

ASSEMBLY BILL

No. 1016

Introduced by Assembly Member Achadjian

February 18, 2011

An act to add Sections 1102.18 and 3482.7 to the Civil Code, relating to nuisance.

LEGISLATIVE COUNSEL'S DIGEST

AB 1016, as introduced, Achadjian. Nuisance: landfill activities.

(1) Existing law defines a nuisance, in part, as anything that is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property. Existing law authorizes various remedies for nuisances, including remedies to effect abatement and damages. Existing law provides, among other things, that no agricultural activity, operation, or facility, or appurtenances thereof, as defined, in operation for more than 3 years, and conducted or maintained for commercial purposes in a manner consistent with proper and accepted customs and standards, shall become a nuisance due to any changed condition in the locality if it was not a nuisance at the time it began, except as specified.

This bill would provide that no landfill activity, operation, or facility, or appurtenances thereof, as defined, in operation for more than 3 years, and conducted or maintained for commercial purposes in a manner consistent with proper and accepted customs and standards, shall become a nuisance due to any changed condition in the locality if it was not a nuisance at the time it began, except as specified.

(2) Existing law requires certain disclosures to be provided to the purchaser of specified residential real property consisting of not less

than one or more than four dwelling units upon transfer of that property. Among other things, the seller of residential real property who has actual knowledge that the property is adjacent to, or zoned to allow, an industrial use, or affected by a nuisance created by that use, shall give written notice of that knowledge as soon as practicable before transfer of title.

This bill would require the seller of any residential dwelling consisting of not less than one or more than four dwelling units that is in close proximity to a landfill activity, operation, or facility, or appurtenances thereof, to give written notice to the purchaser of that real property before transfer of title that the property is subject to the provisions described in (1) above. The bill would require the purchaser to sign the required disclosure.

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

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

1 SECTION 1. Section 1102.18 is added to the Civil Code, to
 2 read:

3 1102.18. The seller of any residential dwelling that is in close
 4 proximity to a landfill activity, operation, or facility, or
 5 appurtenances thereof, shall give written notice to the purchaser
 6 of that real property before transfer of title that the property is
 7 subject to Section 3482.7. The purchaser shall sign the disclosure
 8 required pursuant to this section.

9 SEC. 2. Section 3482.7 is added to the Civil Code, to read:

10 3482.7. (a) No landfill activity, operation, or facility, or
 11 appurtenances thereof, conducted or maintained for commercial
 12 purposes, and in a manner consistent with proper and accepted
 13 customs and standards, as established and followed by similar
 14 landfill operations in the same locality, shall become a nuisance,
 15 public or private, due to any changed condition in or about the
 16 locality, after it has been in operation for more than three years,
 17 if it was not a nuisance at the time it began.

18 (b) Subdivision (a) shall not apply if the landfill activity,
 19 operation, or facility, or appurtenances thereof, obstructs the free
 20 passage or use, in the customary manner, of any navigable lake,
 21 river, bay, stream, canal, or basin, or any public park, square, street,
 22 or highway.

1 (c) Subdivision (a) shall not invalidate any provision contained
2 in the Health and Safety Code, Fish and Game Code, Food and
3 Agricultural Code, or Division 7 (commencing with Section 13000)
4 of the Water Code, if the landfill activity, operation, or facility, or
5 appurtenances thereof, constitutes a nuisance, public or private,
6 as specifically defined or described in any of those provisions.

7 (d) This section shall prevail over any contrary provision of an
8 ordinance or regulation of a city, county, city and county, or other
9 political subdivision of the state. However, nothing in this section
10 shall preclude a city, county, city and county, or other political
11 subdivision of this state, acting within its constitutional or statutory
12 authority and not in conflict with other provisions of state law,
13 from adopting an ordinance that allows notification to a prospective
14 homeowner that the dwelling is in close proximity to a landfill
15 activity, operation, or facility, or appurtenances thereof, and is
16 subject to the provisions of this section consistent with Section
17 1102.6a.

18 (e) For purposes of this section, the term “landfill activity,
19 operation, or facility, or appurtenances thereof” shall include, but
20 not be limited to, a waste management unit at which waste is
21 discharged in or on land for disposal. “Landfill activity, operation,
22 or facility, or appurtenances thereof” does not include any surface
23 impoundment, waste pile, land treatment unit, injection well, or
24 soil amendment.