

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2023-2024 Regular Session**

AB 2114 (Irwin)  
Version: February 5, 2024  
Hearing Date: June 18, 2024  
Fiscal: No  
Urgency: Yes  
ID

**SUBJECT**

Building standards: exterior elevated elements: inspection

**DIGEST**

This bill allows, with immediate effect as an urgency measure, common interest developments with three or more multifamily units to obtain visual inspections of their exterior elevated elements, as required by law, through a civil engineer.

**EXECUTIVE SUMMARY**

The condition and safety of the balconies and other exterior elevated elements of California's housing structures is of vital importance. In 2015, the balcony of an apartment building in Berkeley, California collapsed, killing six people and injuring seven others. In response, the Legislature enacted various measures to strengthen the state's standards for balconies and exterior elevated elements, and to require that these structures be regularly inspected for safety. One type of housing in California subject to these new requirements were common interest developments (CIDs), which are self-governing housing developments comprised of individually-owned housing units and common space. In 2019, the Legislature enacted SB 326 to create a requirement that CIDs with three or more multifamily units obtain a visual inspection of a statistically significant sample of its exterior elevated elements by January 1, 2025 and every nine years thereafter. SB 326 required that these inspections be completed by either an architect or a structural engineer. AB 2114 proposes to expand the list of professionals who can complete this required inspection to include civil engineers, who are similar in training but less specialized than structural engineers. AB 2114 also includes an urgency clause, specifying that its provisions are to take immediate effect. AB 2114 is sponsored by the Community Associations Institute, and is supported by the American Society of Civil Engineers, Region 9, the California Association of Realtors, the American Council of Engineering Companies, and the California Building Officials. The committee has received no timely opposition. The bill passed out of the Senate Housing Committee on a vote of nine to zero.

**PROPOSED CHANGES TO THE LAW**

Existing law:

- 1) Establishes the Davis-Stirling Common Interest Development Act, providing rules and regulations governing the establishment and operation of residential Common Interest Developments (CIDs) and the rights and responsibilities of a CID's homeowner association (HOA) and its members. (Civ. Code § 4000 et seq.)
- 2) Provides the following definitions for purposes of the Davis-Stirling Act:
  - a) "association" means a nonprofit corporation or unincorporated association created for the purpose of managing a CID (Civ. Code § 4080);
  - b) "common area" means the entire CID except the separate interests therein (Civ. Code § 4095); and
  - c) "exclusive use common area" means a portion of the common area designated by the declaration for the exclusive use of one or more, but fewer than all, of the owners of the separate interests and which is or will be appurtenant to the separate interest or interests (Civ. Code § 4145(a)).
- 3) Provides that, unless the declaration states otherwise, any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios, exterior doors, doorframes, and hardware incident thereto, screens and windows or other fixtures designed to serve a single separate interest, but located outside the boundaries of the separate interest, are exclusive use common areas allocated exclusively to that separate interest. (Civ. Code § 4145(b).)
- 4) Provides that, unless otherwise provided in the declaration of a CID, the HOA is responsible for repairing, replacing, and maintaining the common area; the owners of each separate interest are responsible for repairing, replacing, and maintaining their separate interest; and the owner of each separate interest is responsible for maintaining the exclusive use common area appurtenant to that separate interest and the association is responsible for repairing and replacing the exclusive use common area. (Civ. Code § 4775.)
- 5) Requires the board of directors of an association to cause to be conducted, at least once every three years, a reasonably competent and diligent visual inspection of the accessible areas of the major components that the association is obligated to repair, replace, restore, or maintain as part of a study of the reserve account requirements of the CID. (Civ. Code § 5550.)
- 6) Requires an HOA board of a condominium project with buildings containing three or more multifamily units to cause a reasonably competent and diligent visual inspection to be conducted by a licensed structural engineer or architect of a random

and statistically significant sample of the exterior elevated elements of the CID for which the HOA has maintenance or repair responsibility. (Civ. Code § 5551(b).)

