
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: AB 2228 **Hearing Date:** June 14, 2016
Author: Cooley
Version: May 9, 2016
Urgency: No **Fiscal:** Yes
Consultant: JRD

Subject: *Code Enforcement Officers*

HISTORY

Source: League of California Cities and California Association of Code Enforcement Officers

Prior Legislation: None known

Support: American Planning Association; Association of Los Angeles Deputy Sheriffs; California College and University Police Chiefs Association; California Narcotics Association; Los Angeles County Professional Peace Officers Association; Los Angeles Deputy Sheriffs; Los Angeles Police Protective League; Riverside Sheriffs Association

Opposition: None known

Assembly Floor Vote: 68 - 10

PURPOSE

The purpose of this bill is to establish the Code Enforcement Officers Standards Act (CEOSA) which requires the Board of Directors of the California Association of Code Enforcement Officers (CACEO) to develop and maintain standards for the designation of Certified Code Enforcement Officers (CCEO's), as specified.

Existing law defines “code enforcement officer” as a person who is not described in Penal Code Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 and who is employed by a governmental subdivision, public or quasi-public corporation, public agency, public service corporation, a town, city, county, or municipal corporation, whether incorporated or chartered, who has enforcement authority for health, safety, and welfare requirements, and whose duties include enforcement of a statute, rule, regulation, or standard, and who is authorized to issue citations or file formal complaints. And, states that a “code enforcement officer” is also a person who is employed by the Department of Housing and Community Development who has enforcement authority for health, safety, and welfare requirements, as specified. (Penal Code § 829.5.)

Existing law defines a “code enforcement officer” as any person who is not a peace officer and who is employed by any governmental subdivision; public or quasi-public corporation; public agency; public service corporation; or any town, city, county, or municipal corporation, whether

incorporated or chartered, who has enforcement authority for health, safety, and welfare requirements; whose duties include enforcement of any statute, rules, regulations, or standards; and who is authorized to issue citations, or file formal complaints. (Penal Code § 243(f)(11)(A).)

Existing law defines “code enforcement officer” as also including any person employed by the Department of Housing and Community Development who has enforcement authority for health, safety, and welfare requirements pursuant to the Employee Housing Act, State Housing Law, the Mobilehomes-Manufactured Housing Act, the Mobilehome Parks Act, and the Special Occupancy Parks Act. (Penal Code § 243(f)(11)(B).)

This bill provides that for the purposes of the Code the following terms have the following meaning:

- “Board” means the duly elected Board of Directors of CACEO;
- “CACEO” means California Association of Code Enforcement Officers a public benefits corporation domiciled in California;
- “CCEO” means a Certified Code Enforcement certified pursuant to the CEOSA;
- “Code Enforcement Officer” means an person who is not a peace officer and who is employed by a governmental subdivision, public or quasi-public corporation, public agency, public service corporation, a town, city, county, or municipal corporation, whether incorporated or chartered, who has enforcement authority for health, safety, and welfare requirements, and whose duties include enforcement of a statute, rule, regulation, or standard, and who is authorized to issue citations or file formal complaints.

This bill requires the board to develop and maintain standards for the various classes of CCEO's that it designates. The standards for education, training, and certification shall be adopted by the board and meet the minimum requirements of the CEOSA, and CCEO's shall not have the powers of arrest unless authorized by the city, county, or city and county charter, code, or regulations in which they operate. CCEO's shall not have access to summary criminal history information, but persons employed by a city, county or city and county upon a showing of compelling need if the criteria for access under existing law is otherwise met.

This bill requires the board to review all applications from cities, counties, city and counties, and accredited educational institutions who seek to develop and provide education designed to qualify participants as CCEO's. All applications that are submitted are subject to the boards review and approval to determine if they demonstrate the equivalency of the standards adopted under the rules of the board in order to qualify as Code Enforcement Officer Education Program Providers (program providers).

This bill states that all program providers are subject to ongoing program review and evaluation under the board's administrative rules. A program provider shall renew its program provider application and obtain approval under the board's administrative rules no later than 36 months from the date of the last approval or else it shall lapse.

