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AB-585 Public lands: oil, gas, and mineral leases. (2019-2020)

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Assembly Bill No. 585

CHAPTER 123

An act to amend Section 6804 of, and to add Section 6829.4 to, the Public Resources Code, relating to public lands.

[Approved by Governor July 30, 2019. Filed with Secretary of State July 30, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

AB 585, Limón. Public lands: oil, gas, and mineral leases.

Existing law vests with the State Lands Commission control over certain public lands. Existing law authorizes, with respect to oil, gas, and mineral leases, the assignment, transfer, or sublet as to all or any part of certain leased or permitted lands, as prescribed, subject to approval by the commission, to any person, association of persons, or corporation, who, at the time of the proposed assignment, transfer, or sublease, possesses certain qualifications. Existing law provides that the commission's approval of any assignment or transfer of a separate portion of any lease or permit, or of a separate or distinct zone or geological horizon, or portion of a separate or distinct zone or geological horizon, releases and discharges the assignor or transferor from all obligations thereafter accruing under the lease or permit with respect to the assigned, transferred, or subleased portion of the lease or permit.

This bill would require an assignment, transfer, or sublease, or a memorandum of an assignment, transfer, or sublease, to be recorded in the office of the county recorder of the county in which the leased or permitted lands are located. The bill would authorize the commission, in considering an approval of an assignment, transfer, or sublease of a lease or permit under those provisions, to consider whether the proposed assignee, as defined, is likely to comply with the terms of the assigned lease or permit for the duration of both the primary term of the original lease or permit and any extended term of the lease because of production, as determined by specified factors.

The bill would delete the above-described provisions releasing and discharging an assignor or transferor from obligations accruing under a lease or permit after the assignment, transfer, or sublease, and would instead provide that an assignor, transferor, or sublessor of a lease or permit remains liable for, and shall not be released or discharged from, obligations under the lease or permit, including requirements under state law to properly plug and abandon all wells, decommission all production facilities and related infrastructure, complete well site restoration and lease restoration, and remediate contamination at well and lease sites, except as provided.

The bill, on and after January 1, 2020, would make a lessee, an assignee, a transferee, or a sublessee of a lease, or an operator of leased lands under these provisions, responsible and liable, from the date on which it engages in specified activities, for plugging and abandoning all wells and decommissioning all production facilities and related infrastructure, as defined, that have been or may be left on the leased lands by the lessee and any past, present, or future assignee, transferee, or sublessee of the lease or operator of the leased lands.

The bill would require a lessee, assignee, transferee, sublessee, or operator to submit to the commission, in writing, a notarized affidavit of liability for the decommissioning of production facilities and related infrastructure under the jurisdiction of the commission within 6 months after the date on which a lease terminates or expires, and would require the lessee, assignee, transferee, sublessee, or operator to also covenant, in the notarized affidavit, to commence the process of decommissioning the production facilities and related infrastructure within one year after the date on which the lease terminates or expires. The bill would make the failure of a lessee, assignee, transferee, sublessee, or operator to comply with these deadlines a misdemeanor, punishable by a fine of up to \$10,000, by imprisonment in the county jail for up to one year, or by both that fine and imprisonment, for each offense. By creating a new crime, the bill would impose a state-mandated local program. The bill would require the decommissioning of the production facilities and related infrastructure to be completed without undue delay, unless the delay is caused by conditions beyond the control of the lessee, assignee, transferee, sublessee, or operator.

