SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

AB 1061 (Lee)
Version: June 14, 2021
Hearing Date: June 22, 2021
Fiscal: No
Urgency: No
TSG

SUBJECT

Mobilehome Residency Law: water utility charges

DIGEST

This bill clarifies and places limitations on how much a mobilehome park can charge park residents for water service when the park provides submetered water service and bills separately for it.

EXECUTIVE SUMMARY

Some mobilehome parks provide water service to park residents by buying the water from a water supplier, passing the water on to the residents through a submeter, and then sending a bill to each resident. That water bill generally includes a charge for the amount of water the resident consumed and one or more additional water service fees. Current law caps those additional water service fees at the amount that the water supplier could have legally charged each resident if the water supplier were delivering the water to the residents directly. Because it may in fact cost the park less than that to deliver water to the residents, unscrupulous parks can potentially turn a profit by acting as the intermediary. To prevent mobilehome parks from padding their water service fees and profiting off of the delivery of water in this way, this bill would limit parks to charging tenants three separate amounts for water: one charge for the actual water consumed, one charge to cover the resident's share of whatever recurring fixed amount the water supplier charges the park, and one charge to cover the park's administrative costs. Each charge would be calculated according to specified formulas, thus preventing parks from padding resident's bills with unexplained additional fees.

The bill is sponsored by the Golden State Manufactured Homeowners League. Support comes from a county board of supervisors and a local water authority. Opposition comes from park owners who assert that the bill forces them to subsidize the cost of providing water to mobilehome residents.

PROPOSED CHANGES TO THE LAW

Existing law:

1) Establishes the Mobilehome Residency Law (MRL) which regulates the rights, responsibilities, obligations, and relationships between mobilehome park management and park residents. (Civ. Code § 798 *et seq*.)

2) Specifies that, if management provides both master-meter and submeter service of utilities to a homeowner, for each billing period the cost of the charges for the period shall be separately stated along with the opening and closing readings for the homeowner's meter. Also requires management to post specified information regarding the current applicable utility rates. (Civ. Code § 798.40(a).)

3) Requires that, if a third-party billing agent or company prepares utility billing for the park, the management must disclosure on each resident's billing, the name, address, and telephone number of the billing agent or company. (Civ. Code § 798.40(b).)

4) Provides for all of the following in relation to the provision of natural gas or liquid propane gas, electricity, water, cable television, garbage or refuse service, or sewer service at a mobilehome park:
   a) authorizes management to bill homeowners separately for fees and charges assessed by the utility unless the rental agreement states otherwise;
   b) specifies that separate utility fees and charges are not rent; and
   c) outlines the procedures for adjusting base rent calculations under local rent control ordinances when a park switches to billing utility fees and charges separately from rent. (Civ. Code § 798.41(a).)

5) Requires parks to separately state any utility fees and charges for natural gas or liquid propane gas, electricity, water, cable television, garbage or refuse service, or sewer service on any monthly or other periodic billing to the homeowner. If the fee or charge has a limited duration or is amortized for a specified period, the expiration date shall be stated on the initial notice and each subsequent billing to the homeowner while the fee or charge is billed to the homeowner. (Civ. Code § 798.41(d).)

This bill:

1) Limits a mobilehome park that acts as a master-meter customer to a water purveyor, provides submetered water service to its homeowners, and separately bills them for that water service, to charging the homeowner for:
   a) the homeowner's exclusive volumetric water usage;
   b) any recurring fixed charge that the water purveyor bills the park; and
   c) an administrative fee to cover the park's or its agent's billing costs.

2) Authorizes a park to calculate the homeowner's volumetric usage in any of the following ways:
   a) the proportion of the homeowner's usage, as shown by the submeter, to the total usage as shown by the water purveyor's billing;
   b) if the water purveyor charges for volumetric usage based on a tiered rate schedule, management may calculate the charge for a homeowner's volumetric usage as described in (a), above, or management may instead divide each tier's volume evenly among the number of mobilehome spaces, and the rate applicable to each block shall be applied to the consumption recorded for each mobilehome space; or
   c) if the water purveyor charges the property rates on a per-mobilehome space basis, the homeowners may be charged at those exact per-mobilehome space rates.

