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AMENDED IN SENATE AUGUST 4, 2008
AMENDED IN SENATE JULY 1, 2008
AMENDED IN ASSEMBLY MAY 19, 2008
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CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 2939

**Introduced by Assembly Member Hancock
(Coauthors: Assembly Members Laird and Lieu)**

February 22, 2008

An act to amend Sections 17958.5, 17958.7, and 18941.5 of the Health and Safety Code, relating to building standards.

LEGISLATIVE COUNSEL'S DIGEST

AB 2939, as amended, Hancock. Building standards: green buildings: local variances.

The California Building Standards Law provides for the adoption of building standards by state agencies by requiring all state agencies that adopt or propose adoption of any building standard to submit the building standard to the California Building Standards Commission for approval or adoption.

Existing law requires the Department of Housing and Community Development to propose the adoption, amendment, or repeal of building standards to the commission relating to hotels, motels, lodging houses, apartment houses, and dwellings, and the buildings and structures accessory thereto, except as specified.

Existing law authorizes a city or county to make changes or modifications in the building standards proposed by the department and approved by the commission, to provide for local variances relating to local climatic, geological, or topographical conditions, upon making certain findings and filing those findings with the commission.

This bill would specifically authorize a city, county, or city and county to ~~make changes or modifications in the building standards proposed by the department and approved by the commission, to permit the city, county, or city and county to implement one or more green building standards, guidelines, and rating systems, as defined, if the change or modification does not permit use of a building standard that is less stringent than those otherwise permitted under existing law~~ *impose more restrictive building standards than the California Green Building Standards Code, provided those standards do not replace the California Building Standards Code and the governing body makes a specified finding.*

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. The Legislature finds and hereby declares all of~~
- 2 ~~the following:~~
- 3 ~~(a) The design, construction, and maintenance of buildings and~~
- 4 ~~structures within the state can have a significant impact on the~~
- 5 ~~state’s environmental sustainability, greenhouse gas emissions,~~
- 6 ~~resource usage and efficiency, and waste management, and the~~
- 7 ~~health and productivity of the state’s residents, workers, and~~
- 8 ~~visitors.~~
- 9 ~~(b) Green building is a whole-systems approach to the design,~~
- 10 ~~construction, and operation of buildings, from the early stages of~~
- 11 ~~development to the final finishes to the day-to-day operations and~~
- 12 ~~maintenance of the building. Green building includes the following~~
- 13 ~~five principles: planning for livable communities, energy~~
- 14 ~~efficiency, indoor environmental quality and health, natural~~
- 15 ~~resource conservation, and water conservation.~~
- 16 ~~(c) Green building benefits are spread throughout the systems~~
- 17 ~~and features of the building. Green building goes beyond energy~~
- 18 ~~efficiency measures to include, among other things, sites and~~
- 19 ~~designs that make it easier for people to drive less, durable and~~

1 low-maintenance materials, passive solar design, high efficiency
2 heating and cooling equipment, upgraded insulation, materials
3 with reduced formaldehyde and low-volatile or nonvolatile organic
4 compounds, reuse and recycling of construction and demolition
5 debris, recycled content products, low-water landscaping and high
6 efficiency irrigation, and high efficiency appliances and fixtures.

7 (d) In recent years, green building design, construction, and
8 operations techniques and practices have become increasingly
9 widespread. Many homeowners, businesses, and building
10 professionals have voluntarily sought to incorporate green building
11 techniques and practices into their projects. A number of local and
12 national systems have been developed to serve as guides to green
13 building practices.

14 (e) Several provisions of state law are creating uncertainty
15 regarding the ability of California cities and counties to require
16 the use of proven and effective green building techniques, even
17 where those techniques exceed all minimum California building
18 standards. Specifically, the California Building Standards Law
19 generally preempts cities and counties from setting building
20 standards different from those set forth in the California Building
21 Standards Code, except when the city or county determines that
22 modifications are “reasonably necessary because of local climatic,
23 geological, or topographical conditions.” The resultant uncertainty
24 is preventing the cities and counties that wish to do so from fully
25 realizing the economic and environmental benefits of mandating
26 green building measures, even though those measures provide one
27 of the most effective means for local governments to meet
28 greenhouse gas emissions reduction and other important
29 environmental objectives. While the California Building Standards
30 Commission is developing green building standards that will be
31 adopted as code, many local governments have begun to go beyond
32 voluntary measures and mandate more comprehensive green
33 building programs as a strategy to address climate change, and
34 those local governments should have a mechanism to do so without
35 the current uncertainty and potential legal threat.

