
SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair
2021 - 2022 Regular Session

AB 838 (Friedman) - State Housing Law: enforcement response to complaints

Version: July 13, 2021

Policy Vote: HOUSING 6 - 1, GOV. & F. 4
- 0

Urgency: No

Mandate: Yes

Hearing Date: August 16, 2021

Consultant: Mark McKenzie

Bill Summary: AB 838 would require cities and counties to conduct building inspections upon receiving a complaint regarding a potential lead hazard or substandard condition and provide free copies of inspection reports and citations to the complainant and other affected persons, as specified. The bill would prohibit cities and counties from collecting an inspection fee or charging for inspection reports unless a lead hazard or substandard condition is documented.

Fiscal Impact:

- Unknown local costs to conduct complaint-driven inspections regarding potential lead hazards or substandard conditions, and provide free copies of inspection reports and citations. The bill prohibits cities and counties from charging fees for those inspections and inspection reports unless specified violations are found. To the extent some local costs cannot be recovered by inspection fees and charges, these costs could be reimbursable from the state General Fund, subject to a determination by the Commission on State Mandates.

Background: Existing law requires the building department of each city and county to enforce within its jurisdiction all provisions of the State Building Standards Code and provisions of the State Housing Law pertaining to the construction, alteration, repair, demolition, or arrangement of apartment houses, hotels, or dwellings. Existing law defines a substandard building as any building or a portion thereof in which there exists specified conditions to an extent that endangers the life, limb, health, property, safety, or welfare of the public or building occupants, as specified. In addition, any building or portion thereof that contains lead hazards is a violation of State Housing Law. Lead hazards include deteriorated lead-based paint, lead-contaminated dust, lead-contaminated soil, or disturbance of lead-based paint without containment that endangers the health of the occupants or the public.

Local enforcement agencies are authorized to enter and inspect any building whenever necessary to secure compliance with the State Housing Law, building standards, or other rules the agency has the power to enforce. To identify a violation, local officials must generally secure access to the property with the consent of the property owner, or must be able to identify violations from outside the property without extraordinary effort. With probable cause, local officials can secure an inspection warrant to enter a property without the owner's consent.

Existing law specifically authorizes local governments to charge fees for a variety of building, fire, and code enforcement inspections, including for all of the following:

- The abatement of public nuisances.
- The correction of any violation of habitability standards.
- The enforcement of zoning ordinances.
- Inspections and abatement of violations of fire safety standards, the State Housing Law, the building code, and local ordinances and regulations that implement any of the above.

In addition to fees, local agencies can charge fines to property owners and place liens on property to recover costs associated with abating nuisances or remedying code violations, and some local governments also opt to spend local general funds on code enforcement or inspection activities.

Proposed Law: AB 838 would require cities and counties to conduct building inspections for potential lead hazards and substandard conditions. Specifically, this bill would do the following, beginning July 1, 2022:

- Require a city or county that receiving a complaint from a tenant, resident, or occupant, or that person's agent, regarding a potential violation of state lead hazard or substandard building laws to take the following actions:
 - Inspect the building, the portion intended for human occupancy, or the premises for a lead hazard or substandard building violations.
 - Document any lead hazards that would be discovered upon a reasonably competent and diligent visual inspection of the property, and identify any substandard conditions.
 - Advise the owner or operator of each violation and each action that is required to remedy the violation, and schedule a re-inspection to verify correction of any violations.
- Require a city or county to conduct the inspection at least as promptly as it conducts an inspection in response to a request for final inspection under the building code. A city or county would be relieved from the inspection obligation if the complaint does not allege one or more substandard conditions or if a previous complaint was submitted for the same property in the previous 180 days and determined to be unfounded or frivolous.
- Require a city or county to provide free, certified copies of an inspection report and any citations to the complaining tenant, resident, occupant, or their agent, and to all potentially affected persons, if the inspection reveals a condition that potentially affects multiple tenants, residents, or occupants.
- Prohibit a city or county from collecting a fee, cost, or charge from a property owner or their agent for any inspection or inspection report regarding that property unless the inspection reveals one or more material lead hazard violation or deems and declares the property to be substandard.
- Specify that the bill does not limit or alter the existing authority for a city or county to impose fees on rental property owners to support a rental property inspection program, or to otherwise impose generally applicable charges, fees, or assessments to cover the costs of inspections or inspection reports required by the bill.
- Prohibit a required inspection or report from being subject to any unreasonable conditions, including a requirement that the complainant first make a demand for correction from the property owner, that the tenant be current on rent or otherwise in compliance with a rental agreement, the complainant not be involved in a legal dispute with the property owner.

- Prohibit a city or county from unreasonably refusing to communicate with the tenant, resident, occupant, or their agent regarding any matter covered by the bill.
- Specify that the bill does not impose a mandatory duty or be construed to affect any immunity otherwise applicable to a city or county under existing law, and require enforcement of the bill to be brought through a writ of mandate.

Related Legislation: AB 362 (Quirk-Silva), which is currently pending in this Committee, would require cities and counties to establish and administer a homeless shelter inspection program, including annual and complaint-driven inspections, enforcement and penalty provisions, and annual reporting of inspection and violation information to state entities, as specified.

Staff Comments: This bill would impose a state mandated local program by requiring cities and counties to inspect properties that may violate lead hazard standards and substandard building laws upon complaint from specified persons or their agents. However, not all inspections will result in violations. Cities and counties have broad authority to impose fees for inspections using their police powers and as specified in existing law, so long as the fee does not exceed the reasonable regulatory costs to the local agency. The bill explicitly prohibits the city or county from charging a fee for the inspection or inspection report unless the inspection discovers a material lead hazard violation or deems and declares the property to be substandard. Thus, if no violations are discovered upon inspection, the city or county would be forced to cover its expenses from sources other than inspection fees. Some local agencies have, at their discretion, established rental property inspection programs and charge fees to offset their inspection costs, and the bill states that it does not limit or alter existing authority to impose fees on rental property to support such a program, or to otherwise impose generally applicable charges, fees, or assessments to cover the costs of inspections or inspection reports required by the bill. It is unclear whether the general fee authority afforded to local agencies would allow them to recover costs for inspections and reports when no violations are found since the bill explicitly prohibits the charging of fees in those circumstances. To the extent a local agency incurs costs and files a claim for state reimbursement with the Commission on State Mandates, these local costs could be borne by the state General Fund, subject to a determination by the Commission.

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