

Assembly Bill No. 1960

Passed the Assembly August 18, 2008

Chief Clerk of the Assembly

Passed the Senate August 14, 2008

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2008, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 8670.64 of the Government Code, to amend Section 25515 of the Health and Safety Code, and to amend Sections 3009, 3200, 3201, 3202, 3236.5, 3401, and 3419 of, to add Section 3010 to, and to add Article 4.4 (commencing with Section 3270) to Chapter 1 of Division 3 of, the Public Resources Code, relating to public resources.

LEGISLATIVE COUNSEL'S DIGEST

AB 1960, Nava. Public resources: oil production facilities and oil spills.

(1) Existing law generally regulates the drilling, operation, maintenance, and abandonment of oil and gas wells. Existing law authorizes the State Oil and Gas Supervisor or district deputy to order the plugging and abandonment of a well that has been deserted, and specifies the circumstances in which a rebuttable presumption of desertion arises. A violation of these provisions of law is a crime. A violation of existing law and regulations regulating the drilling, operation, maintenance, and abandonment of oil and gas wells is punishable by a maximum civil penalty of \$5,000.

Existing law regulates the disposition of oil and gas wells.

This bill would require the Division of Oil, Gas, and Geothermal Resources to prescribe, by regulation, minimum facility maintenance standards for production facilities, as defined. The bill would require a person proposing to construct, acquire, maintain, or alter a production facility to comply with these standards. The bill would require an operator to notify the supervisor of the construction, alteration, or decommission of a production facility, to maintain at the production facility's local office specified records, and to provide access to, and copies of, these records to the supervisor. The bill would require the division to inspect a production facility to ensure compliance with the standards and would authorize the division to charge the production facility operator a fee in an amount sufficient to reimburse the division for the costs of implementing these requirements. The supervisor would be authorized to issue a cease and desist order

to a production facility operator if the supervisor determines that the production facility is operated in violation of the prescribed standards. The division would be authorized to impose a life-of-well or life-of-production facility bond requirement on a production facility operator that has a history of violating regulations related to a production facility or has outstanding liabilities to the state. Because a violation of these provisions is a crime, this bill would impose a state-mandated local program. The bill would increase the maximum civil penalty for a violation of laws and regulations related to oil and gas wells to \$25,000.

This bill would also extend the regulations related to the disposition of oil and gas wells to production facilities.

(2) The Lempert-Keene-Seastrand Oil Spill Prevention Act requires a person responsible for a discharge or a threatened discharge of oil in marine waters to immediately report the discharge to the Office of Emergency Services. A person who fails to notify the Office of Emergency Services, upon conviction, is subject to a fine of not less than \$2,500 or more than \$250,000 for a first violation and a fine of not less than \$5,000 or more than \$500,000 for a 2nd or subsequent violation, or by imprisonment in a county jail for not more than one year, or by both the fine and imprisonment. That act also imposes specified minimum criminal fines for specified violations.

This bill would provide that a person who knowingly makes a false or misleading marine oil spill report to the Office of Emergency Services, upon conviction, is subject to the above-described fine or imprisonment, or both that fine and imprisonment. By creating a new crime, this bill would impose a state-mandated local program. The bill would eliminate the specified minimum criminal fines.

(3) Existing law requires a person who handles hazardous materials, upon discovery, to immediately report a release or a threatened release of a hazardous substance to, among other agencies, the Office of Emergency Services. A person who fails to provide the report, upon conviction, is subject to a specified fine or imprisonment, or both that fine and imprisonment.

This bill would subject, upon conviction, a person who fails to provide the required report or who knowingly makes a false or misleading report on an oil spill in waters of the state other than

marine waters to a fine of not more than \$50,000. By creating a new crime, this bill would impose 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.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

SECTION 1. Section 8670.64 of the Government Code is amended to read:

8670.64. (a) A person who commits any of the following acts, shall, upon conviction, be punished by imprisonment in a county jail for not more than one year or by imprisonment in the state prison:

(1) Except as provided in Section 8670.27, knowingly fails to follow the direction or orders of the administrator in connection with an oil spill.

(2) Knowingly fails to notify the Coast Guard that a vessel is disabled within one hour of the disability and the vessel, while disabled, causes a discharge of oil which enters marine waters. For the purposes of this paragraph, "vessel" means a vessel, as defined in Section 21 of the Harbors and Navigation Code, of 300 gross registered tons or more.

