

AMENDED IN ASSEMBLY AUGUST 7, 2012

AMENDED IN ASSEMBLY JUNE 26, 2012

AMENDED IN ASSEMBLY JUNE 12, 2012

AMENDED IN ASSEMBLY APRIL 25, 2012

AMENDED IN ASSEMBLY MARCH 29, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2564

Introduced by Assembly Member Ma

February 24, 2012

An act to amend ~~Sections 21080.21, Section 21100.2, and 21168.6~~ of, and to add *and repeal* ~~Section 21063.5 to 21080.21.5 of~~, the Public Resources Code, relating to environmental quality, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 2564, as amended, Ma. Environmental quality: pipelines: project applicants.

(1) The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report (EIR) on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA exempts a project of less than one mile in length within a public street or highway or any other public right-of-way for the installation of a new pipeline, as defined, or the

maintenance, repair, restoration, reconditioning, relocation, replacement, removal, or demolition of an existing pipeline.

~~This bill would also additionally except from CEQA a natural gas pipeline safety enhancement project of less than 8 miles in length, but would restrict this exemption to activities that do not take place along more than one mile at any one time. The bill would also revise the definition of the term pipeline for purposes of this exemption to delete the exclusion for surface facilities related to the operation of the underground facility, as defined, that meets specified requirements. The bill would require a person undertaking such a project to take certain actions with regard to the notification of public agencies and compliance with other permits and statutes. The bill would repeal this exemption on January 1, 2017.~~

The bill would also require a public agency to establish a process that would allow an applicant for a natural gas pipeline safety enhancement project, ~~as defined~~, to elect to pay additional fees to be used by the public agency in determining whether to approve that project by entering into a contract with one or more 3rd parties to assist the public agency to perform the analysis. The bill would impose a state-mandated local program by imposing new duties upon local agencies.

(2) 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.

(3) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

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) On September 9, 2010, a 30-inch-diameter segment of an
4 intrastate natural gas transmission pipeline ruptured in a residential
5 neighborhood in the City of San Bruno. The rupture caused an
6 explosion and fire devastating a community and igniting a call to
7 action.

1 (b) On January 2, 2011, the Public Utilities Commission (PUC)
2 ordered Pacific Gas and ~~Electric (PG&E)~~ *Electric (PG&E)*,
3 Southern California Gas (SoCalGas), San Diego Gas and Electric
4 (SDG&E), and Southwest Gas to perform a comprehensive records
5 review of their transmission pipelines and identify those that have
6 not had their maximum allowable operating pressure established
7 by pressure testing.

8 (c) Federal law exempts from pressure test requirements
9 pipelines placed in service prior to 1970. The National
10 Transportation Safety Board, who has principle jurisdiction over
11 the investigation into San Bruno, concluded that there is no safety
12 justification for the grandfather clause exempting pre 1970 pipelines
13 from the requirement for postconstruction hydrostatic pressure
14 testing.

15 (d) Pursuant to PUC order and ~~section~~ *Section 958* of the Public
16 Utilities Code, enacted by Assembly Bill 56 (Chapter 519, Statutes
17 of 2011), gas corporations are required to prepare comprehensive
18 pressure testing implementation plans to pressure test or replace
19 all intrastate natural gas transmission pipelines as soon as
20 practicable.

21 (e) The scope of work to be accomplished within the
22 implementation plans is unprecedented and will create thousands
23 of jobs within the state.

24 (f) The safe and expeditious completion of these pipeline safety
25 enhancements is a state and public safety priority.

26 (g) It is a matter of statewide concern to achieve the timely
27 completion of natural gas pipeline safety enhancements, including
28 programs for maintenance and operation enhancements, and to
29 contribute to the public's confidence in the safety of natural gas
30 pipelines and their ongoing maintenance and operation.

31 (h) It is in the public interest to accelerate the permitting process
32 for natural gas pipeline safety enhancements, including programs
33 for maintenance and operation enhancements, and for permitting
34 agencies to give these projects priority in processing permits.

35 (i) It is in the public interest to enable state agencies to better
36 carry out their permitting responsibilities by providing applicants
37 an option for enhancing available resources for permit processing.

