

AMENDED IN ASSEMBLY MAY 5, 2015

AMENDED IN ASSEMBLY MARCH 17, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

## ASSEMBLY BILL

**No. 356**

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**Introduced by Assembly Member Williams**  
**(Coauthors: Assembly Members Nazarian and Mark Stone)**

February 17, 2015

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An act to amend Sections 3106 and 3401 of, and to add Article 2.5 (commencing with Section 3130) to Chapter 1 of Division 3 of, the Public Resources Code, and to add Section 13227.5 to the Water Code, relating to oil and gas.

### LEGISLATIVE COUNSEL'S DIGEST

AB 356, as amended, Williams. Oil and gas: groundwater monitoring.

(1) Existing law requires the State Oil and Gas Supervisor to supervise the drilling, operation, maintenance, and abandonment of wells and the operation, maintenance, and removal or abandonment of tanks and facilities attendant to oil and gas production. Existing law authorizes the supervisor to require a well operator to implement a monitoring program, designed to detect releases to the soil and water, for aboveground oil production tanks and facilities. Under existing law, a person who fails to comply with specified requirements relating to the regulation of oil or gas operation is guilty of a misdemeanor.

This bill would additionally authorize the supervisor to require a well operator to implement a monitoring program for belowground oil production tanks and facilities, and disposal and injection wells. Because a failure to comply with this requirement would be a crime, this bill would impose a state-mandated local program.

(2) The federal Safe Drinking Water Act regulates certain wells as Class II wells. Under existing federal law, the authority to regulate Class II wells in California is delegated to the Division of Oil, Gas, and Geothermal Resources. Under existing regulations, a well operator is required to obtain approval from the supervisor or a district deputy for a subsurface injection or disposal project, including Class II wells, or any change in a project, as provided.

This bill would require the division to annually review underground injection or disposal projects approved by the division that use Class II wells. The bill would require the operator of the project, as a part of its application or the annual review process, to submit to the State Water Resources Control Board or appropriate regional water quality control board for its review a groundwater monitoring plan containing certain information, including, among other things, a schedule for monitoring and reporting groundwater quality data, as provided. The bill would require the data be submitted to the state board ~~for inclusion in an~~ *electronic format compatible with* the state board's geotracker database. Because a violation of this requirement would be a crime, this bill would impose a state-mandated local program. The bill would require the state board or regional water quality control board to review and authorize them to provide a written concurrence for the plan.

(3) Existing federal law prohibits certain well activities that affect underground sources of drinking water unless those sources are located in an ~~exempt~~ *exempted* aquifer. Existing federal law authorizes a state delegated with the responsibility of regulating Class II wells to propose that an aquifer or a portion of an aquifer be an ~~exempt~~ *exempted* aquifer and authorizes the United States Environmental Protection Agency to approve the proposal if the aquifer or a portion of the aquifer meets certain criteria.

This bill would require the division, prior to proposing to the United States Environmental Protection Agency an aquifer for exemption, to hold a public hearing on the proposal and to submit the proposal to the state board for review and written concurrence. The bill would authorize the state board to concur with the proposal if certain conditions are met.

(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.

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. Section 3106 of the Public Resources Code is  
2 amended to read:

3 3106. (a) The supervisor shall so supervise the drilling,  
4 operation, maintenance, and abandonment of wells and the  
5 operation, maintenance, and removal or abandonment of tanks and  
6 facilities attendant to oil and gas production, including pipelines  
7 not subject to regulation pursuant to Chapter 5.5 (commencing  
8 with Section 51010) of Part 1 of Division 1 of Title 5 of the  
9 Government Code that are within an oil and gas field, so as to  
10 prevent, as far as possible, damage to life, health, property, and  
11 natural resources; damage to underground oil and gas deposits  
12 from infiltrating water and other causes; loss of oil, gas, or reservoir  
13 energy; and damage to underground and surface waters suitable  
14 for irrigation or domestic purposes by the infiltration of, or the  
15 addition of, detrimental substances.

16 (b) The supervisor shall also supervise the drilling, operation,  
17 maintenance, and abandonment of wells so as to permit the owners  
18 or operators of the wells to utilize all methods and practices known  
19 to the oil industry for the purpose of increasing the ultimate  
20 recovery of underground hydrocarbons and which, in the opinion  
21 of the supervisor, are suitable for this purpose in each proposed  
22 case. To further the elimination of waste by increasing the recovery  
23 of underground hydrocarbons, it is hereby declared as a policy of  
24 this state that the grant in an oil and gas lease or contract to a lessee  
25 or operator of the right or power, in substance, to explore for and  
26 remove all hydrocarbons from any lands in the state, in the absence  
27 of an express provision to the contrary contained in the lease or  
28 contract, is deemed to allow the lessee or contractor, or the lessee's  
29 or contractor's successors or assigns, to do what a prudent operator  
30 using reasonable diligence would do, having in mind the best  
31 interests of the lessor, lessee, and the state in producing and  
32 removing hydrocarbons, including, but not limited to, the injection  
33 of air, gas, water, or other fluids into the productive strata, the  
34 application of pressure heat or other means for the reduction of  
35 viscosity of the hydrocarbons, the supplying of additional motive

1 force, or the creating of enlarged or new channels for the  
2 underground movement of hydrocarbons into production wells,  
3 when these methods or processes employed have been approved  
4 by the supervisor, except that nothing in this section imposes a  
5 legal duty upon the lessee or contractor, or the lessee's or  
6 contractor's successors or assigns, to conduct these operations.

