

Date of Hearing: April 10, 2024

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Juan Carrillo, Chair

AB 2433 (Quirk-Silva) – As Introduced February 13, 2024

SUBJECT: California Private Permitting Review and Inspection Act: fees: building permits.

SUMMARY: Allows an applicant for a building permit to employ a private professional provider to perform plan-checking services, assess plans and specifications, and complete building inspections if the local agency fails to perform these functions within specified timeframes. Specifically, **this bill:**

- 1) Creates the California Private Permitting Review and Inspection Act.
- 2) Allows an applicant for a building permit to contract with or employ at the applicant's own expense a private professional provider to perform plan-checking services and assess the plans and specifications to ensure that the plans and specifications comply with State Housing Law and the State Building Code, if the local agency has not completed the plan-checking services related to the plans and specifications submitted as part of the application within 30 days of receiving an application for a building permit.
- 3) Allows an applicant to contract with or employ at the applicant's own expense a private professional provider to complete the inspection to comply with State Housing Law and the State Building Code, if the local agency has not completed the inspection within five days of receiving from the applicant a request for an inspection as part of the application for a building permit.
- 4) Requires a local agency to create a list of recommended private professional providers and post the list on the local agency's website.
- 5) Requires a private professional provider to perform plan-checking services or inspection pursuant to this bill to determine compliance with State Housing Law and the State Building Code.
- 6) Requires, if the plans and specifications or the building complies with State Housing Law and the State Building Code, the private professional provider to prepare an affidavit under penalty of perjury on a form prescribed by the local agency stating all of the following:
 - a) The private professional provider performed the plan-checking services or inspection pursuant to this bill.
 - b) The plans and specification or building complies with State Housing Law and the State Building Code.
- 7) Requires the applicant to submit to the local agency a report of the plan-checking services or inspection pursuant to this bill within five days of the completion of the plan-checking services or inspection. The report shall include both of the following:
 - a) The affidavit described in 6), above.

- b) Information required by the local agency.
- 8) Requires, within 30 days of receiving the report pursuant to 7), above, the local agency to consider the report and, based on the report, do either of the following:
- a) Issue the building permit if the plans and specifications or building and private professional provider complies with State Housing Law or the State Building Code.
 - b) Deny the building permit and notify the applicant in writing that the plans and specifications, building, or private professional provider does not comply with State Housing Law or the State Building Code if the plans and specifications, building, or private professional provider does not comply with State Housing Law or the State Building Code. The notice shall specify the requirements for the plans and specifications, building, or private professional provider to comply with State Housing Law and the State Building Code.
- 9) Allows an applicant to appeal a denial of a building permit pursuant to 8), above, to the local appeals board.
- 10) Provides that this bill shall not apply to any of the following buildings:
- a) Health facilities.
 - b) Public buildings.
 - c) Highrise structures.
- 11) Requires the building department of a city, including a charter city, or county to prepare a schedule of fees and post the schedule on its internet website if the city or county prescribes fees for permits, certificates, or other forms or documents required or authorized by State Housing Law.
- 12) Provides the following terms for the purposes of this bill:
- a) “Health facility” has the same meaning as defined in Section 1250 of the Health and Safety Code.
 - b) “Highrise structure” means a building of any type of construction or occupancy having floors used for human occupancy located more than 75 feet above the lowest floor level having building access.
 - c) “Private professional provider” means a professional engineer licensed pursuant to the Professional Engineers Act (Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code) or an architect licensed pursuant to the Architects Practice Act (Chapter 3 (commencing with Section 5500) of Division 3 of the Business and Professions Code).
- 13) Provides that no reimbursement is required by this bill pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service

mandated by this bill or because costs that may be incurred by a local agency or school district will be incurred because this bill creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

EXISTING LAW:

