

STATE OF CALIFORNIA  
GOVERNMENT OPERATIONS AGENCY  
CALIFORNIA BUILDING STANDARDS COMMISSION  
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Office Use Item No. \_\_\_\_\_

**PARTICIPATION COMMENTS FOR THE NOTICE DATED APRIL 25, 2014**  
Written comments are to be sent to the above address.

**WRITTEN COMMENT DEADLINE: JUNE 9, 2014**

Date: 5-23-14

From:

Robert E. Raymer, PE  
Name (Print or type)

Robert Raymer  
(Signature)

California Building Industry Association & California Apartment Association

Agency, jurisdiction, chapter, company, association, individual, etc.

1215 K Street, Suite 1200  
Street

Sacramento  
City

CA  
State

95814  
Zip

I/We (do)(do not) agree with:

The Agency proposed modifications As Submitted on Section No. **CBC 3120B.10 (& 3101B SCOPE)**

and request that this section or reference provision be recommended:

Approved  Disapproved  Held for Further Study  Approved as Amended

**Suggested Revisions to the Text of the Regulations:**

**Petitioners respectfully request the Department of Public Health submittal on California Building Code Chapter 31B be "Approved as Amended" and that the following informative "NOTE" be added to CBC Section 3101B SCOPE:**

**Note: Building standards contained herein do not retroactively apply to any public pool that has been constructed prior to the effective date of these regulations. For further clarity on the application of building standards to new and existing public pools and related facilities, please refer to Health & Safety Code Section 18938.5 and 116050.**

**Reason:**

**For the reasons outlined in the attached letter (dated 5/14/14) and based on Criteria #3 and Criteria #6 as specified in Health & Safety Code 18930, petitioners seek to have the DPH Chapter 31B proposal "Approved as Modified"**

[The reason should be concise if the request is for "Disapproval," "Further Study," or "Approve As Amend" and identify at least one of the 9-point criteria (following) of Health and Safety Code §18930.]

## HEALTH & SAFETY CODE SECTION 18930

### SECTION 18930. APPROVAL OR ADOPTION OF BUILDING STANDARDS; ANALYSIS AND CRITERIA; REVIEW CONSIDERATIONS; FACTUAL DETERMINATIONS

- (a) Any building standard adopted or proposed by state agencies shall be submitted to, and approved or adopted by, the California Building Standards Commission prior to codification. Prior to submission to the commission, building standards shall be adopted in compliance with the procedures specified in Article 5 (commencing with Section 11346) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code. Building standards adopted by state agencies and submitted to the commission for approval shall be accompanied by an analysis written by the adopting agency or state agency that proposes the building standards which shall, to the satisfaction of the commission, justify the approval thereof in terms of the following criteria:
- (1) The proposed building standards do not conflict with, overlap, or duplicate other building standards.
  - (2) The proposed building standard is within the parameters established by enabling legislation and is not expressly within the exclusive jurisdiction of another agency.
  - (3) The public interest requires the adoption of the building standards.
  - (4) The proposed building standard is not unreasonable, arbitrary, unfair, or capricious, in whole or in part.
  - (5) The cost to the public is reasonable, based on the overall benefit to be derived from the building standards.
  - (6) The proposed building standard is not unnecessarily ambiguous or vague, in whole or in part.
  - (7) The applicable national specifications, published standards, and model codes have been incorporated therein as provided in this part, where appropriate.
    - (A) If a national specification, published standard, or model code does not adequately address the goals of the state agency, a statement defining the inadequacy shall accompany the proposed building standard when submitted to the commission.
    - (B) If there is no national specification, published standard, or model code that is relevant to the proposed building standard, the state agency shall prepare a statement informing the commission and submit that statement with the proposed building standard.
  - (8) The format of the proposed building standards is consistent with that adopted by the commission.
  - (9) The proposed building standard, if it promotes fire and panic safety as determined by the State Fire Marshal, has the written approval of the State Fire Marshal.



May 14, 2014

Jim McGowan, Executive Director  
California Building Standards Commission  
2565 Natomas Park Drive, Suite 130  
Sacramento, CA 95833

**RE: Request for Amendment  
California Department of Public Health [CDPH 01/13]  
45-Day Express Terms: CCR, Title 24, Part 2 (2013 CBC Chapter 31B)**

Submitted by:

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**Background:**

The California Apartment Association (CAA) has over 13,000 member companies, representing more than 50,000 owners, managers, and their employees who operate more than 2 million rental housing units throughout the State of California. The California Building Industry Association (CBIA) is a statewide trade association representing over 3,500 member-companies involved in residential and light-commercial construction.