- a) Requires the inspection to determine whether the exterior elevated elements are in a generally safe condition and performing in accordance with applicable standards. (Civ. Code § 5551(b)(2).)
  - b) Requires the first inspection to be completed by January 1, 2025, and then every nine years thereafter, in coordination with the reserve study inspection. (Civ. Code § 5551(i).)
- 7) Requires the inspector, prior to conducting the first visual inspection under (6), above, to generate a random list of the locations of each type of exterior elevated element, which must include all exterior elevated elements for which the HOA has maintenance or repair responsibility. (Civ. Code § 5551(c).)
- 8) Requires the inspector to perform the visual inspections in accordance with the random list described in (7), above, and specifies that, if during the inspection the inspector observes building conditions indicating that unintended water or water vapor has passed into the associated waterproofing system, creating the potential for damage to the load-bearing components, the inspector is authorized to conduct a further inspection exercising their best professional judgment in determining the necessity, scope, and breadth of further testing. (Civ. Code § 5551(d).)
- 9) Requires the inspector to issue a written report based on the inspection required in (6), above, containing the following information:
- a) The identification of the building components comprising the load-bearing components and associated waterproofing system;
  - b) The current physical condition of the load-bearing components and associated waterproofing system, including whether the condition presents an immediate threat to the health and safety of the residents;
  - c) The expected future performance and remaining useful life of the load-bearing components and associated waterproofing system; and
  - d) Recommendations for any necessary repair or replacement of the load-bearing components and associated waterproofing system. (Civ. Code § 5551(e).)
- 10) Requires the inspector to provide a copy of the report to the HOA immediately upon completion of the report, and to the local code enforcement agency within 15 days, if the inspector advises that an exterior elevated element poses an immediate threat to the safety of the occupants. Requires the HOA to take preventive measures immediately upon receiving the report, including preventing occupant access to the element until repairs have been inspected and approved by the local enforcement agency. (Civ. Code § 5551(g).)

- 11) Defines, for the purposes of the provisions requiring inspections of CID elevated exterior elements in (6) through (10), above, the following terms:
- a) “exterior elevated elements” to mean the load-bearing components together with their associated waterproofing system;
  - b) “load-bearing components” to mean components that extend beyond the exterior walls of the building to deliver structural loads to the building from decks, balconies, stairways, walkways, and their railings, that have a walking surface elevated more than six feet above ground level, that are designed for human occupancy or use, and that are supported by wood or wood-based products;
  - c) “statistically significant sample” to mean a sufficient number of units inspected to provide a 95 percent confidence that the results from the sample are reflective of the whole, with a margin of error of no more than five percent;
  - d) “visual inspection” to mean inspection through the least intrusive method necessary to inspect load-bearing components, including visual observation only or combined with the use of moisture meters, borescopes, or infrared technology. (Civ. Code § 5551(a).)

This bill:

- 1) Specifies that such inspections of a CID’s elevated exterior elements can be completed by a civil engineer.
- 2) States that this act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution, such that it goes into immediate effect. Specifies that this is necessary in order to ensure the physical safety of Californians.

### COMMENTS

#### 1. Author’s statement

According to the author:

Balcony inspections are a crucial element of ensuring that the balconies people spend significant amounts of time on do not unexpectedly break, causing severe bodily injury and harm. Statute dictates that the deadline for balconies in Common Interest Developments to be inspected is January 1, 2025. Statute also dictates that only licensed structural engineers or architects can perform these inspections in Common Interest Developments. This requirement had led to a lack of availability for qualified professionals who can perform the inspections.

AB 2114 will reduce this workforce shortage by adding civil engineers to the list of professions able to perform these balcony inspections.

## 2. Common interest developments

Condominium complexes are a type of housing development called a common interest development (CID). CIDs are self-governing housing developments comprised of individually-owned housing units and common space that all homeowners and residents of the CID can enjoy. Arrangements of CIDs can vary widely, from condominiums, townhouses, and detached single-family homes, to apartment-like high rises. They may be comprised of only a few housing units, or thousands. CIDs are commonly referred to as HOAs, or homeowner associations, for the body that provides for the CID's self-governance.