7 (c) The supervisor may require an operator to implement a  
8 monitoring program, designed to detect releases to the soil and  
9 water, including both groundwater and surface water, for  
10 aboveground and belowground oil production tanks and facilities,  
11 and disposal and injection wells.

12 (d) To best meet the oil and gas needs in this state, the supervisor  
13 shall administer this division so as to encourage the wise  
14 development of oil and gas resources.

15 SEC. 2. Article 2.5 (commencing with Section 3130) is added  
16 to Chapter 1 of Division 3 of the Public Resources Code, to read:

17  
18 Article 2.5. Underground Injection Control  
19

20 3130. For purposes of this article, the following terms mean  
21 the following:

22 (a) *"Beneficial use"* has the same meaning as set forth in  
23 subdivision (f) of Section 13050 of the Water Code.

24 ~~(a)~~

25 (b) "Class II well" means a well that injects brine and other  
26 fluids associated with oil and gas production or a well that injects  
27 hydrocarbons for the purposes of storage.

28 ~~(b) "Exempt aquifer" means an aquifer that has been proposed~~  
29 ~~by the division and approved by the United States Environmental~~  
30 ~~Protection Agency for exemption from the UIC program and meets~~  
31 ~~the criteria for an aquifer exemption determination pursuant to the~~  
32 ~~federal Safe Drinking Water Act (42 U.S.C. Sec. 300f et seq.) and~~  
33 ~~regulations implementing that act.~~

34 (c) *"Exempted aquifer"* has the same meaning as set forth in  
35 Section 144.3 of Title 40 of the Code of Federal Regulations.

36 ~~(c)~~

37 (d) "Project" means an underground injection or disposal project  
38 that uses a Class II well.

39 ~~(d)~~

1 (e) “State board” means the State Water Resources Control  
2 Board.

3 (f) “*Underground source of drinking water*” has the same  
4 meaning as set forth in Section 144.3 of Title 40 of the Code of  
5 Federal Regulations.

6 ~~(e)~~

7 (g) “UIC program” means a program covering Class II wells  
8 for which the division has received primacy from the United States  
9 Environmental Protection Agency pursuant to Section 1425 of the  
10 federal Safe Drinking Water Act (42 U.S.C. Sec. 300h-4).

11 3131. (a) Prior to proposing to the United States Environmental  
12 Protection Agency an aquifer as an ~~exempt~~ *exempted* aquifer, the  
13 division shall do both of the following:

14 (1) Conduct a public hearing on the proposal.

15 (2) Submit the proposal to the state board for written  
16 concurrence.

17 (b) The state board may concur on the proposal if all of the  
18 following conditions are met:

19 (1) The division has included in the proposal all data necessary  
20 to meet the aquifer exemption criteria set forth in Section 146.4  
21 of Title 40 of the Code of Federal ~~Regulations~~. *Regulations and*  
22 *necessary for the state board to make the determinations required*  
23 *pursuant to paragraphs (2) and (3).*

24 (2) The state board determines that the proposed aquifer cannot  
25 now, ~~or~~ *and* will not in the future, serve as a source of drinking  
26 water or for other beneficial ~~uses~~. *use.*

27 (3) The state board determines that injection into the proposed  
28 aquifer will stay in the proposed area and will not impact the ability  
29 of nearby ~~nonexempt~~ *nonexempted* aquifers to be a source of  
30 drinking water or for other beneficial ~~uses~~. *use.*

31 3132. The division shall review annually all projects approved  
32 pursuant to this chapter for compliance with applicable law.

33 3133. As a part of an application for approval of a project or  
34 as a part of the annual review conducted pursuant to Section 3132,  
35 the operator of the project shall submit to the state board or  
36 appropriate regional water quality control board for review and  
37 concurrence a groundwater monitoring plan meeting the  
38 requirements of Section 3134.

39 3134. (a) The groundwater monitoring plan required pursuant  
40 to Section 3133 shall include, at a minimum, all of the following:

(1) Information demonstrating that the aquifer *or area* into which the injection occurs or the proposed injection will occur is ~~an exempt one of the following:~~

(A) *An exempted aquifer.*

(B) *An aquifer that is not an underground source of drinking water.*

(C) *An area that does not contain an aquifer.*

(2) Information regarding the current water quality of the groundwater basin through which the well passes sufficient to characterize the quality of the aquifer.