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

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

SECTION 1. Section 6804 of the Public Resources Code is amended to read:

6804. (a) A lease or permit issued under this chapter may be assigned, transferred, or sublet as to all or any part of the leased or permitted lands, and as to either a divided or undivided interest therein, or as to any separate and distinct zone or geological horizon or portion thereof, subject to approval by the commission, to any person, association of persons, or corporation, who, at the time of the proposed assignment, transfer, or sublease, possesses the qualifications provided in this chapter. Any assignment, transfer, or sublease shall take effect as of the first day of the month following the approval by the commission and filing with the commission of an executed counterpart thereof, together with any required bond and proof of the qualification, under this act and the rules and regulations of the commission, of the assignee, transferee, or sublessee to take or hold that lease, permit, or interest therein. Unless approved by the commission, no assignment, transfer, or sublease shall be of any effect. Upon approval of any assignment, transfer, or sublease, the assignee, transferee, or sublessee shall be bound by the terms of the lease or permit to the same extent as the assignor, transferor, or sublessor has been, and, except as provided in subdivision (c), shall continue to be, any conditions in the assignment, transfer, or sublease to the contrary notwithstanding. Any assignment or transfer of a separate portion of any lease or permit or of a separate and distinct zone or geological horizon, or a portion thereof, shall segregate the assigned, transferred, or subleased portion thereof from the retained portion thereof, and those segregated leases or permits shall continue in full force and effect for the primary term of the original lease or permit, but, in the case of any lease, for not less than two years after the date of discovery of oil or gas in paying quantities, or commercially valuable deposit of minerals, upon any segregated portion of the lands, zones, or horizons originally subject to that lease, and so long thereafter as oil or gas is produced in paying quantities. Assignments or transfers under this section may also be made with the approval of the commission of parts of leases that are in their extended term because of production, and the segregated lease of any undeveloped lands, zones, or horizons shall continue in full force and effect for two years and so long thereafter as oil, gas, or minerals are produced in paying quantities from the segregated lease lands, zones, or horizons.

(b) (1) In considering the approval of an assignment, transfer, or sublease of a lease or permit under subdivision (a), the commission may consider whether a proposed assignee is likely to comply with the terms of the lease or permit for the duration of both the primary term of the original lease or permit and any extended term of the lease because of production, as determined by all of the following factors:

- (A) The proposed assignee's experience with offshore or onshore oil or gas production or mineral extraction, as applicable.
- (B) Any financial or economic considerations that may affect a proposed assignee and its ability to comply with the terms of a lease or permit.
- (C) Any information concerning the proposed assignee's compliance or noncompliance with other contractual obligations to the state or other government agency.
- (D) Any record of noncompliance with any other laws or regulations.

(2) For purposes of this section, "proposed assignee" means the person or entity in whose name the lease or permit will be held after assignment, transfer, or sublease of a lease or permit, or any person or entity that makes managerial decisions for or exercises managerial control over the assignee.

(c) An assignment, transfer, or sublease pursuant to subdivision (a), or a memorandum of the assignment, transfer, or sublease, shall be recorded in the office of the county recorder of the county in which the leased or permitted lands are located.

(d) The assignor, transferor, or sublessor of a lease or permit under subdivision (a) shall remain liable for, and shall not be released or discharged from, obligations under the lease or permit, including requirements under state law to properly plug and abandon all wells, decommission all production facilities and related infrastructure, complete well site restoration and lease restoration, and remediate contamination at well and lease sites, except under either of the following circumstances:

(1) The commission determines that all lease or permit obligations have been fulfilled.

(2) The commission, in its sole discretion, approves the assignor's, transferor's, or sublessor's request for a waiver of liability and release from the lease or permit obligations pursuant to this paragraph. The commission may approve a waiver and release under the following conditions:

(A) The assignor, transferor, or sublessor provides the commission both of the following:

(i) An estimate, by an independent third party approved by the commission, of the costs of fulfilling outstanding lease or permit obligations.

(ii) A security in at least the amount estimated under clause (i), plus an additional 20 percent of that amount, to account for the time value of money and potential cost overruns. The security may be cash, a letter of credit, or a bond. If the assignor, transferor, or sublessor is already maintaining a bond pursuant to Section 6829, the commission shall deduct the amount of the existing bond from the amount of a security necessary to comply with the requirements of this clause.

(B) The commission determines that the waiver and release is in the best interests of the state.

