

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

AB 358 (Flora)  
Version: May 5, 2021  
Hearing Date: June 29, 2021  
Fiscal: No  
Urgency: No  
TSG

**SUBJECT**

Monitored electrified security fences: permitted use

**DIGEST**

This bill authorizes property owners to install and operate monitored electrified security fences, as defined, on their property, provided the fences meet specified conditions and are not prohibited by a local ordinance.

**EXECUTIVE SUMMARY**

Electrified fences are fences charged with enough electrical current that they deliver a shock when touched. Until recently, such fences were primarily regulated in the agricultural context. As a result, local agencies were sometimes flummoxed when asked to authorize the installation of electrified fences for use as security devices to deter human intruders. There were permitting delays as a result, to the frustration of companies that install and use such fences. In response, California enacted a new law in 2015 setting forth the specific conditions under which electrified security fences may be installed and operated to secure commercial or industrial property. This bill proposes to change that law so that it would instead authorize property owners to install and operate *monitored* electrified security fences – meaning electrified fences that connect to an alarm system designed to summon a human response. In the process, the bill in print appears to repeal authorization for the installation and operation of electrified security fences if they are not monitored in this way. In addition, the bill makes nuanced changes to the permissible height and location of monitored electrified security fences, as well as to the permissible height of accompanying perimeter fences.

The bill is sponsored by Amarak, a private company that makes and installs electrified and monitored security fences. Support comes from industries that use electrified security fencing. There is no known opposition.

**PROPOSED CHANGES TO THE LAW**

Existing law:

- 1) Provides that no electrified fences shall be offered for sale, sold, installed, or used in this state, or otherwise connected to a source of electrical current, unless the electrical current is limited and regulated by an electrical controller which meets or exceeds specified standards for intermittent type electric fence or electrified fence controllers. (Food & Ag. Code § 17152.)
- 2) Defines “electrified fence” to mean any fence and appurtenant devices, including, but not limited to, fences and devices used in animal control, and including, but not limited to, a fence consisting of a single strand of wire supported by posts or other fixtures, which has an electrical charge or is connected to a source of electrical current and which is so designed or placed that a person or animal coming into contact with the conductive element of the fence receives an electrical shock. (Food & Ag. Code § 17151(a).)
- 3) Excludes “electrified security fences” from the definition of “electrified fences.” (Food & Ag. Code § 17151(b).)
- 4) Defines “electrified security fence” to mean any fence, other than an electrified fence, that meets the following requirements:
  - a) the fence is powered by an electrical energizer with specified output characteristics; and
  - b) the fence is used to protect and secure commercial or industrial property. (Civ. Code § 835(a).)
- 5) Authorizes an owner of real property to install and operate an electrified security fence on their property provided that:
  - a) the property is not located in a residential zone;
  - b) the fence meets specified international standards and specifications;
  - c) the fence is identified by prominently placed warning signs that are legible from both sides of the fence and that meet specified criteria; and
  - d) the height of the fence does not exceed 10 feet and the fence is located behind a perimeter fence that is not less than 6 feet in height. (Civ. Code § 835(b).)
- 6) Prohibits an owner of real property from installing and operating an electrified security fence where a local ordinance prohibits that installation and operation. If a local ordinance allows the installation and operation of an electrified security fence, the installation and operation of the fence must meet the requirements of that ordinance and the requirements of (5), above.

- 7) Requires a local jurisdiction that approves a building permit for the construction of an electrified security fences to notify the local fire department and fire marshal and provide them with a copy of the approved permit. (Gov. Code § 50031.)

This bill:

- 1) Replaces authorization for the installation and operation of “electrified security fences” with authorization for the installation and operation of “monitored electrified security fences.”
- 2) Defines “monitored electrified security fence” to mean any fence, other than an electrified fence, that meets the following requirements:
  - a) the fence interfaces with a monitored alarm device in a manner that enables the alarm system to transmit a signal intended to summon the business, a monitoring service, or both the business and a monitoring service, in response to an intrusion or burglary;
  - b) the fence is powered by an electrical energizer with specified output characteristics; and
  - c) the fence is used to protect and secure commercial, manufacturing, or industrial property, as well as property zoned under another designation, but legally authorized for commercial, manufacturing, or industrial use.
- 3) Authorizes an owner of real property to install and operate a monitored electrified security fence on their property provided that:
  - a) the property is not located in a residential zone;
  - b) the fence meets specified international standards and specifications;
  - c) the fence is identified by prominently placed warning signs that are legible from both sides of the fence and that meet specified criteria;
  - d) the height of the fence does not exceed the greater of 10 feet or two feet higher than the perimeter fences; and
  - e) the fence is located behind a perimeter fence that is not less than 5 feet in height.
- 4) Prohibits an owner of real property from installing and operating a monitored electrified security fence where a local ordinance prohibits that installation and operation. If a local ordinance allows the installation and operation of a monitored electrified security fence, the installation and operation of the fence shall meet the requirements of that ordinance and the requirements of (3), above.