**Request for Modification:**

The California Apartment Association and the California Building Industry Association respectfully requests a modification to the California Department of Public Health's 45-Day Express Terms for California Building Code Chapter 31B (Public Pools).

Specifically, we are seeking the inclusion of an informative NOTE on the cover-page to CBC Chapter 31B that would clarify the application (or lack thereof) of these building standards to existing public pools. This clarification was suggested at the March 18<sup>th</sup> BSC Ad Hoc Code Advisory Committee. While DPH has included a new NOTE regarding "applicability" in Section 3120B "Required Signs", there are a great many amendments being made by DPH to other sections and the Advisory Committee felt that a general NOTE at the front-end of the Chapter to avoid repeating this same NOTE dozens of times. In addition, CBIA and CAA would also request the use of language in the NOTE that is easier for the code-user to understand than that currently proposed by DPH for Section 3120B (see suggested language on Page 3).

**The Problem:**

The construction and alteration of new and existing buildings commonly involves plan-check and inspection services provided by local building department personnel. However, the review and inspection of existing public pools may involve local health department personnel who are not that familiar with the application of California's building standards, especially with regards to existing structures and facilities.

This problem surfaced about 18 months ago when DPH's rewrite of Chapter 31B took effect (September of 2012). For example, apartment owners/managers were commonly told by local health office representatives that the new DPH pool signage building standards applied to all pools, including existing pools. CBIA and CAA sought formal clarification from DPH that this was not the case, which we received. Unfortunately, our receipt of that DPH clarification came several months after the initial request was made.

With regards to the application of building standards, Health & Safety Code Section 18938.5 states:

*18938.5. (a) Only those building standards approved by the commission, and that are effective at the local level at the time an application for a building permit is submitted, shall apply to the plans and specifications for, and to the construction performed under, that building permit.*

Simply put, the building standards that are in effect on the day the permit application is submitted to the local building department are the standards to which that project must comply.

In addition, as DPH points out, Health and Safety Code Section 116050 states:

*116050. Except as provided in Section 18930, the department shall make and enforce regulations pertaining to public swimming pools as it deems proper and shall enforce building standards published in the State Building Standards Code relating to public swimming pools; provided, that no rule or regulation as to design or construction of pools shall apply to any pool that has been constructed before the adoption of the regulation, if the pool as constructed is reasonably safe and the manner of the construction does not preclude compliance with the requirements of the regulations as to bacteriological and chemical quality and clarity of the water in the pool. The department shall adopt and submit building standards for approval pursuant to Chapter 4 (commencing with Section 18935) of Part 2.5 of Division 13 for the purposes described in this section.*

With regards to signage requirements found in CBC Chapter 31B, Section 3120B.10, DPH has included a NOTE that states the following:

***Note: Refer to California Health and Safety Code, Section 116050 to determine applicability of this section.***

CBIA and CAA feel this proposed note lacks the clarity needed by the general code user. For example, it is highly unlikely that most code users involved in pool construction (ie: contractors, facility owners and enforcement personnel) will be familiar with or fully understand the content of Health and Safety Code 116050. CBIA and CAA would respectfully request DPH and BSC consider alternative language that is more informative and provides clear guidance that DPH's public pool building standards do not retroactively to existing pools and ancillary facilities.

In addition, and as requested by the Ad Hoc Code Advisory Committee, the informative Note should be located at the beginning of the Chapter as there are a great many amendments being made by DPH to which a "Note" such as this could provide much needed clarity.

**Suggested Modification to be located on CBC Chapter 31B Title Page:**

*Note: Building standards contained herein do not retroactively apply to any public pool that has been constructed prior to the effective date of these regulations. For further clarity on the application of building standards to new and existing public pools and related facilities, please refer to Health & Safety Code Section 18938.5 and 116050.*

Please understand that the language cited above is one suggested solution to our concern and that there may be alternative wording that DPH and BSC would find more appropriate. We look forward to your response and we sincerely appreciate your consideration of this matter.