

Date of Hearing: June 8, 2022

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

SB 1405 (Ochoa Bogh) – As Amended April 18, 2022

SENATE VOTE: 35-0

SUBJECT: Community service districts: Lake Arrowhead Community Service District: covenants, conditions, and restrictions: enforcement.

SUMMARY: Allows the Lake Arrowhead Community Services District (LACSD) to enforce covenants, conditions, and restrictions (CC&Rs). Specifically, **this bill:**

- 1) Authorizes the LACSD to enforce all or part of the CC&Rs for a tract, and assume the duties of the Arrowhead Woods Architectural Committee (AWAC), to the extent that a tract's CC&Rs are legally enforceable by the AWAC. Before the LACSD can enforce CC&Rs, and assume the duties of the AWAC for a tract, the LACSD's board of directors shall do all of the following:
 - a) Receive a written request from the board of directors of the AWAC, with a petition signed by not less than a majority of the property owners of the parcels within the tracts covered by the AWAC, requesting the LACSD to enforce CC&Rs for those tracts and assume the duties of the AWAC for those tracts.
 - b) Conduct a public hearing on the question, after giving mailed notice to each affected property owner of the date, time, and location of meeting.
 - c) Submit an application to the Local Agency Formation Commission (LAFCO) pursuant to existing law, specifying the exact nature and scope of the intended services to be provided by the LACSD.
 - d) Receive the approval of the LAFCO, as specified, which may include completion terms deemed appropriate by the LAFCO, to enforce CC&Rs for a tract, and assume the duties of the AWAC for those tracts.
 - e) Adopt an ordinance assuming power to enforce CC&Rs for a tract, and to assume the duties of the AWAC for those tracts, provided that the ordinance requires both of the following:
 - i) The property owners within the tracts to finance, in compliance with other state and local law, the enforcement of the CC&Rs, and the duties of the AWAC through fees, regular or special assessments that may be enforced either pursuant to the authority of the AWAC under its founding documents or applicable law, or pursuant to the authority of the LACSD, and using specified procedures in order to accomplish the purposes authorized herein.
 - ii) The AWAC to indemnify the LACSD for the costs of any litigation, settlements, injuries, damages, or judgements arising from enforcement of the CC&Rs, imposition

of any fees, assessments, or other financing mechanism, and the LACSD's duties on behalf of the AWAC.

- 2) Provides that the LACSD may use specified procedures for the enforcement of any fee, charge, or assessment authorized herein.
- 3) Specifies that the LACSD may, by ordinance, divest itself of the power undertaken under this bill.
- 4) Provides that the LACSD shall not enforce any CC&Rs for a tract, or assume the duties of the AWAC, until all unlawfully restrictive covenants are removed from the CC&Rs of the properties in those tracts pursuant to a process specified in existing law governing housing discrimination.
- 5) Finds and declares that a special statute is necessary and that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique circumstances facing the LACSD.

EXISTING LAW:

- 1) Sets forth all of the actions that a community service district (CSD) is authorized to take within its boundaries.
- 2) Finds that unique circumstances in certain communities justify the enactment of special statutes for specific CSDs and declares the intent of the Legislature to provide specific CSDs with special statutory powers to provide special services and facilities that are not available to other districts.
- 3) Provides that every covenant contained in a grant of an estate in real property, which is made for the direct benefit of the property, or some part of it then in existence, runs with the land.
- 4) Grants special authority to eight specified CSDs to continue to enforce private CC&Rs between property owners in those districts.
- 5) Authorizes the Bel Marin Keys CSD to enforce all or part of the CC&Rs for properties within the district, and to assume the duties of the architectural control committee, subject to specified requirements.

FISCAL EFFECT: None.

COMMENTS:

- 1) **Bill Summary.** This bill allows the LACSD to enforce CC&Rs and assume the duties of the AWAC to the extent the CC&Rs are legally enforceable. The LACSD must receive a written request from the Board of Directors of the AWAC, with a petition signed by not less than a majority of property owners of the parcels within the tracts covered by the AWAC, requesting the LACSD to enforce the CC&Rs. This bill also requires the LACSD to hold a public hearing, submit an application to and receive approval from the LAFCO, and adopt an ordinance, as specified. Lastly, this bill specifies that the LACSD shall not enforce any

CC&Rs until all unlawfully restrictive covenants are removed from the CC&Rs. The LACSD and the AWAC are the sponsors of this bill.

