

AMENDED IN SENATE MAY 19, 2005

Senate Concurrent Resolution

No. 40

**Introduced by Senators Lowenthal and Vincent
(Coauthors: Senators Bowen, Kuehl, and Perata)**

(Coauthors: Assembly Members Dymally, Goldberg, Karnette, and
~~Oropeza~~ Laird, Oropeza, Pavley, and Ridley-Thomas)

April 7, 2005

Senate Concurrent Resolution No. 40—Relative to preservation of
state authority over siting of ~~liquefied~~ *liquefied* natural gas facilities.

LEGISLATIVE COUNSEL'S DIGEST

SCR 40, as amended, Lowenthal. Liquefied natural gas facilities.

This measure would memorialize the President and Congress to take
necessary action to preserve state and local authority over the siting of
~~liquefied~~ *liquefied* natural gas facilities.

Fiscal committee: no.

- 1 WHEREAS, The California Constitution establishes the Public
2 Utilities Commission, with jurisdiction over all public utilities;
3 and
4 WHEREAS, The California Constitution grants the
5 commission certain general powers over all public utilities
6 subject to its jurisdiction, including the ability to establish rules,
7 subject to control by the Legislature; and
8 WHEREAS, The California Constitution provides that all
9 private corporations and persons that own, operate, control, or
10 manage a line, plant, or system for the production, generation,
11 transmission, or furnishing of heat, light, or power directly or
12 indirectly to or for the public are public utilities subject to control
13 by the Legislature; and

1 WHEREAS, Under the Public Utilities Act, a gas corporation
2 is a public utility subject to the jurisdiction of the commission,
3 and includes every corporation or person owning, controlling,
4 operating, or managing any gas plant for compensation within
5 the state, with certain exceptions; and

6 WHEREAS, Under the Public Utilities Act, a gas plant
7 includes all real estate, fixtures, and personal property, owned,
8 controlled, operated, or managed in connection with, or to
9 facilitate the production, generation, transmission, delivery,
10 underground storage, or furnishing of, gas, natural or
11 manufactured, except propane; and

12 WHEREAS, Under the Public Utilities Act, the commission is
13 authorized, after a hearing, to require every public utility to
14 construct, maintain, and operate utility facilities in a manner so
15 as to promote and safeguard the health and safety of its
16 employees, customers, and the public ~~and requires, and~~ every gas
17 corporation *is required* to obtain a certificate of public
18 convenience and necessity before constructing any gas plant,
19 line, or extension; and

20 WHEREAS, California natural gas consumers may receive
21 substantial benefit from a liquefied natural gas (LNG) facility in
22 California and those consumers have a direct interest in the siting
23 of an LNG facility; and

24 *WHEREAS, It is in the public interest for the state to conduct*
25 *an orderly and comprehensive public assessment of the impacts*
26 *of the construction and operation of LNG facilities on the*
27 *economy, consumers, the environment, and the public health and*
28 *safety; and*

29 WHEREAS, The Federal Energy Regulatory Commission
30 (FERC) is composed of five commissioners appointed by the
31 President with the advice and consent of the Senate, for five-year
32 terms, and ~~have each commissioner has~~ an equal vote on
33 regulatory matters; and

34 WHEREAS, Section 7 of the Natural Gas Act (15 U.S.C. Sec.
35 717f) authorizes FERC certification of onshore LNG facilities
36 involving interstate pipelines; and

37 ~~WHEREAS, FERC is embroiled in a dispute with California~~
38 ~~over the jurisdiction for the approval of LNG terminals and the~~
39 ~~FERC's opposition to meaningful state and local involvement in~~
40 ~~LNG facility siting has led to a dispute with the California Public~~

Utilities Commission over the extent of FERC’s jurisdiction over onshore LNG facilities serving intrastate pipelines, and the issue is currently before the United States Court of Appeals for the Ninth Circuit for resolution; and

WHEREAS, Eighteen members of ~~congress~~ *the Congress of the United States* have filed an amicus (friend of the court) brief on behalf of the Public Utilities ~~Commission’s~~ *Commission in its* dispute with FERC; and

