

Date of Hearing: April 24, 2024

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Juan Carrillo, Chair

AB 2117 (Joe Patterson) – As Introduced February 5, 2024

**SUBJECT:** Development permit expirations: actions or proceedings.

**SUMMARY:** Excludes time spent in litigation from the timeframe in which a housing permit or other project approval can expire. Specifically, **this bill:**

- 1) Defines the time that an action is “pending” as the time of its commencement until its final determination upon appeal, or until the time for appeal has passed, unless the judgment is sooner satisfied.
- 2) Defines “permit” as a variance, conditional use permit, or any other development permit.
- 3) Specifies that the period of time before a permit or project approval issued by a city, county, or state agency expires shall not include the period of time during which an action or proceeding involving the approval or conditional approval of the permit or project approval is or was pending.
- 4) Provides that no reimbursement is required by this bill because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay the program or level of service mandated by this bill.

**EXISTING LAW:**

- 1) Recognizes that there is a housing crisis in California, affirms the importance of reducing delays in completing housing projects, and acknowledges that legal challenges against decisions made by cities or counties can discourage project applicants from proceeding with projects, even if the necessary approvals are in place. (Government Code (GOV) § 65009)
- 2) Establishes procedures through which someone can challenge a decision related to a proposed development in court, including limiting that legal challenge to issues that were brought up at the public hearing or in written correspondence prior to the hearing. (GOV § 65009)
- 3) Establishes a 90 day timeframe from the time of decision by a legislative body in which legal actions or proceedings related to the legislative body’s decision surrounding development agreements, variances, conditional use permits, or any other permit can be brought forward. After that, no further legal actions or proceedings can be brought against the decision. (GOV § 65009)
- 4) Mandates that every permit shall remain valid if work on the site authorized begins within 12 months of permit issuance, unless the permittee has abandoned the work. (Health and Safety Code (HSC) § 18938.6)
- 5) Allows a permittee to request one or more permit extensions of not more than 180 days per extension, to be granted by the local building official. (HSC § 18938.6)

- 6) Authorizes local governments to adopt local amendments to the California Building Standards Code. (HSC § 18941.5)
- 7) Generally requires state and local government agencies to inform decision makers and the public about the potential environmental impacts of proposed projects, and to reduce those environmental impacts to the extent feasible. (Public Resources Code (PRC) § 21000)
- 8) Exempts certain housing projects from the provisions of CEQA by subjecting them to a streamlined and ministerial approval process. (GOV §§ 65852.2, 65852.22, 65852.23, and 65852.26, 65913.4, 65912.100-65912.140, 65913.16)
- 9) Provides for a streamlined, ministerial approval process [via SB 423 (Wiener), Chapter 778, Statutes of 2023] for infill projects with two or more residential units in jurisdictions that are not on track to meet their Regional Housing Needs Assessment (RHNA). For projects approved via that streamlined, ministerial pathway, the local government approval remains valid for three years from the date of final judgment upholding the approval. If litigation is filed on a project approved under SB 423 while the developer is requesting a modification request, the original project approval shall remain valid and shall be further extended during the pendency of the litigation. (GOV § 65913.4)

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

**COMMENTS:**

- 1) **Bill Summary and Author's Statement.** This bill specifies that the period of time before a permit or project approval issued by a city, county, or state agency expires must not include the period of time during which an action or proceeding involving the approval or conditional approval of the permit or project approval is or was pending. The Chico Builders Association is the sponsor of this bill.

According to the author, "Assembly Bill 2117 is a simple bill. All it does is ensures that local and state permits do not expire on an approved project while a CEQA challenge is taking place."

- 2) **Permit and Entitlement Expiration.** California's Building Standards Codes (CBSC) are published in their entirety every three years. Intervening code adoption cycles produce supplement pages half-way (18 months) into each triennial period. Amendments to California's building standards are subject to a lengthy and transparent public participation process throughout each code adoption cycle. There are a few exemptions which allow a local governing body, city, or county to modify state building standards. A local governing body, city, or county can adopt an ordinance or a resolution in a public meeting that finds that a local building standard must be modified from the state building standard because of local climatic, geological or topographical conditions, and must file that ordinance with the California Building Standards Commission (commission). The commission reviews the findings of the ordinance to determine if the local governing body followed the correct procedure.

A developer is subject to the state's building standards and any local changes made through an ordinance to the state's building standards at the time the permit is issued. Unless there is a local ordinance setting forth different local timelines, building permits are deemed expired

twelve months after issuance if the work has not begun or if the permittee has suspended or abandoned work any time after the permit is issued. Building officials have discretion to grant one or more extensions for time periods of not more than 180 days if the permittee requests an extension and provides a written demonstrable and justifiable cause for the extension. Any subsequent building permits are subject to building standards in place at the time the permit is issued.

