

AMENDED IN SENATE AUGUST 7, 2002
AMENDED IN SENATE AUGUST 5, 2002
AMENDED IN SENATE JUNE 20, 2002
AMENDED IN SENATE JUNE 11, 2002
AMENDED IN ASSEMBLY MAY 7, 2002
AMENDED IN ASSEMBLY APRIL 18, 2002
AMENDED IN ASSEMBLY APRIL 1, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 2436

**Introduced by Assembly Member Frommer
(Coauthors: Assembly Members Alquist and Cohn)**

February 21, 2002

An act to amend Section 1471 of the Civil Code, to ~~amend Section 25220 of~~ *add Section 57011 to* the Health and Safety Code, and to amend Section 13307.1 of the Water Code, relating to the environment.

LEGISLATIVE COUNSEL'S DIGEST

AB 2436, as amended, Frommer. ~~Hazardous waste: land~~ *Land* use restrictions: cleanup and abatement.

(1) Existing law requires the Department of Toxic Substances Control to notify the planning and building department of each city, county, or regional council of governments of certain land use restrictions imposed upon property designated as hazardous waste property or border zone property, sites listed for remedial or removal

action, and remedial action land use controls. Existing law requires the planning department of those local agencies to file those restrictions and take specified actions and law authorizes the city, county, or regional council to assess a fee to cover the costs of taking those actions. Existing law requires the department to maintain this list of land use restrictions in a specified manner and to make the list available electronically, as specified.

~~This bill would additionally require the department to include, in the list, certain environmental land use restrictions reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land of hazardous materials.~~

~~The bill would authorize the department to enter into a contract with a third party, in accordance with the State Contract Act, for purposes of maintaining the list. The bill would authorize the department to assess a property owner a fee for the reasonable costs of maintaining the list and would require the department to deposit the fees in the Toxic Substances Control Account in the General Fund, which is available for expenditure by the department, upon appropriation by the Legislature, to carry out the Carpenter Presley Tanner Hazardous Substance Account Act to remediate hazardous substance release sites.~~

~~The bill would authorize the department to expend the fees assessed pursuant to the bill, upon appropriation by the Legislature, to carry out the maintenance of the list, including entering into a contract with a party: require the California Environmental Protection Agency (Cal-EPA), the California Integrated Waste Management Board, the State Water Resources Control Board, each California regional water quality control board, and the department to maintain a list of all instruments and agreements restricting land uses imposed by those agencies and would require the list to provide specified information. The bill would require each agency to update its list, as specified, and would authorize each agency to charge a property owner a fee for the reasonable costs of establishing and maintaining the lists. The bill would require each agency to display the list on the agency's Web site and to make the list available to the public upon request.~~

~~The bill would require Cal-EPA to oversee the implementation of these requirements, including maintaining hyperlinks on its Web site to the individual lists, providing a search function to search and retrieve information from each of the individual lists, and creating and posting a list of all instruments and agreements restricting land uses that would be imposed by the bill with regard to Environmental Restriction~~



covenants, as specified in (2) below. The bill would allow Cal-EPA to enter into a contract with a third party, in accordance with the State Contract Act, for purposes of establishing or maintaining, or both, the lists required by the bill.

(2) The Porter-Cologne Water Quality Control Act prohibits the state and the regional boards from considering cleanup or site closure proposals from the primary or active responsible discharger, issuing a closure letter, or making a determination that no further action is required, with respect to a site subject to a cleanup or abatement order, unless all current record owners of fee title to the site of the proposed action have been notified, as specified.

This bill would additionally prohibit the board or regional board from taking those actions with regard to a site that is not an underground storage tank site, unless a land use restriction is recorded or required to be recorded, if the board or regional board finds that the property is not suitable for unrestricted use.

(3) Existing law provides for the recording of an instrument containing an Environmental Restriction covenant made by an owner of land or by the grantee of land to do or refrain from doing an act that is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land of hazardous materials.

