

Date of Hearing: June 15, 2011

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

Norma Torres, Chair

SB 759 (Lieu) – As Amended: March 22, 2011

SENATE VOTE: 32-8

SUBJECT: Common interest developments: artificial turf

SUMMARY: Makes the governing documents of a common interest development (CID) void and unenforceable if they prohibit the use or include conditions that effectively prohibit the use of artificial turf or any other synthetic surface that resembles grass, but allows a CID to apply design and quality standards for artificial turf.

EXISTING LAW

- 1) Provides a provision of the governing documents of a CID are void and unenforceable if they do any of the following:
  - a) include conditions that effectively prohibit the use of low water-using plants as a group; or
  - b) restrict compliance with local water ordinances required to reduce water consumption, water-efficient landscape ordinance in effect pursuant to Government Code Section 65596, or restriction on use of water adopted pursuant to Water Code Sections 353 & 375.
- 2) Provides if the governing documents of a CID require the homeowners association (HOA) to approve physical changes to an owner's separate interest, the process must be:
  - a) fair, reasonable and expeditious;
  - b) included in the governing documents; and
  - c) made in good faith and may not be unreasonable arbitrary or capricious.
- 3) Provides a decision on a proposed change on a special interest cannot violate the Fair Employment and Housing Law, building code, or other applicable law governing land use or public safety.

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.

Purpose of the bill:

According to the sponsor of this bill, San Diego County Water Authority, grass lawns use up to 46 gallons of water per square foot per year in the San Diego region. Landscape irrigation makes up 70% of the average household water use. The use of artificial turf in landscaping is one method of reducing water consumption, while still allowing property owners to incorporate expanses of green into their landscaping.

In November 2009, SBX7 7 (Steinberg) was enacted requiring water consumption be reduced by 20% per capita by the year 2020. According to the sponsor of the bill, water suppliers are committed to meet this goal. The purpose of this bill is to expand the available means of conserving water by removing impediments to the use of artificial turf and landscaping in CIDs. According to the sponsor, one impediment is the use of covenants, conditions and restrictions in CIDs that prohibit the use of artificial turf.

AB 1061 (Lieu), Chapter 503, Statutes of 2009, made the governing documents of a HOA void and unenforceable if they prohibited or had the effect of prohibiting the use of low-water using plants or violated locally adopted water-efficient landscape ordinances. CIDs may apply rules that conform to legal requirements as to water-efficient landscapes. According to the sponsor, because the bill did not specifically include artificial turf as a possible water-efficient landscaping option some HOAs have prohibited homeowners from installing it.

At the time homeowners purchase in CIDs they receive a copy of the CCRs and other governing documents of the HOA which detail the rules and regulations of the HOA. If the HOA has a process for approving homeowners architectural change to their home, it will be outlined in the governing documents. It is unlikely that the governing documents would specifically prohibit artificial turf. However, in some CIDs homeowners could be required to get the approval of the architectural review committee before making changes to their home including landscaping changes. The procedure must be fair, reasonable and provide for prompt deadlines. If a homeowner is denied approval of a proposed change, the decision can be appealed at a meeting of the board of directors.

SB 759 makes the governing documents of a CID void and unenforceable if they prohibit the use or include conditions that effectively prohibit the use of artificial turf or any other synthetic surface that resembles grass. The bill does allow a CID to apply design and quality standards for the installation of artificial turf, as long as the standards conform to the legal requirements as to water-efficient landscapes. This gives HOAs the ability to set standards regarding the color of the turf, the timeline for replacing it, and other design standards while not prohibiting its use.

Arguments in opposition: According to the Executive Council of Homeowners (ECHO), simply saying that restrictions on the use of artificial turf or any synthetic surface are unenforceable or by providing for design and quality standards does not take into consideration the desires and esthetics of the community. ECHO is concerned about the questions that artificial turf could raise in a community including what to do with artificial turf when a subsequent owner does not want it or with run-off problems.

Arguments in support: According to the sponsor, in response to concerns raised regarding the lead content in artificial turf, "the US Consumer Protection Agency did an analysis of lead content in artificial turf and deemed it safe and that young children are not at risk from using playing fields with artificial turf. Additionally, with the California Attorney General's office with manufactures of artificial turf will lead to products with negligible levels of lead in the products."

Related legislation: Last year, Governor Schwarzenegger vetoed AB 1793 (Saldana), which was identical to this bill. Below is the veto message:

This bill would void a provision in the governing documents of a common interest development (CID) if it prohibits the use of artificial turf or any other synthetic surface that resembles grass in its landscaping rules and regulations.

CIDs provide a system of self-governance through a community association, responsible for managing, maintaining, and repairing the common areas, and have the authority to enforce special rules. Decisions such as these regarding the use of artificial turf can be made by the homeowners and amended into their governing documents.

#### REGISTERED SUPPORT / OPPOSITION:

##### Support

San Diego County Water Authority (sponsor)  
Association of California Water Agencies  
City of San Diego

##### Opposition

Community Association Institute (CAI)  
Executive Council of Homeowners

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