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**AB-631 Oil and gas: enforcement: penalties.** (2023-2024)

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**Assembly Bill No. 631**

**CHAPTER 337**

An act to amend Section 338.1 of the Code of Civil Procedure, and to amend Sections 3224, 3236, and 3236.5 of, and to add Sections 3224.5, 3236.2, 3236.3, and 3236.6 to, the Public Resources Code, relating to oil and gas.

[ Approved by Governor October 07, 2023. Filed with Secretary of State October 07, 2023. ]

**LEGISLATIVE COUNSEL'S DIGEST**

AB 631, Hart. Oil and gas: enforcement: penalties.

(1) Existing law establishes the Geologic Energy Management Division in the Department of Conservation, under the direction of the State Oil and Gas Supervisor, who is required to supervise the drilling, operation, maintenance, and abandonment of oil and gas wells, as provided.

Existing law requires an action for civil penalties or punitive damages authorized pursuant to specified environmental protection laws to be commenced within 5 years after discovery by the agency bringing the action, as provided.

This bill would make that statute of limitations applicable to the oil and gas laws, as provided.

(2) Existing law requires the supervisor to order tests and remedial work that in the supervisor's judgment are necessary to prevent damage to life, health, property, and natural resources and for other specified reasons. A person who violates, fails, neglects, or refuses to comply with any of the oil and gas laws is guilty of a crime.

This bill would provide that, in addition to any cessation requirements or other limitations contained in applicable regulations or conditions of approval, an order to undertake remedial work issued pursuant to this requirement may include an order to cease and desist specified activities that threaten to damage life, health, property, and natural resources or that violate the requirements relating to oil and gas or a regulation implementing these requirements. The bill would also authorize the supervisor, after making a determination, based upon a site inspection, that a well poses a risk to life, health, property, or natural resources, to order an operator, owner, or property owner to secure a site, based on a site inspection, if certain conditions apply. The order would be appealable. The bill would make an operator, owner, or property owner who fails to comply subject to a civil penalty of not more than \$25,000. By expanding the scope of crimes, the bill would impose a state-mandated local program.

(3) Existing law makes it a crime for an owner or operator, or an employee thereof, to refuse to permit the supervisor or the district deputy, or that person's inspector, to inspect a well, or willfully hinder or delay the enforcement of the requirements relating to oil and gas. Existing law makes every person who violates, fails, neglects, or refuses to comply with specified laws relating to oil and gas, who fails, neglects, or refuses to furnish any report or record which may be required pursuant to these laws, or who willfully renders a false or fraudulent report, guilty of a misdemeanor, and subject to punishment by a fine of not less than \$100, nor more than \$1,000, or by imprisonment for not exceeding 6 months, or by both that fine and imprisonment, for each offense.

Existing law establishes the Oil, Gas, and Geothermal Administrative Fund in the State Treasury for specified purposes, subject to appropriation by the Legislature, except as provided. Existing law also establishes, and requires the division to administer and manage, the Oil and Gas Environmental Remediation Account in the Oil, Gas, and Geothermal Administrative Fund. Existing law requires moneys in the account to be used, upon appropriation by the Legislature, for specified purposes.

This bill would increase the fines for committing the acts described above to a minimum of \$500 and not more than \$5,000. In addition, the bill would specifically authorize the supervisor to refer violations of the oil and gas laws to a public prosecutor, as defined, or the Attorney General for prosecution.

The bill would also require a person found liable for one of specified civil penalties to also pay a penalty in an amount equal to the cost to plug and abandon any well associated with the violation in an amount determined by the supervisor using any reasonable method, as provided. The bill would require the penalties collected pursuant to these provisions to be deposited in the Oil and Gas Environmental Remediation Account.

(4) Existing law authorizes the supervisor to impose specified civil penalties on a person who violates a legal requirement regarding the operation of an oil and gas well or production facility, which is in addition to any other penalty provided by law for the violation.

