

AMENDED IN SENATE APRIL 16, 2007

**SENATE BILL**

**No. 412**

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**Introduced by Senator Simitian**

February 21, 2007

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*An act to add Chapter 6.5 (commencing with Section 25571) to Division 15 of the Public Resources Code, relating to energy.*

LEGISLATIVE COUNSEL'S DIGEST

SB 412, as amended, Simitian. State Energy Resources Conservation and Development Commission: liquefied natural gas terminals.

The existing Warren-Alquist State Energy Resources Conservation and Development Act establishes the State Energy Resources Conservation and Development Commission and requires the commission to prepare a biennial integrated energy policy report. The act requires the commission to certify sufficient sites and related facilities that are required to provide a supply of electricity sufficient to accommodate projected demand for power statewide.

~~This bill would state the intent of the Legislature to enact legislation regarding the siting and construction of liquified natural gas facilities on or off the coast of California.~~

*This bill would enact the Liquefied Natural Gas Terminal Evaluation Act and would require the commission to make a liquefied natural gas (LNG) needs assessment study that assesses demand and supply for natural gas and alternatives to natural gas to meet energy demands, and to determine the number of LNG terminals, if any, needed to meet the state's projected natural gas demand. The act would require the LNG needs assessment study to be completed no later than November 1, 2008, and incorporated into the commission's biennial integrated energy policy report. The commission would be required to hold public*

hearings to consider the results of the LNG needs assessment study and to provide an opportunity for public comment. All costs of the LNG needs assessment study for the implementation of these requirements, including costs for any temporary personnel or consultants, would be funded from fees charged to persons or entities applying for permits to build and operate a LNG terminal.

The bill would prohibit the commission from issuing a certificate to build and operate a LNG terminal unless the proposed facility meets certain criteria, findings, and determinations.

The commission would be required by February 1, 2008, to create a matrix on its Internet Web site and to require an applicant for a certificate to build and operate a LNG terminal to provide the commission with updated information at least once every month.

The bill would require the Governor to disapprove an applicant for a license pursuant to the Governor's authority under the federal Deepwater Port Act of 1974, to construct and operate a liquefied natural gas terminal unless the project meets this act's requirements. The bill would prohibit the Governor from allowing a permit to build or operate a LNG terminal or to connect to infrastructure located within the state unless the commission certifies that this act's requirements have been met.

The bill would provide that these requirements are applicable to every LNG terminal to be constructed or operating in California, irrespective of whether an application has been submitted for the construction or operation of the terminal to any federal, state, or local entity prior to January 1, 2008.

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

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

- 1     SECTION 1. The Legislature finds and declares all of the
- 2     following:
- 3     (a) It is the policy of the state to meet California's energy growth
- 4     by optimizing energy conservation and resource efficiency and by
- 5     reducing per capita demand to ensure a clean, safe, and reliable
- 6     supply of energy for California.
- 7     (b) It is the policy of the state to be sensitive to the impact of
- 8     the state's energy policy on global climate change and
- 9     environmental impacts in host countries that export natural gas.

1 (c) It is the policy of the state to accelerate the use of renewable  
2 energy resources wherever feasible and to ensure a diverse and  
3 affordable portfolio of fuel sources to minimize the opportunity  
4 for supply interruptions.

5 (d) The state has a critical role in decisions regarding the siting  
6 and design of new onshore and offshore infrastructure for the  
7 importation of liquefied natural gas that results in impacts to public  
8 health, safety, and the environment.

9 (e) Laws and regulations enacted by the state to address  
10 consumer, community, public health, safety, and environmental  
11 impacts of new onshore and offshore imported liquefied natural  
12 gas infrastructure, where more protective, should not be preempted  
13 by weaker, less protective federal laws and regulations.

14 (f) Decisions regarding the importation of liquefied natural gas  
15 should be based on a comprehensive review of current and  
16 projected natural gas supply and demand in California, and  
17 alternative sources of supply.

