

Assembly Bill No. 2756

Passed the Assembly June 2, 2016

Chief Clerk of the Assembly

Passed the Senate August 16, 2016

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2016, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 3236.5, 3350, 3351, 3352, 3356, and 3357 of, and to repeal, add, and repeal Article 4.3 (commencing with Section 3260) of Chapter 1 of Division 3 of, the Public Resources Code, relating to oil and gas.

LEGISLATIVE COUNSEL’S DIGEST

AB 2756, Thurmond. Oil and gas operations: enforcement actions.

(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. Existing law provides that a person who violates certain requirements related to the regulation of oil and gas is subject to a civil penalty not to exceed \$25,000 for each violation. Existing law requires the State Oil and Gas Supervisor to consider specified circumstances when establishing the amount of the civil penalty.

This bill would require the supervisor to consider specified additional circumstances when establishing the amount of the civil penalty. The bill would set ranges of civil penalty amounts depending on whether the violation is a well stimulation violation, a major violation, or a minor violation, as defined. The bill would authorize the supervisor, in his or her discretion, to treat each day a major or minor violation continues or is not cured as a separate violation. The bill would authorize the supervisor to allow a supplemental environmental project, as defined, in lieu of a portion of the civil penalty amount, not to exceed 50% of the civil penalty amount, as specified. The bill would, until January 1, 2021, require that the civil penalties assessed under these provisions be deposited in the Oil and Gas Environmental Remediation Account. The bill would, until January 1, 2021, establish that account in the Oil, Gas, and Geothermal Administrative Fund to be administered and managed by the division, and would require that the moneys in the account be used, upon appropriation by the Legislature, to plug and abandon oil and gas wells, decommission attendant facilities, or otherwise remediate sites that the supervisor determines could pose a danger to life, health, water quality, wildlife, or natural

resources if there is no operator determined by the supervisor to be responsible for remediation or who is able to respond. The bill would authorize the division to adopt regulations to implement these provisions, and would repeal obsolete provisions related to the Acute Orphan Well Account.

(2) Existing law establishes procedures for an operator of a well or production facility to appeal to the Director of Conservation from an order of the supervisor or a district deputy. Existing law requires a notice of appeal to be filed with supervisor or with the district deputy who issued the order.

This bill would make numerous changes to the appeal process and procedures. The bill would, among other things, require the notice of appeal to be filed with the director, revise exceptions for when the notice of appeal operates as a stay of the order, revise what costs will be refunded if an emergency order is set aside or modified on appeal, and revise the circumstances in which appeals are to be heard in a formal hearing process before an administrative law judge, instead of in an informal hearing before the director.

This bill would make numerous changes to the process and procedures for an informal hearing before the director. The bill would, among other things, authorize the director to extend the date of the hearing for good cause upon his or her own motion, revise the authorization for the hearing to be electronically recorded by either party, revise the timeline in which the director is required to grant or deny a petition to order the testimony of a witness at the hearing, and provide that obtaining subpoenas may be considered good cause to extend the date of the hearing.

(3) Existing law sets forth numerous provisions governing discovery in the context of an informal hearing before the director. Existing law authorizes the supervisor or the director, upon application to a judge of the superior court of the county within which the proceeding or investigation is pending, to obtain a subpoena compelling the attendance of witnesses and the production of records, surveys, documents, books, or accounts at such places as the judge may designate within the limits prescribed in these provisions.

This bill would make numerous changes to these discovery provisions. The bill would, among other things, require a judge of the superior court, upon application by the supervisor or director, to assign a case number for the proceeding or investigation, to

issue an order prescribing the nature and scope of the proceeding or investigation, and to retain jurisdiction for the limited purpose of enforcing subpoenas issued in the proceeding or investigation; authorize the attorney of record for the supervisor or director, upon the assigning of a case number, to issue subpoenas compelling the attendance of witnesses and the production of records, surveys, documents, books, or accounts for certain pending proceedings or investigations in the manner specified; authorize the supervisor or director, or his or her inspector, to inspect the well site or production facilities of any owner or operator to ascertain whether the owner or operator is complying with the certain requirements; authorize the supervisor or director to require any owner or operator to furnish, under penalty of perjury, technical or monitoring reports that the supervisor or director require; and prohibit the division and the department from making available to the public for inspection portions of a report that might disclose trade secrets, well data granted confidential status, or other confidential or privileged information, when requested by the owner or operator furnishing the report. Because the bill would expand the crime of perjury, it would impose a state-mandated local program.

