

Senate Concurrent Resolution No. 40

RESOLUTION CHAPTER 76

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

[Filed with Secretary of State July 12, 2005.]

LEGISLATIVE COUNSEL'S DIGEST

SCR 40, 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 natural gas facilities.

WHEREAS, The California Constitution establishes the Public Utilities Commission, with jurisdiction over all public utilities; and

WHEREAS, The California Constitution grants the commission certain general powers over all public utilities subject to its jurisdiction, including the ability to establish rules, subject to control by the Legislature; and

WHEREAS, The California Constitution provides that all private corporations and persons that own, operate, control, or manage a line, plant, or system for the production, generation, transmission, or furnishing of heat, light, or power directly or indirectly to or for the public are public utilities subject to control by the Legislature; and

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

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

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

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

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

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

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

WHEREAS, FERC's opposition to meaningful state and local involvement in 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 the Congress of the United States have filed an amicus (friend of the court) brief on behalf of the Public Utilities 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, 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

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

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

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

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

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

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

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

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

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

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