

**SENATE RULES COMMITTEE**

AB 1404

Office of Senate Floor Analyses

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CONSENT

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Bill No: AB 1404

Author: Assembly Judiciary Committee

Amended: 6/14/13 in Senate

Vote: 21

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SENATE JUDICIARY COMMITTEE: 7-0, 6/11/13

AYES: Evans, Walters, Anderson, Corbett, Jackson, Leno, Monning

ASSEMBLY FLOOR: 72-0, 5/16/13 - See last page for vote

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**SUBJECT**: Real property: boundaries

**SOURCE**: Author

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**DIGEST**: This bill establishes a presumption that adjoining landowners share an equal benefit from any fence dividing their properties and, absent a written agreement to the contrary, are equally responsible for the reasonable costs for the fence, as specified.

**ANALYSIS**: Existing law provides that coterminous owners are mutually bound equally to maintain: (1) the boundaries and monuments between them; and (2) the fences between them, unless one of them chooses to let his/her land lie without fencing, in which case, if he/she afterwards encloses it, he/she must refund to the other a just portion of the value, at that time, of any division fence made by the latter. (Civil Code Section 841.)

This bill:

1. Repeals Civil Code Section 841, and instead, provides that adjoining landowners shall equally in the responsibility for maintaining the boundaries and monuments between them.

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2. Provides that adjoining landowners are presumed to share an equal benefit from any fence dividing their properties and, unless otherwise agreed to by the parties in a written agreement, be presumed to be equally responsible for reasonable costs of construction, maintenance, or necessary replacement of the fence.
3. Requires a landowner to give 30-days' written notice to each affected adjoining landowner if the landowner intends to incur costs for a fence, as specified. The notice must include notification of the presumption of equal responsibility for the reasonable costs of construction, maintenance, or necessary replacement of the fence. The notice must also include a description of the nature of the problem facing the shared fence, the proposed solution addressing the problem, the estimated construction or maintenance costs involved to address the problem, the proposed cost sharing approach, and the proposed timeline for getting the problem addressed.
4. Allows the above presumption to be overcome by a preponderance of the evidence demonstrating that imposing equal responsibility for the reasonable costs of construction, maintenance, or necessary replacement of the fence would be unjust. In determining whether equal responsibility for the reasonable costs would be unjust, the court shall consider: (a) whether the financial burden to one landowner is substantially disproportionate to the benefit conferred upon that landowner by the fence in question; (b) whether the cost of the fence would exceed the difference in the value of the real property before and after its installation; (c) whether the financial burden to one landowner would impose an undue hardship given that party's financial circumstances as demonstrated by reasonable proof; (d) the reasonableness of the particular construction or maintenance project, as specified; and (e) any other equitable factors appropriate under the circumstances.
5. Provides that when a party rebuts the presumption by a preponderance of the evidence, the court will, in its discretion, consistent with the party's circumstances, order either a contribution of less than an equal share for the costs of construction, maintenance, or necessary replacement of the fence, or order no contribution.
6. Defines "landowner" as a private person or entity that lawfully holds any possessory interest in real property, and provides that landowner does not include a city, county, city and county, district, public corporation, or other political subdivision, public body or public agency.

7. Defines “adjoining” as contiguous or in contact with.

### Background

Under existing law, “coterminous” landowners (property owners that share the same boundary) are required to equally maintain the fences between them, unless one of them chooses to let his or her land lie without fencing. (Civil Code Section 841.) The requirement for landowners to equally share in the costs of fences between their properties was enacted in 1872 and based upon prior requirements for landowners to share costs for fencing. In *Bliss v. Sneath* (1894) 103 Cal. 43, the California Supreme Court further observed:

[Civil Code Section 841 is] one of many code provisions relating to the rights and duties of property holders, and the liability arising from the conditions mentioned cannot justly be said to be a statutory liability. The liability arises from the fact that plaintiff’s principal made use of a fence built by the defendant under circumstances which create the liability. She has been benefited, and the law says she must pay for it. Here are all the elements of an implied contract. The obligation to pay legal interest could be claimed, with much greater plausibility, to be a statutory liability, and therefore not a contract liability. The fact that the Civil Code has changed some common-law rules, by which the rights and obligations of persons were ascertained, does not make the new or changed obligations any less obligations arising from implied contracts than were the different obligations fixed by the common law.

The existing statutory requirement generally imposing a mutual obligation upon landowners to maintain fences has not been amended in over 140 years.

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: No Local: No

**ARGUMENTS IN SUPPORT:** According to the author, “This non-controversial bill 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. This appears to be the approach intended for the past 141 years since Section 841 of the Civil Code was originally enacted in order to safeguard against the unjust enrichment of one landowner by the adjoining landowner’s construction or maintenance of a boundary fence between them.”

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**ASSEMBLY FLOOR**: 72-0, 5/16/13

AYES: Achadjian, Alejo, Ammiano, Atkins, Bigelow, Bloom, Blumenfield, Bocanegra, Bonilla, Bonta, Bradford, Brown, Buchanan, Ian Calderon, Campos, Chau, Chávez, Chesbro, Conway, Cooley, Dahle, Daly, Dickinson, Eggman, Fong, Fox, Frazier, Beth Gaines, Garcia, Gatto, Gomez, Gordon, Gorell, Gray, Hagman, Hall, Harkey, Roger Hernández, Jones, Jones-Sawyer, Levine, Linder, Logue, Lowenthal, Maienschein, Mansoor, Medina, Mitchell, Mullin, Muratsuchi, Nazarian, Nestande, Olsen, Pan, Patterson, Perea, V. Manuel Pérez, Quirk, Quirk-Silva, Rendon, Salas, Skinner, Ting, Torres, Wagner, Waldron, Weber, Wieckowski, Wilk, Williams, Yamada, John A. Pérez

NO VOTE RECORDED: Allen, Donnelly, Grove, Holden, Melendez, Morrell, Stone, Vacancy

AL:d 6/14/13 Senate Floor Analyses

SUPPORT/OPPOSITION: NONE RECEIVED

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