3) Authorizes a park to calculate the amount charged to the homeowner for any recurring fixed charges billed to the park by the water purveyors in any of the following ways:
   a) the homeowner's proportion of the total fixed charges charged to management for the park's water use. The homeowner's proportion shall be based on the percentage of the homeowner's volumetric water use in relation to the total volumetric water use of the entire park, as shown on management's water bill during that period; or
   b) dividing the total fixed charges charged to the park equally among the total number of spaces at the park.

4) Specifies that the billing, administrative, or other fee for management's and billing agent's combined costs shall be the lesser of:
   a) $4.75, as adjusted annually for inflation starting January 1, 2022; or
   b) 25 percent of the amount billed to the homeowner for the homeowner's volumetric water use as determined under (2), above.

COMMENTS

1. Background on mobilehomes

More than 700,000 people are estimated to occupy the roughly 393,000 mobilehome spaces in California's more than 4,700 mobilehome parks. In most of those parks, residents own their home but lease the land upon which their home sits. Although they have historically been called "mobilehomes," it is in fact very difficult and quite expensive to actually move a mobilehome once it has been installed in a park. The cost to move a mobilehome ranges from $2,000 to upwards of $20,000 depending on the size of the home and the distance traveled.

Given the unique nature of mobilehomes, California has enacted a series of laws customized to the mobilehome context. In 1978, the Legislature brought the main body

of these rules together in one central statutory location: the Mobilehome Residency Law (MRL). The MRL governs many aspects of the relationship between mobilehome owners and the parks in which the mobilehomes are situated. For example the MRL covers: the required content of mobilehome leases; permissible park rules and regulations; access to common areas of the park; and the legal grounds upon which a mobilehome and its owner can be evicted from a park. Of particular relevance to this bill, the MRL also governs many aspects of how a park may bill its residents for the provision of utilities. This bill proposes an addition to the MRL addressing how much a park may charge residents for water service when a master-meter/submeter system is used.

2. Examples of the problem the bill is intended to address

Water service within mobilehome parks can be organized in several different ways. One common arrangement is for the mobilehome park to operate as a middle person between the entity that provides water and the residents of the park. Under this system, the park both buys and sells water. The park acts as a master-meter customer of the water purveyor, buying from the purveyor all the water the park needs to operate. The park then turns around and sells this water to the park residents using submeters to measure each mobilehome's water usage. In theory, the parks are not supposed to make a profit off of these transactions; rather, the park is limited to charging park residents no more than what the water purveyor could permissibly charge park residents if the water purveyor were billing the residents directly. According to the author and sponsor, however, this formula actually leaves plenty of wiggle room in which unscrupulous parks can take advantage of the opaque nature of the water billing process to tack on obscure fees and charges that do not necessarily correspond to the park's actual costs. In this way, the author and sponsor allege, these parks quietly make a profit off of providing water.

As evidence of the problem, the sponsors of the bill provided the Committee with copies of billing statements from mobilehomes across the state showing a variety of fees and charges for water. These fees and charges – referred to in the statements as things like "service charges," "basic service charges," and "customer charges" – appear to be separate and in addition to the charge for the amount of water that the resident has used. It is possible, of course, that some or even all of these additional charges or fees correspond to whatever the park has to pay to maintain the water delivery system above and beyond what the water purveyor charges. The problem is that it appears impossible to tell how the fees and charges are calculated. It seems likely that at least some parks would succumb to the temptation to pad these charges above and beyond their actual costs, thus profiting from the provision of water at the expense of residents.

What recently transpired at the Carefree Ranch Mobilehome Park in Escondido may be illustrative. According to media reports, for many years residents of the 185 unit park paid for their monthly water use, as shown on their water meters, plus a water service fee of around $7.50. The amount of the fee made sense, because it corresponded to each

mobilehome's pro rata share of the monthly fixed cost of about $1400 that the City of Escondido charges Carefree Ranch to cover the City's cost to maintain the water system. Then, in February 2017, Carefree Ranch suddenly doubled the water service fee to $15, without explanation. There was no corresponding increase in the amount that the City was charging Carefree Ranch. It appears that the park simply pocketed the difference.[1]

Over time, additional charges like these add up. The sponsors of the bill have developed a chart based on some of the examples of water service charges that they have collected from around the state. By taking the monthly water charge from residents' bills, multiplying it by the number of mobilehomes in the park, and then comparing it against the amount that the water purveyor is believed to charge the park for water service, the sponsors estimate that even relatively small parks may be pocketing more than $35,000 annually in unexplained water service charges, while bigger parks may be taking in over $200,000. Again, in many instances, it is possible that the parks use most if not all of this money to offset their costs of installing, maintaining, or upgrading the infrastructure within the park that delivers water from the master-meter to each resident's submeter, but it is also possible that some of the parks are pocketing some of this money as pure profit at the expense of residents.