~~(3) Information regarding the current water quality of the injection zone sufficient to demonstrate that the injection zone is not suitable to be used as a source of drinking or irrigation water based on treatment technologies existing at the time of submission of the plan.~~

~~(4)~~

~~(3) The identification of both public supply and domestic water wells all injection, production, water wells, including abandoned, partially abandoned, or inactive wells, located within one mile of the boundaries of the injection zone or evidence showing that there are no public supply or domestic water wells located within the one mile zone.~~

~~(5)~~

(4) A demonstration that the proposed injection well is located in an area that is geologically suitable, including an appropriate confining and injection zone.

~~(6)~~

(5) Chemical and physical analyses of, and data regarding, identities and concentrations of all constituents present in the injected fluid or gas. Subdivision (j) of Section 3160 shall apply to a claim of trade secret for information described in this paragraph.

~~(7)~~

(6) (A) Sites for monitoring wells that will allow for the detection of contamination or degradation associated with underground injection projects during and after the period of its active use.

(B) Sites for monitoring wells that demonstrate that the injection fluid is confined to the intended injection zone or zones of injection.

1     ~~(8)~~

2     (7) (A) A schedule for monitoring and reporting data that  
3 provides, at a minimum, groundwater quality data ~~on a quarterly~~  
4 ~~basis~~ *semiannually* during the active life of the well and at least  
5 annually after the well has been closed and ~~abandoned~~. *abandoned*  
6 *until such time as justified by the operator and concurred with by*  
7 *the state board. The operator shall provide the state board access*  
8 *to its monitoring sites and well data for further testing and analysis.*

9     ~~(B) The data shall be submitted electronically to the state board~~  
10 ~~for inclusion in the state board's geotracker database.~~

11     (B) *Groundwater quality data collected shall be submitted to*  
12 *the state board in an electronic format that is compatible with the*  
13 *state board's geotracker database, following the guidelines detailed*  
14 *in Chapter 30 (commencing with Section 3890) of Division 3 of*  
15 *Title 23 of the California Code of Regulations.*

16     ~~(9) An emergency~~

17     (8) A contingency plan that will be implemented in the case of  
18 a well failure or other event that has the potential to degrade  
19 groundwater.

20     (b) Subparagraph (A) of paragraph (7) of subdivision (a) does  
21 not apply to a well if the state board or appropriate regional water  
22 quality board has determined that the well ~~meets both of the~~  
23 ~~following~~; *does not and could not inject into, or pass through, an*  
24 *aquifer with a beneficial use.*

25     ~~(1) The well does not inject into, or pass through, an aquifer~~  
26 ~~with a beneficial use.~~

27     ~~(2) There are no public supply or domestic water wells located~~  
28 ~~within one mile of the injection zone.~~

29     (c) (1) The state board or appropriate regional water quality  
30 control board may revise the monitoring plan to avoid duplication  
31 and assist with regional monitoring plans associated with oil and  
32 gas activities; *reduce the number of monitoring wells needed to*  
33 *accomplish the purposes of the monitoring plan.*

34     (2) The state board or appropriate regional water quality board  
35 may authorize the well operator to ~~rely on a regional monitoring~~  
36 ~~plan in lieu of the requirements of paragraphs (7) and (8) of~~  
37 ~~subdivision (a).~~ *submit one monitoring plan with adjacent*  
38 *operators so that injection projects in an aquifer or portions of an*  
39 *aquifer can be considered as a whole.*

SEC. 3. Section 3401 of the Public Resources Code is amended to read:

3401. (a) 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 a well shall be used exclusively for the support and maintenance of the department charged with the supervision of oil and gas operations.

(b) Notwithstanding subdivision (a), 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 a well undergoing a well stimulation treatment, may be used by public entities, subject to appropriation by the Legislature, for all costs associated with both of the following:

(1) Well stimulation treatments, including rulemaking and scientific studies required to evaluate the treatment, inspections, any air and water quality sampling, monitoring, and testing performed by public entities.

(2) The costs of the State Water Resources Control Board and the regional water quality control boards in carrying out their responsibilities pursuant to Section 3160 and Section 10783 of the Water Code.

(c) Notwithstanding subdivision (a), the proceeds of charges levied, assessed, and collected pursuant to this article upon the properties of every person operating or owning an interest in an injection or disposal well subject to Article 2.5 (commencing with Section 3130), may be used, subject to appropriation by the Legislature, for all costs of the State Water Resources Control Board or appropriate regional water quality control board in carrying out their responsibilities pursuant to that article and Section 13227.5 of the Water Code.

SEC. 4. Section 13227.5 is added to the Water Code, to read:

13227.5. The state board or appropriate regional board shall review and may provide a written concurrence for a groundwater monitoring plan submitted pursuant to Section 3133 of the Public Resources Code to ensure that groundwater quality is protected.

SEC. 5. 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



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

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