

Date of Hearing: May 9, 2018

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 2485 (Chau) – As Amended April 16, 2018

SUBJECT: Code enforcement: financially interested parties.

SUMMARY: Prohibits local inspection officials from being accompanied by financially interested persons during inspections of commercial properties or businesses. Specifically, **this bill:**

- 1) Prohibits a local official who inspects a commercial property or business for compliance with a state statute or regulation or local ordinance from being accompanied during the inspection by a person with a potential financial interest in the outcome of the inspection, unless the person is any one of the following:
 - a) The owner of the property or business;
 - b) The agent or representative of the owner of the property or business; or,
 - c) A person who has an existing contract with the local government of the local official to provide inspection, abatement, or remediation services for that particular inspected property or business.
- 2) Provides the following definitions:
 - a) "Agent or representative" may include, but is not limited to, a licensed contractor that is performing work on, or has completed work on, the commercial property or business that is the subject of the inspection;
 - b) "Local official" means a code enforcement officer of a city, county, or a city and county, a county health officer, a city health officer, or the designated agent of those health officers, as specified; and,
 - c) "Person with a potential financial interest in the outcome of the inspection" is any of the following:
 - i) A person who offers to remediate for compensation potential violations of a state statute or regulation or local ordinance found in the course of an inspection by a local official; or,
 - ii) A person who offers to provide or provides compensation to a local official in exchange for recommending the remediation services of a specific person, providing the contact information for those services to the owner or agent of the owner of the premises or business inspected, or providing the name of the owner of the property or business or agent or representative of the owner to the person who offers the remediation services.

- 3) Finds and declares that this bill addresses a matter of statewide concern, rather than a municipal affair as that term is used in Section 5 of Article XI of the California Constitution.

EXISTING LAW:

- 1) Allows cities to make and enforce all local, police, sanitary and other regulations not in conflict with state law.
- 2) Requires the building department of every city or county to enforce within its jurisdiction all the provisions published in the State Building Standards Code, State Housing Law, and the other rules and regulations promulgated pursuant to the State Housing Law pertaining to the erection, construction, reconstruction, movement, enlargement, conversion, alteration, repair, removal, demolition, or arrangement of apartment houses, hotels, or dwellings.
- 3) Makes it a misdemeanor for every executive or ministerial officer, employee, or appointee of the State of California, or any county or city therein, or any political subdivision thereof, to knowingly ask, receive, or agree to receive any emolument, gratuity, or reward, or any promise thereof excepting such as may be authorized by law for doing an official act.

FISCAL EFFECT: None

COMMENTS:

- 1) **Bill Summary.** This bill prohibits a local official who inspects a commercial property or a business for compliance with state law or regulation or local ordinance from being accompanied during the inspection by a person with a potential financial interest in the outcome of the inspection. Exceptions to this prohibition include the owner of the property or business or his or her representative, or a person with an existing contract with the inspector's local agency to provide inspection, abatement, or remediation services for that particular inspected property or business. Local officials subject to the provisions of this bill include code enforcement officers, county health officers, and city health officers.

This bill is sponsored by the author.

- 2) **Author's Statement.** According to the author, "Businesses typically go through code enforcement inspections to make sure they are safe, habitable, and healthy places for the public. A local government code enforcement officer, or health officer, will inspect a business and issue citations for anything that is not up to proper safety levels. The business must then fix any cited issues in order to receive a permit to operate.

"In December of 2017, a newspaper publication reported on a possible case of inappropriate behavior by a code enforcement officer and independent contractor. The article detailed an anonymous tip submitted by the owner of an auto body factory who applied for a permit with a city to renovate his business. When the time came for an inspection of the property, the code enforcement officer was accompanied by a third party independent contractor who operates a design and construction business.

"Prior to the inspection, the business owner previously had an architect design the plans for the renovation consistent with the city's codes. However, the code enforcement officer cited

a number of issues with the business and the architectural plan and required the business owner to fix them. After the inspection was complete and the code enforcement officer left the business, the owner was approached by the contractor who stayed behind and offered to redesign and construct the project for \$30,000. The business owner was quoted \$10,000 by the initial architect.

"The business owner ultimately paid \$30,000 to the contractor, who accompanied the code enforcement officer, out of fear that not doing so would result in delays to having the permit approved. The business owner suspected being the subject of a scheme whereby the contractor and/or code enforcement officer would benefit financially from the inspection. AB 2485 limits situations that would allow local government code enforcement officers or health officers from being accompanied by a third party independent contractor to only those where the individual is only there to provide professional expertise and will not financially benefit from remedying any of the issues found during the inspection."

- 3) **Background.** Code enforcement is the prevention, detection, investigation and enforcement of violations of statutes or ordinances regulating public health, safety, and welfare, public works, business activities and consumer protection, building standards, land-use, or municipal affairs.

A code enforcement officer is any person who is not a peace officer and who is employed by any governmental subdivision, public or quasi-public corporation, public agency, public service corporation, any town, city, county, or municipal corporation, whether incorporated or chartered, who has enforcement authority for health, safety, and welfare requirements, whose duties include enforcement of any statute, rule, regulation, or standard, and who is authorized to issue citations, or file formal complaints.

A code enforcement officer also includes any person who is employed by the Department of Housing and Community Development who has enforcement authority for health, safety, and welfare requirements pursuant to the Employee Housing Act, the State Housing Law, the Manufactured Housing Act of 1980, the Mobilehome Parks Act, and the Special Occupancy Parks Act.

A county health officer enforces and observes in the unincorporated territory of a county orders and ordinances of the board of supervisors pertaining to public health and sanitary matters, orders of the local health department, and statutes relating to public health. A city health officer exercises similar functions for cities.

Code enforcement officers and health officers are the local officials that would be subject to this bill's requirements.

- 4) **Arguments in Support.** None on file.
- 5) **Arguments in Opposition.** The California Building Officials, in opposition, state, "As agents of local government, building officials often refer to subject matter experts when providing inspections. Although CALBO understands the intent of the bill, we believe violators to be few and far between. 'Financially interested parties,' such as contractors, can be a resource, and can provide valuable insight into inspection and construction particulars.

Limiting their access and communication with building officials during an inspection can be harmful to the client and the overall inspection process."

REGISTERED SUPPORT / OPPOSITION:

Support

None on file

Opposition

California Building Officials
Rural County Representatives of California

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