(4) Existing law provides, if the operator does not appeal an order, seek judicial review of a decision affirming or modifying an order within the time provided in law, or if the court has affirmed the decision, then any charge, including penalty and interest, that the decision permits the supervisor to impose constitutes a state tax lien against the real and personal property of the operator.

This bill additionally would include any civil penalties imposed by the supervisor for violations of certain requirements related to the regulation of oil and gas in these provisions. The bill would authorize the supervisor to apply to the appropriate superior court for a clerk's judgment, in addition to the state tax lien, and would provide provisions related to obtaining the clerk's judgment.

(5) 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.

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

SECTION 1. Section 3236.5 of the Public Resources Code is amended to read:

3236.5. (a) A person who violates this chapter or a regulation implementing this chapter is, at the supervisor's discretion, subject to a civil penalty as described in subdivision (b) for each violation. An act of God and an act of vandalism beyond the reasonable control of the operator shall not be considered a violation. The civil penalty shall be imposed by an order of the supervisor pursuant to Section 3225 upon a determination that a violation has been committed by the person charged. The imposition of a civil penalty under this section shall be in addition to any other penalty provided by law for the violation. When establishing the amount of the civil penalty pursuant to this section, the supervisor shall consider, in addition to other relevant circumstances, all of the following:

- (1) The extent of harm caused by the violation.
- (2) The persistence of the violation.
- (3) The pervasiveness of the violation.
- (4) The number of prior violations by the same violator.
- (5) The degree of culpability of the violator.
- (6) Any economic benefit to the violator resulting from the violation.
- (7) The violator's ability to pay the civil penalty amount, as determined based on information publicly available to the division.
- (8) The supervisor's prosecution costs.

(b) (1) (A) A "well stimulation violation" is a violation of Article 3 (commencing with Section 3150) or the regulations implementing that article.

(B) The civil penalty amount for a well stimulation violation shall be not less than ten thousand dollars (\$10,000) per day per violation and not more than twenty-five thousand dollars (\$25,000) per day per violation.

(2) (A) A "major violation" is a violation that is not a well stimulation violation and that is one or more of the following:

- (i) A violation that results in harm to persons or property or presents a significant threat to human health or the environment.
- (ii) A knowing, willful, or intentional violation.

(iii) A chronic violation or one that is committed by a recalcitrant violator. In determining whether a violation is chronic or a violator is recalcitrant, the supervisor shall consider whether there is evidence indicating that the violator has engaged in a pattern of neglect or disregard with respect to applicable requirements.

(iv) A violation where the violator derived significant economic benefit, either by significantly reduced costs or a significant competitive advantage.

(B) The civil penalty amount for a major violation shall be not less than two thousand five hundred dollars (\$2,500) per violation and not more than twenty-five thousand dollars (\$25,000) per violation.

(3) (A) A “minor violation” is a violation that is neither a well stimulation violation nor a major violation.

(B) The civil penalty amount for a minor violation shall be not more than two thousand five hundred dollars (\$2,500) per violation.

(4) At the supervisor’s discretion, each day a major or minor violation continues or is not cured may be treated as a separate violation.

(c) An order of the supervisor imposing a civil penalty shall be reviewable pursuant to Article 6 (commencing with Section 3350). When the order of the supervisor has become final and the penalty has not been paid, the supervisor may apply to the appropriate superior court for an order directing payment of the civil penalty. The supervisor may also seek from the court an order directing that production from the well or use of the production facility that is the subject of the civil penalty order be discontinued until the violation has been remedied to the satisfaction of the supervisor and the civil penalty has been paid.