- 1) Allows cities and counties to “make and enforce within its limits, all local, police, sanitary and other ordinances and regulations not in conflict with general laws.” It is from this fundamental power (commonly called the police power) that cities and counties derive their authority to regulate behavior to preserve the health, safety, and welfare of the public, including land use authority. (California Constitution, Article XI, § 7)
- 2) Establishes the California Building Standards Commission (CBSC) within the Department of General Services and requires CBSC to approve and adopt building standards and to codify those standards in the California Building Standards Code. [Health and Safety Code (HSC) § 18930]
- 3) Establishes the Permit Streamlining Act (PSA), which, among other things, establishes time limits within which state and local government agencies must either approve or disapprove permits to entitle a development. [Government Code (GOV) § 65920 - 65964.5]
- 4) Establishes standards and requirements for local agencies to review non-discretionary postentitlement phase permits, including time limits within which local agencies must either approve or disapprove postentitlement permits (GOV § 65913.3).
- 5) Allows the governing body of a local agency to authorize its enforcement agency to contract with or employ a private entity or persons on a temporary basis to perform plan-checking functions, as specified. (HSC § 17960.1 § 19837)
- 6) Requires a local agency to contract with or employ a private entity or persons on a temporary basis to perform plan-checking functions upon the request of an applicant for specified structures when there is an “excessive delay” in checking the plans and specifications that are submitted as a part of the application. (HSC § 17960.1 § 19837)
- 7) For a residential building permit, “excessive delay” generally means the building department or building division of a local agency has taken more than 30 days after submitting a complete application to complete the structural building safety plan check of the applicant’s set of plans and specifications that are suitable for checking. “Residential building” means a one-to-four family detached structure not exceeding three stories in height. (HSC § 17960.1)
- 8) For a nonresidential permit for a building other than a hotel or motel that three stories or less, “excessive delay” generally means the building department or building division of the local agency has taken more than 50 days after submitting a complete application to complete the structural building safety plan check of the applicant’s set of plans and specifications that are suitable for checking. (HSC § 19837)

FISCAL EFFECT: This bill is keyed fiscal and contains a state-mandated local program.

COMMENTS:

- 1) **Bill Summary.** This bill allows applicants for a building permit to hire a private professional provider to perform plan-checking services, and assess plans and specifications to ensure they comply with State Housing Law and the State Building Code, if the local agency fails to perform these functions within 30 days of receiving an application for a building permit. Applicants may do the same for a building inspection if the local agency has not completed the inspection within five days of receiving a request for an inspection as part of the permit application.

This bill requires a private professional provider to perform plan-checking services or inspections to determine compliance with State Housing Law and the State Building Code. If the plans and specifications or the building complies, the private professional provider must prepare an affidavit under penalty of perjury on a form prescribed by the local agency stating that the private professional provider performed the plan-checking services or inspection and that they comply with State Housing Law and the State Building Code.

This bill requires the applicant to submit to the local agency a report of the plan-checking services or inspection pursuant to this bill within five days of the completion of those services. The report must include the affidavit from the private professional provider and information required by the local agency. Within 30 days of receiving the report, the local agency must:

- a) Issue the building permit if the plans and specifications or building and private professional provider complies with State Housing Law or the State Building Code.
- b) Deny the building permit and notify the applicant in writing that the plans and specifications, building, or private professional provider does not comply with State Housing Law or the State Building Code, if that is the case. The notice must specify the requirements for the plans and specifications, building, or private professional provider to come into compliance. An applicant may appeal a denial to the local appeals board.

This bill requires a local agency to create a list of recommended private professional providers and post the list on the local agency's website. It also requires the building department of a city or county to prepare a schedule of fees and post the schedule on its internet website if the city or county prescribes fees for permits, certificates, or other forms or documents required or authorized by State Housing Law.

This bill specifies that it does not apply to health facilities, public buildings, or highrise structures.

This bill is sponsored by NAIOP CA.

- 2) **Author's Statement.** According to the author, "Efficiency is key for economic growth and effective governance. AB 2433 aims to cut through the red tape in the building permit process by setting reasonable, common-sense deadlines for plan-checking and inspections. It is all about keeping projects moving forward smoothly and providing relief to our local agencies facing challenges in timely permit processing. By making the permit process more efficient, we support our communities and businesses alike."