18 (g) Construction and operation of liquefied natural gas onshore  
19 and offshore infrastructure could commence after completion of  
20 a rigorous evaluation that analyzes the need for additional supplies  
21 of natural gas and the relative merits of pending and future  
22 proposals with respect to business, consumer, community, public  
23 health, safety, and environmental impacts.

24 SEC. 2. Chapter 6.5 (commencing with Section 25571) is added  
25 to Division 15 of the Public Resources Code, to read:

26  
27 *CHAPTER 6.5. LIQUEFIED NATURAL GAS TERMINAL EVALUATION*  
28 *ACT*

29  
30 25571. This chapter shall be known and may be cited as the  
31 *Liquefied Natural Gas Terminal Evaluation Act*.

32 25571.1. For purposes of this chapter, the following definitions  
33 apply:

34 (a) "Applicant" means a person who files a request for  
35 certification, pursuant to Chapter 6 (commencing with Section  
36 25500) to build and operate on LNG terminal in this state.

37 (b) "Feasible" means capable of being accomplished in a  
38 successful manner within a reasonable period of time, taking into  
39 account all of the following:

1 (1) *Economic, environmental, social, technological, safety, and*  
2 *reliability factors.*

3 (2) *Gas supply and demand forecasts.*

4 (3) *Alternative sources of natural gas.*

5 (c) *“Liquefied natural gas” or “LNG” means natural gas cooled*  
6 *to minus 259 degrees Fahrenheit so that it forms a liquid at*  
7 *approximately atmospheric pressure.*

8 (d) *“Liquefied natural gas terminal,” “terminal,” or “LNG*  
9 *terminal,” means facilities designed to receive liquefied natural*  
10 *gas from oceangoing vessels, including those facilities required*  
11 *for storage and regasification of the liquefied natural gas and*  
12 *those pipelines and facilities necessary for the transmission of the*  
13 *regasified natural gas to the point of interconnection with existing*  
14 *pipelines.*

15 (e) *“Person” means an individual, organization, partnership,*  
16 *or other business association or corporation, the federal*  
17 *government, the state government, any local government, and any*  
18 *agency or instrumentality of any of those entities.*

19 25571.2. (a) *The commission shall make a study of the need*  
20 *for liquefied natural gas terminals to meet the state’s energy*  
21 *demands. This study shall be known as the LNG Needs Assessment*  
22 *Study and shall assess all of the following:*

23 (1) *The future demand for natural gas in the state.*

24 (2) *The future supply of natural gas in the state available from*  
25 *domestic production and imported into the state through interstate*  
26 *pipelines, supply available from domestic production within the*  
27 *state, and supply available from foreign production and imported*  
28 *into the state through international pipelines from Mexico and*  
29 *Canada, including any liquefied natural gas terminal proposed to*  
30 *be built outside the state that would be the source for natural gas*  
31 *imported into the state.*

32 (3) *All supplemental sources of natural gas and natural gas*  
33 *alternatives that can reasonably be expected to be available to*  
34 *meet the projected demand for natural gas, including, but not*  
35 *limited to, conservation and energy efficiency programs, steps to*  
36 *increase production and importation of natural gas from other*  
37 *states, Mexico, and Canada, steps to increase available supply*  
38 *from federally owned or federally regulated supplies, and steps to*  
39 *increase energy supplies available from renewable energy*  
40 *resources, including solar, wind, geothermal, and biomass.*

1 (b) The LNG Needs Assessment Study shall determine the  
2 projected quantity of additional natural gas necessary for the  
3 state's expected future demand and whether it is economically  
4 feasible to meet the state's future natural gas needs without  
5 constructing one or more liquefied natural gas terminals.

6 (1) The LNG Needs Assessment Study shall be commenced by  
7 January 1, 2008, and shall be completed no later than November  
8 1, 2008, and shall be incorporated into the integrated energy policy  
9 report prepared pursuant to Section 25302.

