

Senate Bill No. 407

CHAPTER 587

An act to add Section 1102.155 to, and to add Article 1.4 (commencing with Section 1101.1) to Chapter 2 of Title 4 of Part 4 of Division 2 of, the Civil Code, relating to water conservation.

[Approved by Governor October 11, 2009. Filed with
Secretary of State October 11, 2009.]

LEGISLATIVE COUNSEL'S DIGEST

SB 407, Padilla. Property transfers: plumbing fixtures replacement.

(1) Existing law authorizes public entities that supply water, by the adoption of an ordinance or resolution pursuant to specified procedures, to adopt and enforce a water conservation program. Existing law requires certain disclosures to be made upon the transfer of real estate. Existing law requires that all water closets or urinals sold or installed in the state use no more than an average of 1.6 gallons or one gallon per flush, respectively.

This bill would establish requirements for residential and commercial real property built and available for use on or before January 1, 1994, for replacing plumbing fixtures that are not water conserving, as defined as noncompliant plumbing fixtures. On and after January 1, 2014, the bill would require, for all building alterations or improvements to single-family residential real property, as defined, that water-conserving plumbing fixtures replace other noncompliant plumbing fixtures as a condition for issuance of a certificate of final completion and occupancy or final permit approval by the local building department. By creating a new duty to inspect for local officials, this bill would impose a state-mandated local program. The bill would require, on or before January 1, 2017, that all noncompliant plumbing fixtures in any single-family residential real property shall be replaced by the property owner with water-conserving plumbing fixtures.

The bill would require, on or before January 1, 2019, that all noncompliant plumbing fixtures in multifamily residential real property and commercial real property, as defined, be replaced with water-conserving plumbing fixtures. The bill would require, on and after January 1, 2014, for specified building alterations or improvements to multifamily residential real property and commercial real property, that water-conserving plumbing fixtures replace other noncompliant plumbing fixtures as a condition for issuance of a certificate of final completion and occupancy or final permit approval by the local building department. By creating a new duty to inspect for local officials, this bill would impose a state-mandated local program.

The bill would require, on and after January 1, 2017, that a seller or transferor of single-family residential real property, multifamily residential real property, or commercial real property disclose to a purchaser or

transferee, in writing, specified requirements for replacing plumbing fixtures, and whether the real property includes noncompliant plumbing. The bill would require, on and after January 1, 2017, a seller of certain residential real property to make a specified disclosure in this regard. The bill would permit an owner or the owner's agent to enter rental property for the purpose of installing, repairing, testing, and maintaining water-conserving plumbing fixtures, as specified, and would require, on and after January 1, 2019, that the water-conserving plumbing fixtures prescribed by the bill operate at the manufacturer's rated water consumption at the time that a tenant takes possession, as specified. The bill would provide that the application of its requirements may be postponed up to one year, as specified, with respect to a building for which a demolition permit has been issued. The bill would permit a city or county or retail water supplier to enact a local ordinance or policy that promotes compliance with the bill's provisions or that will result in greater water savings than otherwise provided by the bill. The bill would provide that any city, county, or city and county that has adopted an ordinance requiring retrofit of noncompliant plumbing fixtures prior to July 1, 2009, is exempt from its requirements so long as the ordinance remains in effect.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Article 1.4 (commencing with Section 1101.1) is added to Chapter 2 of Title 4 of Part 4 of Division 2 of the Civil Code, to read:

Article 1.4. Installation of Water Use Efficiency Improvements

1101.1. The Legislature finds and declares all of the following:

(a) Adequate water supply reliability for all uses is essential to the future economic and environmental health of California.

(b) Environmentally sound strategies to meet future water supply and wastewater treatment needs are key to protecting and restoring aquatic resources in California.

(c) There is a pressing need to address water supply reliability issues raised by growing urban areas.

(d) Economic analysis by urban water agencies has identified urban water conservation as a cost-effective approach to addressing water supply needs.

(e) There are many water conservation practices that produce significant energy and other resource savings that should be encouraged as a matter of state policy.

(f) Since the 1991 signing of the “Memorandum of Understanding Regarding Urban Water Conservation in California,” many urban water and wastewater treatment agencies have gained valuable experience that can be applied to produce significant statewide savings of water, energy, and associated infrastructure costs. This experience indicates a need to regularly revise and update water conservation methodologies and practices.

(g) To address these concerns, it is the intent of the Legislature to require that residential and commercial real property built and available for use or occupancy on or before January 1, 1994, be equipped with water-conserving plumbing fixtures.

(h) It is further the intent of the Legislature that retail water suppliers are encouraged to provide incentives, financing mechanisms, and funding to assist property owners with these retrofit obligations.

1101.2. Except as provided in Section 1101.7, this article shall apply to residential and commercial real property built and available for use on or before January 1, 1994.

1101.3. For the purposes of this article:

(a) “Commercial real property” means any real property that is improved with, or consisting of, a building that is intended for commercial use, including hotels and motels, that is not a single-family residential real property or a multifamily residential real property.

(b) “Multifamily residential real property” means any real property that is improved with, or consisting of, a building containing more than one unit that is intended for human habitation, or any mixed residential-commercial buildings or portions thereof that are intended for human habitation. Multifamily residential real property includes residential hotels but does not include hotels and motels that are not residential hotels.

(c) “Noncompliant plumbing fixture” means any of the following:

(1) Any toilet manufactured to use more than 1.6 gallons of water per flush.