(d) The supervisor may allow a supplemental environmental project in lieu of a portion of the civil penalty amount. The supplemental environmental project may not be more than 50 percent of the total civil penalty amount. Any amount collected under this section that is not allocated for a supplemental environmental project shall be deposited in the Oil and Gas Environmental Remediation Account established pursuant to Section 3261, until January 1, 2021. Commencing January 1, 2021, any amount collected under this section that is not allocated for a

supplemental environmental project shall be deposited into the Oil, Gas, and Geothermal Administrative Fund.

(e) “Supplemental environmental project” means an environmentally beneficial project that a person, subject to an order of the supervisor imposing a civil penalty, voluntarily agrees to undertake in settlement of the action and to offset a portion of a civil penalty.

SEC. 2. Article 4.3 (commencing with Section 3260) of Chapter 1 of Division 3 of the Public Resources Code is repealed.

SEC. 3. Article 4.3 (commencing with Section 3260) is added to Chapter 1 of Division 3 of the Public Resources Code, to read:

Article 4.3. Oil and Gas Environmental Remediation Account

3260. For purposes of this article, “account” means the Oil and Gas Environmental Remediation Account established under Section 3261.

3261. (a) Notwithstanding any other provision of this chapter, including the expenditure limitations of Section 3258, the division shall administer and manage the Oil and Gas Environmental Remediation Account, which is hereby established in the Oil, Gas, and Geothermal Administrative Fund.

(b) Moneys in the account shall be used, upon appropriation by the Legislature, to plug and abandon oil and gas wells, decommission attendant facilities, or otherwise remediate sites that the supervisor determines could pose a danger to life, health, water quality, wildlife, or natural resources if there is no operator determined by the supervisor to be responsible for remediation pursuant to subdivision (c) of Section 3237 or who is able to respond.

3262. The division may adopt regulations to implement this article.

3263. This article shall remain in effect only until January 1, 2021, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2021, deletes or extends that date.

SEC. 4. Section 3350 of the Public Resources Code is amended to read:

3350. (a) The operator of a well or a production facility to whom the supervisor or district deputy has issued an order pursuant to this chapter may file a notice of appeal from that order. The

notice of appeal shall be in writing and shall be filed with the director. The operator shall file the appeal within 10 days of the service of the order, or within 10 days of the posting of a copy of an order made pursuant to Section 3308. Failure of the operator to file an appeal from the order within the 10-day period shall be a waiver by the operator of its rights to challenge the order. If the order, other than an order made pursuant to Section 3308, is served by mail, the time for responding shall be determined as provided in Section 1013 of the Code of Civil Procedure.

(b) (1) The filing of a written notice of appeal shall operate as a stay of the order, except when an order is issued as an emergency order pursuant to Section 3226. If the order is an emergency order, the operator shall immediately perform whatever work is required by the order to alleviate the emergency or shall permit the agents appointed by the supervisor to perform that work. If the order is an emergency order to cease injection, then the operator shall cease injection as soon as it is safe to do so.

(2) If an emergency order is set aside or modified on appeal, the supervisor shall refund the reasonable costs incurred by the operator for whatever work is not required by the set-aside or modified order or shall not impose costs for work performed by the supervisor or the supervisor's agents if the work is excluded from the modified order or the order is set aside. Only the costs of work performed shall be refunded, and there shall be no reimbursement for lost profits or increased production costs.

(3) (A) The costs to be refunded pursuant to paragraph (2) by the supervisor shall be determined in a hearing before the director after the exhaustion of appeals. The operator shall have the burden of proving the amount of costs to be refunded.

(B) A determination by the director as to the amount of costs to be refunded pursuant to paragraph (2) may be appealed by the operator pursuant to subdivision (a) of Section 3354.

(4) If the operator believes that it will be irretrievably injured by the performance of the work required to alleviate the emergency pending the outcome of the appeal, the operator may seek an order from the appropriate superior court restraining the enforcement of the order pending the outcome of the appeal.

SEC. 5. Section 3351 of the Public Resources Code is amended to read:

3351. (a) A hearing shall be provided in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code only in an appeal from an order in the following circumstances:

(1) Issued pursuant to a Section 3237 finding that the operator's wells are deserted and should be plugged and abandoned.

