

Date of Hearing: June 18, 2014

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

Ed Chau, Chair

SB 992 (Nielsen) – As Amended: May 28, 2014

SENATE VOTE: 36-0

SUBJECT: Common interest developments: property use and maintenance

SUMMARY: Prohibits an HOA from imposing a fine or assessment against a member who reduces or eliminates watering of vegetation or lawns during any period during which the Governor or has declared an emergency due to drought. Includes an urgency clause.

EXISTING LAW

- 1) Authorizes the Governor to declare a state of emergency in an area affected or likely to be affected by drought conditions. (Government Code Section 8625 and 8558)
- 2) Directs the Governor to declare the termination of a state of emergency at the earliest possible date that conditions warrant, and all powers, granted by the Governor terminate with the declaration. (Government Code Section 8629)
- 3) Authorizes a local government to proclaim, by ordinance, a state of emergency due to drought conditions. (Government Code Section 8558 and 8630)
- 4) Defines the governing documents of a CID to mean the declaration, and any other documents such as the bylaws, operating rules of the association, articles of incorporation, or articles of association, which govern the operation of the CID or HOA. (Civil Code Section 4150)
- 5) Makes the governing documents of a CID void and unenforceable if they do any of the following:
  - a) Prohibit or include conditions that have the effect of prohibiting low water-using plants as a group;
  - b) Restrict compliance with a water-efficient landscape ordinance adopted by a local government; or
  - c) Prohibit compliance with any regulation or restriction on the use of water due to severe water shortage. (Civil Code Section 4735)

FISCAL EFFECT: None

COMMENTS:

There are over 49,000 CIDs in the state that range in size from three to 27,000 units. CIDs make up over 4.9 million housing units which represents approximately one quarter of the state's housing stock. CIDs include condominiums, community apartment projects, 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, covenants and conditions that limit the use of common area, separate ownership interests, the management of common property, and enforcement of restrictions by a HOA. CIDs are governed by the Davis Stirling Act as well as the governing documents of the HOA including bylaws, declaration, and operating rules.

CIDs and droughts: Under existing law the governing documents of a CID cannot prohibit a homeowner from installing low water-using plants as a group. In addition, HOAs cannot prevent a homeowner from installing landscaping that complies with a city's or county's water-efficient landscape ordinance or from complying with any restrictions on watering that a city or county adopts in response to severe water shortages. There is nothing that prohibits an HOA from requiring a homeowner to water their lawn in a case where the Governor has declared a drought but there is no local ordinance restricting water use. SB 992 would make it clear that if the Governor declared a state of emergency due to a drought that homeowners could stop watering their lawns without being fined by the HOA. The bill does not prevent a HOA from fining a homeowner if they do not maintain their yard or comply with requirements in state law to keep weeds and vegetation at a minimum in high fire areas. Existing law requires the Governor to declare an end to a state of emergency, in this case a drought, as soon as conditions warrant it.

In the beginning of this year, due to record low rainfall, the Governor declared a drought emergency. The governor's declaration called on residents to voluntarily reduce water consumption by 20 percent. Local governments have authority to declare a state of emergency through an ordinance. Many cities have enacted ordinances to restrict watering lawns to a specified number of days per week during the drought.

The Governor issued the following directive in a subsequent declaration:

"Homeowners Associations (commonly known as HOAs) have reportedly fined or threatened to fine homeowners who comply with water conservation measures adopted by a public agency or private water company. To prevent this practice, pursuant to Government Code section 8567, I order that any provision of the governing document, architectural or landscaping guidelines, or policies of a common interest development will be void and unenforceable to the extent it has the effect of prohibiting compliance with the water-saving measures contained in this directive, or any conservation measure adopted by a public agency or private water company, any provision of Division 4, Part 5 (commencing with section 4000) of the Civil Code notwithstanding."

Related legislation: This bill is almost identical to AB 2100 (Campos) which passed out of this committee 7-0.

#### REGISTERED SUPPORT / OPPOSITION:

##### Support

California Association of Realtors  
California Landscape Contractors Association (CLCA)  
East Bay Municipal Utility District

The Metropolitan Water District of Southern California

Opposition

None on file

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