- 2) **Author's Statement.** According to the author, "The community of Lake Arrowhead is a unique mountain community located in the San Bernardino Mountains. The development of approximately 10,000 parcels that surround Lake Arrowhead is known as Arrowhead Woods. Currently, the Covenant, Conditions and Restrictions (CC&Rs) in Arrowhead Woods are enforced by the Arrowhead Woods Architectural Committee (AWAC), which was established by a group of concerned Lake Arrowhead residents in 1923 to preserve the unique glorious scenery of Lake Arrowhead. Because AWAC was formed before the Davis-Sterling Common Interest Development Act, AWAC was not formed as an HOA and therefore does not have authority to charge fees to cover the cost of their operations. The only revenue the organization receives is from application fees and penalties for lack of compliance, which are often difficult for AWAC, which is a non-profit, to collect. With 10,000 parcels, enforcement is a major challenge and AWAC only has one full time and one part-time staff person. As a result, revenue generation is uncertain in any given year and cost increases and legal challenges make it difficult to anticipate costs.

"AWAC has requested that the Lake Arrowhead Community Services District take over the enforcement of the CC&Rs in Arrowhead Woods. LACSD is one of the few locally elected agencies in the area. At the time of its creation, one of the conditions of approval by the Local Area Formation Commission (LAFCO) was that the District would 'continue to explore possibilities of adding additional services at the earliest possible time' to serve the community. This was in part because Lake Arrowhead is fairly isolated at 5,000 feet in the San Bernardino mountains and is an unincorporated area of San Bernardino County. LACSD currently provides water service to the properties in Arrowhead Woods and its staff are already in the field visiting properties on a daily basis. This puts LACSD in a unique position to monitor and enforce compliance in a much more comprehensive and efficient manner. To accomplish this, LACSD needs to be provided authorization to add the enforcement of CC&Rs to its powers. Government Code Section 61105 acknowledges that there are unique circumstances that exist in certain communities that justify the enactment of special statutes for specific districts and we believe those circumstances exist in this case.

"In recognition of the unique circumstances in the Lake Arrowhead community, SB 1405 adds the Lake Arrowhead Community Services District to the list of Community Service Districts in Government Code Section 61105 that are authorized to enforce CC&Rs. AWAC has asked for this change, and the Lake Arrowhead Community Services District has agreed to take it on. This bill will ensure that this transition can occur and the CC&Rs put in place by the residents of Arrowhead Woods can continue to be enforced efficiently."

- 3) **Community Services Districts.** The CSD Law is the principal act that governs CSDs, which are a form of special district. The law governing CSDs was initially passed in 1951 and re-enacted in 1955. SB 135 (Kehoe), Chapter 249, Statutes of 2005 revised the CSD Law with the help of a large working group of stakeholders.

A CSD can deliver over 30 different types of services and facilities, such as police protection, road maintenance, and parks and recreation. Most of the state's 330 CSDs perform only a few of these authorized services, depending on what local residents and property owners are willing to fund. When a specific CSD wants to exercise a new power

that statute provides to CSDs generally (known as a “latent power”), the CSD must apply to the LAFCO in the county. LAFCOs can impose wide-ranging conditions before a CSD can use the new power.

- 4) **Covenants, Conditions, and Restrictions (CC&Rs).** The Legislature has granted special powers to individual CSDs when communities face unique circumstances. In a few cases, the Legislature has authorized CSDs to enforce CC&Rs on behalf of private entities. CC&Rs are limitations and rules placed on a group of homes by a builder, developer, neighborhood association or homeowner association that impose mutual contractual duties on property owners. Subject to legal limitations, CC&Rs can place restrictions of almost any kind on homeowners, from exterior paint color to restrictions on curb-side parking, as long as the homeowners electing to adopt the CC&Rs agree to them. CC&Rs generally outline procedures for amendments or rescission. CC&Rs have the effect of imposing limitations on the use of property that is subject to them beyond what the city or county land use laws require. CC&Rs are private arrangements, outside the government's land use regulations that come from the police power. Although CC&Rs have the same purpose and often the same effect as zoning ordinances, they are not government regulations; they are private contracts.

