

Date of Hearing: June 29, 2016

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Susan Talamantes Eggman, Chair

SB 1340 (Wolk) – As Amended June 21, 2016

**SENATE VOTE:** 21-12

**SUBJECT:** Water Conservation in Landscaping Act.

**SUMMARY:** Requires a local permit for the installation or expansion of automatic irrigation systems for specified residential and nonresidential landscape projects. Specifically, **this bill:**

- 1) Amends the Water Conservation in Landscaping Act (Act) by requiring, on or after July 1, 2018, a local agency to require a written permit for the installation of any automatic irrigation system, or the expansion of an existing automatic irrigation system to increase the irrigated area by 25% or more, for a landscape project subject to the Act and not otherwise within the scope of a local agency permit, if the irrigation system is to serve either of the following:
  - a) A nonresidential landscape that is not a cemetery and that is at least 2,500 square feet (sq. ft.) or greater; or,
  - b) A residential landscape that is at least 10,000 sq. ft. or greater.
- 2) Allows the governing body of a local agency, before issuing any permit required by this bill, to adopt an ordinance prescribing fees for filing an application for that permit.
- 3) Prohibits permit fees from exceeding the amount reasonably required by the local agency to review applications and issue permits.
- 4) Prohibits permit fees from being levied for general revenue purposes.
- 5) Allows an application for a permit for a residential landscape irrigation system to be submitted by a property owner, property manager, landscape contractor, landscape architect, or any other agent designated by the property owner.
- 6) Provides that the bill's provisions do not apply to the repair or replacement of the components or parts of any existing automatic irrigation system.
- 7) Provides that no reimbursement is required by this bill because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this bill, as specified.

**EXISTING LAW:**

- 1) Requires, pursuant to the Act, the Department of Water Resources (DWR) to adopt and update a model water efficient landscaping ordinance (MWELO).
- 2) Requires the MWELO to be updated to address specific elements to reduce water use, including, but not limited to, water conservation and appropriate plant use, a landscape water

budget, storm water capture, automatic irrigation systems and schedules, soil assessment and management, use of recycled water, water user education, economic incentives, maintenance practices for long-term water conservation, and minimization of overspray and runoff.

- 3) Requires, on or before January 1, 2010, a local agency to adopt one of the following:
  - a) A water efficient landscape ordinance that is, based on evidence in the record, at least as effective in conserving water as the updated MWELO adopted by DWR; or,
  - b) The updated MWELO adopted by DWR.
- 4) Provides that, if a local agency has not adopted an ordinance as described above, DWR's updated MWELO shall apply within the jurisdiction of the local agency, shall be enforced by the local agency, and shall have the same force and effect as if adopted by the local agency.
- 5) Defines, for the purposes of the Act, "local agency" to mean any city, county, or city and county, including a charter city or charter county.

**FISCAL EFFECT:** This bill is keyed fiscal.

**COMMENTS:**

- 1) **Bill Summary.** This bill amends the Act by requiring local agencies to require a permit for the installation of any automatic irrigation system, or the expansion of an existing automatic irrigation system that would increase the irrigated area by 25% or more, for a landscape project subject to the Act and not otherwise within the scope of a local permit. This requirement applies to an irrigation system that will serve a nonresidential landscape that is 2,500 sq. ft. or larger (except cemeteries) or a residential landscape that is 10,000 sq. ft. or larger, and would go into effect July 1, 2018.

This bill allows a process for local agencies to adopt permit fees via ordinance, and prohibits permit fees from exceeding the amount reasonably required by the local agency to review applications and issue permits or from being levied for general revenue purposes.

Applications for residential landscape irrigation system permits may be submitted by a property owner, property manager, landscape contractor, landscape architect, or any other agent designated by the property owner. The bill's provisions do not apply to the repair or replacement of the components or parts of any existing automatic irrigation system. This bill's provisions, as an amendment to the Act, apply to any county or city, including a charter city.

This bill is sponsored by the author.

- 2) **Author's Statement.** According to the author, "It has been the goal of the State since at least 1990 that new landscapes and major renovations of existing landscapes should be designed and installed to be water-efficient. The state's Model Water Efficient Landscape Ordinance (MWELO) carries standards and criteria for new and renovated landscape projects that are included in projects that require a local permit, plan check or design review such as the construction of a new building, the extension of electric or natural gas lines from an existing building, or major excavation and regrading.

"However, the coverage of MWELO as specified in the Model Ordinance has a major gap that leaves a very significant portion of new landscape projects not subject to any standards. This is because it is common practice in most parts of the state for home builders to leave the back yards of new homes un-landscaped. What's more, in some parts of the state, it is common for front yards to be left un-landscaped by home builders as well. Thus, in many cases the building permit for the new home does not include the landscape, and the owner-initiated landscape projects that may follow new home construction by anywhere from a few months to a few years are not subject to the Model Ordinance because in most localities, the installation of landscape materials and an irrigation system as a stand-alone project do not themselves require a permit."