38 ~~SEC. 2. Section 21063.5 is added to the Public Resources~~
39 ~~Code, to read:~~

1 ~~21063.5. “Natural gas pipeline safety enhancement project”~~
 2 ~~means an activity undertaken by a public utility as part of a~~
 3 ~~program to enhance the safety of intrastate natural gas pipelines~~
 4 ~~in accordance with a decision, rule, or regulation adopted by the~~
 5 ~~Public Utilities Commission.~~

6 ~~SEC. 3. Section 21080.21 of the Public Resources Code is~~
 7 ~~amended to read:~~

8 ~~21080.21. (a) This division does not apply to any project of~~
 9 ~~either of the following:~~

10 ~~(1) Up to one mile in length within a public street or highway~~
 11 ~~or any other public right-of-way for the installation of a new~~
 12 ~~pipeline or the maintenance, repair, restoration, reconditioning,~~
 13 ~~relocation, replacement, removal, or demolition of an existing~~
 14 ~~pipeline.~~

15 ~~(2) Greater than one mile in length, but less than eight miles in~~
 16 ~~length, within a public street or highway or any other public~~
 17 ~~right-of-way for the installation of a new pipeline or the~~
 18 ~~maintenance, repair, restoration, reconditioning, relocation,~~
 19 ~~replacement, removal, or demolition of an existing pipeline, if the~~
 20 ~~activity does not take place along more than one mile at any one~~
 21 ~~time.~~

22 ~~(b) For purposes of this section, “pipeline” includes any valve,~~
 23 ~~flange, meter, or other piece of equipment that is directly attached~~
 24 ~~to the pipeline.~~

25 ~~(c) If a project meets the requirements of paragraph (2) of~~
 26 ~~subdivision (a), the person undertaking the project shall do the~~
 27 ~~following:~~

28 ~~(1) Notify, in writing, any public agency having discretionary~~
 29 ~~permit and land use authority of the exemption of the project from~~
 30 ~~this division no later than 10 days prior to undertaking the project,~~
 31 ~~and thereafter proceed to secure all appropriate ministerial permits~~
 32 ~~from the public agency.~~

33 ~~(2) Comply with all conditions otherwise authorized by law,~~
 34 ~~imposed by any state agency as part of any permit process, and~~
 35 ~~otherwise comply with the California Endangered Species Act~~
 36 ~~(Chapter 1.5 (commencing with Section 2050) of Division 3 of~~
 37 ~~the Fish and Game Code), the California Coastal Act of 1976~~
 38 ~~(Division 20 (commencing with Section 30000) of the Public~~
 39 ~~Resources Code), and other applicable state and federal laws.~~

1 SEC. 2. Section 21080.21.5 is added to the Public Resources
2 Code, to read:

3 21080.21.5. (a) For purposes of this section, the following
4 definitions shall apply:

5 (1) “Natural gas pipeline safety enhancement project” means
6 an activity for the installation of a new pipeline or the maintenance,
7 repair, restoration, reconditioning, relocation, replacement,
8 removal, or demolition of an existing pipeline undertaken by a
9 public utility as part of a program to enhance the safety of
10 intrastate natural gas pipelines, in accordance with a decision,
11 rule, or regulation adopted by the Public Utilities Commission.

12 (2) “Pipeline” includes any valve, flange, meter, or other piece
13 of equipment that is directly attached to a pipeline.

14 (b) This division does not apply to a natural gas pipeline safety
15 enhancement project if the project meets all of the following
16 requirements:

17 (1) The project is less than eight miles in length.

18 (2) The project is within a public street or highway or other
19 public right-of-way.

20 (3) The right-of-way is restored to its condition prior to the
21 project.

22 (4) Construction activity does not take place along more than
23 one mile at any one time.

24 (5) The project is not located in a resource area, as defined in
25 Section 65080.01 of the Government Code.

26 (c) A person undertaking a natural gas pipeline safety
27 enhancement project pursuant to this section shall do both of the
28 following:

29 (1) Provide written notification of the exemption of the project
30 from this division to any public agency that has discretionary
31 permit and land use authority, no later than 10 days prior to
32 undertaking the project, and thereafter proceed to secure all
33 appropriate ministerial permits from the public agency.

