

**Introduced by Senator Pavley**December 3, 2012

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An act to amend Section 3213 of, and to add Article 3 (commencing with Section 3150) to Chapter 1 of Division 3 of, the Public Resources Code, relating to oil and gas.

## LEGISLATIVE COUNSEL'S DIGEST

SB 4, as introduced, Pavley. Oil and gas: hydraulic fracturing.

Under existing law, the Division of Oil, Gas, and Geothermal Resources (DOGGR) 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 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 or a district deputy. Existing law requires the operator of a well to keep, or cause to be kept, a careful and accurate log, core record, and history of the drilling of the well. Within 60 days after the date of cessation of drilling, rework, or abandonment operations, the owner or operator is required to file with the district deputy certain information, including the history of work performed.

This bill would define, among other things, hydraulic fracturing and hydraulic fracturing fluid. The bill requires an operator of a well to record and include all data on hydraulic fracturing treatment, including names and locations of all known seismic faults, as a part of the history of the drilling of the well. The bill would require DOGGR, in

consultation with the Department of Toxic Substances Control, the State Air Resources Board, and the State Water Resources Control Board, on or before January 1, 2015, to adopt rules and regulations specific to hydraulic fracturing, including governing the construction of wells and well casings and full disclosure of the composition and disposition of hydraulic fracturing. The bill would require an operator to file with the supervisor or a district deputy, at least 30 days prior to the commencement of a hydraulic fracturing treatment, a notice of intention to commence hydraulic fracturing treatment containing specified information. The bill would require the hydraulic fracturing to be completed within one year of the filing of the notice of intention. The bill would require DOGGR, within 10 days of the receipt of the notice of intention, to make the notice publicly available, to post it on the division's Internet Web site, and to notify the appropriate regional water quality control board. The bill would require the supplier, as defined, of the hydraulic fracturing treatment to provide to the operator, within 30 days following the conclusion of the hydraulic fracturing, certain information regarding the hydraulic fracturing fluid. The bill would require the operator, within 60 days of the cessation of hydraulic fracturing treatment, to post or cause to have posted on an Internet Web site accessible to the public specified information on the fracturing and fluid, as specified. The bill would require a supplier claiming trade secret protection for the chemical composition of additives used in the hydraulic treatment to disclose the composition to DOGGR, but would, except as specified, prohibit those with access to the trade secret to disclose it, and a person who violates this prohibition would be guilty of a misdemeanor. Because this bill would create a new crime, it would impose a state-mandated local program.

This bill would require the supervisor, on or before January 1, 2016, and annually thereafter, to transmit to the Legislature and make available publicly a comprehensive report on hydraulic fracturing in the exploration and production of oil and gas resources in the state.

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. Article 3 (commencing with Section 3150) is  
2 added to Chapter 1 of Division 3 of the Public Resources Code,  
3 to read:

4  
5 Article 3. Hydraulic Fracturing  
6

7 3150. “Additive” means a substance or combination of  
8 substances added to a base fluid for purposes of preparing a  
9 hydraulic fracturing fluid. An additive may, but is not required to,  
10 serve additional purposes beyond the transmission of hydraulic  
11 pressure to the geologic formation. An additive may be of any  
12 phase and includes proppants.

13 3151. “Base fluid” means the continuous phase fluid used in  
14 the makeup of a hydraulic fracturing fluid. The continuous phase  
15 fluid may include, but is not limited to, water, and may be a liquid  
16 or a gas.

17 3152. “Carrier fluid” means a base fluid into which additives  
18 are mixed to form a hydraulic fracturing fluid.

19 3153. “Hydraulic fracturing” means a treatment used in  
20 stimulating a well that involves the pressurized injection of  
21 hydraulic fracturing fluid and proppant into an underground  
22 geologic formation in order to fracture the formation, thereby  
23 causing or enhancing, for the purposes of this division, the  
24 production of oil or gas from a well.

25 3154. “Hydraulic fracturing fluid” means a carrier fluid mixed  
26 with physical and chemical additives for the purpose of hydraulic  
27 fracturing. A hydraulic fracturing treatment may include more than  
28 one hydraulic fracturing fluid.

29 3155. “Proppants” means materials inserted or injected into  
30 the underground geologic formation that are intended to prevent  
31 fractures from closing.

32 3156. “Supplier” means an entity performing hydraulic  
33 fracturing or an entity supplying an additive or proppant directly  
34 to the operator for use in hydraulic fracturing.

35 3157. (a) The Legislature finds and declares that hydraulic  
36 fracturing of oil and gas wells in combination with technological  
37 advances in oil and gas well drilling are spurring oil and gas  
38 extraction, as well as oil and gas exploration, in California.