This bill provides that all students, participants, and employees who successfully pass the minimum education and certification requirements of the program provider approved curriculum

shall, subject to the same fees as other registered CCEO's under the board's administrative rules, be granted status as CCEO's in an equivalent manner as applicants who attained certification through the CACEO education and certification program and academics.

This bill states that the development and perpetual advancement of code enforcement officer professional standards and actively providing related educational offerings that lead to increased professional competence and ethical behavior shall be the highest priority for the board in its licensing, certification, and disciplinary functions. Whenever the advancement of code enforcement officer professional standards and the provision of related educational offerings is inconsistent with other interests sought to be promoted, the former shall be paramount.

This bill provides that the board's administrative rules shall designate minimum training, qualifications, and experience requirements for applicants to qualify for the CCEO designation, including, but not limited to, training and competency requirements in the areas of land use and zoning laws, health and housing codes, building and fire codes, environmental regulations, sign standards, public nuisance laws, applicable constitutional law, investigation and enforcement techniques, application of remedies, officer safety, and community engagement. The board may, by administrative rule, designate additional classes of certifications to help meet its mission.

This bill requires the board to conspicuously and continually publish its list of CCEOs on the CACEO Internet Web site, containing the registrant's full name, summary status as to individual disciplinary concerns, active or inactive status, date of active CCEO expiration, and business address, unless the business address is a residence, which shall be treated as confidential.

This bill states that a CCEO shall hold a valid certificate designating the person as a CCEO issued by the CACEO, shall at all times remain a member in good standing of the CACEO, and shall be subject to ongoing continuing education and registration requirements as designated by the board's administrative rules.

This bill provides that a failure to maintain the continuing education requirements shall cause the certification status to lapse, subject to redemption as specified by the board's administrative rules. Once a certification lapses, the certification status shall automatically convert to inactive CCEO status unless it is redeemed. The rights, privileges, and procedures or limitations on redemption of inactive CCEOs shall be specified in the board's administrative rules.

This bill requires the board to annually set fees in amounts that are reasonably related and necessary to cover the cost of administering this chapter. The fees shall be set by the board and published on the CACEO Internet Web site and maintained at the CACEO's headquarters.

This bill provides that the board shall maintain a register of each application for a certificate of registration under this chapter. The register shall include all of the following:

- The name, residence, date of birth, and driver's license number (including state or country of origin) of the applicant;
- The name and address of the employer or business of the applicant;
- The date of the application;
- The education and experience qualifications of the applicant;
- The action taken by the board regarding the application and the date of the action;
- The serial number of any certificate of registration issued to an applicant; and

- Any other information required by board rule.

This bill states that a person may not hold himself or herself out to be a Certified Code Enforcement Officer in this state or use the title “Certified Code Enforcement Officer” in this state unless the person holds a certificate of registration pursuant to this chapter.

This bill requires the board, by administrative rule, create a process to timely consider and review all applicants who hold certification from any other agency, and allow them to seek review and potential approval of the qualifications to potentially be recognized as a CCEO in this state. A denial of full recognition as a CCEO shall be accompanied by written justification and a list of required steps that may be required for the individual applicant to complete the registration and certification process. Recognition fees shall be set as specified.

This bill provides that board shall adopt administrative rules to process information, investigate allegations or suspicions of applicants or licensees providing false information, failing to disclose material information on the registration application, or not providing any information that may, either before or during the certification process, disqualify the applicant or certificant as specified. The board shall adopt procedures and guidelines to impose any discipline, revocation of certification, or sanction, for cause, against any applicant, registrant, or certificant.

This bill states that the administrative rules shall provide the applicant or registrant with adequate and fair notice and hearing opportunities prior to the board taking any adverse action against the applicant or certificant.

This bill provides that any factual finding after a hearing that the board concludes is cause for revocation, suspension, or other disciplinary or administrative action against a registration or certification shall result in an order after hearing that meets the fair notification requirements of this section.

This bill provides all orders after hearing shall be deemed final under the board’s authority and procedures and may be appealed as specified in the Code of Civil Procedure.

This bill states that the requirements of the CEOSA do not interfere with the regulations or certification requirements for building inspectors as specified.