36 (f) To permit the people of the State of California to realize the
37 benefits of green building, it is necessary to amend the California
38 Building Standards Code to clarify that a city, county, or city and
39 county may mandate the use of appropriate green building
40 measures.

1 ~~SEC. 2.~~

2 *SECTION 1.* Section 17958.5 of the Health and Safety Code
3 is amended to read:

4 17958.5. (a) Except as provided in Section 17922.6, in
5 adopting the ordinances or regulations pursuant to Section 17958,
6 a city, county, or city and county may make those changes or
7 modifications in the requirements contained in the provisions
8 published in the California Building Standards Code and the other
9 regulations adopted pursuant to Section 17922 that it determines,
10 pursuant to the provisions of Section 17958.7, are reasonably
11 necessary to do either of the following:

12 ~~(1) Address local climatic, geological, or topographical~~
13 ~~conditions.~~

14 ~~(2) Permit the city, county, or city and county to implement one~~
15 ~~or more green building standards, guidelines, and rating systems,~~
16 ~~if the change or modification does not permit the use of a building~~
17 ~~standard that is less stringent than those otherwise permitted under~~
18 ~~this part. For the purposes of this subdivision, a city and county~~
19 ~~may make reasonably necessary modifications, on the basis of~~
20 ~~local conditions, to the requirements adopted pursuant to Section~~
21 ~~17922 and contained in the California Building Standards Code~~
22 ~~and related regulations.~~

23 ~~(b) For the purposes of this part, “green building” shall mean a~~
24 ~~structure that uses a holistic approach or life cycle analysis~~
25 ~~approach for design, construction, and demolition that minimizes~~
26 ~~the building’s impact on the environment, the occupants, and the~~
27 ~~community, and that includes measures to reduce impacts,~~
28 ~~including, but not limited to, site planning, energy efficiency, water~~
29 ~~conservation, materials and resource efficiency, indoor air quality,~~
30 ~~and environmental quality.~~

31 ~~(c) For the purposes of this part, “green building standards,~~
32 ~~guidelines, and rating systems” shall mean a publicly available~~
33 ~~system that is developed by a third party and provides a mechanism~~
34 ~~for evaluating and determining whether, and to what extent, a~~
35 ~~structure qualifies as a green building.~~

36 ~~(d) Any ordinance or regulation adopted by a city, county, or~~
37 ~~city and county to implement one or more green building standards,~~
38 ~~guidelines, and rating systems shall include a procedure by which~~
39 ~~that city, county, or city and county shall review any subsequent~~

1 changes to that system before those changes can take effect within
2 the city, county, or city and county.

3 (e) ~~A building standard permitted by an ordinance or regulation
4 adopted by a city, county, or city and county to implement a green
5 building standard, guideline, or rating system shall not be less
6 restrictive than the building standards contained in the California
7 Building Standards Code on the subject of performance, safety,
8 or the protection of life, health, or the general welfare.~~

9 (f) ~~A city, county, or city and county that has adopted an
10 ordinance or regulation to implement one or more green building
11 standards, guidelines, and rating systems prior to January 1, 2009,
12 without making the required findings pursuant to subdivision (a)
13 of Section 17958.7, shall be deemed to have complied with this
14 section, and Sections 17958.7 and 18941.5, for the purposes of
15 that ordinance or regulation, if the city, county, or city and county
16 makes and files the required finding pursuant to subdivision (a)
17 of Section 17958.7 on or before January 1, 2010.~~

18 (g) ~~Nothing in this section or in Section 17958.7 or 18941.5
19 shall limit or alter the requirements of subdivision (h) of Section
20 25402.1 of the Public Resources Code regarding city or county
21 conservation or energy insulation standards. *necessary because of
22 local climatic, geological, or topographical conditions. For
23 purposes of this subdivision, a city, county, or city and county may
24 make reasonably necessary modifications to the requirements,
25 adopted pursuant to Section 17922, contained in the provisions
26 of the California Building Standards Code and regulations on the
27 basis of local conditions.*~~