(2) Any urinal manufactured to use more than one gallon of water per flush.

(3) Any showerhead manufactured to have a flow capacity of more than 2.5 gallons of water per minute.

(4) Any interior faucet that emits more than 2.2 gallons of water per minute.

(d) “Single-family residential real property” means any real property that is improved with, or consisting of, a building containing not more than one unit that is intended for human habitation.

(e) “Water-conserving plumbing fixture” means any fixture that is in compliance with current building standards applicable to a newly constructed real property of the same type.

(f) “Sale or transfer” means the sale or transfer of an entire real property estate or the fee interest in that real property estate and does not include the sale or transfer of a partial interest, including a leasehold.

1101.4. (a) On and after January 1, 2014, for all building alterations or improvements to single-family residential real property, as a condition for

issuance of a certificate of final completion and occupancy or final permit approval by the local building department, the permit applicant shall replace all noncompliant plumbing fixtures with water-conserving plumbing fixtures.

(b) On or before January 1, 2017, noncompliant plumbing fixtures in any single-family residential real property shall be replaced by the property owner with water-conserving plumbing fixtures.

(c) On and after January 1, 2017, a seller or transferor of single-family residential real property shall disclose in writing to the prospective purchaser or transferee the requirements of subdivision (b) and whether the real property includes any noncompliant plumbing fixtures.

1101.5. (a) On or before January 1, 2019, all noncompliant plumbing fixtures in any multifamily residential real property and in any commercial real property shall be replaced with water-conserving plumbing fixtures.

(b) An owner or the owner's agent may enter the owner's property for the purpose of installing, repairing, testing, and maintaining water-conserving plumbing fixtures required by this section, consistent with notice requirements of Section 1954.

(c) On and after January 1, 2019, the water-conserving plumbing fixtures required by this section shall be operating at the manufacturer's rated water consumption at the time that the tenant takes possession. A tenant shall be responsible for notifying the owner or owner's agent if the tenant becomes aware that a water-conserving plumbing fixture within his or her unit is not operating at the manufacturer's rated water consumption. The owner or owner's agent shall correct an inoperability in a water-conserving plumbing fixture upon notice by the tenant or if detected by the owner or the owner's agent.

(d) (1) On and after January 1, 2014, all noncompliant plumbing fixtures in any multifamily residential real property and any commercial residential real property shall be replaced with water-conserving plumbing fixtures in the following circumstances:

(A) For building additions in which the sum of concurrent building permits by the same permit applicant would increase the floor area of the space in a building by more than 10 percent, the building permit applicant shall replace all noncompliant plumbing fixtures in the building.

(B) For building alterations or improvements in which the total construction cost estimated in the building permit is greater than one hundred fifty thousand dollars (\$150,000), the building permit applicant shall replace all noncompliant plumbing fixtures that service the specific area of the improvement.

(C) Notwithstanding subparagraph (A) or (B), for any alterations or improvements to a room in a building that require a building permit and that room contains any noncompliant plumbing fixtures, the building permit applicant shall replace all noncompliant plumbing fixtures in that room.

(2) Replacement of all noncompliant plumbing fixtures with water-conserving plumbing fixtures, as described in paragraph (1), shall be a condition for issuance of a certificate of final completion and occupancy or final permit approval by the local building department.

(e) On and after January 1, 2019, a seller or transferor of multifamily residential real property or of commercial real property shall disclose to the prospective purchaser or transferee, in writing, the requirements of subdivision (a) and whether the property includes any noncompliant plumbing fixtures. This disclosure may be included in other transactional documents.

1101.6. The duty of an owner or building permit applicant to comply with the requirements of this article shall be postponed for one year from the date of issuance of a demolition permit for the building. If the building is demolished within the one-year postponement, the requirements of this article shall not apply. If the building is not demolished after the expiration of one year, the provisions of this article shall apply, subject to appeal to the local building department, even though the demolition permit is still in effect or a new demolition permit has been issued.

1101.7. This article shall not apply to any of the following:

- (a) Registered historical sites.
- (b) Real property for which a licensed plumber certifies that, due to the age or configuration of the property or its plumbing, installation of water-conserving plumbing fixtures is not technically feasible.
- (c) A building for which water service is permanently disconnected.

1101.8. A city, county, or city and county, or a retail water supplier may do either of the following:

- (a) Enact local ordinances or establish policies that promote compliance with this article.
- (b) Enact local ordinances or establish policies that will result in a greater amount of water savings than those provided for in this article.

1101.9. Any city, county, or city and county that has adopted an ordinance requiring retrofit of noncompliant plumbing fixtures prior to July 1, 2009, shall be exempt from the requirements of this article so long as the ordinance remains in effect.

SEC. 2. Section 1102.155 is added to the Civil Code, to read:

1102.155. (a) (1) The seller of residential real property subject to this article shall disclose, in writing, that Section 1101.4 of the Civil Code requires that California single-family residences be equipped with water-conserving plumbing fixtures on or before January 1, 2017, and shall disclose whether the property includes any noncompliant plumbing fixtures.

(2) The seller shall affirm that this representation is that of the seller and not a representation of any agent, and that this disclosure is not intended to be part of any contract between the buyer and the seller. The seller shall further affirm that this disclosure is not a warranty of any kind by the seller or any agent representing any principal in the transaction and is not a substitute for any inspections that or warranties any principal may wish to obtain.

(b) This section shall become operative on January 1, 2017.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution 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 act, within the meaning of Section 17556 of the Government Code.

O