

Date of Hearing: June 15, 2011

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

Norma Torres, Chair

SB 209 (Corbett) – As Amended: June 6, 2011

SENATE VOTE: 25-14

SUBJECT: Common interest developments: electric vehicle charging stations

SUMMARY: Makes void and unenforceable any covenant, restriction or conditions contained in any deed, contract, security instrument, or other instrument in a common interest development (CID) that prohibits or restricts the installation of an electric vehicle charging stations.

Specifically, this bill:

- 1) Defines an "electric vehicle charging station" as the following:
  - a) designed in compliance with the California Building Standards;
  - b) delivers electricity from a source outside an electric vehicle into one or more electric vehicles;
  - c) may include several charge points simultaneously connecting several electric vehicles to the station; and
  - d) any related equipment needed to facilitate charging plug-in electric vehicles.
- 2) Permits the application of reasonable restrictions on electric vehicle charging stations.
- 3) Declares that it is the policy of the state to promote, encourage, and remove obstacles to the use of electric vehicle charging stations.
- 4) Defines "reasonable restrictions" as those that do not significantly increase the cost of the station or decrease its efficiency or performance.
- 5) Requires electric vehicle charging stations to meet applicable health and safety standards and requirements imposed by state and local permitting authorities.
- 6) Requires a homeowners association (HOA) to process and approve a request to install an electric charging station in the same manner as an architectural modification to the property and to not willfully delay or avoid approval.
- 7) Requires the approval or denial of an electric vehicle charging station to be in writing.
- 8) Provides that if an application is not denied within 60 days from the date it is received the application will be deemed approved unless the delay was a result of a reasonable request for additional information.

- 9) Provides that if an electric vehicle charging station is to be placed in the common area or an exclusive use common area, the owner must obtain approval to install the electric vehicle charging station.
- 10) Provides that if an electric vehicle charging station is to be placed in the common area or an exclusive use common area, the homeowner must agree in writing to all the following:
  - a) comply with the architectural standards for installation;
  - b) engage a licensed contractor to install the station;
  - c) within 14 days of approval provide a certification of insurance that names the HOA as an additional insurer under the homeowner's insurance policy; and
  - d) pay for the electricity usage associated with the station.
- 11) Requires that any owner and each successive owner of the parking stall on which or near where the electric vehicle charging station is placed is responsible for all of the following:
  - a) cost for any damage to the station, common areas, exclusive common areas, or adjacent units resulting from the installation, maintenance, repair, removal or replacement of the station;
  - b) cost for the maintenance, removal, repair and replacement of the electric vehicle charging station until it has been removed from the common area or exclusive use common area;
  - c) the cost of electricity associated with the station; and
  - d) disclosing to prospective buyers the existence of any electric vehicle charging station and the related responsibilities of the homeowner.
- 12) Requires any homeowner and each successive homeowner to maintain an umbrella liability coverage policy for \$1 million and name the HOA as an additional insured under the policy with a right to notice of cancellation.
- 13) Provides that an HOA that willfully violates this section is liable for actual damages and shall pay a civil penalty to the applicant in an amount not to exceed \$1000.
- 14) Provides in any action to enforce compliance with this section the prevailing plaintiff is entitled to reasonable attorney fees.

#### EXISTING LAW

- 1) Defines "governing documents" as the Covenants, Conditions and Restrictions (CC&Rs), bylaws, operating rules, articles of incorporation and any other documents which govern the HOA (Civil Code Section 1351).

- 2) Prohibits a covenant, restriction or condition contained in any deed contract, security instrument affecting the transfer or sale of, or any interest in, real property, from preventing or restricting installation or use of a solar energy system (Civil Code Section 714).
- 3) Allows a HOA to impose reasonable restrictions on the installation of solar energy systems in common areas and requires an owner to obtain the approval of the HOA prior to installing a solar energy system in another owner's separate interest (Civil Code Section 714.1).
- 4) Provides it is the policy of the state to promote and encourage the use of solar energy systems and to remove obstacles to their installation. Finds that reasonable restrictions on solar energy systems are those restrictions that do not significantly increase the cost of the system or significantly decrease efficiency (Civil Code Section 714).
- 5) Requires solar energy systems to meet appropriate health and safety standards and specified national certification standards (Civil Code Section 714).

FISCAL EFFECT: None

COMMENTS:

There are over 47,000 CIDs in the state that range in size from three to 27,000 units. CIDs make up over six million total housing units which represents approximately one quarter of the state's housing stock. In the 1990s, over 60% of all residential construction starts in the state were CIDs. CIDs include condominiums, community apartment projects, and housing cooperatives, and planned unit developments. They are characterized by a separate ownership of dwelling space coupled with an undivided interest in a common property, restricted by covenants and conditions that limit the use of common area, and the separate ownership interests and the management of common property and enforcement of restrictions by an association. CIDs are governed by the Davis Stirling Act (Civil Code Section 1350 et al.) as well as the governing documents of the association including the bylaws, declaration, and operating rules. Except when CIDs are first developed, no state agency provides ongoing oversight to these communities.

The governing documents of CIDs generally require approval of the HOA before an owner can make improvements or alterations to their separate interests. HOAs are required to provide a fair, reasonable, and expeditious procedure for reviewing applications for improvements or alterations. In the case of the installation of energy savings technology, the Legislature has taken proactive steps to ensure that HOAs cannot deny a homeowner's request to make changes to his/her separate unit. In 2008, AB 1892 (Smyth), Chapter 40, clarifies that any provision of the governing documents of a CID that prohibits or restricts the installation or use of a solar energy system is considered void and unenforceable.

According to the author, existing law allows for a CID to deny an application for installation of electric vehicles. SB 209 seeks to address that problem by making void a prohibition on the installation of electric vehicles in CID governing documents. The author offers as evidence for the need for the bill, a recent case in Hawaii where a homeowner in a CID was denied the right to install an electric charging device. This bill is an effort to preempt a potential problem in this

state but making clear that the Legislature supports homeowner's rights to charge electric vehicles.

Double referred: The Assembly Committee on Rules referred SB 209 to the Committee on Housing and Community Development and Judiciary. If SB 209 passes this committee, the bill must be referred to the Committee on Judiciary.

REGISTERED SUPPORT / OPPOSITION:

Support

American Lung Association  
Alliance of Automobile Manufacturers  
Bay Area Air Quality Management District  
California Electric Transportation Coalition  
Natural Resources Defense Council  
Plug In America  
South Coast Air Quality Management District  
Tesla Motors, Inc.  
Union of Concerned Scientists

Opposition

None on file.

Analysis Prepared by: Lisa Engel / H. & C.D. / (916) 319-2085