### COMMENTS

#### 1. Background on electrified security fences

Generally speaking, an electrified fence is a fence that has an electrical charge that is designed or placed so that a person or animal coming into contact with the fence

receives an electric shock. The fence operates by sending a high voltage pulse of electricity at regular intervals through conductive materials in the fence.

The sale and use of electric fences is generally prohibited in California unless the electrical current is limited and regulated by an electrical controller that meets or exceeds specified standards. (Food & Agr. Code § 17152.) Electrified fences that comply with these standards should not ordinarily cause lasting physical harm to animals or people who come in contact with one, because the length of electric shock delivered by the fence is very brief.<sup>1</sup>

## 2. Proposed changes to what kinds of electrified fences are permissible and where

Until 2015, the installation and operation of electric fences was exclusively governed by provisions within the Food and Agriculture Code. This led to some confusion or hesitancy on the part of local governments when companies applied to install and operate such fences in commercial or industrial settings, causing permitting delays.<sup>2</sup> In response, California enacted SB 582 (Hall, Ch. 273, Stats. 2015). The resulting Civil Code Section 835 authorizes property owners to install and operate electrified fences outside of residential settings, provided that the fences meet specified requirements and there is no local ordinance prohibiting the installation of such fences.

This bill would amend Civil Code Section 835, thus changing what kinds of electrified security fences are allowed in California. Specifically, whereas Section 835 currently authorizes installation and operation of electrified security systems regardless of whether or not they are connected to an alarm system meant to summon a human response, this bill would modify the statute so that it only authorizes the installation and operation of electrified security systems if they are connected to such an alarm system. At the same time, the bill makes nuanced changes to where these fences can be installed, how high they can be, where they can be located, and how high the accompanying perimeter fence must be.

## 3. About the sponsor of the bill and potential concern about special legislation

This bill is sponsored by a private company, Amarok, LLC, the same company that sponsored SB 582 in 2015 (then known as Electric Guard Dog, Inc.). Based on a review of its website, Amarok appears to provide a variety of property security systems, but chief among them are electrified fences. In particular, Amarok's website promotes electrified security fences in combination with "our additional security systems" or

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<sup>1</sup> Webster, *Safety of Electric Security Fences*, University of Wisconsin – Madison  
<https://static.spokanecity.org/documents/projects/electric-fence-text-amendment-update/electric-fence-university-wisconsin-report.pdf> (as of Jun. 12, 2021).

<sup>2</sup> See Sen. Com. on Judiciary Analysis of Assem. Bill No. 582 (2015-2016 Reg. Sess.) as amended Apr. 7, 2015.

“surveillance solutions” including alarm systems connected with the fence.<sup>3</sup> In other words, the sponsor of the bill appears to specialize in the installation and operation of monitored electrified security fences – the very thing that this bill authorizes.

In and of itself, the fact that a private company is sponsoring the bill and stands to gain from its passage is not necessarily problematic from a constitutional point of view. The California Constitution invalidates “special” state or local statutes – that is, laws that only apply to a particular person or entity -- when the statute can be made applicable generally. (Cal. Const., art. IV, § 16.) The purpose of this constitutional prohibition is to prevent public corruption.<sup>4</sup> This bill, although clearly of benefit to the sponsor, would apply generally to all companies that install and operate monitored security fences – those that exist now and any that may be established in the future. Moreover, the bill is not punitive in nature and can be justified by the apparent need for greater clarity about what kind of electrified security fencing is permissible in California. Such factors have been sufficient for courts to uphold statutes even where, as a practical matter, the statute only impacted one entity at the time of enactment. (*Law School Admission Council, Inc. v. State of California* (2014) 222 Cal.App.4th 1265, 1297-9.)

