
THIRD READING

Bill No: SB 248
Author: Pavley (D)
Amended: 6/1/15
Vote: 21

SENATE NATURAL RES. & WATER COMMITTEE: 6-2, 4/14/15
AYES: Pavley, Allen, Hueso, Jackson, Monning, Wolk
NOES: Stone, Fuller
NO VOTE RECORDED: Hertzberg

SENATE APPROPRIATIONS COMMITTEE: 5-2, 5/28/15
AYES: Lara, Beall, Hill, Leyva, Mendoza
NOES: Bates, Nielsen

SUBJECT: Oil and gas

SOURCE: Author

DIGEST: This bill requires the Division of Oil, Gas, and Geothermal Resources in the Department of Conservation to update its regulations, develop a data management system, and enhance required reporting.

ANALYSIS:

Existing law:

- 1) Establishes the Division of Oil, Gas, and Geothermal Resources (division) in the Department of Conservation as the state's oil and gas regulator.
- 2) Requires the division to regulate the drilling, operation, maintenance, and abandonment of wells and the operation, maintenance, and removal or abandonment of tanks and facilities used in oil and gas production.

- 3) Allows the division to apply to the US Environmental Protection Agency (US EPA) to receive “primacy” to operate the Class II Underground Injection Control (UIC) program for oil and gas injection wells at the state level. The US EPA granted primacy and delegated authority to the division to operate the UIC program in 1983.
- 4) Requires the state’s oil and gas supervisor to produce a public annual report containing information about the state’s oil and gas production and other related material, as specified.
- 5) Requires an owner or operator of a well to keep and at specified times file with the division, a careful and accurate log, core record, and history of the drilling of the well containing specified information.
- 6) Requires monthly reporting by an owner or operator of a well to the division of certain oil and gas production, and water source, production, use and disposition information.

This bill:

- 1) Requires the division to review and update its regulations, data management practices and enhance required reporting:
 - a) Update injection well regulations, including the development of “best management practices” for injection wells through a public process with independent expert and stakeholder input,
 - b) Require injection well regulations be specific to each kind of injection well and ensure formation, wellbore and well integrity, including “full and complete characterization and reporting of all operations, with appropriate monitoring,”
 - c) Require that information regarding the division’s inspection program, such as frequency, be publicly available, and that inspection results, as specified, be included in the supervisor’s annual report,
 - d) Require the development and implementation of a new data management system to improve data handling and ensure ready public access to the division’s data and actions, as specified, and
 - e) Require enhanced quarterly reporting of waste disposal well information, as specified.

- 2) Provides for existing injection wells as of a certain date to be brought into compliance with the new regulations by another date (years for the dates are blank).
- 3) Requires that injection wells subject to the division's April 2015 emergency regulations (described below) and currently non-compliant with existing regulations meet the compliance schedule in the emergency regulations or cease injection operations.
- 4) Requires complete reporting of all activities conducted on an oil and gas well, including injected fluid composition, as specified,
- 5) Requires the monthly reporting of the chemical composition of produced water, and
- 6) Adds an ongoing requirement that the division review its regulations and other requirements at least every 10 years and update any, if needed, as specified, among other provisions.

Background

As of 2013, California was the third ranked oil producing state by volume and also a significant producer of natural gas. It is a multi-billion dollar industry in the state.

There are approximately 90,000 active oil and gas wells in the state. These wells are primarily oil and gas production wells, injection wells used to enhance oil recovery by a variety of methods, oil field wastewater disposal injection wells and gas storage wells, among others. About half of the state's active oil and gas wells are injection wells of which about 1,500 are waste disposal wells. The remaining injection wells (roughly 40,000) are different types of wells to enhance oil recovery. While percentages vary from year-to-year, roughly 60% of the state's oil production in recent years has depended upon enhanced oil recovery operations using injection wells (for contrast, recent data suggest hydraulic fracturing, and other forms of well stimulation treatments, account for 25% of the state's oil production).