1 (b) (1) On or before January 1, 2015, the division, in  
2 consultation with the Department of Toxic Substances Control,  
3 the State Air Resources Board, and the State Water Resources  
4 Control Board, shall adopt rules and regulations specific to  
5 hydraulic fracturing. The rules and regulations shall include, but  
6 are not limited to, revisions, as needed, to the rules and regulations  
7 governing construction of wells and well casings to ensure integrity  
8 of wells, well casings, and the geologic and hydrologic isolation  
9 of the oil and gas formation during and following hydraulic  
10 fracturing, and full disclosure of the composition and disposition  
11 of hydraulic fracturing fluids.

12 (2) Full disclosure of the composition and disposition of  
13 hydraulic fracturing fluids shall, at a minimum, include:

14 (A) The date of the hydraulic fracturing.

15 (B) A complete list of the names, Chemical Abstract Service  
16 (CAS) numbers, and maximum concentration, in percent by mass,  
17 of each and every chemical constituent of the hydraulic fracturing  
18 fluids used. If a CAS number does not exist for a chemical  
19 constituent, the well owner or operator may provide another unique  
20 identifier, if available. Chemical information claimed as a trade  
21 secret, pursuant to subdivision (h), shall be identified as such and  
22 reported as described in subdivision (h).

23 (C) The trade name, the supplier, and a brief description of the  
24 intended purpose of each additive contained in the hydraulic  
25 fracturing fluid.

26 (D) The total volume of carrier fluid used during hydraulic  
27 fracturing, and the identification of whether the carrier fluid is  
28 water suitable for irrigation or domestic purposes, water not  
29 suitable for irrigation or domestic purposes, or a fluid other than  
30 water.

31 (E) The total volume of base fluid, if not reported as a carrier  
32 fluid, used during hydraulic fracturing, and the identification of  
33 whether the base fluid is water suitable for irrigation or domestic  
34 purposes, water not suitable for irrigation or domestic purposes,  
35 or a fluid other than water.

36 (F) The source, volume, and disposition of all water, including,  
37 but not limited to, all water used as base and carrier fluids, used  
38 during hydraulic fracturing and recovered from the well following  
39 hydraulic fracturing that is not otherwise reported as produced  
40 water pursuant to Section 3227.

1 (G) The disposition of all hydraulic fracturing fluids other than  
2 water.

3 (H) Any radiological components or tracers injected into the  
4 well as part of the hydraulic fracturing process, a description of  
5 the recovery method, if any, for those components or tracers, the  
6 recovery rate, and the disposal method for recovered components  
7 or tracers.

8 (I) The radioactivity of the recovered hydraulic fracturing fluids.

9 (J) The location of the portion of the well subject to the hydraulic  
10 fracturing treatment and the extent of the fracturing surrounding  
11 the well induced by the treatment.

12 (c) (1) Notwithstanding any other law or regulation, at least 30  
13 days prior to commencing a hydraulic fracturing treatment on a  
14 well, the operator shall file a written notice of intention to  
15 commence the hydraulic fracturing treatment with the supervisor  
16 or district deputy. The notice shall contain the pertinent data the  
17 supervisor requires on printed forms supplied by the division or  
18 on other forms acceptable to the supervisor. The hydraulic  
19 fracturing treatment shall be completed within one year of filing  
20 the notice of intention. The information provided in the notice  
21 shall include, but is not limited to, the following:

22 (A) The well identification number and location.

23 (B) The time period during which the hydraulic fracturing  
24 treatment is planned to occur.

25 (2) Within 10 days of receipt of the notice of intention, the  
26 division shall make the notice of intention publicly available, post  
27 it on the publicly accessible portion of the division's Internet Web  
28 site, and notify the appropriate regional water quality control board  
29 or boards as determined by where the well, including its subsurface  
30 portion, is located.

31 (3) The operator shall provide notice to the division 72 hours  
32 prior to the actual start of the hydraulic fracturing treatment in  
33 order for the division to witness the treatment.

34 (d) If hydraulic fracturing is performed on a well, a supplier  
35 that performs any part of hydraulic fracturing or provides additives  
36 directly to the operator for hydraulic fracturing shall furnish the  
37 operator with information needed for the operator to comply with  
38 subdivision (e). If a supplier claims trade secret protection pursuant  
39 to subdivision (h), the supplier shall notify the operator and provide  
40 to the operator substitute information, as described in subdivision

1 (h), suitable for public disclosure. This information shall be  
2 provided as soon as possible but no later than 30 days following  
3 the conclusion of the hydraulic fracturing.