Still, as a policy matter, since the bill is sponsored by a private company and could confer a competitive marketplace advantage on that company, the Committee may wish to be especially careful to ensure that any such advantage is adequately justified on public policy grounds. The author and sponsors assert that the bill is needed in order to clarify that monitored electrified security fences are permissible in California (at least in the absence of a local ordinance to the contrary), thus reducing delays in local permitting processes.

The bill goes about that clarification in a curious way, however. Rather than *adding* authorization to install monitored electrified security fences, specifically, to the existing authorization to install electrified security fences generally, the bill in print would *replace* the general authorization of electrified security fences with the specific authorization of monitored electrified security fences. As a result, at the same time that the bill explicitly authorizes the installation and operation of *monitored* electrified security fences, it appears that the bill also *prohibits* the installation and operation of *unmonitored* electrified security fences. That is true because if the bill in print were enacted, there would no longer be any statute allowing property owners to install and operate unmonitored electrified security fences.

Such an outcome would confer a major marketplace advantage on companies, like the sponsor of the bill, who specialize in the installation and operation of monitored electrified security fences. Property owners who currently have unmonitored electrified security systems would be obliged to upgrade to a monitored system, creating

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<sup>3</sup> See <https://www.amarok.com/> (as of Jun. 12, 2021).

<sup>4</sup> Long, State Constitutional Prohibitions on Special Laws, 60 Clev. St. L. Rev. 719 (2012) at 721-722.

additional business for companies specializing in the monitored systems. Any companies that do not offer or specialize in monitored systems would suddenly find themselves unable to compete against the companies that do.

To avoid this consequence, the author proposes to offer an amendment in Committee. The amendment would clarify that the bill's authorization of the installation and operation of monitored electrified security fences *supplements* the existing authorization for installation and operation of electrified security fences generally, rather than replacing it. In other words, companies that install or operate unmonitored electrified security fences under the existing requirements could continue to do so while companies that choose to install or operate monitored electrified security fences would have clear authorization to do so (assuming there is not local ordinance prohibiting it). This should achieve the author and sponsor's stated aim of eliminating delays or confusion in the permitting process without inadvertently conferring any special marketplace advantages.

#### 4. Proposed amendments

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

- maintain the existing authorization for installation and operation of electrified security fences generally, while also authorizing installation and operation of monitored electrified security fences, specifically.

A mock-up of the amendments in context is attached to this analysis.

#### 5. Arguments in support of the bill

According to the author:

The experience on the permitting and approval process widely ranges given the diverse local ordinances and permitting requirements that unfortunately in some cases result in delays and de facto denials. These scenarios could be split into two buckets: 1) local law that allows for this use and 2) local law that is silent on this permitted use.

Where local law allows for this use, there may still be confusion given the added component of an alarm system that may trigger a burdensome full-scale review of a property and additional updated municipal code requirements that could take 6-12 months for approval. There is also the unfortunate reality of local governments that are already strained with limited resources and a backlog of projects all of which have been exacerbated by the pandemic.

Where local law is “silent”, meaning that there is no local ordinance for electrified security fences, the unintended consequences is that there is confusion as to what a security system that has the integral components of electrified fence and an alarm system should be deemed and what requirements it should meet.

As sponsor of the bill, Amarok, LLC writes:

This clarity in statute is needed because in certain instances where there is a lack of a clear regulatory structure at the local level, this has caused permitting to be inefficient, inconsistent, and often results in unreasonable permitting delays or denials for electrified security fence systems. [...]

AB 358 is essential towards meeting this goal as it will help ensure that many of our members are able to quickly secure their facilities in an effort to protect their workers, run their businesses efficiently, and service their customers.

In support, the California Trucking Association and the California New Car Dealers Association write:

Collaboration with local governments is key to ensuring that the communities where our members operate and live have all the tools at their disposal and in a timely manner to maximize public safety and deter theft and damage.

### **SUPPORT**

Amarok, LLC (sponsor)  
California New Car Dealers Association  
California Trucking Association

### **OPPOSITION**

None known

### **RELATED LEGISLATION**

Pending Legislation: None known.

Prior Legislation:

SB 582 (Hall, Ch. 273, Stats. 2015) authorized a property owner to install and operate an electrified fence on their property if the property is not in a residential zone, the fence

met specified requirements, and a local ordinance did not prohibit the installation of such a fence.

**PRIOR VOTES:**

Assembly Floor (Ayes 78, Noes 0)

Assembly Judiciary Committee (Ayes 11, Noes 0)

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