Recent revelations have revealed long-standing mismanagement of the UIC program by the division. In 2011, an audit of the division's UIC program was completed by a US EPA contractor. One of the numerous issues raised by the

audit was the need to improve the number and type of inspections by the division. The audit also indicated that division staff did not always follow the division's regulations and policies in performing their work. While the division now conducts more inspections, it is not clear that the division made significant and sustained changes to all of its work practices at the time (see below).

Following the audit, according to a March 2015 memo by the California Environmental Protection Agency, continuing discussions between the division and the US EPA and also internal to the division revealed both concern and conflicting records over whether or not all zones injection wells were approved to inject into were appropriately permitted. This permitting for certain aquifers is a requirement of the division's primacy agreement with the US EPA. Not all injection zones need to be specifically permitted, but any aquifer that qualifies or may qualify as an "underground source of drinking water" needs a specific permit, issued by the US EPA, to be approved. These "exempt aquifers" must meet certain criteria, such as being hydrocarbon-bearing in commercial quantities, to qualify as injection zones.

As documented by a series of recent letters between the US EPA, the division and the State Water Resources Control Board (Water Boards), approximately 2,500 injection wells are injecting into aquifers that are not properly exempted. Some of these wells were approved as recently as last year. While 23 injection wells were shut down in 2014, the review of the remaining 2,500 wells continues. The division and the Water Boards have prioritized the review to address those wells that represent the most risk to groundwater in use for other purposes first. For example, those oil and gas injection wells in operation near water wells are the highest priority. As of a May 15, 2015 letter to the US EPA, the division has acknowledged that an additional 3,600 injection wells are also injecting into aquifers that have not been properly exempted. While many of these injection zones in question are likely to qualify for aquifer exemption status, if needed, well over 10% of all the injection wells in the state are improperly permitted due to aquifer exemption status.

In April 2015, the division proposed emergency regulations to bring the injection wells that lacked appropriate aquifer exemptions status into compliance with existing requirements. The schedule in the regulations reflects an agreement between the US EPA, the division and the Water Boards. All wells that could not be brought into compliance would be shut down by February 2017 (with two intermediate deadlines for specific categories of wells). The division, with the

concurrence of the Water Boards, will apply to the US EPA for “exempt aquifer” status, where warranted.

Additionally:

- Since the FY 2010/2011 budget year, the division has repeatedly asked for positions and funding to update its UIC regulations, which it acknowledges are outdated. Over 50 positions and \$7 million in annual funding have been provided. There has been little-to-no apparent progress on any new injection well regulations. All injection well regulations in effect, other than the recent emergency regulations addressing aquifer exemptions, are over 20 years old.
- When hydraulic fracturing of oil and gas wells became of wide-spread concern, legislative requests to the division for additional information revealed that only certain records were required to be reported. While requirements for well stimulation treatment data reporting are now in place, many other procedures remain unreported..
- It has long been known that disposal of large amounts of waste in deep injection wells is, in some instances, associated with an increase in seismic activity. Scientists have reported significant overall increases in seismic activity, particularly in areas with little previous activity, and attributed it to increased use of injection wells for waste disposal.
- In the May revise to the Governor’s budget, the division asked for \$10M funding to initiate a two-year data management program for the division. (The Senate and Assembly Budget Committees disagreed on this item and it is before the joint budget conference committee.)

Related Legislation

SB 454 (Allen, 2015) seeks to alter the aquifer exemption process for the UIC program (*on the Senate Floor*).

SB 545 (Jackson, 2015) revises and updates division’s authority and permitting practices, and reform the handling of confidential wells (*held on the Senate Appropriations Suspense file*).

AB 356 (Williams, 2015) provides for reform of the UIC program with an emphasis on the role of the Water Boards and requires groundwater monitoring in the vicinity of UIC wells (*on the Assembly floor*).

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Senate Appropriations Committee:

- Ongoing cost pressures at least in the hundreds of thousands of dollars to the Oil, Gas, and Geothermal Fund (special) to the division for additional inspection activities.
- Ongoing costs no more than the low hundreds of thousands of dollars annually to the Oil, Gas, and Geothermal Fund (special) for revisions and updates to the regulations, field rules, notices, and other requirements at least every 10 years.
- Unknown potential losses of fee revenues to the Oil, Gas, and Geothermal Fund (special) for the shutting-in of noncompliant wells.

