

AMENDED IN ASSEMBLY MAY 8, 2013
AMENDED IN ASSEMBLY MARCH 21, 2013
CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1323

Introduced by Assembly Member Mitchell

February 22, 2013

An act to add Sections 3017 and 3203.5 to the Public Resources Code, relating to oil and gas.

LEGISLATIVE COUNSEL'S DIGEST

AB 1323, as amended, Mitchell. Oil and gas: hydraulic fracturing.

(1) Under existing law, the Division of Oil, Gas, and Geothermal Resources in the Department of Conservation regulates the drilling, operation, maintenance, and abandonment of oil and gas wells in the state. The State Oil and Gas Supervisor, *referred to as the supervisor*, supervises the drilling, operation, maintenance, and abandonment of wells and the operation, maintenance, and removal or abandonment of tanks and facilities related to oil and gas production within an oil and gas field regarding safety and environmental damage. Existing law requires an operator of a well, before commencing the work of drilling the well, to obtain approval from the ~~State Oil and Gas Supervisor~~ *supervisor* or a district deputy. Violation of these provisions is a misdemeanor.

This bill would define “hydraulic fracturing” in oil and gas operations and would prohibit hydraulic fracturing until the completion of a report, as specified, and a determination is made that hydraulic fracturing can be conducted without a risk to the public health and welfare, environment, or the economy of the state. *A violation of this prohibition*

would be a misdemeanor. By creating a new crime, this bill would impose a state-mandated local program. The bill would also express the intent of the Legislature to, among other things, protect the public health and welfare, natural and environmental resources, and economic interest of the state.

(2) Existing law establishes the Natural Resources Agency consisting of various entities, departments, and boards. Existing law also establishes the California Environmental Protection Agency consisting of various entities, departments, and boards.

This bill would require the Secretary of the Natural Resources Agency and the Secretary for Environmental Protection to (A) convene an advisory committee, by July 1, 2014, to develop a report relating to hydraulic fracturing, as specified; (B) to complete the report on or before January 1, 2016, and provide a copy to the Governor and the Legislature on or before that date; and (C) to make a determination, as specified, not later than January 1, 2019, as to whether and under what conditions hydraulic fracturing is permitted within the state.

~~This bill would prohibit hydraulic fracturing, the violation of which would be a misdemeanor. By creating a new crime, the bill would impose a state-mandated local program.~~

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.

Vote: majority. 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) It is the intent of the Legislature in enacting this act to protect
- 4 the public health and welfare, natural and environmental resources,
- 5 and the economic value of private and public property in the state.
- 6 (b) The Legislature recognizes that hydraulic fracturing poses
- 7 serious threats to California’s air, water, climate, environment,
- 8 wildlife, and public health.
- 9 (c) The Legislature further recognizes that hydraulic fracturing
- 10 is currently occurring in California with scarce monitoring or

1 regulation, and almost completely undisclosed to the people of the
2 state.

3 (d) Although some potential impacts from hydraulic fracturing
4 are currently under investigation by federal agencies, other states,
5 and academic and research institutions, no independent and
6 scientific investigations are being undertaken or have been
7 completed in California to examine the risks to the state's unique
8 geologic, geographic, atmospheric, and environmental conditions
9 and resources.

10 (e) There is scarce independent information, investigation, and
11 analysis regarding the tools and mechanisms available to assess
12 the risks and impacts of hydraulic fracturing and to protect the
13 public health and welfare, and the environmental resources from
14 these impacts.

15 (f) The Legislature recognizes the immediate need to protect
16 against, and prepare for, the emergencies and impacts related to
17 hydraulic fracturing as well as the related activities that could range
18 from small localized events to far-reaching disasters with complex
19 consequences that could require the involvement and coordination
20 among many agencies. Mechanisms to ensure funding,
21 coordination, and equipment for response to these impacts are
22 urgently needed to be identified and adopted.

23 SEC. 2. Section 3017 is added to the Public Resources Code,
24 to read:

25 3017. "Hydraulic fracturing" means the injection of fluids or
26 gases into an underground geologic formation with the intention
27 to cause or enhance fractures in the formation, in order to cause
28 or enhance the production of oil or gas from a well. Alternate terms
29 include, but are not limited to, "fracking," "hydrofracking," and
30 "hydrofracturing."

