

Introduced by Senator RubioJanuary 14, 2011

An act to add Section 3482.8 to the Civil Code, relating to nuisance.

LEGISLATIVE COUNSEL'S DIGEST

SB 110, as introduced, Rubio. Nuisance: mining activities.

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, 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 mining 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.

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 3482.8 is added to the Civil Code, to
2 read:

3 3482.8. (a) No mining activity, operation or facility, or
4 appurtenances thereof, whether underground or in a quarry or pit,
5 conducted or maintained for commercial purposes, and in a manner
6 consistent with proper and accepted customs and standards, as
7 established and followed by similar mining operations in the same
8 locality, shall become a nuisance, private or public, due to any
9 changed condition in or about the locality, after it has been in
10 operation for more than three years, if it was not a nuisance at the
11 time it began.

12 (b) Subdivision (a) shall not apply if the mining activity,
13 operation, or facility, or appurtenances thereof, obstruct the free
14 passage or use, in the customary manner, of any navigable lake,
15 river, bay, stream, canal, or basin, or any public park, square, street,
16 or highway.

17 (c) Subdivision (a) shall not invalidate any provision contained
18 in the Health and Safety Code, Fish and Game Code, Food and
19 Agricultural Code, or Division 7 (commencing with Section 13000)
20 of the Water Code, if the mining activity, operation, or facility, or
21 appurtenances thereof, constitutes a nuisance, public or private,
22 as specifically defined or described in any of those provisions.

23 (d) This section shall prevail over any contrary provision of an
24 ordinance or regulation of a city, county, city and county, or other
25 political subdivision of the state. However, nothing in this section
26 shall preclude a city, county, city and county, or other political
27 subdivision of this state, acting within its constitutional or statutory
28 authority and not in conflict with other provisions of state law,
29 from adopting an ordinance that allows notification to a prospective
30 homeowner that the dwelling is in close proximity to a mining
31 activity, operation, facility, or appurtenances thereof, and is subject
32 to the provisions of this section consistent with Section 1102.6a.

33 (e) For purposes of this section, the term “mining activity,
34 operation, or facility, or appurtenances thereof” shall include, but
35 not be limited to, the excavation, extraction, or removal from land
36 of ores and minerals, including sand, gravel, shells, or stone, or
37 combinations thereof, used to produce a construction material or
38 an industrial product or other commercial product directly from

1 those ores and minerals, including the private ways, roads, and
2 areas necessary to conduct that activity or operation, and the
3 operation of a plant site for processing those ores and minerals,
4 including associated onsite structures, equipment, machines, tools,
5 or other materials, including the onsite stockpiling and onsite
6 recovery of those ores and minerals.

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