SUPPORT: (Verified 6/1/15)

Asian Pacific Environmental Network
Association of California Water Agencies
Association of Irrigated Residents
California League of Conservation Voters
Center for Environmental Health
Center for Race, Poverty and the Environment
Citizens for Responsible Oil and Gas
Clean Water Action
Coastal Environmental Rights Foundation
Earthworks
Environment California
Environmental Action Center of West Marin
Environmental Defense Center
Environmental Working Group
Foothill Conservancy
Fresnans Against Fracking
Friends Committee on Legislation of California
League of Women Voters
Los Padres ForestWatch
Mainstreet Moms
Medicine Lake Citizens for Quality Environment, Inc
Natural Resources Defense Council

Planning and Conservation League
San Diego350
Save the Sespe
Sierra Club California
Southern Monterey County Rural Coalition
The Wildlands Conservancy
Wholly H2O

OPPOSITION: (Verified 5/29/15)

African American Farmers of California
Anne DeMartini, Trustee, Yosemite Community College District
Associated Builders & Contractors of California
Buddy Mendes, Supervisor, Fresno County Board of Supervisors
California Asian Pacific Chamber of Commerce
California Chamber of Commerce
California Cotton Ginners Association
California Cotton Growers Association
California Independent Petroleum Association
California Women for Agriculture
Camarillo Chamber of Commerce
Cerritos Regional Chamber of Commerce
Chambers of Commerce Alliance of Ventura & Santa Barbara Counties
Clint Olivier, Councilmember, City of Fresno
Coastal Energy Alliance
Craig Pedersen, Supervisor, Kings County Board of Supervisors
Dick Monteith, Supervisor, Stanislaus County Board of Supervisors
Doug Verboon, Supervisor, Kings County Board of Supervisors
El Monte/South El Monte Chamber of Commerce
Frank Hotchkiss, Councilmember, City of Santa Barbara
Fresno Area Hispanic Foundation/Downtown Business Hub
Fresno County Farm Bureau
Greater Bakersfield Chamber of Commerce
Hayward Chamber of Commerce
Humboldt Taxpayer's League
Huntington Beach Chamber of Commerce
Independent Oil Producers' Agency
Inland Empire Economic Partnership
International Faith Based Coalition
Jim DeMartini, Supervisor, Stanislaus County Board of Supervisors
José Flores, Councilmember, City of Clovis

Justin Mendes, Councilmember, City of Hanford
Kern County Black Chamber of Commerce
Kern County Firefighters IAFF Local 1301
Kern County Hispanic Chamber of Commerce
Kern County Taxpayers Association
Kern Economic Development Corporation
Kings County Farm Bureau
Latino Community Roundtable of Stanislaus County
Lee Brand, Councilmember, City of Fresno
Louie Arrollo, former Mayor, City of Ceres
Luis Chavez, Trustee, Fresno Unified School District
Mike Spence, Councilmember, City of West Covina
Mike Welsh, School Board Member, Ceres Unified School District
Monterey County Farm Bureau
National Association of Royalty Owners
National Association of Royalty Owners – California
National Federation of Independent Business
National Hmong American Farmers
Nickel Family, LLC
Nisei Farmers League
Oxnard Chamber of Commerce
Pete Vander Poel, Supervisor, Tulare County Board of Supervisors
Peter Adam, Supervisor, Santa Barbara County Board of Supervisors
Peter Foy, Supervisor, Ventura County Board of Supervisors
Porterville Chamber of Commerce
Richard Valle, Supervisor, Kings County Board of Supervisors
Rick Farinelli, Supervisor, Madera County Board of Supervisors
Robert Silva, Mayor, City of Mendota
Rudy Mendoza, Mayor, City of Woodlake
Russ Curry, Mayor, City of Hanford
Sacramento Asian Pacific Chamber of Commerce
Sal Quintero, Councilmember, City of Fresno
San Diego East County Chamber of Commerce
San Diego Tax Fighters
San Joaquin Farm Bureau
Santa Barbara County Taxpayers Association
Santa Barbara Technology and Industry Association
Santa Fe Springs Chamber of Commerce
Santa Maria Valley Chamber of Commerce & Visitor and Convention Bureau
Steve Brandau, Councilmember, City of Fresno