This bill would specify that the civil penalty imposed by the supervisor is an administrative civil penalty.

The bill would also impose a civil penalty of not more than \$50,000 for each separate violation of an oil and gas law or regulation, as specified, and each violation of an order issued pursuant to the oil and gas laws, or not more than \$25,000 for each separate violation, or, for continuing violations, for each day that violation continues, if the person accused of the violation alleges by affirmative defense and establishes by a preponderance of the evidence that specified circumstances apply. The bill would impose a civil penalty not to exceed \$70,000 for intentionally or negligently violating a provision of oil and gas laws, or a permit, rule, regulation, standard, or requirement issued or promulgated pursuant to those laws. The bill would authorize specified actions brought pursuant to the oil and gas laws to be commenced by a public prosecutor, the Attorney General, or an attorney for the division or the department. The bill would require 50% of the civil penalties collected be paid to the agency or office prosecuting the action and 50% be deposited in the Oil and Gas Environmental Remediation Account. The bill would specify that the violator is only subject to either the administrative civil penalty imposed by the supervisor or the civil penalty imposed by the court, and not to both penalties. The bill would authorize the supervisor to recover from the owner or operator all prosecution and enforcement costs incurred by the division arising from the administration and enforcement of those requirements and would require moneys recovered to be deposited into the Oil and Gas Environmental Remediation Account.

The bill would also authorize the supervisor to apply to the superior court for an order enjoining acts or practices that violate the oil and gas laws, or violate a regulation, condition of approval, order, or other requirement issued, promulgated, or executed under those laws, as provided. The bill would also authorize a public prosecutor or the Attorney General to apply for that injunctive order.

(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.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

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## THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

**SECTION 1.** Section 338.1 of the Code of Civil Procedure, as amended by Section 7 of Chapter 258 of the Statutes of 2022, is amended to read:

**338.1.** An action for civil penalties or punitive damages authorized under Chapter 6.5 (commencing with Section 25100), Chapter 6.67 (commencing with Section 25270), Chapter 6.7 (commencing with Section 25280), or Chapter 6.95 (commencing with Section 25500) of Division 20 of, or Part 2 (commencing with Section 78000) of Division 45 of, the Health and Safety Code, or Chapter 1 (commencing with Section 3000) of Division 3 of the Public Resources Code, shall be commenced within five years after the discovery by the agency bringing the action of the facts constituting the grounds for commencing the action.

**SEC. 2.** Section 3224 of the Public Resources Code is amended to read:

**3224.** The supervisor shall order those tests or remedial work as in the supervisor's judgment are necessary to prevent damage to life, health, property, and natural resources; to protect oil and gas deposits from damage by underground water; or to prevent the escape of water into underground formations, or to prevent the infiltration of detrimental substances into underground or surface water suitable for irrigation or domestic purposes, to the best interests of the neighboring property owners and the public.

In addition to any cessation requirements or other limitations contained in applicable regulations or conditions of approval, an order to undertake remedial work under this section may include an order to cease and desist specified activities that threaten to damage life, health, property, or natural resources, including waters suitable for irrigation or domestic purposes, or that violate the requirements of this chapter or a regulation implementing this chapter. The order shall be in writing, signed by the supervisor. It shall be served upon the owner of the well, or the owner's local agent, either personally or by mailing a copy of the order to the post office address given at the time the local agent is designated. If a local agent has not been designated, the order shall be served by mailing a copy to the last known post office address of the owner, or if the owner is unknown, by posting a copy in a conspicuous place upon the property, and publishing it once a week for two successive weeks in some newspaper of general circulation throughout the county in which the well is located. The order shall specify the conditions sought to be remedied and the work necessary to protect the deposits from damage from underground water.

**SEC. 3.** Section 3224.5 is added to the Public Resources Code, to read:

**3224.5.** (a) After making a determination, based upon a site inspection, that a well poses a risk to life, health, property, or natural resources, the supervisor may order an operator, owner, or property owner to secure a site, based on a site inspection, if both of the following conditions apply to that site:

(1) The well does not comply with the regulations implementing this chapter.