- 3) **Background.** State Housing Law establishes statewide construction and occupancy standards for buildings used for human habitation. Existing law authorizes the governing body of a county or city to prescribe fees for permits, certificates, or other forms or documents required or authorized under the State Housing Law, and fees to defray the cost of enforcement required by the law to be carried out by local enforcement agencies.
- 4) **Building Codes.** The California Building Standards Code contains building standards and regulations as adopted by the BSC. These standards include, among other requirements, structural standards for building safety (the Building Code), fire safety standards (the Fire Code), energy efficiency standards (the Energy Code), and standards for green buildings (CalGreen).

The BSC updates the Building Standards Code on a three-year cycle—the BSC will publish new standards on or before July 1, 2022, that will go into effect on January 1, 2023. Once adopted at the state level, cities and counties in California then enact an ordinance to adopt the codes. New construction and improvements to existing buildings must comply with the current building codes, and improvements to an existing building may trigger additional code upgrades for other parts of the building.

Existing law requires the building department of every city or county to enforce the provisions of the State Housing Law, the California Building Standards Code, and the other specified rules and regulations promulgated pursuant to the State Housing Law.

- 5) **Planning for and Approval of New Development.** Planning for and approving new development is mainly a local responsibility. The California Constitution allows cities and counties to “make and enforce within its limits, all local, police, sanitary and other ordinances and regulations not in conflict with general laws.” It is from this fundamental power (commonly called the police power) that cities and counties derive their authority to regulate behavior to preserve the health, safety, and welfare of the public – including land use authority. Cities and counties enforce this land use authority through zoning regulations, as well as through an “entitlement process” for obtaining discretionary as well as ministerial approvals.

The scale of the proposed development, as well as the existing environmental setting determine the degree of local review that occurs. For larger developments, the local entitlement process commonly requires multiple discretionary decisions regarding the subdivision of land, environmental review per the California Environmental Quality Act (CEQA), design review, and project review by the local agency’s legislative body (city council or county board) or by a planning commission delegated by the legislative body.

- 6) **The Permit Streamlining Act.** The PSA requires public agencies to act fairly and promptly on applications for development proposals. Under the PSA, public agencies have 30 days to determine whether applications for development projects are complete and request additional information; failure to act results in an application being “deemed complete.” The PSA applies to the discretionary approval phase of a development review process; this is the phase where the agency, in its discretion, decides whether it approves of the concept outlined in the development proposal.

- 7) **Non-discretionary Postentitlement Permits.** A development proposal that is approved and entitled by a local agency is still required to obtain approval for a range of non-discretionary permits. This includes building permits and other permits related to the physical construction of the development proposal. The timelines established in the PSA do not apply to these non-discretionary permits.

Essentially, the PSA applies to the discretionary approval phase of a development review process. This is the phase where the local agency, in its discretion, decides whether or not it approves of the concept outlined in the development proposal. Because the local agency is exercising discretion, these approval decisions are subject to CEQA. A development proposal that is approved and entitled by a local agency must also obtain approval of objective permits associated with the development proposal. This ensures the proposal is compliant with state and local building codes and other measures that protect public health, safety and the environment. This stage of the review process is often ministerial, as these postentitlement permits are typically objective in nature. Generally, once a local agency invests the time and effort to approve and entitle a development proposal, there is an incentive for the agency to process the postentitlement permits in a timely fashion.

- 8) **Excessive Delays for Plan Checks.** Existing law requires a local agency to contract with or employ a private entity or persons on a temporary basis to perform plan-checking functions upon the request of an applicant when there is an “excessive delay” in checking the applicant’s plans and specifications.

For a nonresidential permit for a building other than a hotel or motel that is three stories or less, “excessive delay” generally means the building department or building division of the local agency has taken more than 50 days after receiving a complete application to complete the structural building safety plan check of the applicant’s set of plans and specifications that are suitable for checking.

For a residential building permit, “excessive delay” generally means the building department or building division of a local agency has taken more than 30 days after receiving a complete application to complete the structural building safety plan check of the applicant’s set of plans and specifications that are suitable for checking. “Residential building” means a one-to-four family detached structure not exceeding three stories in height.