28 (b) *Notwithstanding any other law, neither the California
29 Building Standards Law (Part 2.5 (commencing with Section
30 18901) nor any other provision of this part shall limit the authority
31 of a city, county, or city and county to impose more restrictive
32 building standards than the California Green Building Standards
33 Code (Part 11 of Title 24 of the California Code of Regulations),
34 provided those standards do not replace, in their entirety, Part 11
35 or any other part of the California Building Standards Code. The
36 governing body, before adopting or implementing any
37 modifications pursuant to this subdivision, shall make an express
38 finding, pursuant to Section 17958.7, that doing so is reasonably
39 necessary to mitigate or address environmental conditions and*

1 *that the cost of the modification is reasonable and will not*
 2 *unreasonably impact housing affordability.*

3 *(c) For the purpose of mitigating or addressing environmental*
 4 *conditions within the scope of Part 11 of Title 24 of the California*
 5 *Code of Regulations, any modifications pursuant to subdivision*
 6 *(b) shall be deemed to meet all requirements for modifications to*
 7 *other parts of Title 24 of the California Code of Regulations unless*
 8 *those modifications result in standards that are less restrictive*
 9 *than the California Building Standards Code on the subject of*
 10 *performance, safety, or the protection of life, health, or the general*
 11 *welfare.*

12 ~~SEC. 3.~~

13 *SEC. 2.* Section 17958.7 of the Health and Safety Code is
 14 amended to read:

15 17958.7. (a) Except as provided in Section 17922.6, the
 16 governing body of a city, county, or city and county, before making
 17 any modifications or changes pursuant to Section 17958.5, shall
 18 make an express finding that the modifications or changes are
 19 reasonably necessary because of local climatic, geological, or
 20 ~~topographical conditions, or to permit the city, county, or city and~~
 21 ~~county to implement one or more green building standards,~~
 22 ~~guidelines, and rating systems.~~ *topographical conditions, pursuant*
 23 *to subdivision (a) of Section 17958.5, or because of environmental*
 24 *conditions, pursuant to subdivision (b) of Section 17958.5. The*
 25 *finding shall be available as a public record. A copy of those*
 26 *findings that finding, together with the modification or change*
 27 *expressly marked and identified so as to correlate with the relevant*
 28 *findings, shall be filed with the California Building Standards*
 29 *Commission. If the modification or change consists of the adoption*
 30 *of one or more green building standards, guidelines, and rating*
 31 *systems, this requirement shall be satisfied by filing a copy of the*
 32 *findings that expressly identifies the green building guidelines and*
 33 *rating systems. No modification or change shall become effective*
 34 *or operative for any purpose until the finding and the modification*
 35 *or change have been filed with the California Building Standards*
 36 *Commission.*

37 (b) The California Building Standards Commission may reject
 38 a modification or change filed by the governing body of a city,
 39 county, or city and county *pursuant to Section 17958.5* if no finding
 40 was submitted.

1 ~~SEC. 4.~~

2 *SEC. 3.* Section 18941.5 of the Health and Safety Code is
3 amended to read:

4 18941.5. (a) (1) Amendments, additions, and deletions to the
5 California Building Standards Code adopted by a city, county, or
6 city and county pursuant to ~~this section or pursuant to~~ Section
7 17958.7 *or 18941.5*, together with all applicable portions of the
8 California Building Standards Code, shall become effective 180
9 days after publication of the California Building Standards Code
10 by the commission, or at a later date after publication established
11 by the commission.

12 (2) The publication date established by the commission shall
13 be no earlier than the date the California Building Standards Code
14 is available for purchase by the public.

15 (b) Neither the State Building Standards Law contained in this
16 part, nor the application of building standards contained in this
17 section, shall limit the authority of a city, county, or city and county
18 to establish more restrictive building standards reasonably
19 necessary because of local climatic, geological, or topographical
20 conditions, ~~or to permit a city, county, or city and county to~~
21 ~~implement one or more green building standards, guidelines, and~~
22 ~~rating systems.~~ *conditions, pursuant to subdivision (a) of Section*
23 *17958.5, or to mitigate or address environmental conditions,*
24 *pursuant to subdivision (b) of Section 17958.5.* The governing
25 body shall make the finding required by Section 17958.7 and the
26 other requirements imposed by Section 17958.7 shall apply to that
27 finding. Nothing in this section shall limit the authority of fire
28 protection districts pursuant to subdivision (a) of Section 13869.7.
29 Further, nothing in this section shall require findings required by
30 Section 17958.7 beyond those currently required for more
31 restrictive building standards related to housing.