10 (c) The commission shall hold at least two public hearings to  
11 consider the results of the LNG Needs Assessment Study and to  
12 provide an opportunity for public comment. At least one public  
13 hearing shall be held in any city or county that is the proposed  
14 site for which an application for a certificate has been filed with  
15 the commission to build and operate a liquefied natural gas  
16 terminal. If the terminal is not proposed to be located within a city  
17 or county, the hearings shall be in the city or county nearest the  
18 proposed location.

19 (d) All costs incurred by the commission for the implementation  
20 of this chapter, including costs for any temporary personnel or  
21 consultants, shall be funded by fees charged to persons or entities  
22 applying for a certificate to build and operate a liquefied natural  
23 gas terminal.

24 (e) The commission shall make public all information required  
25 for the LNG Needs Assessment Study using the commissions'  
26 Internet Web site, except as follows:

27 (1) If an applicant for a certificate that has been filed with the  
28 commission to build and operate a liquefied natural gas terminal  
29 claims that any data or information that the commission requires  
30 pursuant to this section is proprietary, the applicant shall submit  
31 to the commission a summary of that required data and  
32 information, along with an explanation as to the proprietary nature  
33 of the required data and information.

34 (2) On or before 30 days after receiving a claim that data or  
35 information is propriety pursuant to paragraph (1), the commission  
36 shall determine whether the data and information is proprietary.  
37 If the commission determines that the data and information is  
38 proprietary, the summary description of that data and information  
39 shall be provided on the commissions' Internet Web site. If the  
40 commission determines that the data and information is not

1 *proprietary, and the applicant refuses to provide the full data and*  
2 *information, the commission shall stop all review of the project*  
3 *and notify any other agency authorized to review the project to*  
4 *stop that review.*

5 *(3) An applicant may appeal the decision of the commission on*  
6 *the proprietary nature of the data and information subject to this*  
7 *subdivision to the Superior Court in Sacramento County within*  
8 *30 days after a decision by the commission determining that the*  
9 *information requested is not proprietary in nature. The court shall*  
10 *review the commissions, decision on a de novo basis.*

11 25571.3. (a) *The commission, in consultation with the Public*  
12 *Utilities Commission, the California Coastal Commission, the*  
13 *State Air Resources Board, the State Water Resources Control*  
14 *Board, and the Department of Fish and Game shall evaluate each*  
15 *proposed LNG project for which a certificate has been filed with*  
16 *the commission to build and operate a liquefied natural gas*  
17 *terminal to determine whether the project meets all of the*  
18 *requirements specified in subdivision (b). The commission shall*  
19 *request the Office of Homeland Security, the Federal Energy*  
20 *Regulatory Commission, the Department of Defense and its*  
21 *component armed services, and the United States Coast Guard,*  
22 *to also evaluate each proposed LNG project to determine whether*  
23 *the project meets the requirements specified in subdivision (b).*

24 *(b) The commission shall not issue a certificate to build and*  
25 *operate a liquefied natural gas terminal in the state unless the*  
26 *commission determines the proposed facility meets all of the*  
27 *following requirements:*

28 *(1) The facility is necessary to meet the future energy needs of*  
29 *California.*

30 *(2) The supply of natural gas identified for use by the project*  
31 *is reliable and sustainable.*

32 *(3) The State Air Resources Board determines that the project*  
33 *is carbon neutral.*

34 *(4) The State Water Resources Control Board finds that the*  
35 *project will not result in decreases in water quality.*

36 *(5) The California Coastal Commission finds that the project*  
37 *will not negatively impact the coastal zone, including view sheds.*

38 *(6) The project requires a coast keeper to be appointed either*  
39 *separately or by identifying an existing local entity or agency to*  
40 *monitor compliance with environmental laws and regulations.*