- 3) **Background.** The Act, approved in 1990, required DWR to prepare a MWELO and required all local agencies to adopt a landscape ordinance by 1993 or the MWELO would automatically take effect. AB 1881 (Laird), Chapter 559, Statutes of 2006, revised the Act significantly. The revised Act required DWR to revise the MWELO by January 2009, pending funding, to incorporate a number of measures to reduce water use. DWR adopted the revised MWELO on September 10, 2010.

On April 1, 2015, the Governor issued an executive order regarding the ongoing drought. Among its provisions was direction to DWR to update the MWELO through expedited regulation. This update was intended to increase water efficiency standards for new and existing landscapes through more efficient irrigation systems, greywater use, onsite storm water capture, and limiting the portion of landscapes that can be covered in turf. It also required reporting on the implementation and enforcement of local ordinances, with required reports due by December 31, 2015. DWR was further directed to provide information on local compliance to the State Water Resources Control Board, which must consider adopting regulations or taking appropriate enforcement actions to promote compliance. DWR was also directed to provide technical assistance and give priority in grant funding to public agencies for actions necessary to comply with local ordinances.

On July 15, 2015, the California Water Commission approved DWR's revision to the MWELO. Local agencies had until December 1, 2015, to adopt the updated MWELO or to adopt a local ordinance that is at least as effective in conserving water as the MWELO. Local agencies working together to develop a regional ordinance had until February 1, 2016, to adopt their ordinance.

- 4) **Independent Technical Panel Recommendations.** At the direction of the Legislature in 2007, an Independent Technical Panel (ITP) on Demand Management Measures was formed to provide DWR and the Legislature information and recommendations on new water demand management measures, technologies and approaches to water use efficiency. The most recent report of the ITP was issued in May 2016. Among other recommendations, the report recommends that a new permit requirement be implemented by local agencies for the installation of new automatic irrigation systems, or the expansion of existing irrigation systems, for large nonresidential and residential landscapes over certain sizes. The report set those thresholds at 500 sq. ft. or greater for nonresidential landscapes, and 10,000 sq. ft. or greater for residential landscapes.

The ITP report states, "While the planting of landscape materials can take place over an extended period of time, the irrigation system largely controls the delivery of water to the

landscape. Thus, the installation of an irrigation system for a large landscape is itself an appropriate 'trigger' for a permit subject to all requirements of MWELo....Developer-installed landscape projects would continue to be covered by a building permit, without requiring a separate permit for the irrigation system.”

The ITP report further states, “we recommend that the Legislature directly incorporate a requirement for permitting of stand-alone irrigation installations for commercial and large residential landscapes into the Water Conservation and Landscaping Act. The effect will be to bring stand-alone landscape projects under the scope of the revised MWELo in all local jurisdictions...”

- 5) **Previous Legislation.** AB 1420 (Laird), Chapter 628, Statutes of 2007, directed the DWR to form an independent panel to provide information to the DWR and the Legislature on new demand management measures, technologies, and approaches.

AB 1881 (Laird), Chapter 559, Statutes of 2006, required the DWR to update the MWELo, and required local agencies to either adopt the model ordinance or another ordinance that is at least as efficient in conserving water.

- 6) **Arguments in Support.** The California League of Conservation Voters, in support, writes, "Statewide, about half of all the water supplied to urban areas is used outdoors, primarily for landscape irrigation. Improving the efficiency of outdoor water use is critically important for water supply reliability and resource protection throughout California...Stand-alone landscape projects are common in California, and should not be exempt from permitting and the water efficiency requirements of (MWELo). The proper design, installation, and control of automatic landscape irrigation systems is essential to the efficient use and avoidance of waste of water. The avoidance of waste requires that new stand-alone irrigation projects should require a permit."
- 7) **Arguments in Opposition.** The California Association of Realtors, in opposition, states, "SB 1340 (Wolk)...introduces a new, time-consuming and expensive mandate on local property owners that is unlikely to improve overall reductions in water consumption for irrigated landscapes. Just because a system is permitted does not ensure that any water savings will result. The existing MWELo program already offers local governments a multitude of options to address water conservation in irrigated landscapes. SB 1340 (Wolk) strips local government of the authority to define their own rules, goes outside the existing program and provides no guarantee of a reduction in water usage. Instead of putting an extra burden on property owners, actions should be taken to help them make better landscape decisions."
- 8) **Double-Referral.** This bill is double-referred to the Assembly Water, Parks and Wildlife Committee, where it failed on a 6-8 vote on June 14, 2016. The bill was subsequently amended on June 21, 2016, and is scheduled for a vote-only action in the Water, Parks and Wildlife Committee on June 28, 2016.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Apartment Association of Orange County  
Apartment Association, California Southern Cities  
California Building Industry Association  
California Building Officials  
California Business Properties Association  
California Landscape Contractors Association  
California League of Conservation Voters  
California Native Plant Society  
East Bay Rental Housing Association  
Gardenworks Inc.  
Irrigation Association  
Natural Resources Defense Council  
North Valley Property Owners Association  
Sierra Club California  
USGBC California

**Opposition**

California Association of Realtors

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