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past several years this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state’s ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its “ROCA” policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding. On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In December of 2015 the administration reported that as “of December 9, 2015, 112,510 inmates were housed in the State’s 34 adult institutions, which amounts to 136.0% of design bed capacity, and 5,264 inmates were housed in out-of-state facilities. The current population is 1,212 inmates below the final court-ordered population benchmark of 137.5% of design bed capacity, and has been under that benchmark since February 2015.” (Defendants’ December 2015 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).) One year ago, 115,826 inmates were housed in the State’s 34 adult institutions, which amounted to 140.0% of design bed capacity, and 8,864 inmates were housed in out-of-state facilities. (Defendants’ December 2014 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).)

While significant gains have been made in reducing the prison population, the state must stabilize these advances and demonstrate to the federal court that California has in place the “durable solution” to prison overcrowding “consistently demanded” by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants’ Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14). The Committee’s consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

COMMENTS

1. Need for This Legislation

According to the Author:

Code enforcement officers employed by a city or county, or city and county, possess specialized training, but the level of training these officers receive varies based on the city or county in which they live. There is currently no uniform training standard.

In recent years, the California Association of Code Enforcement Officers has received over 30 safety incident reports involving code enforcement officers. These include a 2015 incident in which two men pointed a rifle at a code enforcement officer serving legal papers, as well as a 2012 incident in which an officer was shot while serving an inspection warrant.

There have also been several notable cases of misconduct by code enforcement officers in which local jurisdictions were required to pay large amounts in settlements. For

example, in 2014, San Jacinto paid \$746, 559 in damages for disability discrimination after code enforcement officers did a sweep of unlicensed group homes without warrants and unlawfully questioned residents. In 2005, the City of Sacramento was found to be liable for \$717,000 in compensatory and punitive damages for seizing and destroying property without required due process. Lack of proper training led to code officers being in danger, as well as a liability to local governments.

AB 2228 establishes a framework through which code enforcement officers may receive state recognized certification, if they so choose. Setting standards, minimum qualifications, and ongoing educational requirements for local code enforcement officers who elect to attain the Certified Code Enforcement title helps local agencies identify, select, and train qualified public officers to enforce laws and codes necessary to help preserve safe, well-ordered communities.

2. Effect of This Legislation

This bill creates the CEOSA and requires its Board of Directors to develop and maintain standards for the certification of code enforcement officers. While the legislation does not require all code enforcement officers to have the certification, it does create a new class of “Certified Code Enforcement Officers.”

The Government Code states that prior to consideration by the Legislature of “legislation creating a new category of licensed professional, a plan for the establishment and operation of the proposed state board or new category of licensed professional shall be developed by the author or sponsor of the legislation.” (Government Code § 9148.4.) Specifically, the Government Code requires the plan to include:

- A description of the problem that the creation of the specific state board or new category of licensed professional would address, including the specific evidence of need for the state to address the problem.
- The reasons why this proposed state board or new category of licensed professional was selected to address this problem, including the full range of alternatives considered and the reason why each of these alternatives was not selected. Alternatives that shall be considered include, but are not limited to, the following:
 - No action taken to establish a state board or create a new category of licensed professional.
 - The use of a current state board or agency or the existence of a current category of licensed professional to address the problem, including any necessary changes to the mandate or composition of the existing state board or agency or current category of licensed professional.
 - The various levels of regulation or administration available to address the problem.
 - Addressing the problem by federal or local agencies.
- The specific public benefit or harm that would result from the establishment of the proposed state board or new category of licensed professional, the specific manner in which the proposed state board or new category of licensed professional would achieve this benefit, and the specific standards of performance which shall be used in reviewing the subsequent operation of the board or category of licensed professional.
- The specific source or sources of revenue and funding to be utilized by the proposed state board or new category of licensed professional in achieving its mandate.

- The necessary data and other information required in this section shall be provided to the Legislature with the initial legislation and forwarded to the policy committees in which the bill will be heard. (*Id.*)

In addition, the Government Code authorizes the appropriate policy committee of to evaluate the plan. (Government Code § 9148.8.) The chairperson of a policy committee may alternatively require that the Joint Sunset Review Committee evaluate and provide recommendations on the plan. (*Id.*)

Members may wish to consider whether the proponents of this legislation should be required to go through the process outlined above.

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