4 (e) (1) Within 60 days following cessation of hydraulic  
5 fracturing on a well, the operator shall post or cause to have posted  
6 to an Internet Web site designated or maintained by the division  
7 and accessible to the public, all of the hydraulic fracturing fluid  
8 composition and disposition information required to be collected  
9 pursuant to rules and regulations adopted under subdivision (b),  
10 including well identification number and location.

11 (2) The division may designate a publicly accessible Internet  
12 Web site, developed by the Ground Water Protection Council and  
13 the Interstate Oil and Gas Compact Commission for the posting  
14 of the data pursuant to paragraph (1), if all of the following  
15 requirements are met:

16 (A) The information is organized on that Internet Web site in a  
17 format such as a spreadsheet that allows the public to easily search  
18 and aggregate, to the extent practicable, each type of information  
19 required to be collected pursuant to subdivision (b) using search  
20 functions on that Internet Web site.

21 (B) The Internet Web site permits any person to export, copy,  
22 or otherwise obtain in electronic format the data submitted pursuant  
23 to subdivision (b) from that Internet Web site. Once obtained, there  
24 shall be no restrictions on the possession or further distribution,  
25 modification, transmission, or reproduction of any information  
26 submitted pursuant to this section in any form and by any means  
27 and no prior authorization shall be required.

28 (3) If an Internet Web site is not designated by the division  
29 pursuant to paragraph (2), the division shall maintain a publicly  
30 accessible Internet Web site, in compliance with subparagraphs  
31 (A) and (B) of paragraph (2), for the posting of the data required  
32 pursuant to paragraph (1).

33 (f) The operator is responsible for compliance with this section.

34 (g) The names and locations of all known seismic faults within  
35 a distance from the well bore in any direction equal to five times  
36 the fracture zone length and the names and locations of seismic  
37 faults whose movement is reasonably anticipated to impact the  
38 integrity of the well, well casing, and oil and gas formation shall  
39 be added to the well history. The fracture zone length is defined

1 as the distance from the well bore to the maximum extent of any  
2 induced fracture.

3 (h) (1) The supplier may claim trade secret protection for the  
4 chemical composition of additives pursuant to Section 1060 of the  
5 Evidence Code, or the Uniform Trade Secrets Act (Title 5  
6 (commencing with Section 3426) of Part 1 of Division 4 of the  
7 Civil Code).

8 (2) If a supplier believes that information regarding a chemical  
9 constituent of a hydraulic fracturing fluid is a trade secret, the  
10 supplier shall nevertheless disclose the information to the division  
11 within 30 days following cessation of hydraulic fracturing on a  
12 well, and shall notify the division in writing of that belief.

13 (3) The supplier is not required to disclose trade secret  
14 information to the operator.

15 (4) This subdivision does not permit a supplier to refuse to  
16 disclose the information required pursuant to this section to the  
17 division.

18 (5) To comply with the public disclosure requirements of this  
19 section, the supplier shall indicate where trade secret information  
20 has been withheld and the specific name of a chemical constituent  
21 shall be replaced with the chemical family name or similar  
22 descriptor associated with the trade secret chemical information.

23 (6) Except as provided in subparagraph (B) of paragraph (8),  
24 the division shall protect from disclosure any trade secret  
25 designated as such by the supplier, if that trade secret is not a public  
26 record.

27 (7) The supplier shall notify the division in writing within 30  
28 days of any changes to information provided to the division to  
29 support a trade secret claim.

30 (8) Upon receipt of a request for the release of information to  
31 the public, which includes information the supplier has notified  
32 the division is a trade secret and is not a public record, the  
33 following procedure applies:

34 (A) The division shall notify the supplier of the request in  
35 writing by certified mail, return receipt requested.

36 (B) The division shall release the information to the public, but  
37 not earlier than 60 days after the date of mailing the notice of the  
38 request for information, unless, prior to the expiration of the 60-day  
39 period, the supplier obtains an action in an appropriate court for a  
40 declaratory judgment that the information is subject to protection

1 or for a preliminary injunction prohibiting disclosure of the  
2 information to the public and provides notice to the division of  
3 that action.

4 (9) Except as provided in subparagraph (B) of paragraph (8),  
5 trade secret information is not a public record and shall not be  
6 disclosed to anyone except to an officer or employee of the  
7 division, the state, or the United States, in connection with the  
8 official duties of that officer or employee, to a health professional,  
9 under any law for the protection of health, or to contractors with  
10 the division or the state and its employees if, in the opinion of the  
11 division, disclosure is necessary and required for the satisfactory  
12 performance of a contract, for performance of work, or to protect  
13 health and safety.