(2) The well poses a risk to life, health, property, or natural resources.

(b) (1) The order to secure the well shall require the posting of the site with signs. The order shall also require that the well be enclosed with a fence.

(2) If fencing is ordered, the fence shall be maintained at the well to prevent unauthorized persons from gaining access to the well.

(3) The signs shall be maintained and shall meet all of the following requirements:

(A) Be bilingual, appropriate to the local area.

(B) Have lettering that is legible from a distance of at least 25 feet.

(C) Read: "Caution: Hazardous Well, Unauthorized Persons Keep Out" and shall have the name and telephone number of the division contact that ordered the posting.

(D) Be visible from the surrounding area and posted at each route of entry into the site, including those routes that are likely to be used by unauthorized persons, at access roads leading to the well, and facing navigable waterways where appropriate.

(E) Be of a material able to withstand the elements.

(c) An order of the supervisor to secure the site under subdivision (a) may be appealed by the owner of the property pursuant to Article 6 (commencing with Section 3350), except that in the case of an emergency a stay of the supervisor's order shall not accompany the appeal.

(d) Within five days after service of an order pursuant to this section, or, if there has been an appeal from the order to the director, within five days after service of the decision of the director, or, if a review has been taken of the order of the director, within five days after affirmance of the order, the operator, owner, or property owner shall complete the work ordered. If the work is not completed within that time, the supervisor may appoint necessary agents to enter the premises and perform the work. If the supervisor determines that an emergency exists, the supervisor may secure and post the site as necessary to protect life, health, property, or natural resources pursuant to subdivision (b) of Section 3226. If the division undertakes work to secure a site pursuant to this section, an accurate account of the expenditures shall be kept and any amount expended shall constitute a lien pursuant to Section 3423 against real or personal property of the operator, owner, or property owner ordered to do the work. The division's accounting of actual costs to perform work ordered shall be served by personal service or certified mail. For purposes of Section 3420, charges pursuant to this section for actual costs to perform work ordered are delinquent if not paid within 30 days after service of the accounting of costs.

(e) The remedies and penalties specified in this section are in addition to, and do not affect, any other remedies, enforcement actions, requirements, or penalties otherwise authorized by law.

**SEC. 4.** Section 3236 of the Public Resources Code is amended to read:

**3236.** (a) An owner or operator, or employee thereof, who refuses to permit the supervisor or the district deputy, or the district deputy's inspector, to inspect a well, or who willfully hinders or delays the enforcement of this chapter, and every person, whether as principal, agent, servant, employee, or otherwise, who violates, fails, neglects, or refuses to comply with this chapter, or who fails, neglects, or refuses to furnish any report or record required pursuant to this chapter, or who willfully renders a false or fraudulent report, is guilty of a misdemeanor, which upon conviction is punishable by a fine of not less than five hundred dollars (\$500), nor more than five thousand dollars (\$5,000), or by imprisonment for not exceeding six months, or by both such fine and imprisonment, for each offense.

(b) The supervisor may refer violations of this chapter to a public prosecutor or the Attorney General for prosecution. Upon agreement of any prosecutors, a court may consider consolidating multiple actions relating to the same violation that occurred in different jurisdictions.

(c) As used in this article, "public prosecutor" means a district attorney, a city attorney, a county counsel, or any other city or county prosecutor.

**SEC. 5.** Section 3236.2 is added to the Public Resources Code, to read:

**3236.2.** (a) (1) Upon referral by the supervisor, a person who violates this chapter or a regulation implementing this chapter is subject to a civil penalty of not more than fifty thousand dollars (\$50,000) for each separate violation or, for continuing violations, for each day that violation continues, except as otherwise provided in paragraph (2). An act of God or a criminal act of vandalism beyond the reasonable control of the operator is not a violation.

