
SENATE COMMITTEE ON GOVERNANCE AND FINANCE

Senator Anna M. Caballero, Chair

2021 - 2022 Regular

Bill No: SB 1405
Author: Ochoa Bogh
Version: 3/15/22
Consultant: Favorini-Csorba

Hearing Date: 4/7/22
Tax Levy: No
Fiscal: No

COMMUNITY SERVICE DISTRICTS: LAKE ARROWHEAD COMMUNITY SERVICE DISTRICT: COVENANTS, CONDITIONS, AND RESTRICTIONS: ENFORCEMENT

Authorizes Lake Arrowhead Community Services District to enforce covenants, conditions and restrictions on behalf of the Arrowhead Woods Architectural Committee.

Background

Community services districts. The Community Services Districts Law is the principal act that governs community services districts (CSDs), which are a form of special district. The law governing CSDs was initially passed in 1951 and re-enacted in 1955. In 2005, the Legislature revised the Community Services District Law (SB 135, Kehoe) with the help of a working group of stakeholders.

A community services district 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 local agency formation commission (LAFCO) in the county. LAFCO can impose wide-ranging conditions before the CSD can use the new power.

Covenants, conditions, and restrictions. 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 covenants, conditions and restrictions (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:

- Bel Marin Keys CSD in Marin County;
- Cameron Park CSD in El Dorado County;
- El Dorado Hills CSD in El Dorado County;
- Golden Hills CSD in Kern County;
- Mountain House CSD in Alameda County;
- Rancho Murieta CSD in Sacramento County;
- Salton CSD in Riverside County;
- Stallion Springs CSD in Kern County; and
- Tenaja CSD in Riverside County.

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 the Arrowhead Woods Architectural Committee (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 7 to 9 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 AWAC funds its operations via permit fees when property owners seek AWAC approval to build on their property and damage assessments when they don't. 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 elected by district 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.

Because the Arrowhead Woods CC&Rs predate the state's homeowners association (HOA) law and doesn't govern property shared in common amongst the property owners, AWAC is not an HOA and lacks the ability to impose general dues to fund its duties. According to AWAC, this has made administration and enforcement of the CC&Rs challenging. AWAC and the Lake Arrowhead CSD want the Legislature to grant the CSD the authority to assume the duties of AWAC in enforcing CC&Rs for Arrowhead Woods.

Proposed Law

Senate Bill 1405 authorizes the Lake Arrowhead CSD to enforce all or part of the Arrowhead Woods CC&Rs for a tract, and assume the duties of AWAC to the extent that a tract's CC&Rs are legally enforceable by AWAC.

Before the district can enforce the CC&Rs for a tract, the CSD's board must do all of the following:

- Receive a written request from the AWAC board requesting the district to assume AWAC's duties and enforce the CC&Rs for the tracts;
- Conduct a public hearing on the question, after mailing notice to each property owner;
- Apply to LAFCO for the ability to enforce the CC&Rs, and receive LAFCO's approval, subject to any conditions imposed by LAFCO. The application must specify the exact nature and scope of the intended services to be provided by the district; and
- Adopt an ordinance assuming AWAC's duties and enforcement responsibilities, as described below.

The ordinance must require the property owners within the tracts to finance, in compliance with other state and local law, the activities assumed by the CSD through fees, regular or special assessments. However, SB 1405 provides that this requirement shall not restrict the authority of the district to use general public funds. It also allows the CSD to collect these charges on the property tax bill. The ordinance must also require AWAC to indemnify the district for any litigation-related costs incurred in carrying out AWAC's duties.

SB 1405 allows the CSD to divest itself of the responsibility to enforce the CC&Rs on AWAC's behalf by adopting an ordinance.

State Revenue Impact

No estimate.

Comments

1. Purpose of the bill. 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. For these reasons, AWAC is faced with a financial crisis.

"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.”