The laws that regulate CIDs are encompassed in the Davis-Sterling Common Interest Development Act (Civil Code Section 4000 et seq.). All homeowners in the CID are members of the HOA, which provides for the self-governance of the CID, managing and maintaining the common space of the CID, setting the rules for the CID, and resolving disputes. The HOA elects a board of directors, and usually has bylaws outlining the governance rules of the HOA and its board of directors. Many of the rules and structure of the CID are determined by the Declaration of Covenants, Conditions, and Restrictions (CC&Rs) that are filed with the county recorder when the CID is established. These CC&Rs identify the CID's common area, the HOA's responsibilities, the obligation of the HOA to collect assessments from homeowners to cover the HOA's expenses, and a variety of other topics.

HOAs are usually funded through monthly dues charged by the HOA to the owners of each separate unit within the CID. In addition, HOAs may implement one-time assessments on their members to cover a major project or unexpected costs that the members' dues are not able to cover. The HOA has significant power over individual members: when a homeowner in the CID does not pay their assessments, the HOA has the authority to impose a lien and foreclose on an individual's property. (Civ. Code §§ 5660, 5700.)

The Davis-Sterling Act also sets out the various responsibilities for maintenance of the facilities of the CID between the HOA and the individual homeowners. The HOA is generally responsible for repairing, replacing, and maintaining the common area in the CID, while each owner is responsible for repairing, replacing, and maintaining their separate interest in the CID (typically their individual unit). (Civ. Code § 4775.) Exclusive use common areas appurtenant to an owner's separate interest must be maintained by the owner of the separate interest, while the HOA is responsible for repairing and replacing this exclusive use common area. (Civ. Code § 4775(a)(3).) An exclusive use common area is a portion of the common area designated by the CID's declaration for the exclusive use of one or more, but fewer than all, owners of a separate

interest in the CID, and which is tied to the respective separate interest or interests. (Civ. Code § 4145.) Exclusive use common areas are typically balconies, patios, exterior entryways, and designated parking spaces. The law specifies that any costs for temporary relocation during repair and maintenance of areas within the responsibility of the HOA are to be borne by the owner of the separate interest that is affected. (Civ. Code § 4775(b).)

The Davis-Sterling Act requires that the HOA complete what is called a reserve study at least every three years. (Civ. Code § 5550.) The study must include: an identification of the major components of the CID that the HOA is obligated to repair, replace, restore, or maintain that, as of the date of the study, have a remaining useful life of less than 30 years; identification of the probable remaining useful life of the components with less than 30 years remaining, as identified; an estimate of the cost to repair, replace, restore, or maintain the identified aging components; an estimate of the total annual contributions necessary to defray the cost to repair, replace, restore, or maintain the identified aging components at the end of their useful life, beyond the current total reserves; and a reserve funding plan that indicates how the HOA plans to fund the contributions required to repair, restore, replace, or maintain the identified aging components. (Civ. Code § 5550.) To complete this reserve study, the HOA board must arrange for a visual inspection of the accessible areas of the major components that the HOA is obligated to repair, replace, restore, or maintain.

### 3. Legislation regarding the safety of HOA balconies

The issue of balcony safety became a statewide concern after a balcony at an apartment complex in Berkeley, California, collapsed in 2015. The balcony's collapse killed six people and injured seven more.<sup>1</sup> An investigation by the California State Contractors Licensing Board found that the accident was the result of substantial water damage, moisture saturation, and dry rot in the balcony's supports, resulting from a combination of poor building materials and failures to waterproof the structure during construction.<sup>2</sup>

Following that tragedy, the Legislature enacted a number of laws meant to increase oversight over the construction of balconies and to increase regular inspection of balconies. SB 465 (Hill, Ch. 372, Stats. 2016) created greater oversight over the construction industry and required the California Building Standards Commission (CBSC) to study balcony failures and submit a report to the Legislature. The report issued by the CBSC found that "deterioration of EEEs [exterior elevated elements] is a significant problem and illustrates that a post-occupancy inspection program is critical

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<sup>1</sup> Jason Hanna and Pere Taggart, Balcony collapses during Irish students' party in Berkeley, killing 6. CNN (Jun. 16, 2015), available at <https://www.cnn.com/2015/06/16/us/california-balcony-collapse/index.html>.