(3) Knowingly engages in or causes the discharge or spill of oil into marine waters, or a person who reasonably should have known that he or she was engaging in or causing the discharge or spill of oil into marine waters, unless the discharge is authorized by the United States, the state, or another agency with appropriate jurisdiction.

(4) Knowingly fails to begin cleanup, abatement, or removal of spilled oil as required in Section 8670.25.

(b) The court shall also impose upon a person convicted of violating subdivision (a), a fine of not less than five thousand dollars (\$5,000) or more than five hundred thousand dollars (\$500,000) for each violation. For purposes of this subdivision, each day or partial day that a violation occurs is a separate violation.

(c) (1) A person who knowingly does any of the acts specified in paragraph (2) shall, upon conviction, be punished by a fine of not less than two thousand five hundred dollars (\$2,500) or more than two hundred fifty thousand dollars (\$250,000), or by imprisonment in a county jail for not more than one year, or by both the fine and imprisonment. Each day or partial day that a violation occurs is a separate violation. If the conviction is for a second or subsequent violation of this subdivision, the person shall be punished by imprisonment in the state prison or in a county jail for not more than one year, or by a fine of not less than five thousand dollars (\$5,000) or more than five hundred thousand dollars (\$500,000), or by both the fine and imprisonment:

(2) The acts subject to this subdivision are all of the following:

(A) Failing to notify the Office of Emergency Services in violation of Section 8670.25.5.

(B) Knowingly making a false or misleading marine oil spill report to the Office of Emergency Services.

(C) Continuing operations for which an oil spill contingency plan is required without an oil spill contingency plan approved pursuant to Article 5 (commencing with Section 8670.28).

(D) Except as provided in Section 8670.27, knowingly failing to follow the material provisions of an applicable oil spill contingency plan.

SEC. 2. Section 25515 of the Health and Safety Code is amended to read:

25515. (a) A person or business who violates Section 25507 shall, upon conviction, be punished by a fine of not more than twenty-five thousand dollars (\$25,000) for each day of violation, or by imprisonment in the county jail for not more than one year, or by both the fine and imprisonment. If the conviction is for a violation committed after a first conviction under this section, the person shall be punished by a fine of not less than two thousand dollars (\$2,000) or more than fifty thousand dollars (\$50,000) per day of violation, or by imprisonment in the state prison for 16, 20, or 24 months or in the county jail for not more than one year, or by both the fine and imprisonment. Furthermore, if the violation results in, or significantly contributes to, an emergency, including a fire, to which the county or city is required to respond, the person shall also be assessed the full cost of the county or city emergency

response, as well as the cost of cleaning up and disposing of the hazardous materials.

(b) Notwithstanding subdivision (a), a person who fails to report, pursuant to Section 25507, an oil spill occurring in waters of the state other than marine waters shall, upon conviction, be punished by a fine of not more than fifty thousand dollars (\$50,000).

(c) Notwithstanding subdivision (a), a person who knowingly makes a false or misleading report on an oil spill occurring in waters of the state other than marine waters shall, upon conviction, be punished by a fine of not more than fifty thousand dollars (\$50,000).

SEC. 3. Section 3009 of the Public Resources Code is amended to read:

3009. “Operator” means a person who, by virtue of ownership, or under the authority of a lease or any other agreement, has the right to drill, operate, maintain, or control a well or production facility.

SEC. 4. Section 3010 is added to the Public Resources Code, to read:

3010. “Production facility” means any equipment attendant to oil and gas production or injection operations including, but not limited to, tanks, flowlines, headers, gathering lines, wellheads, heater treaters, pumps, valves, compressors, injection equipment, and pipelines that are not under the jurisdiction of the State Fire Marshal pursuant to Section 51010 of the Government Code.

SEC. 5. Section 3200 of the Public Resources Code is amended to read:

3200. An owner or operator of a well or production facility shall designate an agent, giving his or her address, who resides in this state, to receive and accept service of all orders, notices, and processes of the supervisor or a court of law. Every person so appointing an agent shall, within five days after the termination of the agency, notify the supervisor, in writing, of the termination, and unless operations are discontinued, shall appoint a new agent.