- 1     (7) *The coast keeper is funded by the project applicant at a level*  
2 *set by the Department of Finance.*
- 3     (8) *The California Coastal Commission certifies that the project*  
4 *is in compliance with the Marine Mammal Protection Act (Chapter*  
5 *31 (commencing with Section 1361) of Title 16 of the United States*  
6 *Code).*
- 7     (9) *The project meets design criteria to mitigate long-term*  
8 *coastal impact should the project stop operating for any reason.*
- 9     (10) *The project meets postclosure requirements, including the*  
10 *financial assurances established by the commission.*
- 11     (11) *The project reserves 20 percent of capacity for open source*  
12 *supply of natural gas.*
- 13     (12) *Natural gas supply contracts for the project are transparent*  
14 *and available for review by the public.*
- 15     (13) *If the commission determines that any of the requirements*  
16 *specified in paragraphs (1) to (12), inclusive, are not feasible, the*  
17 *project applicant demonstrate that it is using the best available*  
18 *technology at the time the application is filed.*
- 19     (14) *The applicant files with the commission a memorandum of*  
20 *understanding with the Department of Defense indicating that the*  
21 *applicant has consulted with the Department of Defense and has*  
22 *reached agreement with the Department of Defense on means to*  
23 *mitigate impacts on Department of Defense operations with regard*  
24 *to impacts upon national security, including potential impacts on*  
25 *the land, sea, and airspace identified by the Department of Defense,*  
26 *any of its component armed services, or the United States Coast*  
27 *Guard, for conducting operations, training, or for the development*  
28 *and testing of weapons, sensors, and tactics.*
- 29     (15) *The applicant enters into a contract with the state to*  
30 *provide cost reimbursement for monitoring, compliance, safety,*  
31 *environmental training, and emergency response requirements.*
- 32     (16) *The Secretary for Environmental Protection certifies that*  
33 *the project contains reasonable mitigation measures to offset*  
34 *impacts to low-income and minority communities that would be*  
35 *affected by the project.*
- 36     (17) *The commission determines, based on the record, that*  
37 *among the available technologies for producing natural gas*  
38 *through a liquefied natural gas process, a particular technology*  
39 *chosen for a particular site will have the minimum adverse public*

1 *health, safety, and environmental impacts among the technologies*  
2 *available at the time an application is received by the commission.*

3 25571.4. (a) *On or before February 1, 2008, the commission*  
4 *shall create a matrix on its Internet Web site that meets all of the*  
5 *following requirements:*

6 (1) *The matrix shall be in a format that allows the public to*  
7 *contrast and compare the progress of each applicant for a*  
8 *certificate to build and operate a liquefied natural gas terminal*  
9 *in attaining each of the criteria required pursuant to this chapter.*

10 (2) *The matrix shall be updated monthly.*

11 (3) *The commission shall post a new application for a certificate*  
12 *to build and operate an LNG terminal in the state to the matrix*  
13 *within 30 days after the date the commission receives an*  
14 *application.*

15 (b) (1) *Each applicant for a certificate to build and operate an*  
16 *LNG terminal in the state shall provide the commission updated*  
17 *information at least once every month regarding each of the*  
18 *required criteria.*

19 (2) *If an applicant does not provide the information specified*  
20 *in paragraph (1), all agencies involved in the required review of*  
21 *the project may discontinue the review until that information is*  
22 *provided.*

23 25571.5. *This chapter does not limit any existing authority of*  
24 *state government pursuant to Division 13 (commencing with*  
25 *Section 21000) as that division read on January 1, 2008.*

26 25571.6. (a) *In furtherance of, and in conformance with, the*  
27 *Deepwater Port Act of 1974 (33 U.S.C. Sec. 1501 et seq.), as*  
28 *amended, the Governor pursuant to Section 1508 of Title 33 of the*  
29 *United States Code shall disapprove an application for a license*  
30 *to build and operate a liquefied natural gas terminal unless the*  
31 *project meets the requirements specified in subdivision (b) of*  
32 *Section 25571.3.*