34 (2) Comply with all conditions otherwise authorized by law or
35 imposed by any state agency as part of any permit process and
36 otherwise comply with the California Endangered Species Act
37 (Chapter 1.5 (commencing with Section 2050) of Division 3 of the
38 Fish and Game Code), the California Coastal Act of 1976 (Division
39 20 (commencing with Section 30000)), and other applicable state
40 and federal laws.

1 (d) A project shall not be divided into smaller projects to qualify
2 for one or more exemptions pursuant to this section.

3 (e) This section shall remain in effect only until January 1, 2017,
4 and as of that date is repealed, unless a later enacted statute, that
5 is enacted before January 1, 2017, deletes or extends that date.

6 ~~SEC. 4.~~

7 SEC. 3. Section 21100.2 of the Public Resources Code is
8 amended to read:

9 21100.2. (a) (1) For projects described in subdivision (c) of
10 Section 21065, each state agency shall establish, by resolution or
11 order, time limits that do not exceed the following:

12 (A) One year for completing and certifying environmental
13 impact reports.

14 (B) One hundred eighty days for completing and adopting
15 negative declarations.

16 (2) The time limits specified in paragraph (1) shall apply only
17 to those circumstances in which the state agency is the lead agency
18 for a project. These resolutions or orders may establish different
19 time limits for different types or classes of projects, but all limits
20 shall be measured from the date on which an application requesting
21 approval of the project is received and accepted as complete by
22 the state agency.

23 (3) No application for a project may be deemed incomplete for
24 lack of a waiver of time periods prescribed in state regulations.

25 (4) The resolutions or orders required by this section may
26 provide for a reasonable extension of the time period in the event
27 that compelling circumstances justify additional time and the
28 project applicant consents thereto.

29 (b) If a draft environmental impact report, environmental impact
30 report, or focused environmental impact report is prepared under
31 a contract to a state agency, the contract shall be executed within
32 45 days from the date on which the state agency sends a notice of
33 preparation pursuant to Section 21080.4. The state agency may
34 take longer to execute the contract if the project applicant and the
35 state agency mutually agree to an extension of the time limit
36 provided by this subdivision.

37 (c) (1) A public agency shall establish a process that would
38 allow *an applicant* for a natural gas pipeline safety enhancement
39 project ~~applicant~~ to elect to pay additional fees to be used by the
40 public agency in determining whether to approve a natural gas

1 pipeline safety enhancement project by entering into a contract
 2 with one or more third parties to assist the public agency to perform
 3 the analysis, consistent with Article VII of the California
 4 Constitution and Section 19130 of the Government Code and the
 5 charter of a chartered city or county, as applicable. The public
 6 agency may, but is not required to, offer a project applicant the
 7 option to pay those fees and subject a project to this process.

8 (2) The amount of the fees charged by the public agency
 9 pursuant to this subdivision shall be conditioned upon the natural
 10 gas pipeline safety enhancement project applicant agreeing to that
 11 amount and electing to proceed with the retention of a third party
 12 pursuant to this subdivision.

13 (3) All fees paid by a natural gas pipeline safety enhancement
 14 project applicant shall be used exclusively for analysis of that
 15 applicant’s application for certification.

16 (4) *For purposes of this section, “natural gas pipeline safety*
 17 *enhancement project” has the same meaning as defined in*
 18 *paragraph (1) of subdivision (a) of Section 21080.21.5.*

19 ~~SEC. 5.~~

20 *SEC. 4.* No reimbursement is required by this act pursuant to
 21 Section 6 of Article XIII B of the California Constitution because
 22 a local agency or school district has the authority to levy service
 23 charges, fees, or assessments sufficient to pay for the program or
 24 level of service mandated by this act, within the meaning of Section
 25 17556 of the Government Code.

26 ~~SEC. 6.~~

27 *SEC. 5.* This act is an urgency statute necessary for the
 28 immediate preservation of the public peace, health, or safety within
 29 the meaning of Article IV of the Constitution and shall go into
 30 immediate effect. The facts constituting the necessity are:

31 In order to achieve the timely completion of natural gas pipeline
 32 safety enhancements, including programs for maintenance and
 33 operation enhancements, and to contribute to the public’s
 34 confidence in the safety of natural gas pipelines and their ongoing
 35 maintenance and operation, thereby protecting public health and
 36 safety, it is necessary for this act to take effect immediately.