Prior to the 2005 CSD law revision, 18 CSDs were authorized to enforce CC&Rs, but only nine used this authority. When revising the law, the Legislature repealed the authority for those that were not actively exercising this power. Currently, nine CSDs have the authority to enforce CC&Rs within their districts on behalf of the private entities named in those CC&Rs. The nine CSDs that have this special power are:

- 1) Bel Marin Keys CSD in Marin County.
 - 2) Cameron Park CSD in El Dorado County.
 - 3) El Dorado Hills CSD in El Dorado County.
 - 4) Golden Hills CSD in Kern County.
 - 5) Mountain House CSD in Alameda County.
 - 6) Rancho Murieta CSD in Sacramento County.
 - 7) Salton CSD in Riverside County.
 - 8) Stallion Springs CSD in Kern County.
 - 9) Tenaja CSD in Riverside County.
- 5) **Arrowhead Woods.** The community of Arrowhead Woods comprises approximately 10,000 parcels that surround Lake Arrowhead in the San Bernardino Mountains. The architectural style of the residential neighborhoods has been maintained by enforcement of the CC&Rs that are recorded on most of the developed tracts of land. The CC&Rs task AWAC, a non-profit public benefit corporation, with the responsibility for enforcing the CC&Rs by approving the design and construction of structures within the tracts. AWAC is governed by a seven to nine member board, made up of volunteers selected by the other board members.

The CC&Rs provide that no structures can be erected without AWAC approval, and the only revenue AWAC receives is from application fees and penalties for lack of compliance. When AWAC discovers a violation of the CC&Rs, it must go to court to enforce them.

Lake Arrowhead CSD was formed in 1978 to provide drinking water to Arrowhead Woods, which had been provided by a private company. Over time, the CSD annexed additional areas and added wastewater services to its responsibilities. Lake Arrowhead CSD is governed by a five member board and currently provides drinking water to approximately 8,400 connections and wastewater services to approximately 10,700 connections, encompassing Arrowhead Woods and other nearby communities.

- 6) **Policy Consideration.** In 2005, California enacted SB 135 which mostly prohibited the practice of CSDs enforcing CC&Rs. Only those public entities that were already exercising their authority to enforce private CC&Rs were allowed to keep doing so. Commenting on the content of that 2005 legislation and debate within the working group that helped draft the legislation, the Senate Local Government Committee wrote the following:

“Covenants, conditions, and restrictions (CC&Rs) are private deed restrictions which impose mutual contractual duties on property owners. CC&Rs are private arrangements, outside the government's land use regulations that come from the police power. Although CC&Rs have the same purpose and often the same effect as zoning ordinances, they are not government regulations; they are private contracts. Since 1979, legislators have authorized 18 CSDs to enforce private CC&Rs. Although a 1989 Legislative Counsel's opinion found that these statutes were not unconstitutional, several members of the Working Group were intensely skeptical of that legal analysis. Even if the current CSD Law is constitutional, they and others questioned the wisdom of allowing special districts to enforce private contractual duties. The Working Group learned that only 8 of the 18 CSDs actually use the current Law to enforce CC&Rs. After considerable debate, the Working Group recommended allowing the 8 CSDs to continue enforcing private CC&Rs, but repealing the practice for everyone else (61105 [e]).”

Ultimately, as stated above, a compromise was struck to only allow those CSDs that were already doing so to exercise CC&R enforcement power. In light of the Working Group's hesitation to continue CC&R authority in 2005, the Committee may wish to consider if the LACSD should be given the ability to enforce CC&Rs.

- 7) **Related Legislation.** AB 1995 (Levine), Chapter 289, Statutes of 2014, authorized the Bel Marin Keys CSD to enforce the CC&Rs for a tract within that district, and to assume the duties of an architectural control committee with regard to that property.
- 8) **Arguments in Support.** According to the LACSD, “The Lake Arrowhead area is an unincorporated, rural community that is rich in history and beauty. The CCRs have protected the tree canopy and maintained the character of our neighborhoods for 100 years. The Arrowhead Architectural Committee (AWAC), which currently enforces the CCRs, has requested a partner to ensure that the CCRs remain in place. As a Community Services District, LACSD is prepared to serve the community where it can.”

9) **Arguments in Opposition.** None on file.

10) **Double-Referred.** This bill is double-referred to the Assembly Judiciary Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Arrowhead Woods Architectural Committee [SPONSOR]
Lake Arrowhead Community Service District [SPONSOR]
California Special Districts Association

Opposition

None on file

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