31 SEC. 3. Section 3203.5 is added to the Public Resources Code,
32 to read:

33 3203.5. Hydraulic fracturing is prohibited until all of the
34 following requirements are met:

35 (a) (1) By July 1, 2014, the Secretary of the Natural Resources
36 Agency and the Secretary for Environmental Protection shall
37 convene an advisory committee to develop a report, based on the
38 best scientific information available, relating to hydraulic
39 fracturing. The advisory committee shall include two
40 representatives from each of the following:

- 1 (A) The California Environmental Protection Agency.
- 2 (B) The Natural Resources Agency.
- 3 (C) The State Department of Public Health.
- 4 (D) Environmental justice organizations.
- 5 (E) The agriculture industry.
- 6 (F) The oil and gas industry.
- 7 (G) Two academic researchers with experience in hydraulic
- 8 fracturing issues.
- 9 (H) Water agencies.
- 10 (2) The advisory committee shall address specific issues related
- 11 to hydraulic fracturing in the report, which shall include, but is not
- 12 limited to, all of the following:
- 13 (A) A description of hydraulic fracturing, and other enhanced
- 14 oil and gas recovery techniques.
- 15 (B) All potential health and environmental impacts related to
- 16 hydraulic fracturing, including, but not limited to, all of the
- 17 following:
- 18 (i) The handling and disposition of produced water or
- 19 wastewater.
- 20 (ii) Contamination of groundwater or surface water.
- 21 (iii) The supply and sources of water used in hydraulic fracturing
- 22 and its impact on the state, regional, and local water supply.
- 23 (iv) Air quality impacts, including, but not limited to, particulate
- 24 and volatile organic compound and methane releases.
- 25 (v) Impacts on climate change and emissions of greenhouse
- 26 gases, including the goals set in the California Global Warming
- 27 Solutions Act of 2006 (Division 25.5 (commencing with Section
- 28 38500) of the Health and Safety Code).
- 29 (vi) The potential for migration of gases and fluids through
- 30 geologic formations.
- 31 (vii) The potential for generating seismic activity, both as a
- 32 result of increased hydraulic fracturing and the disposal of produced
- 33 wastewater into underground injection wells.
- 34 (viii) The use, handling, and accidental spill of chemicals used
- 35 in hydraulic fracturing.
- 36 (ix) Impacts on endangered species and their habitat.
- 37 (C) All potential economic impacts of increased hydraulic
- 38 fracturing operations and other enhanced oil and gas recovery
- 39 methods in the state.

1 (D) All potential effects on communities most likely to be
2 negatively affected by the impacts of hydraulic fracturing.

3 (E) A review of the regulations affecting hydraulic fracturing
4 and an analysis of whether these are adequate to address the issues
5 identified in this report.

6 (F) Recommendations for emergency planning and mechanisms
7 necessary to ensure adequate and fully funded responses to
8 emergencies related to hydraulic fracturing operations.

9 (G) Recommendations for regulatory and statutory changes
10 needed to address the issues covered in the report.

11 (3) *The advisory committee shall develop the report in the*
12 *context of current and foreseeable hydraulic fracturing operations*
13 *in the state, such as potential operations in the Monterey shale*
14 *and northern California gas reservoirs.*

15 (b) Prior to finalizing the report, the Secretary of the Natural
16 Resources Agency and the Secretary for Environmental Protection
17 shall seek independent peer review by persons of the scientific and
18 academic community commonly acknowledged to be experts on
19 the subjects under consideration and possessing the knowledge
20 and expertise to critique the scientific validity of the report.

21 (c) A draft of the final report shall be made available for public
22 comment for a period of no less than 120 days.

23 (d) The final report shall be completed on or before January 1,
24 2016, and a copy shall be provided to the Governor and the
25 Legislature by the Secretary of the Natural Resources Agency and
26 the Secretary for Environmental Protection on or before that date.

27 (e) Upon completion of the report, the Secretary of the Natural
28 Resources Agency and the Secretary for Environmental Protection
29 shall make a determination not later than January 1, 2019, as to
30 whether, and under what conditions, hydraulic fracturing is
31 permitted within the state. The determination shall be made only
32 after measures are in place to ensure that any activities related to
33 hydraulic fracturing do not pose a risk to the public health and
34 welfare, environment, or economy of the state.

35 ~~(f) This section shall not be interpreted to impair or infringe on~~
36 ~~any vested right to conduct hydraulic fracturing operations.~~

37 SEC. 4. No reimbursement is required by this act pursuant to
38 Section 6 of Article XIII B of the California Constitution because
39 the only costs that may be incurred by a local agency or school
40 district will be incurred because this act creates a new crime or

1 infraction, eliminates a crime or infraction, or changes the penalty
2 for a crime or infraction, within the meaning of Section 17556 of
3 the Government Code, or changes the definition of a crime within
4 the meaning of Section 6 of Article XIII B of the California
5 Constitution.

O