14 (10) Except as provided in subparagraph (B) of paragraph (8),  
15 an officer or employee of the division or former officer or employee  
16 who, by virtue of that employment or official position, has  
17 possession of, or has access to, any trade secret subject to this  
18 section, and who, knowing that disclosure of the information to  
19 the general public is prohibited by this section, knowingly and  
20 willfully discloses the information in any manner to any person  
21 not entitled to receive it, is guilty of a misdemeanor. A contractor  
22 of the division and any employee of the contractor who has been  
23 furnished information as authorized by this section shall be  
24 considered an employee of the division for purposes of this section.

25 (11) In the event of exposure to hydraulic fracturing fluids  
26 necessitating medical care, the person receiving the care shall have  
27 the right to petition the division to disclose relevant trade secret  
28 information in order to receive appropriate medical care.

29 (i) This section does not apply to routine tests to monitor the  
30 integrity of wells and well casings.

31 (j) A well granted confidential status pursuant to Section 3234  
32 shall comply with this section, with the exception of the disclosure  
33 of hydraulic fracturing fluids pursuant to subdivision (e) which  
34 shall not be required until the confidential status of the well ceases.

35 3158. (a) Within 60 days after the date of cessation of  
36 hydraulic fracturing, the operator shall file with the district deputy,  
37 in a form approved by the supervisor, true copies of the log, core  
38 record, and history of work performed, and, if made, true and  
39 reproducible copies of all electrical, physical, or chemical logs,  
40 tests, or surveys. Upon a showing of hardship, the supervisor may



1 extend the time within which to comply with this section for a  
2 period not to exceed 60 additional days.

3 (b) The supervisor shall include information provided pursuant  
4 to subdivision (e) of Section 3157 on existing publicly accessible  
5 maps on the division's Internet Web site, and make the information  
6 available such that hydraulic fracturing and related information  
7 are associated with each specific well. If data are reported on an  
8 Internet Web site not maintained by the division pursuant to  
9 paragraph (2) of subdivision (e) of Section 3157, the division shall  
10 provide electronic links to that Internet Web site. The public shall  
11 be able to search and sort the hydraulic fracturing and related  
12 information by at least the following criteria:

- 13 (1) Geographic area.
- 14 (2) Additive.
- 15 (3) Chemical constituent.
- 16 (4) Chemical Abstract Service number.
- 17 (5) Time period.
- 18 (6) Operator.

19 (c) Notwithstanding Section 10231.5 of the Government Code,  
20 on or before January 1, 2016, and annually thereafter, the  
21 supervisor shall, in compliance with Section 9795 of the  
22 Government Code, prepare and transmit to the Legislature a  
23 comprehensive report on hydraulic fracturing in the exploration  
24 and production of oil and gas resources in California. The report  
25 shall include aggregated data of all of the information required to  
26 be reported pursuant to Section 3157 reported by district, county,  
27 and operator. The report also shall include relevant additional  
28 information, as necessary, including, but not limited to, all the  
29 following:

- 30 (1) Aggregated data detailing the disposition of any produced  
31 water from wells that have undergone hydraulic fracturing.
- 32 (2) Aggregated data detailing the names and locations of seismic  
33 faults within a distance from the well bore in any direction equal  
34 to five times the fracture zone length and the names and locations  
35 of seismic faults whose movement is reasonably anticipated to  
36 impact the integrity of the well, well casing, and oil and gas  
37 formation.
- 38 (3) The number of emergency responses to a spill or release.

1 (4) Aggregated data detailing the number of times trade secret  
2 information was not provided to the public, by county and by each  
3 company, in the preceding year.

4 (5) Data detailing the loss of well and well casing integrity in  
5 the preceding year for wells that have undergone hydraulic  
6 fracturing treatment. For comparative purposes, data detailing the  
7 loss of well and well casing integrity in the preceding year for all  
8 wells shall also be provided. The cause of each well and well casing  
9 failure, if known, shall also be provided.

10 (d) The report shall be made publicly available and an electronic  
11 version shall be available on the division’s Internet Web site.

12 SEC. 2. Section 3213 of the Public Resources Code is amended  
13 to read:

14 3213. The history shall show the location and amount of  
15 sidetracked casings, tools, or other material, the depth and quantity  
16 of cement in cement plugs, the shots of dynamite or other  
17 explosives, and the results of production and other tests during  
18 drilling operations. *All data on hydraulic fracturing treatments*  
19 *pursuant to Section 3157 shall be recorded in the history.*

20 SEC. 3. No reimbursement is required by this act pursuant to  
21 Section 6 of Article XIII B of the California Constitution because  
22 the only costs that may be incurred by a local agency or school  
23 district will be incurred because this act creates a new crime or  
24 infraction, eliminates a crime or infraction, or changes the penalty  
25 for a crime or infraction, within the meaning of Section 17556 of  
26 the Government Code, or changes the definition of a crime within  
27 the meaning of Section 6 of Article XIII B of the California  
28 Constitution.