This bill would require the office of the county recorder, if an instrument containing an Environmental Restriction covenant is recorded, to send ~~electronically~~ a certified copy of the instrument to the department for posting on its Web site, ~~unless the instrument indicates that the instrument is required by a regional board~~ Cal-EPA for posting on its Web site, for informational purposes only, pursuant to the requirements imposed by the bill, except as specified. The bill would provide the office of the county recorder and any of its employees immunity from any liability under any state law or in any action for damages if the office of the recorder does not send a certified copy of the instrument pursuant to the requirements of the bill.

The bill would authorize the office of the recorder to assess a property owner a reasonable fee, as determined by resolution of its governing body, to cover the costs of taking the action required by the bill. Since the bill would impose new requirements upon county recorders, the bill would create a state-mandated local program.

~~(4) 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, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

~~(4) 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.~~

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

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

1 SECTION 1. Section 1471 of the Civil Code is amended to
2 read:

3 1471. (a) Notwithstanding Section 1468 or any other
4 provision of law, a covenant made by an owner of land or by the
5 grantee of land to do or refrain from doing some act on his or her
6 own land, which doing or refraining is expressed to be for the
7 benefit of the covenantee, regardless of whether or not it is for the
8 benefit of land owned by the covenantee, shall run with the land
9 owned by or granted to the covenantor if all the following
10 requirements are met:

11 (1) The land of the covenantor that is to be affected by the
12 covenant is particularly described in the instrument containing the
13 covenant.

14 (2) The successive owners of the land are expressed to be bound
15 thereby for the benefit of the covenantee in the instrument
16 containing the covenant.

17 (3) Each act that the owner or grantee will do or refrain from
18 doing relates to the use of land and each act is reasonably necessary
19 to protect present or future human health or safety or the
20 environment as a result of the presence on the land of hazardous



1 materials, as defined in Section 25260 of the Health and Safety
2 Code.

3 (4) The instrument containing the covenant is recorded in the
4 office of the recorder of each county in which the land or some
5 portion thereof is situated and the instrument includes in its title the
6 words: "Environmental Restriction."

7 (b) Except as provided by Section 1466 or as specifically
8 provided in the instrument creating a covenant made pursuant to
9 this section, the covenant shall be binding upon each successive
10 owner, during his or her ownership, of any portion of the land
11 affected thereby and upon each person having any interest therein
12 derived through any owner thereof.

13 (c) If several persons are subject to the burden of a covenant
14 recorded pursuant to this section, it shall be apportioned among
15 them pursuant to Section 1467, except if only a portion of the land
16 is so affected thereby, the apportionment shall be only among the
17 several owners of that portion.

18 (d) This section shall apply to the mortgagee, trustee, or
19 beneficiary of a mortgage or deed of trust upon the land or any part
20 thereof while but only while he or she, in that capacity, is in
21 possession thereof.

22 (e) (1) If an instrument containing a covenant is recorded
23 pursuant to paragraph (4) of subdivision (a) as an "Environmental
24 Restriction," in accordance with this section, the office of the
25 recorder of the county shall send ~~electronically a copy of the~~
26 ~~instrument to the Department of Toxic Substances Control, for~~
27 ~~posting on its Web site, for informational purposes only, pursuant~~
28 ~~to Section 25220 of the Health and Safety Code.~~

29 ~~SEC. 2. Section 25220 of the Health and Safety Code is~~
30 ~~amended to read:~~

31 ~~25220. (a) For purposes of this article, unless the context~~
32 ~~clearly requires a different meaning:~~

33 (1) ~~"Determination" means a decision by the department as to~~
34 ~~whether land should be designated as hazardous waste property or~~
35 ~~border zone property and that is reached after an analysis and an~~
36 ~~evaluation of the information obtained by the department.~~

37 (2) ~~"Designation" means imposition of the requirements~~
38 ~~specified in Section 25230 after a determination, a public hearing,~~
39 ~~and a decision by the director has occurred pursuant to Section~~
40 ~~25229.~~