3. The solution proposed by the bill

To ensure that unscrupulous park owners do not exploit the circumstances to turn a profit on providing water service to mobilehome residents, this legislation proposes strict limitations on how parks operating a master-meter/submeter system can bill for water. Specifically, the legislation allows only three types of charges on a resident's water bill: (1) a charge for the amount of water the resident has used; (2) a charge for the resident's share of any recurring fixed charges that the water purveyor makes the park pay; and (3) a small fee to cover the park's administrative expenses associated with billing the tenants for their water. For each of these three types of charges, the bill provides exact formulas for how the amount of the charge may be calculated.

4. Opposition concerns about the bill's proposed solution

The solution proposed by the legislation is based on how water service has to be billed in the context of other kinds of multi-family residential housing. (Civ. Code § 1954.205.) Those rules were enacted pursuant to SB 7 (Wolk, Ch. 623, Stats. 2016). SB 7 sought to encourage landlords to adopt the use of master-meter/submeter systems because such systems are believed to promote water conservation.

The park owners who oppose this bill contend that the rules governing billing for water in conventional multi-family housing scenarios are ill-suited to the mobilehome context and will force the parks operating under a master-meter/submeter system to provide

[1] Pell, *Mobilehome Owner Sees Water Bill Jump* (Dec. 8, 2017) San Diego Reader https://www.sandiegoreader.com/news/2017/dec/08/stringers-mobile-home-owner-sees-water-bill-jump/ (as of Jun. 12, 2021.)

water service at a financial loss. The parks highlight that, while this bill would allow them to recover three types of costs that they incur when providing water service – the water used, any fixed charges from the water purveyor, and their administrative costs – there is a fourth cost that the bill does not incorporate. That fourth cost is the amount that parks must spend on installation, maintenance, and any upgrades to the water delivery infrastructure that lies between the master-meter and the mobilehomes. According to the opposition, that infrastructure is larger and more complex in a mobilehome park than it is in a conventional multi-family residential building. As a result, the associated costs are higher. Without some ability to recover these costs, the opposition contends, park owners who currently operate on a master-meter/submeter system will lose money on the provision of water, and park owners who might otherwise consider converting to master-meter/submeter systems will be deterred from doing so.

The opposition is correct that the three types of water service charges permitted under this bill do not account for whatever costs the parks incur for installation, maintenance, and improvement to the park's internal water delivery infrastructure. However, the proponents of the bill point out that parks should be able to recoup these expenses through other means as, according to the proponents, many parks already do. For example, if the rental agreement permits it – and the proponents assert that many mobilehome park rental agreements in California do – the parks could simply charge these amounts to homeowners as capital expense pass-throughs.

Alternatively, where the local law permits it, parks could cover their internal water infrastructure costs using increases in rent or authorized capital improvement pass-throughs. Such rent increases should even be possible in jurisdictions with local rent control ordinances, because most of those ordinances allow parks to petition for rent increases above and beyond the usual limits when the increase can be justified as a "capital improvement" and even those local rent control ordinances that do not allow rent increase for capital improvements are still constitutionally obligated to provide a method for the parks to obtain a return on their investment. The author may wish to amend the bill to make it crystal clear that such avenues for recovering internal water delivery infrastructure costs would remain open to parks.

In contrast to the present system, where unexplained water service charges simply appear on residents' bills, the virtue of most of these other methods is that they would require the park to justify the basis for the additional charges being made to residents and provide the residents with a mechanism for challenging them, though that would not necessarily be true in a jurisdiction with no rent control. In those jurisdictions, of course, parks are at liberty to raise rents by any amount the market will bear, with or without explanation.