(2) A civil penalty under this subdivision shall not be more than twenty-five thousand dollars (\$25,000) for each separate violation, or, for continuing violations, for each day that violation continues, if the person accused of the violation alleges by affirmative defense and establishes by a preponderance of the evidence both of the following:

(A) The violation did not result in harm to, and did not present a significant threat to, human health, property, or the environment.

(B) The violation is not a chronic violation, and the operator is not a recalcitrant violator. In determining whether a violation is chronic or a violator is recalcitrant, consideration shall be given to whether there is evidence indicating that the violator has engaged in a pattern of neglect or disregard with respect to applicable requirements.

(b) Upon referral by the supervisor, a person subject to an order issued pursuant to Section 3224.5 who does not comply with that order shall be subject to a civil penalty of not more than twenty-five thousand dollars (\$25,000).

(c) Upon referral by the supervisor, a person subject to an order issued pursuant to this chapter who does not comply with that order shall be subject to a civil penalty of not more than fifty thousand dollars (\$50,000) for each day of noncompliance.

(d) Upon referral by the supervisor, a person who intentionally or negligently makes a false statement or representation in an application, record, report, permit, notice to comply, or other document filed, maintained, or used for purposes of compliance with this chapter, shall be liable for a civil penalty not to exceed seventy thousand dollars (\$70,000) for each separate violation or, for continuing violations, for each day that violation continues.

(e) Except as provided in subdivision (b), (c), or (d), a person who intentionally or negligently violates a provision of this chapter or a permit, rule, regulation, standard, or requirement issued or promulgated pursuant to this chapter shall be liable for a civil penalty not to exceed seventy thousand dollars (\$70,000) for each violation of a separate provision or, for continuing violations, for each day that violation continues.

(f) The civil penalty imposed for each separate violation pursuant to this section is separate, and in addition to any other civil penalty imposed for a separate violation pursuant to this section or any other law.

(g) In determining the amount of a civil penalty imposed pursuant to this section, the court shall take into consideration all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the persistence of the violation, the pervasiveness of the violation, the number of prior violations by the same violator, the degree of culpability of the violation, any economic benefit to the violator resulting from the violation, the violator's ability to pay the civil penalty amount, as determined based on information publicly available to the division, the prosecution costs associated with enforcement of this section, and any other matters the court determines justice may require.

(h) In determining the amount of a civil penalty imposed pursuant to subdivision (b), the court shall consider all relevant circumstances, including, but not limited to, the economic assets of the operator, owner, or property owner and whether the operator, owner, or property owner has acted in good faith.

(i) In addition to any other penalty set forth in this section, a person found liable for a civil penalty under subdivision (a), (c), (d), or (e) shall also pay a penalty in an amount equal to the cost to plug and abandon any well associated with the violation. The cost to plug and abandon any well associated with the violation is to be determined by the supervisor using any reasonable method, including, but not limited to, consideration of the factors listed in subdivision (b) of Section 3205.3 or the cost estimation criteria described in subdivision (b) of Section 3205.7, or consultation with a contractor to obtain an estimate of the cost to plug and abandon the well.

(j) Any action commenced pursuant to this section may be brought pursuant to this chapter by a public prosecutor, the Attorney General, or an attorney for the division or the department who shall bring the action in the name of the people of the State of California. Any actions relating to the same violation may be joined or consolidated.

(k) Fifty percent of any penalty collected under this section, other than penalties collected under subdivision (i), shall be paid to the agency or office prosecuting the action.

(l) Fifty percent of any penalty collected under this section, other than penalties collected under subdivision (i), shall be distributed to the division for deposit in the Oil and Gas Environmental Remediation Account established pursuant to Section 3261.

(m) Any penalty collected under subdivision (i) shall be distributed to the division for deposit in the Oil and Gas Environmental Remediation Account established pursuant to Section 3261.