- 9) **Author’s Amendments.** Due to timing constraints, the author has requested that the Committee adopt the following amendments:

- a) Change references in the timelines required by the bill to “business days.”
- b) Delete the provision requiring a local agency to create a list of recommended private professional providers and post the list on the agency’s website.

- 10) **Related Legislation.** AB 3012 (Grayson) requires a city or county that has an internet website to make a fee estimate tool that the public can use to calculate an estimate of fees and exactions for a proposed housing development project available on its internet website. AB 3012 is pending in this Committee.

- 11) **Previous Legislation.** AB 2234 (Robert Rivas), Chapter 651, Statutes of 2022, required local agencies to process non-discretionary permits within 30 days for small housing development projects and 60 days for large housing development projects.
- 12) **Arguments in Support.** A large coalition of supporters, including the sponsor of this bill, NAIOP CA, state, “The above organizations support AB 2433 (Quirk-Silva), legislation that will improve the efficiency of California's building permit process, which in coordination with local planning officials will enable an alternative plan process and allow economic and community development opportunities to come to fruition more quickly.

“AB 2433 proposes the implementation of flexible fee structures, expedited inspection timelines, and the conditional employment of private professional services. These measures are designed to enhance the speed and predictability of permit processing, alleviating the unnecessary burdens currently borne by project applicants, particularly those in small business sectors and entities working on affordable housing in underserved communities.

“The bill’s emphasis on establishing definitive deadlines and permitting the sensible use of private professionals in the inspection process promises to cultivate a more streamlined, transparent, and conducive environment for growth and investment across California. Furthermore, AB 2433 thoughtfully ensures that critical safety and oversight measures remain uncompromised for major projects. We believe that the enactment of AB 2433 represents an essential step towards fostering a more vibrant, equitable, and sustainable economic future for all Californians.”

- 13) **Arguments in Opposition.** The Rural County Representatives of California, the California State Association of Counties, the Urban Counties of California, and the League of California Cities write, “We understand the issue of lagging permitting times in some jurisdictions and would like to find a path to facilitating that needed construction, whether commercial or residential, in a reasonable amount of time. However, we do not believe that the solution put forth in AB 2433 adequately preserves a local jurisdiction’s ability and duty to enforce building related laws. AB 2433 allows an applicant for a construction project (large or small with the only exceptions being health facilities, high rises and public buildings) to pay a private third party to review plans and inspect the site, even if that is the same professional that designed the plans and works with (or for) the company. Even if the bill included an anti-collusion provision that disallowed services from professionals connected with a project, there is a clear financial incentive for the person paid by the applicant to do site review and inspection to render decisions favorable to applicant. Quite simply, directly paying the ‘regulator’ (a private individual in this case) to regulate you leads to biased results and creates a structure of deregulation.

“Building inspection is an important step in the public safety process – there are many examples of unpermitted activities leading to catastrophic outcomes, such as 2016 Valley fire that killed four people and burned over 76,000 acres - all caused by an unpermitted hot tub electrical connection. We are concerned that as currently drafted, AB 2433 removes government oversight in the permitting process, allowing only approval or denial based on a private third-party report, negating any involvement, oversight or independent verification or judgment of the facts by the local jurisdiction.

“To address concerns of slow permitting timelines in some jurisdictions, we suggest the bill is amended to allow for an expedited permitting process, similar to those that are already in place for other specific permits, such as broadband microtrenching permits or those in the air pollution permitting arena.”

14) **Double-Referral.** This bill is double-referred to the Housing and Community Development Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

NAIOP California [SPONSOR]
Associated General Contractors
Bay Area Council
Building Owners and Managers Association of California
California Apartment Association
California Building Industry Association
California Business Properties Association
California Business Roundtable
California Chamber of Commerce
California Manufacturing Technology Association
Institute of Real Estate Management (IREM)
Ucan Chambers of Commerce
Yimby Action

Opposition

California Fire Chiefs Association
California State Association of Counties
Fire Districts Association of California
League of California Cities
Rural County Representatives of California
Urban Counties of California

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