1 ~~(b) Whenever there is reasonable cause for the department to~~
2 ~~believe that any land may be a hazardous waste property or border~~
3 ~~zone property, the department may, by certified mail, request any~~
4 ~~person who owns, leases, or occupies the land, or any other person~~
5 ~~who has information relating to the land, to provide any or all of~~
6 ~~the following information:~~

7 ~~(1) A description of the present use of the land.~~

8 ~~(2) The types and volumes of hazardous waste or extremely~~
9 ~~hazardous waste contained therein or thereon.~~

10 ~~(3) The date or dates the hazardous waste or extremely~~
11 ~~hazardous waste was deposited into or onto the land.~~

12 ~~(4) A map or maps of the property that they own and that~~
13 ~~contains or overlies hazardous waste or extremely hazardous~~
14 ~~waste, drawn to a scale of not more than 200 feet to the inch, that~~
15 ~~shows the area or areas where the hazardous waste or extremely~~
16 ~~hazardous waste is contained or was deposited. The provision of~~
17 ~~a map pursuant to this paragraph shall not be required if the~~
18 ~~respondent to the request asserts in writing that the respondent has~~
19 ~~no knowledge or insufficient knowledge of the existence or~~
20 ~~location of the wastes to comply with this subdivision.~~

21 ~~(5) Any other information that relates to the disposal of~~
22 ~~hazardous waste on or within 2,000 feet of the property or the~~
23 ~~potential for the migration of those wastes.~~

24 ~~(c) Any person who is requested to provide information~~
25 ~~pursuant to subdivision (b) shall submit the information to the~~
26 ~~department within 90 calendar days of receipt of the request.~~

27 ~~(d) The department shall notify the planning and building~~
28 ~~department of each city, county, or regional council of~~
29 ~~governments of any recorded land use restriction imposed~~
30 ~~pursuant to Section 25202.5, 25222.1, 25229, 25230, 25355.5, or~~
31 ~~25398.7 within the jurisdiction of the local agency. Upon receiving~~
32 ~~this notification, the planning and building department shall do~~
33 ~~both of the following:~~

34 ~~(1) File all recorded land use restrictions in the property files~~
35 ~~of the city, county, or regional council of government.~~

36 ~~(2) Require that any person requesting a land use which differs~~
37 ~~from those filed land use restrictions on the property apply to the~~
38 ~~department for a variance or a removal of the land use restrictions~~
39 ~~pursuant to Section 25233 or 25234.~~



1 ~~(c) (1) A planning and building department of a city, county,~~
2 ~~or regional council of governments may assess a property owner~~
3 ~~a reasonable fee to cover the costs of taking the actions required~~
4 ~~by subdivision (d).~~

5 ~~(2) The department may assess a property owner a fee for the~~
6 ~~reasonable costs of taking the actions required by paragraph (1) of~~
7 ~~subdivision (f), regardless of the time when the land use restriction~~
8 ~~is recorded. The department shall deposit the fee revenues in the~~
9 ~~Toxic Substances Control Account, for expenditure by the~~
10 ~~department, pursuant to subdivision (b) of Section 25174.6, to~~
11 ~~carry out the requirements of paragraph (1) of subdivision (f),~~
12 ~~including entering into a contract pursuant to subdivision (g).~~

13 ~~(3) For purposes of this subdivision, “property owner” does~~
14 ~~not include a person who holds evidence of ownership solely to~~
15 ~~protect a security interest in the property, unless the person~~
16 ~~participates, or has a legal right to participate, in the management~~
17 ~~of the property.~~

18 ~~(f) (1) The department shall maintain a list of all instruments~~
19 ~~and agreements restricting land uses recorded pursuant to Section~~
20 ~~1471 of the Civil Code and pursuant to Sections 25200, 25200.10,~~
21 ~~25202.5, 25222.1, 25229, 25230, 25355.5, and 25398.7 in~~
22 ~~accordance with all of the following requirements:~~