(n) A person is not subject to a civil penalty imposed pursuant to this section and to an administrative civil penalty imposed pursuant to Section 3236.5 for the same act or failure to act.

**SEC. 6.** Section 3236.3 is added to the Public Resources Code, to read:

**3236.3.** (a) When the supervisor determines that a person has engaged in, is engaged in, or is about to engage in any acts or practices that constitute or will constitute a violation of this chapter, or any regulation, condition of approval, order, or other requirement issued, promulgated, or executed thereunder, the supervisor may apply to a superior court for an order enjoining those acts or practices, or for an order directing compliance. Upon a showing by the supervisor that the person has engaged in or is about to engage in those acts or practices, the court may grant a permanent or temporary injunction, restraining order, or other injunctive order appropriate to the circumstances.

(b) At the request of the supervisor, an application for an injunctive order may be applied for under this section by a public prosecutor or the Attorney General.

(c) In any civil action brought pursuant to this section in which a temporary restraining order, preliminary injunction, or permanent injunction is sought, it shall not be necessary to allege or prove at any stage of the proceeding that irreparable damage will occur should the temporary restraining order, preliminary injunction, or permanent injunction not be issued; or that the remedy at law is inadequate, and the temporary restraining order, preliminary injunction, or permanent injunction shall issue without those allegations and without that proof.

**SEC. 7.** 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 an administrative 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 administrative 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 an administrative civil penalty under this section shall be in addition to any other penalty provided by law for the violation, except that a person is not subject to an administrative civil penalty imposed pursuant to this section and to a civil penalty imposed pursuant to Section 3236.2 for the same act or failure to act. When establishing the amount of the administrative 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 administrative civil penalty amount, as determined based on information publicly available to the division.

(8) The supervisor's prosecution costs.

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

(B) The administrative 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) For purposes of this section, 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.

(B) The administrative 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) For purposes of this section, a "minor violation" is a violation that is neither a well stimulation violation nor a major violation.

(B) The administrative 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 an administrative 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 administrative 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 administrative civil penalty order be discontinued until the violation has been remedied to the satisfaction of the supervisor and the administrative civil penalty has been paid.

(d) (1) The supervisor may allow a supplemental environmental project in lieu of a portion of the administrative civil penalty amount. The supplemental environmental project may not be more than 50 percent of the total administrative 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.

(2) For purposes of this section, "supplemental environmental project" means an environmentally beneficial project that a person, subject to an order of the supervisor imposing an administrative civil penalty, voluntarily agrees to undertake in settlement of the action and to offset a portion of an administrative civil penalty.

(e) (1) The supervisor may establish regulations prescribing specific penalty amounts for specific violations.

(2) These regulations shall include a determination of whether the violation in question is a minor violation, a major violation, or a well stimulation violation.

(3) Penalty amounts prescribed in regulation shall not exceed the maximum civil penalty amount for the type of violation and shall not be less than the minimum penalty amount for the type of violation.

(4) When prescribing an administrative civil penalty amount by regulation, the supervisor shall consider the potential harm caused by the violation, the potential benefit to the violator resulting from the violation, the supervisor's potential prosecution costs, and other relevant circumstances associated with enforcement of the requirement. When imposing an administrative civil penalty amount prescribed in regulation, the supervisor is not required to consider circumstances listed in subdivision (a).

(f) The supervisor shall adjust the maximum penalties specified in this section for inflation based on the California Consumer Price Index. The adjustment shall be exempt from the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

**SEC. 8.** Section 3236.6 is added to the Public Resources Code, to read:

**3236.6.** The supervisor, or the supervisor's designee, may recover from the owner or operator all response, prosecution, and enforcement costs incurred by the division arising from the administration and enforcement of this chapter. The supervisor may request, and a public prosecutor, the Attorney General, or an attorney for the division or department as part of a prosecution or negotiation, may allege a claim for, these costs and expenditures and shall deposit any recoveries into the Oil and Gas Environmental Remediation Account established pursuant to Section 3261.

**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.