(2) Imposing civil penalties totaling more than twenty-five thousand dollars (\$25,000).

(3) Rescinding an entire injection project approval for a project that has already commenced.

(4) Imposing a life-of-well bond or a life-of-production facility bond.

(b) An order issued pursuant to Section 3225 shall satisfy the substantive requirements of an accusation pursuant to Section 11503 of the Government Code and may be filed when scheduling a formal hearing in accordance with this chapter and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. All applicable formal hearing deadlines do not commence until a formal hearing is scheduled. When scheduling a formal hearing after an appeal from an order under this chapter, the supervisor is not required to send a Notice of Defense statement and the operator is not required to request a hearing.

(c) For an appeal of an order that is not described in subdivision (a), a hearing shall be conducted by the director in accordance with Sections 3352 and 3353.

(d) For an appeal of an order that is described in subdivision (a) and is also an emergency order, a hearing shall be conducted by the director in accordance with Sections 3352 and 3353 for the limited purpose of considering the reasonableness of the supervisor's determination that an emergency exists. All other penalties and requirements imposed by the order shall be considered at a hearing provided in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 6. Section 3352 of the Public Resources Code is amended to read:

3352. (a) A hearing conducted by the director shall adhere to the following:

(1) When an order is not issued as an emergency order, within 30 days from the date of the service of the notice of appeal, the director shall provide to the operator notice of the time and place of the hearing. The hearing shall take place within 30 days after the date of the director's notice. The notice shall inform the operator that the director may extend the date of the hearing for up to 60 days for good cause upon his or her own motion, or an application of the operator or the supervisor.

(2) When an order has been issued as an emergency order, within 10 days from the date of the service of the notice of appeal, the director shall provide to the operator notice of the time and place of the hearing. The hearing shall take place within 20 days after the date of the director's notice. The notice shall inform the operator that the director may extend the date of the hearing for up to 30 days for good cause upon his or her own motion, or an application of the operator or the supervisor.

(b) The director shall conduct the hearing within the district where the majority of the wells or production facilities that are the subject of the order are located, or the hearing may be conducted at a location outside of that district upon application of the operator. The hearing shall be reported by a stenographic reporter.

(c) The notice of hearing shall inform the operator of its right to file a written answer to the charges no later than 10 days before the date of the hearing. The notice also shall inform the operator that it has the right to present oral and documentary evidence at the hearing.

(d) Upon a verified and timely petition of the operator, the director may order the testimony of a witness at the hearing. The petition shall be served upon the director and the other party within five days after the filing of an appeal and shall set forth the name and address of the witness whose testimony is requested, to the extent known; a showing of the materiality of the testimony; and a showing that the witness cannot be compelled to testify absent an order of the director. The supervisor may file an opposition to the petition within five days after the petition is served. The director shall either deny or grant the petition within 10 days after receipt of the petition. Upon granting a petition, the director shall issue a subpoena pursuant to Section 3357 compelling the testimony of the witness at the hearing. Obtaining subpoenas may be considered

good cause to extend the date of the hearing under paragraph (1) or (2) of subdivision (a).

(e) The director may convert a hearing pursuant to this section to a formal hearing conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code in any of the following circumstances:

(1) The operator makes a showing satisfactory to the director that the order being appealed is likely to result in termination of an established oil or gas producing or injection operation.

(2) It appears to the director that the hearing will involve complex evidentiary or procedural issues that will cause more than minimal delay or burdens.

(3) The operator and the supervisor agree and stipulate to convert the hearing to a formal hearing.

(f) The conversion of a hearing pursuant to this section to a formal hearing shall be conducted in accordance with Article 15 (commencing with Section 11470.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code. If a hearing for an appeal of an emergency order is converted to a formal hearing, the supervisor shall endeavor to schedule and notice a formal emergency hearing as soon as reasonably possible and, notwithstanding Section 11517 of the Government Code, the director shall only have 30 days from receipt of the administrative law judge's proposed emergency hearing decision to act as prescribed in subparagraphs (A) to (E), inclusive, of paragraph (2) of subdivision (c) of Section 11517 of the Government Code.