23 ~~(A) The list shall, at a minimum, provide the street address and~~
24 ~~the assessor’s parcel number of each property. If a street address~~
25 ~~is not available, the list shall include an equivalent description of~~
26 ~~location or the location’s latitude and longitude.~~

27 ~~(B) The description of location shall contain a description of~~
28 ~~any restricted uses of the property, contaminants known to be~~
29 ~~present, and any remediation of the property that is required. The~~
30 ~~department may post the recorded land use restriction document~~
31 ~~on the Internet Web site in lieu of providing the description~~
32 ~~required by this subparagraph.~~

33 ~~(C) The department shall update the list as new land use~~
34 ~~restrictions are recorded and as land use restrictions on properties~~
35 ~~are changed.~~

36 ~~(D) The department shall make the list available to the public,~~
37 ~~upon request, and shall make the list available on the department’s~~
38 ~~Internet Web site.~~

39 ~~(2) The obligation of the department to maintain a list of~~
40 ~~restrictions recorded pursuant to Section 1471 of the Civil Code~~



1 is limited to listing those deed restrictions that are reported to the
2 department and is for informational purposes only.

3 (g) The department may enter into a contract with a third party,
4 in accordance with the State Contract Act (Part 2 (commencing
5 with Section 10100) of Division 2 of the Public Contract Code) for
6 purposes of maintaining the list required by paragraph (1) of
7 subdivision (f); a certified copy of the instrument to the California
8 Environmental Protection Agency, for posting on its Web site, for
9 informational purposes only, pursuant to Section 57011 of the
10 Health and Safety Code, unless the instrument indicates that it is
11 required by a board or department specified in paragraphs (1) to
12 (3), inclusive, of subdivision (e) of Section 57011 of the Health and
13 Safety Code.

14 (2) Notwithstanding any provision of law, the office of the
15 recorder of the county and any of its employees shall not be subject
16 to any liability under any state law or in any action for damages
17 if the office of the recorder does not send a certified copy of the
18 instrument pursuant to paragraph (1).

19 (f) The office of the recorder of the county may assess a property
20 owner a reasonable fee, as determined by resolution of its
21 governing body, to cover the costs of taking the action required by
22 subdivision (e).

23 SEC. 2. Section 57011 is added to the Health and Safety Code,
24 to read:

25 57011. (a) Each agency listed in subdivision (e) shall
26 maintain a list of all instruments and agreements restricting land
27 uses imposed by that agency under Section 1471 of the Civil Code
28 or any provision of law that is administered by that agency, in
29 accordance with all of the following requirements:

30 (1) The list shall provide a description of location for each
31 property that, at a minimum, provides the street address and the
32 assessor's parcel number. If a street address or assessor's parcel
33 number is not available, or if a street address or assessor's parcel
34 number does not adequately describe the property affected by the
35 instrument or agreement restricting land use, the list shall include
36 a description of location or the location's geographic coordinates.

37 (2) The list shall provide a description of any restricted uses of
38 the property, contaminants known to be present, and any
39 remediation of the property, if known, that would be required to
40 allow for its unrestricted use. The recorded instrument or



1 agreement restricting land uses may be provided in lieu of the
2 description required by this paragraph.

3 (3) Each agency shall update its list as new instruments and
4 agreements restricting land uses are recorded and as instruments
5 and agreements restricting land uses on properties are changed.

6 (4) Each agency may charge a property owner a fee for the
7 reasonable costs of establishing and maintaining the list required
8 by this section, regardless of the time when the land use restriction
9 is recorded. If the California Environmental Protection Agency
10 determines that all or part of establishing and maintaining the list
11 should be contracted to a third party, in accordance with this
12 section, the fee charged the property owner may be used in whole
13 or in part to pay all or part of the contractual charges for
14 performing those functions.

15 (b) Each agency listed in subdivision (e) shall display the list
16 required under subdivision (a) on that agency's Web site, and shall
17 make the list available to the public upon request.