6. Proposed amendments

In order to address the issues set forth in the Comments, above, the author proposes to incorporate amendments into the bill that would:

- prevent the bill from being construed to limit the ability of mobilehome parks to recover costs for installing, maintaining, or improving their internal water delivery systems by any means permitted under any rental agreement or local regulation

The specific amendment is achieved by adding the following subdivision to the end of the bill in print:

(e) Nothing in this section shall be construed to prevent management from recovering its costs to install, maintain, or improve its internal water delivery system as may otherwise be allowed in any rental agreement or local regulation.

7. Arguments in support of the bill

According to the author:

> Existing law ensures that residents are billed proportionally for utilities like energy (SB 1117 [Monning], Chapter 164, Statutes of 2020), but does not extend similar protections to water. As a result, mobilehome park owners are able to charge an ambiguous water service fee to residents. This fee is often above and beyond what park owners pay to the water utility, and in many cases the fee increases without explanation.
>
> AB 1061 would ensure that water service fees for mobilehome residents reflect only their proportional share of charges. SB 1117 established consumer protections for utilities and energy for mobilehome residents, ensuring that they are only charged for their portion of gas and electric. This bill would extend similar protections to another essential utility service: water.

As sponsor of the bill, the Golden State Manufactured Homeowners League writes:

> [AB 1061 protects mobilehome residents from arbitrary and unfair water "service" charges and fees which are billed to many park residents over and above the actual amount of water that they consume when a park sub-meters and bills monthly water service to individual mobilehome spaces. It is proper that residents pays for their water consumption. However, many parks also charge a water "service" or "customer" charge far in excess of the pro-rata share of any such charges which are billed to the park by the

> serving water utility. Such park owners are not just passing on to their residents a pro-rata share of any such charges per space, but are multiplying the charge to each of the spaces throughout the park, or in some cases making up their own charges, and reaping "free money" from residents in the process.

In support, the San Diego County Water Authority writes:

> […] [M]any mobilehome parks with separate water submeters located on each lot space charge residents an additional cost to the amount of water used each month. This charge appears on the billing statement as a "customer charge" or "service charge." This charge may be fixed or vary from month-to-month. The varying range and calculation for the charge is unknown and could essentially result in additional revenue to the mobilehome park owner. While residents should pay for their water consumption and that requirement advances an important water conservation concept, a "water service" or "customer charge" far in excess of the charges billed to the park by the serving water utility takes advantage of residents and does not support or advance a water conservation ethic.

8. <u>Arguments in opposition to the bill</u>

In opposition to the bill, the California Manufactured Parkowners Alliance writes:

> AB 1061 requires that parkowners only bill residents for their proportionate share of the park's master-meter utility bill. However, the master-meter bill only covers the utility's fixed cost of delivering water to the park, not the park's fixed cost for the system that distributes water to homes in the park. Consequently as currently drafted AB 1061 will prohibit those parkowners who already reduced rent when installing submeters in their park from recuperating their cost of delivering water within the park. For those parks that have already submetered, this is fundamentally unfair. For parks who have not yet installed submeters, AB 1061 represents a major disincentive to doing so as currently drafted.

In further opposition to the bill, Western Manufactured Housing Communities Association writes:

> GSMOL's proposed amendments will provide mobilehome park residents with water at a subsidy below the cost to other residential water users and will require park operators to submeter water at a loss.

SUPPORT

Golden State Manufactured Homeowners League (sponsor)
Board of Directors of the Rancho Yolo Community Association
Disability Rights California
Rancho Yolo Community Association
San Diego County Water Authority
Santa Cruz County Board of Supervisors

OPPOSITION

California Mobilehome Parkowners Alliance
Western Manufactured Housing Communities Association

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

SB 1117 (Monning, Ch. 164, Stats. 2020) ensured consumer protections for electrical and gas service are extended to tenants of mobilehome parks and other similar residential complexes.

SB 7 (Wolk, Ch. 623, Stats. 2016) specified that separately-metered water bills in multi-family residential rental housing must be transparent and may only include specified components.

AB 1830 (Pérez, Ch. 539, Stats. 2012) authorized the California Public Utilities Commission (PUC) to order a mobilehome park to reimburse tenants if, upon a complaint from at least 10 percent of park residents, the Commission finds that the park has charged an unreasonable rate for water services.

PRIOR VOTES:

Assembly Floor (Ayes 48, Noes 4)
Assembly Housing and Community Development Committee (Ayes 7, Noes 0)

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