(g) The director or his or her designee shall permit inconspicuous personal recording devices to be used by persons during a hearing pursuant to this section to make sound recordings as personal notes of the proceedings. A person proposing to use a recording device shall provide advance notice to the director or his or her designee. The recordings may not be used for any purpose other than as personal notes.

SEC. 7. Section 3356 of the Public Resources Code is amended to read:

3356. (a) If the operator does not appeal an order, if the operator does not timely seek judicial review of a decision affirming or modifying an order within the time provided in Section 3354, or if the operator has timely sought and obtained judicial review and the court has affirmed the decision, then any charge,

including penalty and interest, that the decision permits the supervisor to impose on the operator for work performed by the supervisor or the supervisor's agents, and any civil penalties imposed under Section 3236.5 shall constitute a state tax lien against the real and personal property of the operator pursuant to Section 3423.

(b) In addition to a state tax lien, the supervisor may apply to the appropriate superior court for a clerk's judgment. The application, which shall include a certified copy of the final agency order or decision, shall constitute a sufficient showing to warrant the issuance of the judgment. The court clerk shall enter the judgment immediately in conformity with the application. The judgment so entered shall have the same force and effect as, and shall be subject to all the provisions of law relating to, a judgment in a civil action, and may be enforced in the same manner as any other judgment of the court.

SEC. 8. Section 3357 of the Public Resources Code is amended to read:

3357. (a) In any proceeding before the director, and in any proceeding instituted by the supervisor for the purpose of enforcing or carrying out the provisions of this division, or for the purpose of holding an investigation to ascertain the condition of any well or wells complained of, or which in the opinion of the supervisor may reasonably be presumed to be improperly located, drilled, operated, maintained, or conducted, the supervisor and the director shall have the power to administer oaths and may apply to a judge of the superior court of the county in which the proceeding or investigation is pending for subpoenas for witnesses to attend the proceeding or investigation. Upon the application of the supervisor or the director, the judge of the superior court shall assign a case number for the proceeding or investigation, shall issue an order prescribing the nature and scope of the proceeding or investigation, and shall retain jurisdiction for the limited purpose of enforcing subpoenas issued in the proceeding or investigation. Upon the assigning of a case number, the attorney of record for the supervisor or director may issue subpoenas directing witnesses to attend the proceeding or investigation, and those persons shall be required to produce, when directed, all records, surveys, documents, books, or accounts in the witness' custody or under the witness' control; except that no person shall be required to attend upon the

proceeding unless the person resides within the same county or within 100 miles of the place of attendance. The attorney of record for the supervisor or the director may in that case cause the depositions of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in superior courts of this state under Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure, and may issue subpoenas compelling the attendance of witnesses and the production of records, surveys, documents, books, or accounts at designated places within the limits prescribed in this section.

(b) (1) In conducting a proceeding or investigation specified in subdivision (a), the supervisor or director may require an owner or operator to furnish, under penalty of perjury, technical or monitoring reports that the supervisor or director requires. The burden, including costs, of any report shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the report. In requiring a report, the supervisor or director shall explain in writing to the owner or operator the need for the report, and shall identify the rationale that supports requiring that owner or operator to provide the report.

(2) When requested by the owner or operator furnishing the report, neither the division nor the department shall make available to the public for inspection portions of a report that might disclose trade secrets, well data granted confidential status pursuant to Section 3234, or other confidential or privileged information. The division or department shall make that confidential or privileged information available to other public agencies as needed for regulatory purposes and in accordance with a written agreement with the other public agency regarding the sharing of the information.

(c) In conducting a proceeding or investigation pursuant to subdivision (a), the supervisor or director, or his or her inspector, may inspect the well site or production facilities of any owner or operator to ascertain whether the owner or operator is complying with the requirements of or authorized by this division. The inspection shall be made with the consent of the owner or operator or, if consent is withheld, with a warrant duly issued pursuant to the procedure set forth in Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure. In the event of

an emergency affecting the public health or safety, an inspection may be performed without consent or a warrant. This subdivision is in addition to any other inspection authority granted or authorized by this division.

SEC. 9. 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 for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Approved _____, 2016

Governor