2. Whose job is it anyway? SB 1405 charges the Lake Arrowhead CSD with enforcing the private contractual agreements among homeowners and AWAC. AWAC, under the terms of the CC&Rs, already has enforcement authority. The sponsors state that enforcement can be challenging because it requires private litigation through the courts. However, this arrangement is precisely how CC&Rs are intended to be enforced. Additionally, SB 1405 raises questions about the distribution of responsibilities between AWAC and Lake Arrowhead CSD. Specifically, it is unclear whether AWAC retains the ability to set the specific standards (such as fence heights, paint colors, and other aspects of building design) that the CSD must then enforce, or whether the CSD’s elected board members would have the ability to both set the standards and enforce them. Finally, there are questions about whether a public agency enforcing CC&Rs is constitutional. Specifically, the Senate Local Government committee analysis of the rewrite of CSD law in 2005 noted that, regarding CSD enforcement of 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.” Accordingly, a compromise was struck to only allow those CSDs that were already doing so to exercise this power. More broadly, public enforcement of private contracts may create a fundamental mismatch of authority and responsibility.

3. Public funds for private benefit? SB 1405 provides somewhat contradictory direction on how enforcement activities would be funded. The bill requires the ordinance assuming enforcement responsibilities to require the property owners to fund the activities undertaken on AWAC’s behalf, but then says that this requirement doesn’t prohibit Lake Arrowhead CSD from using general funds. But the CSD serves properties outside of the Arrowhead Woods community, meaning that funds that currently benefit individuals outside of the Arrowhead Woods community could be redirected to enforcement of Arrowhead Woods’s CC&Rs. The Committee may wish to consider amending SB 1405 to delete the provision that allows such cost shifting.

4. Who’s asking? CC&Rs are usually enforced by an HOA, which can be done without legislation and upon the consent of each property owner to join. SB 1405 instead creates a shortcut to the same end by allowing Lake Arrowhead to assume enforcement responsibilities with only the consent of AWAC—the board of which is not elected—and after a public hearing. Previous measures granting CSDs similar authority required an election or a petition approved by a majority of property owners for the authority to be transferred from the private entity to the CSD. Without such a provision, it is unclear that greater enforcement is desired by a majority of the property owners in Arrowhead Woods. The Committee may wish to consider amending SB

1405 to require AWAC to submit a petition signed by the majority of property owners to Lake Arrowhead CSD before the CSD can enforce the CC&Rs.

5. History lesson. There is a dark side to the history of CC&Rs. After the United States (U.S.) Supreme Court struck down racial zoning ordinances in *Buchanan v. Warley* (1917) 245 U.S. 60, champions of segregation turned to private agreements in order to achieve the same end, such that “racially restrictive covenants” came increasingly into use in the 1920s. Accordingly, many CC&Rs contained restrictions that prohibited nonwhite individuals (sometimes with an exemption for servants) from occupying the premises. In 1948, in the companion cases of *Shelley v Kramer* 334 U.S. 1 and *Hurd v Hodge* 334 U.S. 24, the U.S. Supreme Court held that state court enforcement of racially restrictive property covenants violated the due process and equal protection clauses of the 14th Amendment to the U.S. Constitution. While private parties could make such agreements without violating the 14th Amendment—which required “state action”—the courts, as state actors, could not enforce such agreements. Subsequent state legislation, in California and elsewhere, made racial discrimination in housing accommodations, including by the use of exclusionary covenants, unlawful. SB 1405 allows the Lake Arrowhead CSD to enforce the CC&Rs that apply to Arrowhead Woods properties—many of which include racially restrictive covenants. To be clear, if SB 1405 is enacted, the CSD would not bear responsibility for enforcing these racially restrictive covenants because they are unenforceable, and the CC&Rs do not task AWAC with enforcing these provisions. Nonetheless, even the appearance of tacit public concurrence with racially restrictive covenants is odious. The Committee may wish to consider amending SB 1405 to only allow the CSD to enforce the CC&Rs after all racially restrictive covenants have been legally expunged.

6. Double-referred. The Senate Rules Committee has ordered a double-referral of SB 1405—first to the Senate Governance & Finance Committee, which has jurisdiction over community services district powers and duties, and then to the Senate Judiciary Committee.

7. Special legislation. Article IV, Section 16 of the California Constitution prohibits special legislation when a general law can apply. SB 1405 contains findings and declarations explaining the need for legislation that applies only to the Lake Arrowhead CSD.

Support and Opposition (4/4/22)

Support:

Arrowhead Woods Architectural Committee (co-sponsor)

Lake Arrowhead CSD (co-sponsor)

Opposition:

None submitted

-- END --