<sup>2</sup> Cal. Contractors State Licensing Board, Berkeley Balcony Investigation Materials (May 30, 2017), available at [https://www.cslb.ca.gov/About\\_Us/Library/Reports.aspx](https://www.cslb.ca.gov/About_Us/Library/Reports.aspx).

to reducing the risk of failure of existing EEEs.”<sup>3</sup> The report recommended periodic post-occupancy inspections and legislation to enable programs for such inspections.

In 2017, the Legislature enacted SB 721 (Hill, Ch. 441, Stats. 2017) to implement this recommendation and require 15% of existing balconies in multi-family buildings with three or more units be inspected at least every six years. SB 721 required that these inspections be completed by any of the following: a licensed architect; licensed civil or structural engineer; a building contractor that meets specific licensure and experience requirements; or an individual certified as a building inspector or building official from a recognized association, as determined by the local jurisdiction. (Health & Saf. Code § 17973(a).) Notably, SB 721 specifically excluded CIDs from its provisions. (Health & Saf. Code § 17973(n).)

In 2019, SB 326 (Hill, Ch. 207, Stats. 2019) extended similar inspection requirements to CIDs. SB 326 requires that the HOA board arrange a reasonably competent and diligent visual inspection every nine years of a statistically-significant sample of the CID’s balconies over which the association has maintenance or repair responsibility. (Civ. Code § 5551(b).) The purpose of the inspection is to “determine whether the exterior elevated elements are in a generally safe condition and performing in accordance with applicable standards.” The inspector must prepare a report of the inspection for the Board, which will also be incorporated into the HOA’s reserve study. (Civ. Code § 5551(e).) SB 325 requires that the first required inspection be conducted by the HOA by January 1, 2025, and every nine years thereafter. (Civ. Code § 5551(i).)

4. AB 2114 proposes to expand the list of individuals eligible to conduct HOA balcony inspections

Unlike the requirements under SB 721, SB 326 only permitted inspections of HOA balconies to be completed by either a licensed structural engineer or an architect. (Civ. Code § 5551(b).) According to the author, many CIDs are reporting having difficulty finding the permitted licensed professionals willing and available to complete the balcony inspections. This, according to the author, is due in part to a lack of availability. In addition, the author asserts that the limited availability of inspectors has resulted in a significant increase in the cost of such inspections.

AB 2114 expands the list of permitted professionals who may conduct the inspections required by SB 326 to include civil engineers. The author asserts that this will alleviate the shortage of eligible inspectors and provide CIDs with more opportunities to complete the required inspections before next year’s deadline.

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<sup>3</sup> California Building Standards Commission, SB 465 *Exterior Elevated Elements Working Group: Report to the Legislature*, Dept. of General Svcs., (Jan. 1, 2018) p. 6, available at <https://www.dgs.ca.gov/en/Resources/Legislative-Reports>.

Civil engineers and structural engineers are similar, and both must be licensed by the Board for Professional Engineers, Land Surveyors, and Geologists (the Board). Civil engineers generally must have a four-year degree in engineering from an accredited program, pass the Fundamentals of Engineering exam, complete a number of years of experience under a licensed engineer, and must pass the Principles and Practice exam.<sup>4</sup> A structural engineer is a licensed civil engineer who has passed a Structural Engineer exam and has completed three years of qualifying work experience as a civil engineer.<sup>5</sup> Thus, in short, all structural engineers are civil engineers, but not all civil engineers are structural engineers. The structural engineer title is more specialized than that of civil engineer. According to the Board, civil engineers may analyze and design buildings to withstand natural forces, and can provide advice regarding structural design requirements to architects and contractors.<sup>6</sup> They may perform structural engineering if fully competent to do so. Structural engineers also perform similar tasks, though they primarily focus on the structural and load-bearing aspects of a building.

AB 2114 includes an urgency clause, which specifies that its provisions become effective as of the date of enactment. The stated necessity for the urgency is “in order to ensure the physical safety of Californians.” The author asserts that AB 2114 must be an urgency measure so that its provisions expanding the professionals eligible to inspect CID balconies can go into effect before the January 1, 2025, the current deadline in the law for CIDs to complete the initial inspection required by SB 326. If AB 2114 were not an urgency measure, it would not go into effect until that deadline has already arrived.