33 (b) *The Governor may not allow a permit to construct or operate*  
34 *an LNG terminal or to connect to infrastructure located within*  
35 *the state unless the commission certifies that the project meets the*  
36 *requirements specified in subdivision (b) of 25571.3.*

37 25571.7. (a) *The requirements of this chapter are applicable*  
38 *to every LNG terminal to be constructed or operating in the state,*  
39 *irrespective of whether an application has been submitted for the*

1 *construction or operation of the terminal to any federal, state, or*  
2 *local entity prior to January 1, 2008.*

3 *(b) Nothing in this chapter shall be construed as an absolute*  
4 *prohibition on the construction of a LNG terminal on or off the*  
5 *California coast. It is the intent of the state to facilitate a*  
6 *comprehensive and efficient review of applications for liquefied*  
7 *natural gas terminals and their related infrastructure in the state.*

8 ~~SECTION 1. The Legislature finds and declares all of the~~  
9 ~~following:~~

10 ~~(a) It is the policy of the state to meet California's energy growth~~  
11 ~~by optimizing energy conservation and resource efficiency and by~~  
12 ~~reducing per capita demand to ensure a clean, safe, and reliable~~  
13 ~~supply of energy for California.~~

14 ~~(b) It is the policy of the state to be sensitive to the impact of~~  
15 ~~the state's energy policy on global climate change and~~  
16 ~~environmental impacts in host countries that export natural gas.~~

17 ~~(c) It is the policy of the state to accelerate the use of renewable~~  
18 ~~energy resources wherever feasible and to ensure a diverse and~~  
19 ~~affordable portfolio of fuel sources to minimize the opportunity~~  
20 ~~for supply interruptions.~~

21 ~~(d) The state has a role in decisions regarding the siting and~~  
22 ~~design of new onshore and offshore infrastructure for the~~  
23 ~~importation of liquefied natural gas that results in impacts to public~~  
24 ~~health, safety, and the environment.~~

25 ~~(e) Laws and regulations enacted by the state to address~~  
26 ~~consumer, community, public health, safety, and environmental~~  
27 ~~impacts of new onshore and offshore imported liquefied natural~~  
28 ~~gas infrastructure, where more protective, should not be preempted~~  
29 ~~by weaker, less protective federal laws and regulations.~~

30 ~~(f) Decisions regarding the importation of liquefied natural gas~~  
31 ~~should be based on a comprehensive review of current and~~  
32 ~~projected natural gas supply and demand in California, and~~  
33 ~~alternative sources of supply.~~

34 ~~(g) Construction and operation of liquefied natural gas onshore~~  
35 ~~and offshore infrastructure may commence after completion of a~~  
36 ~~rigorous evaluation that analyzes the need for liquefied natural gas~~  
37 ~~and the relative merits of pending and future proposals with respect~~  
38 ~~to business, consumer, community, public health, safety, and~~  
39 ~~environmental impacts.~~

1     ~~(h) Based upon the Tenth Amendment to the United States~~  
2     ~~Constitution, federal law neither abrogates a state’s property rights~~  
3     ~~within its tide and submerged lands nor provides the power of~~  
4     ~~eminent domain to the Federal Energy Regulatory Commission~~  
5     ~~with respect to the siting liquefied natural gas facilities.~~  
6     ~~(i) Nothing in this bill should be construed as an absolute~~  
7     ~~prohibition on the construction of LNG facilities on or off the~~  
8     ~~California coast. It is the intent of the State of California to~~  
9     ~~facilitate a comprehensive and efficient review of applications for~~  
10    ~~liquefied natural gas terminals and their related infrastructure in~~  
11    ~~the state.~~  
12    ~~SEC. 2. It is the intent of the Legislature to enact legislation~~  
13    ~~regarding the siting and construction of LNG facilities on or off~~  
14    ~~the state’s coast.~~