Local governments set their own timelines for planning approval and entitlement expiration through local Municipal Codes, unless specific timelines are set for certain housing projects via state legislation, as is the case in SB 423. There is typically language in the local Municipal Code stating that a certain action must be taken (e.g. site or building permit issued or tentative map approved) within a period of time or the approval will expire or require an extension of time from the authorizing body. The local policies and procedures surrounding the granting of these extensions vary from jurisdiction to jurisdiction.

SB 423, among other provisions, provides for a streamlined, ministerial approval for housing developments in jurisdictions that are not on track to meet their RHNA. For projects approved via that streamlined, ministerial pathway, statute mandates that the local government approval remains valid for three years from the date of final judgment upholding the approval. If litigation is filed on a project approved under SB 423 while the developer is requesting a modification request, the original project approval shall remain valid and shall be further extended during litigation. In doing so, SB 423 sets the precedent for state law to supersede permit and planning approval expiration timelines when a project is subject to litigation, as is proposed by this bill.

- 3) **Litigation During the Approvals Process.** In California, housing approvals are often subject to litigation, a phenomenon that has become a hurdle in addressing the state's housing crisis. Developers seeking to construct new housing projects must navigate a complex regulatory landscape that includes not only obtaining necessary approvals from local governments but also preparing for potential legal challenges. Legal challenges may arise during the various stages of the local approvals process. They may include environmental lawsuits under the California Environmental Quality Act (CEQA); land use and zoning lawsuits, including litigation brought against zoning approvals, variances, conditional use permits, or other local authorizations; lawsuits over fees assessed to a proposed development; lawsuits over building permits issued – or those not obtained – to name a few examples.

These challenges may arise from community groups or individuals who oppose the development for various reasons, such as concerns about environmental impact, traffic congestion, or changes to neighborhood character. Regardless of the intent behind the lawsuit, all lawsuits add time and costs to the development. In some instances, these lawsuits can last for years, if not decades, and they may be used as a tactic to stall, or indefinitely delay, certain developments. Since the state and local governments set timelines under which planning approvals and building permits expire, it is not uncommon for the approval to expire while a project proponent is held up in litigation.

- 4) **Previous Legislation.** AB 1152 (Patterson) of 2023 was similar to this bill. AB 1152 was referred to this committee but never heard.

SB 423 (Wiener), Chapter 778, Statutes of 2023, provided for a streamlined, ministerial approval process for housing developments in jurisdictions that are not on track to meet their RHNA.

- 5) **Arguments in Support.** According to the bill’s sponsor, Chico Builders Association, “This policy change helps represent a crucial step towards protecting applicants, builders, and developers from the detrimental effects of meritless litigation and facilitating the timely commencement and completion of much-needed development projects. According to the California Department of Housing and Community Development during the last ten years, housing production averaged fewer than 80,000 new homes each year, and ongoing production continues to fall far below the projected need of 180,000 additional homes annually. One reason behind this delay as many are aware, is the fact that the development process often faces significant challenges, including legal actions that can lead to delays, uncertainty, and increased costs. In many cases, these legal challenges are unfounded and serve only to hinder progress without any legitimate basis. Assembly Bill 2117 addresses this issue by providing a mechanism to suspend the expiration period for permits or entitlements during litigation, ensuring that applicants are not unfairly penalized for circumstances beyond their control.

“Furthermore, AB 2117 promotes efficiency and expediency in the development process by allowing applicants to resume development promptly following the conclusion of litigation. Without the burden of reapplying for permits lost due to litigation delays, applicants can focus their resources on advancing their projects, ultimately benefiting the communities they serve. In conclusion, Assembly Bill 2117 represents a sensible and equitable approach to addressing the challenges posed by meritless litigation in the development process. By safeguarding permits and entitlements during litigation and promoting the timely completion of development projects, AB 2117 will contribute to the overall well-being and prosperity of our state.”

- 6) **Arguments in Opposition.** None on file.
- 7) **Double-Referred.** This bill is double-referred to the Assembly Housing and Community Development Committee where it passed on a 9-0 vote on April 17, 2024.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

Chico Builders Association [SPONSOR]  
 BuildCasa  
 California Building Industry Association  
 Chico Chamber of Commerce  
 North Valley Property Owners Association  
 Sand Hill Property Company  
 SPUR  
 The Two Hundred for Homeownership  
 Valley Contractors Exchange  
 Valley Contractors Workforce Foundation  
 YIMBY Action

**Opposition**

None on file

**Analysis Prepared by:** Linda Rios / L. GOV. / (916) 319-3958