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## CALIFORNIA LEGISLATORS INTRODUCE FRACKING LEGISLATION

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On December 3, 2012, Senator Fran Pavley of California's 27th Senate District and Assemblymember Bob Wieckowski of the 25th Assembly District introduced separate but virtually identical bills that would regulate hydraulic fracturing, or "fracking," in the state.

Commenting on her bill, Senate Bill 4 ([pdf](#)), Senator Pavley stated that the legislation "would direct the California Division of Oil Gas and Geothermal Resources ([DOGGR](#)) to enact fracking regulations which include advance public notice of planned fracking activities and fracking fluid chemical disclosure." She continued:

Public interest and concern remain high about the practice of fracking wells to facilitate oil and gas production here in California. Significant environmental, health and public safety concerns have been raised across the country by fracking.

Nationally, numerous interests including water providers and agriculture have raised serious concerns about fracking impacting their businesses while homeowners have seen their property values negatively impacted. I am introducing this bill today because the status quo is unacceptable. DOGGR has promised to release draft fracking regulations in the very near future and I will take those draft regulations into consideration once they are released.

Assemblymember Wieckowski, speaking about Assembly Bill 7 ([pdf](#)), said:

The public has a right to know the type of chemicals that are being pumped underground in case there is a leak or contamination. Our state has done a poor job of collecting

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this important information and the public is demanding answers.

I intend to craft this legislation to work in conjunction with [DOGGR's] regulations. Californians deserve a disclosure bill on fracking that is worthy of our state's strong history of environmental protection.

As both Senator Pavley and Assemblymember Wieckowski acknowledge, DOGGR has promised to release draft fracking regulations, which we expect to see by year-end. The regulations will be the culmination of a several-months-long process, during which DOGGR conducted a series of [public workshops](#) and a [fracking seminar](#), and invited public comments. At a recent fracking symposium sponsored by the South Coast Air Quality Management District ([AQMD](#)), the State Oil and Gas Supervisor, [Tim Kustic](#), outlined the anticipated scope of those regulations. We summarized Mr. Kustic's remarks [here](#). The recently-introduced legislation appears designed to ensure that DOGGR continues to move toward a comprehensive scheme to regulate fracking in the state, within a time frame deemed reasonable by the legislature.

Neither Senator Pavley nor Assemblymember Wieckowski are new to the fracking debate in California. Senator Pavley previously sponsored [Senate Bill 1054](#), which was introduced in February 2012. Among other things, SB 1054 would have required oil and gas operators to provide notice to nearby property owners of planned drilling operations, including fracking activities. That bill [failed to survive a vote](#) of the Senate in May. Assemblymember Wieckowski has had a bill pending in the Assembly since 2011, [Assembly Bill 591](#). That bill would have required that oil well operators disclose certain fracking activities and the content of fracking fluid, subject to protection for proprietary and trade secret information, but it [failed to make it out of committee](#) at the end of the last legislative session.

Both SB 4 and AB 7 would require DOGGR to adopt rules and regulations specific to fracking, working in conjunction with the Department of Toxic Substances Control ([DTSC](#)), the State Air Resources Board ([CARB](#)), and the State Water Resources Control Board ([SWRCB](#)). With limited exceptions (noted below), the bills are virtually identical. Both include definitional sections,

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defining a variety of fracking-related terms, and both direct DOGGR to consider revisions to existing regulations on construction of wells and well casings to ensure well integrity, as well as those designed to ensure the geologic and hydrologic isolation of oil and gas formations following fracking.

A significant aspect of the legislation is the disclosure requirement. If passed, the bills would require “full disclosure of the composition and disposition of hydraulic fracturing fluids,” including the date of fracking, a list of chemicals in the fracking fluid, the volume of fluid used, whether that fluid is water suitable for irrigation or domestic purposes or some other fluid, the source, volume, and disposition of all water, the disposition of all fracking fluids other than water, any radiological components or tracers, and the location of the portion of the well fracked. Operators would be required to notify DOGGR at least thirty days in advance of any fracking treatment and complete that treatment within one year of the date of the notice. DOGGR would then be required to make the notice available publicly within ten days. The operator must again notify DOGGR no less than seventy-two hours before fracking actually begins, thereby allowing DOGGR an opportunity to supervise. The legislation also would require that fracking-related information be posted on a website to be developed or designated by DOGGR, such as [FracFocus.org](http://FracFocus.org). Disclosure exceptions would be made for information claimed to be trade secret. Full disclosure would be required to DOGGR, but certain categories of information would be exempted from public disclosure under Evidence Code Section 1060 and the Uniform Trade Secrets Act.

Both bills address concerns for induced seismicity associated with fracking. Senator Pavley’s bill would require identification of known faults within a certain distance of the well bore. Assemblymember Wieckowski’s proposal would more generally require that DOGGR “take into consideration and document the risk posed by potential seismicity.”

The legislation also requires a post-fracking report to DOGGR, including copies of the well log, core record, and history of the work performed, within 60 days of completion of fracking. That information must be included on the website designated by DOGGR, searchable and sortable in a variety of specified ways. DOGGR is also required to provide a comprehensive report to the legislature, containing aggregated information about the disposition of any produced water, the names and locations of seismic faults,

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the number of emergency responses to a spill or release, the number of times trade secret information was not disclosed to the public, and information on loss of well and well casing integrity. DOGGR must deliver that report to the legislature by January 1, 2016.

Two significant differences exist between the two bills. First, AB 7 would require that the proposed regulations take effect January 1, 2014. SB 4 would delay the effective date until January 1, 2015. Second, AB 7 includes language not present in SB 4 that documents DOGGR's right to enjoin any violations of the fracking regulations. It also creates a private right of action whereby any person who might be adversely affected by a violation could seek to enjoin the violation if DOGGR declines to do so after being notified of the violation. That private right of action does not provide for civil damages. Other differences exist between the bills but the functional intent is similar.

The practical effect of these two bills may be limited to ensuring that the upcoming DOGGR regulations are sufficiently comprehensive to address the issues about which the legislature is most concerned. As we documented in our summary of Mr. Kustic's [recent comments](#) at the AQMD symposium, the regulations currently under consideration would appear to address most, if not all, of the legislature's concerns. If so, the legislature may defer to those regulations rather than proceed with legislation that would be largely duplicative.

For more information regarding California fracking issues, please contact:

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