SEC. 6. Section 3201 of the Public Resources Code is amended to read:

3201. The operator of a well or production facility shall notify the supervisor or the district deputy, in writing, in such form as the supervisor or the district deputy may direct, of the sale, assignment, transfer, conveyance, exchange, or other disposition

of the well or production facility by the operator of the well or production facility as soon as is reasonably possible, but in no event later than the date that the sale, assignment, transfer, conveyance, exchange, or other disposition becomes final. The operator shall not be relieved of responsibility for the well or production facility until the supervisor or the district deputy acknowledges the sale, assignment, transfer, conveyance, exchange, or other disposition, in writing, and the person acquiring the well or production facility is in compliance with Section 3202. The operator's notice shall contain all of the following:

(a) The name and address of the person to whom the well or production facility was or will be sold, assigned, transferred, conveyed, exchanged, or otherwise disposed.

(b) The name and location of the well or production facility, and a description of the land upon which the well or production facility is situated.

(c) The date that the sale, assignment, transfer, conveyance, exchange, or other disposition becomes final.

(d) The date when possession was or will be relinquished by the operator as a result of that disposition.

SEC. 7. Section 3202 of the Public Resources Code is amended to read:

3202. A person who acquires the right to operate a well or production facility, whether by purchase, transfer, assignment, conveyance, exchange, or other disposition, shall, as soon as it is reasonably possible, but not later than the date when the acquisition of the well or production facility becomes final, notify the supervisor or the district deputy, in writing, of the person's operation. The acquisition of a well or production facility shall not be recognized as complete by the supervisor or the district deputy until the new operator provides all of the following material:

(a) The name and address of the person from whom the well or production facility was acquired.

(b) The name and location of the well or production facility, and a description of the land upon which the well or production facility is situated.

(c) The date when the acquisition becomes final.

(d) The date when possession was or will be acquired.

(e) An indemnity bond for each idle well. The bond shall be in an amount as provided in Section 3204 or 3205. The conditions

of the bond shall be the same as the conditions stated in Section 3204. An operator that has provided an individual bond required by this subdivision in an amount as provided in Section 3204 shall not be required additionally to comply with the requirements of Section 3206. An operator who has provided a blanket indemnity bond in the minimum amount required in subdivision (a) or (b) of Section 3205 shall additionally comply with Section 3206 for any idle wells not covered by a bond provided under Section 3204.

SEC. 8. Section 3236.5 of the Public Resources Code is amended to read:

3236.5. (a) A person who violates this chapter or a regulation implementing this chapter is subject to a civil penalty not to exceed twenty-five thousand dollars (\$25,000) for each violation. Acts of God and acts of vandalism beyond the reasonable control of the operator shall not be considered a violation. The civil penalty shall be imposed by an order of the supervisor upon a determination that a violation has been committed by the person charged, following notice to the person and an opportunity to be heard. The notice shall be served by personal service or certified mail, and shall inform the alleged violator of the date, time, and place of the hearing, the activity that is alleged to be a violation, the statute or regulation violated, and the hearing and judicial review procedures. The notice shall be provided at least 30 days before the hearing. The hearing shall be held before the supervisor or the supervisor's designee in Sacramento or in the district in which the violation occurred. The hearing is not required to be conducted pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The imposition of a civil penalty under this section shall be in addition to any other penalty provided by law for the violation. When establishing the amount of the civil penalty pursuant to this section, the supervisor shall consider, in addition to other relevant circumstances, (1) the extent of harm caused by the violation, (2) the persistence of the violation, (3) the pervasiveness of the violation, and (4) the number of prior violations by the same violator.

(b) Notwithstanding this chapter, an order of the supervisor imposing a civil penalty shall not be reviewable pursuant to Article 6 (commencing with Section 3350). A person upon whom a civil penalty is imposed by a final order of the supervisor may obtain judicial review of that final order by seeking a writ of mandate

pursuant to Section 1094.5 of the Code of Civil Procedure within 30 days of the date of that final order. When the order of the supervisor has become final, and the penalty has not been paid, the supervisor may apply to the appropriate superior court for an order directing payment of the civil penalty. The supervisor may also seek from the court an order directing that production from the well or use of the production facility that is the subject of the civil penalty order be discontinued until the violation has been remedied to the satisfaction of the supervisor and the civil penalty has been paid.

(c) Any amount collected under this section shall be deposited in the Oil, Gas, and Geothermal Administrative Fund.

SEC. 9. Article 4.4 (commencing with Section 3270) is added to Chapter 1 of Division 3 of the Public Resources Code, to read:

Article 4.4. Regulation of Production Facilities

3270. (a) The division shall, by regulation, prescribe minimum facility maintenance standards for all production facilities in the state. The regulations shall include, but are not limited to, standards for all of the following:

- (1) Leak detection.
- (2) Corrosion prevention and testing.
- (3) Tank inspection and cleaning.
- (4) Valve and gauge maintenance, and secondary containment maintenance.

