

ASSEMBLY THIRD READING

AB 1404 (Judiciary Committee)

As Amended April 30, 2013

Majority vote

JUDICIARY 10-0

Ayes: Wieckowski, Wagner, Alejo, Chau,
Dickinson, Garcia, Gorell,
Maienschein, Muratsuchi, Stone

SUMMARY: Seeks to clarify and modernize California's almost 150 year old neighborhood fence statute, maintaining the state's long tradition which holds that neighbors are presumed to gain mutual benefits from the construction and maintenance of a boundary fence between their properties, and as a result are generally equally responsible to contribute to the construction and maintenance of their shared fencing. Specifically, this bill, among other things:

- 1) Provides that there is a rebuttable presumption that adjoining landowners gain an equal benefit from the shared fencing that divides their properties, unless otherwise agreed to by the parties in a written agreement.
- 2) Requires a landowner who intends to incur costs for the construction or maintenance of a shared fence with an adjoining landowner, and who wishes to have reasonable contribution for those costs by the adjoining landowner, to provide that neighbor reasonable written notice of at least 30 days to an adjoining landowner prior to any construction or maintenance of the fencing.
- 3) Requires the court to consider, when determining whether equal responsibility for the reasonable costs of construction, maintenance or necessary replacement would result in injustice, various appropriate factors.
- 4) Excludes from the measure any city, city and county, district, public corporation, or other political subdivision, public body, or public agency.

EXISTING LAW provides that "coterminous owners are mutually bound equally to maintain the fences between them, unless one of them chooses to let his land lie without fencing, in which case, if he afterward encloses it, he must refund to the other a just proportion of the value, at that time, of any division fence made by the latter."

FISCAL EFFECT: None

COMMENTS: This non-controversial Assembly Judiciary Committee bill merely seeks to clarify and modernize California's almost 150 year old neighborhood fence statute, maintaining the state's long tradition that neighbors are generally presumed to gain mutual benefits from the construction and maintenance of a fence between their properties. This appears to be the approach intended for the past 141 years since the law was originally enacted in order to safeguard against the unjust enrichment of one landowner by the adjoining landowner's construction or maintenance of a fence between them. However this is one of the rare examples

of an old California statute never having been amended in all that time, so its 1870s language no longer provides clear and helpful guidance to those seeking to understand the law.

While maintaining the centuries-old rule in California that neighbors who share a fence equally share in the responsibility for maintaining it, the bill also takes into account that neighborhood fences are not always mutually beneficial, and that an adjoining landowner who receives little or no benefit from a fence will not be required to subsidize an adjoining landowner's fence construction or maintenance. By allowing such owners to demonstrate the unfairness of imposing equal responsibility in a particular case, this bill prevents the inequities that would result from a hard and fast "blanket" presumption of equal benefit and responsibility.

Research by the Assembly Judiciary Committee reveals that there are several California cities that explicitly require property owners to maintain fences on their properties. However, the ordinances do not address how adjoining property owners should avoid disputes regarding the reasonable apportionment of costs of construction or maintenance of such shared fencing. This bill will thus help guide neighbors on these issues to minimize neighborhood disputes. These typical omissions and ambiguities in local ordinances highlight the need and benefit of clarifying and modernizing the state's neighborhood fencing statute.

The bill is also in line with how other states deal with these neighborhood issues, such as Minnesota, Nebraska, Iowa, New Hampshire and Louisiana.

The presumption of equal responsibility and contribution for shared fencing does not make sense in the context of public lands, such as California's 1.5 million acres containing state parks, or in the context of many other state and local public lands. The measure thus appropriately limits its scope to private landowners.

Analysis Prepared by: Drew Liebert / JUD. / (916) 319-2334

FN: 0000403