WHEREAS, In the amicus brief, Congressman Ed Markey writes: “... While my 1979 LNG siting bill clearly envisioned a federal role in the siting of new LNG facilities, it also directed that such facilities be remotely located. Unfortunately, the Transportation Department and FERC have failed to follow that directive. At the same time, my bill never preempted State public safety and emergency response authorities, reflecting Congress’ view that State Governments needed to be able to take action to protect their populations from hazards represented by proposals to site new LNG facilities in densely populated urban areas. The amicus brief that we’ve filed reflects Congressional support for retention of such authorities by the States.”; and

~~WHEREAS, Because resolution of the dispute through the courts could take years, FERC is supporting legislation currently before Congress to grant FERC exclusive jurisdiction over the siting of LNG import terminals and to therefore preclude any state or local government from having any decision-making authority with respect to the siting of LNG import terminals; and~~

~~WHEREAS, FERC is supporting legislation currently before Congress that would arguably grant FERC the right to dictate the schedule for state administrative proceedings that involve intrastate natural gas pipeline transportation of LNG-converted natural gas from LNG import terminals; and~~

~~WHEREAS, At a January 24, 2005, conference with the Senate Energy and Natural Resources Committee, FERC indicated that it wants~~

WHEREAS, FERC’s opposition to meaningful state and local involvement in LNG facility siting has led it to also seek legislation in Congress to grant FERC unambiguous control, including the power of eminent domain, over the siting of LNG import terminals; and

1 *WHEREAS, There exists proposed federal legislation intended*
2 *to grant FERC exclusive jurisdiction over all LNG facilities and*
3 *to therefore preclude any state or local government from having*
4 *any decisionmaking authority with respect to the siting of LNG*
5 *facilities; and*

6 *WHEREAS, The proposed federal legislation, if enacted,*
7 *would prohibit state or local officials from independently*
8 *conducting safety inspections of LNG facilities and enforcing*
9 *safety violations; and*

10 *WHEREAS, There is currently pending a proposal to construct*
11 *and operate a LNG terminal at the Port of Long Beach, to be*
12 *located on state tidelands operated by the City of Long Beach*
13 *through the Port of Long Beach, as a public trust granted by the*
14 *state; and*

15 *WHEREAS, If there were an accidental release or catastrophic*
16 *event, such as a terrorist attack, upon a LNG terminal at the Port*
17 *of Long Beach, it could have disastrous consequences; and*

18 *WHEREAS, States should be regulating the safety and siting*
19 *of LNG facilities in their states, which do not involve interstate*
20 *pipelines, because the states regulate the intrastate pipelines that*
21 *interconnect with the LNG facilities; and*

22 *WHEREAS, States have a much better understanding than the*
23 *FERC of the natural physical aspects of a location, such as the*
24 *effects from a major earthquake on a proposed LNG facility; and*

25 *WHEREAS, To grant FERC exclusive control over the siting*
26 *of LNG import terminals would be inconsistent with numerous*
27 *federal regulatory systems in which Congress has respected the*
28 *rights of states to protect their coastlines, to protect their*
29 *environment, and to protect the safety of their citizens, including*
30 *the Coastal Zone Management Act, the Natural Gas Pipeline*
31 *Safety Act, the Clean Water Act, and the Clean Air Act; and*

32 *WHEREAS, To deprive citizens of a state forum within which*
33 *to resolve concerns over safety and injury to the environment is*
34 *contrary to the public interest; now, therefore, be it*

35 *Resolved by the Senate of the State of California, the Assembly*
36 *thereof concurring, That the Legislature of the State of California*
37 *memorializes the President and Congress to take necessary action*
38 *to preserve state and local authority over the siting of ~~liquefied~~*
39 *liquefied natural gas facilities; and be it further*

1 *Resolved*, That the Secretary of the Senate transmit copies of
2 this resolution to the President of the United States, to all
3 Members of the Congress of the United States, and to the Federal
4 Energy Regulatory Commission.

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