SEC. 2. Section 6829.4 is added to the Public Resources Code, to read:

6829.4. (a) For purposes of this section, the following terms have the following meanings:

(1) "Decommission" means any activities up to and including the safe dismantling and removal of a production facility or related infrastructure and restoration of the site on which it was located as directed by the commission and in full compliance with state and local law.

(2) "Operator" means a person who has the right to drill, operate, maintain, or control a well or production facility.

(3) "Plugging and abandoning all wells and decommissioning all production facilities and related infrastructure" includes all of the following:

(A) Staffing and maintenance of all wells and production facilities.

(B) All refurbishments necessary to meet those obligations.

(C) Any and all other actions necessary to meet those obligations.

(4) "Plugging and abandonment" means the plugging and abandonment of a well in accordance with the specifications of the commission and the State Oil and Gas Supervisor and in full compliance with state and local law.

(5) "Production facilities and related infrastructure" includes, but is not limited to, platforms, pipelines, and improvements under the jurisdiction of the commission.

(6) "Well" means an oil or gas well.

(b) (1) On and after January 1, 2020, from the date on which a lessee, an assignee, a transferee, or a sublessee of a lease, or an operator of leased lands under this chapter, engages in an activity that is specified in paragraph (2), the lessee, assignee, transferee, sublessee, or operator shall become responsible and liable, until each obligation under this subdivision is met, for plugging and abandoning all wells and decommissioning all production facilities and related infrastructure that have been or may be left on the leased lands by the lessee and any past, present, or future assignee, transferee, or sublessee of the lease or operator of the leased lands.

(2) Obligations under paragraph (1) shall accrue when a lessee, assignee, transferee, sublessee, or operator does any of the following:

(A) Acquires or is assigned, transferred, or sublet the lease, including a pipeline right-of-way lease, if the leased lands contain either of the following:

(i) A well that is not permanently plugged.

(ii) A production facility or related infrastructure.

(B) Becomes the operator of either of the following:

(i) A well that is not permanently plugged.

(ii) A production facility or related infrastructure.

(C) Drills, redrills, or deepens a well, or permanently alters the casing of a well, on the leased lands.

(D) Installs a production facility or related infrastructure on the leased lands.

(c) Persons subject to subdivision (b) shall be jointly and severally liable for all obligations under that subdivision.

(d) (1) (A) The lessee, assignee, transferee, sublessee, or operator shall submit to the commission, in writing, a notarized affidavit of liability for the decommissioning of production facilities and related infrastructure under the jurisdiction of the commission within six months after the date on which a lease terminates or expires. The lessee, assignee, transferee, sublessee, or operator shall also covenant, in the notarized affidavit, to commence the process of decommissioning the production facilities and related infrastructure within one year after the date on which the lease terminates or expires.

(B) The decommissioning of the production facilities and related infrastructure shall be completed without undue delay, unless the delay is caused by conditions beyond the control of the lessee, assignee, transferee, sublessee, or operator.

(2) A lessee, assignee, transferee, sublessee, or operator that fails to comply with the deadlines specified in subparagraph (A) of paragraph (1) shall be guilty of a misdemeanor, punishable by a fine of up to ten thousand dollars (\$10,000), by imprisonment in the county jail for up to one year, or by both that fine and imprisonment, for each offense.

(e) If the commission or another state agency, due to failure of a lessee, assignee, transferee, sublessee, or operator to meet its obligations for the plugging and abandonment of a well or the decommissioning of a production facility or related infrastructure, conducts those activities to preserve public health or protect the environment, those activities shall be deemed an exercise of the police power of the state.

(f) The commission may adopt rules and regulations as necessary to carry out the purposes of this section.

(g) (1) This section does not supersede or limit plugging and abandonment or decommissioning obligations under any other law.

(2) This section does not alter or limit the authority of the commission to approve the manner of decommissioning otherwise permitted by law.

SEC. 3. 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.