(5) Other facility or equipment maintenance that the supervisor deems important for the proper operation of production facilities and that the supervisor determines are necessary to prevent damage to life, health, property, and natural resources; damage to underground oil and gas deposits from infiltrating water and other causes; loss of oil, gas, or reservoir energy; and damage to underground and surface waters suitable for irrigation or domestic purposes by the infiltration of, or the addition of, detrimental substances.

(b) An operator who constructs, acquires, maintains, or alters an oil well or a production facility shall comply with the standards prescribed pursuant to subdivision (a).

(c) In a form and at a time prescribed by the division in regulation, an operator shall notify the supervisor of the

construction, alteration, or decommissioning of a production facility.

(d) An operator shall maintain at the production facility's local office records of maintenance and repair operations, tests, and inspections, and shall provide the supervisor with access to these records at all times during normal business hours and with copies of the records immediately, upon request.

3270.1. Within three months of its acquisition of a production facility or at the time of the initial production at its production facility, the facility operator shall file with the division a spill contingency plan.

3270.2. The division shall inspect production facilities to ensure compliance with the standards prescribed in the regulations promulgated pursuant to subdivision (a) of Section 3270.

3270.3. In addition to any other remedy provided by law, the supervisor, upon his or her determination or that of the district deputy that a production facility is being operated in violation of the standards prescribed in subdivision (a) of Section 3270, may issue a cease and desist order to a production facility operator requiring the operator to cease operation until the operator demonstrates, to the satisfaction of the supervisor, that the violation has been corrected.

3270.4. (a) In addition to the bonding requirements under Article 4 (commencing with Section 3200), for an operator with a history of violating this chapter or that has outstanding liabilities to the state associated with a well or production facility, the supervisor may require a life-of-well or life-of-production facility bond in an amount adequate to ensure all of the following:

- (1) The proper plugging and abandonment of each well.
- (2) The safe decommissioning of each production facility.
- (3) The financing of spill response and incident cleanup.

(b) Upon the failure of an operator to properly plug and abandon a well, decommission a production facility, or perform the appropriate spill response and incident cleanup, the supervisor may levy on the bond to obtain money to pay the cost of the work.

(c) The supervisor may release a life-of-production facility bond upon the satisfactory decommissioning of a production facility, or when an operator has provided another valid life-of-production facility bond.

(d) The supervisor may release a life-of-well bond upon the satisfactory plugging and abandonment of all wells covered by the bond or when an operator has provided another valid life-of-well bond.

(e) Whenever an operator sells, assigns, transfers, conveys, exchanges, or otherwise disposes to another operator a well or production facility that is covered by a life-of-well bond or a life-of-production facility bond, the new operator shall replace the life-of-well or life-of-production bond, as applicable, and maintain the new bond for five years before it may be released by the supervisor.

(f) In lieu of the indemnity bond required by this section, the supervisor may accept a deposit given pursuant to Article 7 (commencing with Section 995.710) of Chapter 2 of Title 14 of Part 2 of the Code of Civil Procedure, excluding a deposit of money, bearer bonds, or bearer notes.

(g) The supervisor shall adopt regulations specifying the content, including the conditions, of the bond or other security instrument required by this section.

SEC. 10. Section 3401 of the Public Resources Code is amended to read:

3401. The proceeds of charges levied, assessed, and collected pursuant to this article upon the properties of every person operating or owning an interest in the production of any well shall be used exclusively for the support and maintenance of the division of the department charged with the supervision of oil and gas operations.

SEC. 11. Section 3419 of the Public Resources Code is amended to read:

3419. On or before the first of July the department shall deliver to the State Controller the record of assessments and charges, certified to by the director, which certificate shall be substantially as follows: "I, ____, Director of Conservation, do hereby certify that between the first of March and the first of July, 20__, I made diligent inquiry and examination to ascertain all property and persons, firms, corporations and associations subject to assessment as required by the provisions of this chapter, providing for the assessment and collection of charges; that I have faithfully complied with all the duties imposed upon me by law; that I have not imposed any unjust or double assessment through malice or

ill will or otherwise; nor allowed any person, firm, corporation, or association, or property to escape a just assessment or charge through favor or regard or otherwise.” Failure to subscribe the certificate to the record of assessments and charges, or any certificate, shall not affect the validity of any assessment or charge.

SEC. 12. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Approved _____, 2008

Governor