Steve Nascimento, Councilmember, City of Turlock
Steve Worthley, Supervisor, Tulare County Board of Supervisors
Sylvia V. Chávez, Mayor, City of Huron
Taft Chamber of Commerce and Visitors Bureau
Terry Withrow, Supervisor, Stanislaus County Board of Supervisors
The Chamber of Commerce of the Santa Barbara Region
Tulare County Farm Bureau
Valley Industry & Commerce Association
Western Agricultural Processors Association
Western States Petroleum Association
Western United Dairymen
Four individuals

ARGUMENTS IN SUPPORT: According to the author, “in the last few years, the division and its operations have come under increasing scrutiny. About five years ago, the division starting asking the Legislature for – and receiving – increased funding and personnel to revamp its injection well program. The then-supervisor released a draft plan to address deficiencies in that program. Many of these problems were highlighted in the 2011 EPA audit of the injection well program. It’s now 4 years later, and I have a few more draft plans released by the division. It’s time for legislative action to ensure there is a final plan that gets fully implemented and the division’s outdated regulations are revised to reflect advances in oil and gas field technology.”

“The state is in the fourth year of an extreme drought. We recently found out that over 2,500 – and now that total has been increased by 3,600 – injection wells are injecting oil and gas-related wastewater and other fluids into groundwater that, in many instances, others are using for drinking and irrigation water. The division knew about this issue for years, and did little to resolve it. The division has only shut down a handful of wells while it investigates, putting much needed groundwater at risk. The division does not know all of the materials and chemicals put into those wells. How can the division fulfill its regulatory mission to protect the state’s groundwater, natural resources and public health and safety, if it doesn’t collect information about many oil and gas field operations and depends on regulations it acknowledges are out-of-date?”

“SB 248 codifies the recent schedule that the US EPA, the Water Boards and the division agreed to that is the basis for the division’s emergency regulations. No wells in compliance with regulations will be shut down.”

The author continues, “SB 248 seeks to spur reform at the division and specifically within its oil and gas injection well program in order to provide regulatory accountability and public transparency. The division needs to be held to its promises. My bill puts a statutory framework in place to require the division to regularly review its practices every ten years. If no changes need to be made, then none are required.”

ARGUMENTS IN OPPOSITION: According to the Western States Petroleum Association, “SB 248 calls for a number of new or additional responsibilities by the [division] that are at best redundant and would add extensive administrative interruptions and burdens that will detract from the reforms the division is currently tasked with and implementing.”

“The proposed modifications to the UIC program would compromise California’s oil production without providing any additional environmental and groundwater protections beyond those provided by the enhancements to the UIC program proposed to US EPA by the [Water Boards] and [the division]. [...] Newly proposed Article 2.5 relating to injection wells and the [UIC] program is particularly unnecessary and will promote more, not less, regulatory confusion and inaction.”

“[The division] has provided US EPA a comprehensive “work plan” outlining new regulations and program reforms it is in the process of implementing. [The division’s] initiatives have been developed in response to audits conducted by other regulatory agencies and questions raised by the legislature. The importance of allowing [the division] to complete implementation of this work plan to ensure regulatory stability and consistency is achieved cannot be understated. SB 248 essentially derails [the division’s] focus from these critical efforts by forcing the agency to promulgate yet more regulations that are redundant to existing activities, hinders progress and promotes more regulatory instability.”

The Western States Petroleum Association also notes that “SB 248 would now require additional data which will undoubtedly require additional PYs and data management capacity.”

Prepared by: Katharine Moore / N.R. & W. / (916) 651-4116
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