18 (c) The California Environmental Protection Agency shall
19 oversee the implementation of this section. In overseeing the
20 implementation of this section, the California Environmental
21 Protection Agency shall do all of the following:

22 (1) Maintain on its Web site hyperlinks to the individual lists
23 posted pursuant to this section.

24 (2) Provide a search function that is able to search and retrieve
25 information from each of the individual lists posted pursuant to
26 this section.

27 (3) Create and post a list of all instruments and agreements
28 restricting land uses that have been sent pursuant to subdivision
29 (e) of Section 1471 of the Civil Code. The list created and posted
30 pursuant to this paragraph shall meet all of the following
31 requirements:

32 (A) The list shall identify the entity or jurisdiction that imposed
33 the instrument or agreement restricting land uses.

34 (B) The list shall be maintained for informational purposes
35 only.

36 (C) The list shall contain a notation that information regarding
37 the listed properties has been provided voluntarily, that the list is
38 not all-inclusive, and that there may be additional sites where
39 instruments or agreements restricting land uses have been imposed
40 by other entities that have not been included on the list.



1 (d) *The California Environmental Protection Agency may*
2 *enter into a contract with a third party, in accordance with the*
3 *State Contract Act (Part 2 (commencing with Section 10100) of*
4 *Division 2 of the Public Contract Code) for purposes of*
5 *establishing or maintaining, or both, the lists required by this*
6 *section.*

7 (e) *This section applies to the California Environmental*
8 *Protection Agency and to all of the following entities within the*
9 *agency:*

10 (1) *The California Integrated Waste Management Board.*

11 (2) *The State Water Resources Control Board, and each*
12 *California regional water quality control board.*

13 (3) *The Department of Toxic Substances Control.*

14 SEC. 3. Section 13307.1 of the Water Code is amended to
15 read:

16 13307.1. (a) The state board and the regional boards shall not
17 consider cleanup or site closure proposals from the primary or
18 active responsible discharger, issue a closure letter, or make a
19 determination that no further action is required with respect to a
20 site subject to a cleanup or abatement order pursuant to Section
21 13304, unless all current record owners of fee title to the site of the
22 proposed action have been notified of the proposed action by the
23 state board or regional board.

24 (b) The state board and regional boards shall take all reasonable
25 steps necessary to accommodate responsible landowner
26 participation in the cleanup or site closure process and shall
27 consider all input and recommendations from any responsible
28 landowner wishing to participate.

29 (c) In addition to the requirements of subdivision (a), the state
30 board and the regional boards shall not issue a closure letter, or
31 make a determination that no further action is required, with
32 respect to a site that is subject to a cleanup or abatement order
33 pursuant to Section 13304 and that is not an underground storage
34 tank site, if the state board or the regional board finds that the
35 property is not suitable for unrestricted use, unless a land use
36 restriction is recorded or required to be recorded pursuant to
37 Section 1471 of the Civil Code.

38 ~~SEC. 4. Notwithstanding Section 17610 of the Government~~
39 ~~Code, if the Commission on State Mandates determines that this~~
40 ~~act contains costs mandated by the state, reimbursement to local~~



1 ~~agencies and school districts for those costs shall be made pursuant~~
2 ~~to Part 7 (commencing with Section 17500) of Division 4 of Title~~
3 ~~2 of the Government Code. If the statewide cost of the claim for~~
4 ~~reimbursement does not exceed one million dollars (\$1,000,000),~~
5 ~~reimbursement shall be made from the State Mandates Claims~~
6 ~~Fund.~~

7 *SEC. 4. No reimbursement is required by this act pursuant to*
8 *Section 6 of Article XIII B of the California Constitution because*
9 *a local agency or school district has the authority to levy service*
10 *charges, fees, or assessments sufficient to pay for the program or*
11 *level of service mandated by this act, within the meaning of Section*
12 *17556 of the Government Code.*

