maintain or repair in a similar manner as above but exempts an individual owner's separate interest in a planned development, as defined.
- 11) Requires inspections for condominium conversions for sale, as specified, with the report being provided to the Bureau of Real Estate and a final report provided to the local jurisdiction.

COMMENTS:

- 1) *Purpose.* According to the author, this bill is a follow up to SB 465 (Hill, 2016) which required the BSC to study recent balcony failures in the state and submit a report to the Legislature of findings and recommendations. That bill was a response to the Berkeley balcony collapse in 2015 that killed six and injured seven. In addition to the deadly Berkeley balcony collapse, a stairwell at an apartment building in the City of Folsom collapsed in 2015, killing a Cal Poly Masters student. The author states that both the Berkeley and Folsom collapses were caused by wood dry rot as a result of poor building maintenance. Current law does not require all local governments to inspect apartment and multi-dwelling structures or require inspections from other licensed entities. It's up to each city to decide if they want to inspect multi-family structures for maintenance and safety.

In January, 2017, the BSC required that contractors get sign-off from inspectors on the construction of new balconies before sealing them to ensure proper ventilation and quality. This bill requires that existing apartment and condominium buildings be inspected at least once every five years to ensure that balconies, stairwells, and other building assemblies with load-bearing components are safe and up to code. Building owners can hire a licensed entity to perform the inspection and proof of fixes will need to be submitted to the local jurisdiction.

- 2) *Background.* This measure is in response to the Berkeley balcony collapse on June 16, 2015. The balcony collapsed due to dry rotted joists, killing six young adults aged 21 to 22 and injuring seven others, mostly Irish citizens visiting on a summer exchange program. The incident occurred at the downtown Library Gardens apartment complex, located near the University of California, Berkeley campus. In the Contractors State License Board's (CSLB's) accusation against Segue, the contractor who worked on the Library Gardens apartment complex, the board alleges that floor joists installed on the balcony of the affected unit were not pressure treated and that instead of the plywood called for in the design plans, a thinner composite material was used. In addition, a subcontractor hired by Segue to waterproof the balcony did not install a membrane that would have made it waterproof. The work occurred between October 2005 and August 2006, during which time Berkeley received more than 38 inches of rain, causing the joists supporting the balcony to decay. This measure is intended to ensure that load-bearing components of building assemblies are safe.

- 3) *Berkeley's model.* On July 14, 2015 the Berkeley City Council unanimously passed Ordinance No.7,431-N.S. adding Section 601.4 to the Berkeley Housing Code requiring inspection of weather-exposed, exterior, elevated elements of buildings. The Ordinance requires inspection of exterior elevated elements (EEEs) such as balconies, decks, and stairs every three years, and it applies to temporary and permanent residences such as hotels and apartments. The EEE inspection program applies to all such buildings regardless of their original construction date. The Ordinance required the initial inspection within 6 months of the Ordinance passing and required inspections every three years thereafter. Writing in support of this bill, Berkeley Mayor Jesse Arreguin states that, upon inspection of buildings with EEEs, 402 buildings were identified as in need for repair work.
- 4) *Building on Berkeley.* Similarly to the Berkeley Ordinance, this bill would require regular inspections, but doesn't require an initial report until January 1, 2022, essentially allowing a 4 year notice, and subsequent reports every five years instead of three years. Also, Berkeley allows licensed general contractors and structural pest control licensees to perform the inspections. This bill was amended to specify that certain licensed professionals such as architects and civil engineers (also in Berkeley Ordinance) can perform inspections, unless otherwise approved by the DCA as qualified to perform the inspection. This bill also uses the broader term "building assemblies" instead of EEEs, which is defined to be inclusive of elevated exterior balconies, decks, porches, stairwells, etc.
- 5) *Unintentionally broad.* Prior to being amended on April 17th, this bill only addressed balconies and elevated walking surfaces that are both exposed to water and are six feet above grade. The current bill applies to building assemblies that include load-bearing components. This new language could result in a significant expansion beyond balconies and other elevated surfaces that are exposed to water, resulting in a significant workload burden on local jurisdictions. **The committee may wish to consider refocusing the language back to only requiring inspections for balconies and elevated walking surfaces that are above six feet from ground level and are exposed to water.**
- 6) *BSC emergency regulations.* On January 27, 2017 the BSC passed emergency regulations to address the safety of elevated elements exposed to water from rain, snow or irrigation. The regulations were modeled after a proposal by the International Code Council (ICC) to amend the International Building Code (IBC) and the International Existing Building Code (IBEC). For new construction, the IBC-modeled regulations require the inclusion of

manufacturer's installation instructions of the structure's impervious moisture barrier system in the construction documents and require the inspection and approval of this barrier before sealing. They also increase the minimum uniform load requirements for balconies and decks and require ventilation below balconies or elevated walking surfaces that are exposed to water. For existing buildings, the IEBC-modeled regulations require the maintenance of buildings and structures in safe and sanitary conditions. **The committee may wish to consider amending this bill to make it consistent with the CBC regulations, addressing only balconies or other elevated walking surfaces that are exposed to water have a structural framing protected by an impervious moisture barrier.**

- 7) *Intrusive sampling.* As part of the inspection, this bill allows inspectors to perform representative, intrusive sampling on components that are not directly visible, even if they show no exterior damage or deterioration, in a sufficient number of locations and to extrapolate that finding to all similar locations. This type of inspection may be more disruptive and costly than intended. **The committee may wish to consider whether intrusive sampling on existing buildings without exterior signs of damage or deterioration should be required.**
- 8) *Inspector liability.* This version of the bill requires the inspector to include in their report an expectation of future performance and projected service life of the structure. This projection may present a liability to the inspector should the structure not live up to the projection. **The committee may wish to consider whether an inspector should include a projected service life of the structure.**
- 9) *Back to balconies.* Prior to the April 17th amendments, this bill passed the Senate Business, Professions, and Economic Development Committee by a vote of 8-0. That version of the bill also received the support of the California Building Officials. This version contains amendments, as described above, that expand the scope of the inspections beyond balconies and elevated walkways exposed to rain and include requirements for inspection that may be costly and may introduce contractor liability concerns. **The committee may wish to consider the suggestions above to address some of these concerns and to return the bill to a focus on balcony safety.**

RELATED LEGISLATION:

SB 465 (Hill, 2016)—required the CA Building Standards Commission to study recent balcony failures in the state and submit a report to the Legislature of findings and recommendations

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

POSITIONS: (Communicated to the committee before noon on Wednesday, April 19, 2017.)

SUPPORT:

Consumer Attorneys of California
Center for Public Interest Law
City of Berkeley, Office of the Mayor

OPPOSITION:

California Apartment Association
California Association of Realtors
California Building Industry Association
California Building Officials
California Land Title Association

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