##### 5. Arguments in support

According to the Community Associations Institute, which is the sponsor of AB 2114:

[AB 2114] would add licensed civil engineer to the list of authorized professionals who can inspect load bearing components and waterproofing systems in a common interest development (CID) or homeowner association (HOA).

In 2019, the Legislature approved SB 326 (Hill), establishing mandatory inspections for exterior elevated elements such as balconies in a common interest development (CID) by January 1, 2025.

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<sup>4</sup> Board for Professional Engineers, Land Surveyors, and Geologists, “Applying for Licensure as a Civil Engineer,” Dept. of General Svcs. (accessed Jun. 2, 2024), available at [https://www.bpelsg.ca.gov/applicants/applying\\_for\\_ce.shtml](https://www.bpelsg.ca.gov/applicants/applying_for_ce.shtml).

<sup>5</sup> Board for Professional Engineers, Land Surveyors, and Geologists, “Structural Engineer Application,” Dept. of General Svcs. (accessed Jun. 2, 2024), available at <https://www.bpelsg.ca.gov/applicants/seappintro.shtml>.

<sup>6</sup> Board for Professional Engineers, Land Surveyors, and Geologists, *Consumer Guide to Engineering and Land Surveying*, Dept. of Consumer Affairs (accessed Jun. 2, 2024), available at <https://www.bpelsg.ca.gov/consumers/index.shtml>.



However, as the deadline for these inspections' approaches, many CIDs are struggling to find licensed professionals willing to conduct the inspections. This is in part to the lack of availability, with inspections being limited to licensed structural engineers and architects. With the limited pool of eligible inspectors, the cost of hiring them has increased significantly.

AB 2114 addresses this issue by adding civil engineer to the list of licensed professionals able to conduct these inspections. The bill also includes an urgency clause, ensuring that the provisions of the bill will come into effect before the deadline of January 1, 2025.

According to the American Society of Civil Engineers, Region 9, which supports AB 2114:

AB 2114 corrects an omission in existing inspection law. It adds licensed civil engineers to the types of design professionals eligible to perform visual inspections of exterior elevated elements for which a homeowner's association (HOA) has maintenance or repair responsibility.

Civil engineers are qualified to conduct these inspections because of their specialized knowledge of structures. AB 2114 rightly acknowledges this, enabling them to play a vital role in assisting HOAs in upholding the safety standards of these elements for the public.

### **SUPPORT**

Community Associations Institute (sponsor)  
American Council of Engineering Companies  
American Society of Civil Engineers, Region 9  
California Association of Realtors  
California Building Officials

### **OPPOSITION**

None received

### **RELATED LEGISLATION**

Pending Legislation: None known.

Prior Legislation:

AB 1101 (Flora, 2023) would have permitted a Branch 3 company registered with the Structural Pest Control Board with at least five years of experience to conduct the visual

inspections of CID's elevated exterior elements, as required by Civil Code Section 5551. AB 1101 died in the Assembly Appropriations Committee.

SB 326 (Hill, Ch. 207, Stats. 2019) required that CIDs with three or more multifamily units obtain visual inspections of a statistically significant sample of the CID's elevated exterior elements by January 1, 2025 and every nine years thereafter, among other requirements.

SB 721 (Hill, Ch. 441, Stats. 2017) established inspection and repair requirements for elevated exterior elements, including decks and balconies, for buildings with three or more multifamily dwelling units. Established reporting and repair requirements if repairs are needed, including specific timelines for carrying out the repairs. Provided for civil penalties against building owners for violations.

SB 465 (Hill, Ch. 372, Stats. 2016) established greater oversight over the construction industry and required the CBSC working group tasked with studying recent elevated exterior element failures, the Exterior Elevated Element working group, to submit a report to the Legislature containing any findings and possible recommendations for statutory changes or changes to the California Building Standards Code by January 1, 2018.

**PRIOR VOTES:**

Senate Housing Committee (Ayes 9, Noes 0)

Assembly Floor (Ayes 71, Noes 0)

Assembly Housing and Community Development Committee (Ayes 9, Noes 0)

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