

Date of Hearing: May 8, 2024

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Buffy Wicks, Chair

AB 3233 (Addis) – As Amended March 21, 2024

Policy Committee: Natural Resources

Vote: 8 - 3

Urgency: No

State Mandated Local Program: No

Reimbursable: No

SUMMARY:

This bill authorizes a local entity, by ordinance, to regulate, limit, or prohibit oil and gas operations or development in its jurisdiction, as specified.

Specifically, this bill, among other things:

- 1) Revises the stated purposes of the Geologic Energy Management Division (CalGEM) to include preserving California's air, water, environment, and natural resources, and advancing the state's climate goals, and requires CalGEM to minimize harm from oil and gas operation activities.
- 2) Authorizes, notwithstanding any other law, and notwithstanding any notice of intention, supplemental notice, well stimulation permit, or similar authorization issued by the supervisor or district deputy, or a local entity (city, county, or city and county), by ordinance, to prohibit oil and gas operations or development in its jurisdiction or impose regulations, limits, or prohibitions on oil and gas development that are more protective of public health, the climate, or the environment than those prescribed by a state law, regulation, or order.
- 3) Requires, if a local entity limits or prohibits oil and gas operations of an owner or operator, the owner or operator to be responsible for plugging and abandoning its wells, decommissioning attendant production facilities, and related measures, pursuant to the rules of the oil and gas statutory division.

FISCAL EFFECT:

CalGEM estimates costs of an unknown but potentially significant amount, likely in the hundreds of thousands of dollars to low millions of dollars (General Fund or special fund). The resources required for CalGEM to coordinate with local agencies would vary. Anticipated workload includes field staff who would require resources to understand and track each local ordinance and its requirements, and legal staff who may need to determine if a local ordinance conflicts or overlaps with CalGEM's existing programs, regulations, and permits. Any coordination requirement by a local jurisdiction for implementation and enforcement may also incur significant costs. If a local jurisdiction required improvements or changes to WellSTAR – CalGEM's well tracking and reporting system – those changes may cost millions of dollars.

According to the Legislative Analyst's Office, the General Fund faces a structural deficit in the tens of billions of dollars over the next several fiscal years.

COMMENTS:1) **Purpose.** According to the author:

Pollution from oil and gas production causes grave harm to our health, climate, and environment. For more than a century, cities and counties have protected their residents' health and safety by deciding whether, where, and under what conditions to allow oil and gas projects to operate. As California transitions away from its dependency on fossil fuels, more cities and counties have introduced ordinances to ban oil and gas operations. Assembly Bill 3233 uplifts the voices of our local communities by codifying their right to enact these policies.

2) **Background.** As described in a 2023 article on Legal Planet by Professor Richard Frank of the University of California, Davis School of Law, in 2016, a local environmental group in Monterey County sponsored a voter initiative – Measure Z – that qualified for the local ballot and was enacted by voters by a 56% margin. Measure Z would have prohibited the drilling of new oil and gas wells in Monterey County and prohibited the use of fracking technology for both new and existing wells. A coalition of oil and gas companies led by Chevron challenged Measure Z on constitutional grounds. The Monterey County Superior Court invalidated the measure, concluding that it was preempted by contrary, longstanding state law. The California Court of Appeal agreed in a 2021 decision.

After the county abandoned its defense of Measure Z on appeal, Project Monterey County sought review by the California Supreme Court. In its August 2023 decision, the Supreme Court affirmed the decision of the lower courts. The justices concluded that Measure Z contradicts, and thus is preempted by, a nearly century-old system of oil and gas regulation of the state's oil and gas industry administered by the state. The Supreme Court's decision focused in particular on California Public Resources Code section 3106, which grants CalGEM broad authority to permit, regulate, and condition oil and gas development in the state. Measure Z, concluded the Supreme Court, is far more restrictive of oil and gas development in Monterey County and thus conflicts with state statute.

A large coalition of organizations contends this bill safeguards the longstanding authority of local governments to regulate and phase out oil and gas operations in their jurisdictions and affirm the state's commitment to protect the public from oil and gas pollution. They point to the fact that many cities and counties have decades-old ordinances that impose such restrictions. The coalition writes:

In an attempt to intimidate local officials, the industry asserts that a recent decision by the California Supreme Court eliminated a local government's power to restrict oil and gas production. Even though the Court's decision was narrowly focused on a single local ordinance and a statute enacted in 1961, the industry has distorted the ruling to sow confusion regarding how authority is split between local and state governments when regulating oil and gas. This attack on other lawful ordinances has had a chilling effect on the ability of local governments to take action to limit oil and gas pollution and protect local communities.

Writing in opposition, the Western States Petroleum Association argues that by allowing local governments to adopt ordinances that may prohibit or significantly restrict an operator's right to operate its existing oil and gas production wells or other facilities, this bill has the potential to expose local governments to significant liability:

Operators hold valuable property rights in their existing oil and gas production operations. A local ordinance that results in a facial or de facto prohibition may result in an unconstitutional violation of the Takings Clause under the federal and state constitutions unless the local government pays just compensation for the taking of these property rights from the operator.

Analysis Prepared by: Nikita Koraddi / APPR. / (916) 319-2081