

THE McCONNELL REPORT by Greg McConnell

LEGISLATIVE UPDATE

As you read this article, the California Legislature will be at the mid year point for considering bills that have been introduced this year. June 3 is the last day for bills to be approved by the house in which they were introduced. On June 6, the Senate starts consideration of Assembly bills and the Assembly starts consideration of Senate bills that have not already been moved from one house to the next.

Please keep in mind that even though a bill has been “defeated” or whittled down, it can be revived by amendments in the second house. So do not read this report as an indication of the final fate of any pending legislation.

Each bill can be accessed by going to <http://www.leginfo.ca.gov/bilinfo.html>. Enter the bill number and click “search.”

MEGAN’S LAW

The Public Safety Committee said **no to AB 438**, a bill that sought to allow property owner’s the right to use the Megan’s Law internet website of registered sex offenders to deny housing and evict “high risk” sex offenders. The bill was defeated on a 3-3 vote.

As reported in past articles, Megan’s law became very problematic for property owners when the state created an internet website that lists the addresses of certain sex offenders. The purpose of the website is to alert the public to where high-risk offenders are living so they can protect themselves from the risk of being victimized. However, the law that created the website also created strict limitations on the use of information. It provides that except to protect a person at risk, use of the information is prohibited in making decisions about housing accommodations. Property owners who misuse the information can face sever penalties.

The first sign that the bill was in trouble came about a week before the hearing when a member who was thought to be sympathetic to the bill was removed from the committee. This made it very difficult to pick up a majority of votes and Capitol insiders predicted prior to the hearing that a 3-3 tie was all but a forgone conclusion.

The next sign was the committee analysis that raised strong questions about the constitutionality of a ban on housing for sex offenders and the propriety of a law that the committee consultant indicated may result in sex offenders being denied rental housing for life. The analysis indicated that more than 33,000 people who are required to register and whose identities are made known by the website would be affected.¹

When the bill came up for hearing, the usual cast of liberal social justice groups attacked the bill. Their arguments, however, were made stronger when the Attorney General’s Office joined in the opposition. The Attorney General argued that the bill would cast doubt on the legality of Megan’s Law because it would effectively become a tool for permanent punishment of offenders in violation of various judicial opinions that have held that such permanent punishment is constitutionally impermissible.

In the final analysis, the bill was killed when Committee Chairman Leno and Assembly Member Dymally, both of whom are long time civil rights proponents, indicated that they would not support any law that promoted affirmative discrimination.

It seems pretty clear at this point that the liberal majority of the legislature is not going to grant the right to evict merely because someone is on the list. Owners will have to come up with a better tool, one that balances safety against what is perceived, rightly or wrongly, as a flat out permanent ban on rental housing for registered sex offenders.

¹ The analysis can be viewed at http://www.leginfo.ca.gov/pub/bill/asm/ab_0401-0450/ab_438_cfa_20050418_120224_asm_comm.html

One ray of hope emerged from the hearing. The members of the committee acknowledged that property owners may be exposed to liabilities under the current law and they seemed to signal a willingness to address that issue with appropriate legislation.

Status: *This issue is far from decided. Owners will build a better model and come at this issue another way. In the meantime, going after legislation that makes sure that owners are not sued for failing to do what the law prevents them from doing is a step that may be worth taking and one that the legislature may be willing to approve.*

AB 1323 (Vargas) This bill would, among other things, require every lease to contain a provision that informs tenants that there is an internet website of registered sex offenders.

Status: *the Assembly Public Safety Committee approved the bill on a 5-1 vote.*

OTHER LANDLORD/TENANT LEGISLATION

The following major landlord/tenant bills are of significant concern:

AB 769 (Horton) This bill would, beginning July 1, 2006, authorize an enforcement agency to require an owner of residential rental property to successfully complete 15 hours of educational courses, seminars, or workshops that are approved by the Department of Real Estate, as specified, if he or she fails to comply within a reasonable time with the terms of an order or notice to repair or abate a building condition that is in violation of a housing or building standard to an extent that the health and safety of the residents or the public is substantially endangered.

Status: *The Assembly approved the bill on a 70-4 vote and it is headed to the Senate.*

AB 781 (Leno) This bill would amend the Ellis Act to provide that owners can only use the Act to go out of business if they have owned the property for a period of five years. **Status:** *As this article is written, the bill is headed to the Assembly Housing Committee where it will face stiff opposition.*

AB 1078 (Keene) This bill would enact the "Methamphetamine Contaminate Property Cleanup Act of 2005." It specifies that contaminated properties are uninhabitable and specifies procedures for clean up and remediation. The bill requires various government agencies to establish research projects and to enact regulations by January 1, 2007. **Status:** *The Assembly Environmental Safety Commission approved the bill on a 7-0 vote.*

AB 1528 (Jones) As introduced, this bill sought to overturn a favorable court ruling that landlords are protected by the litigation privilege against local ordinances that create liabilities for landlords who file eviction actions or certain changes of terms of tenancy.

Status: *The bill has been amended to drop the provisions that owners found objectionable.*

SB 51 (Kuehl) This bill would permanently require owners to provide sixty day notices for no fault terminations of tenancies. **Status:** *The bill was narrowly approved in the Senate on 21-13 vote. (21 votes is the minimum number for passage.) The bill will face major opposition in the Assembly.*

SB 735 (Torlakson) This bill creates penalties for owners who prevent tenant organizers from entering the property where the organizer is there at the invitation of the tenant. The bill also specifies notice requirements to tenants when a property is sold or management is transferred.

Status: *After major owner opposition, the notice requirements were removed from the bill.*

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