

## CALENDAR ITEM

92

A Statewide

04/20/17

S Statewide

S. Pemberton

### **CONSIDER SUPPORTING STATE LEGISLATION (AB 1472, LIMON) THAT WOULD SPECIFY THE FACTORS THE COMMISSION MAY CONSIDER WHEN EVALUATING AN APPLICATION TO ASSIGN, TRANSFER, OR SUBLEASE AN OIL AND GAS LEASE OR PERMIT AND TO DEFINE AN ASSIGNEE**

#### **SUMMARY:**

This bill specifies the factors the Commission may consider when contemplating an application to assign, transfer, or sublease an oil and gas lease or permit, and defines an assignee to include any subsidiary or principal owner of the person or entity who will hold the assigned or transferred lease, any entity having a common parent entity with that person or entity, or any person or entity having functional management and control over that person or entity.

#### **BACKGROUND AND DISCUSSION:**

The Commission has not issued a new offshore oil development lease since 1969, but the original leases issued prior to that time are still in effect. Fifteen of the Commission's offshore oil leases are producing oil and gas, while nine are not producing at this time. The Commission also has onshore oil and gas agreements in the Sacramento-San Joaquin Delta area. Lessees occasionally request that the Commission transfer, assign, or sublease their lease—or a percentage of the lease—to another operator, which requires Commission approval at a public meeting. The Commission has approved dozens of assignments and transfers over the past few decades.

The Commission and the lessee can agree to include new lease terms in an assignment, transfer or sublease. Examples of new terms included in recent assignments are increasing the bond amount and terms, requiring compliance with current or new relevant regulations during the life of the lease, requiring capital expenditures, requiring a lease management fee to reimburse staff for lease administration and implementation costs, and requiring consent for Commission staff to perform safety audits.

When the Commission considers an application, it carefully reviews the applicant's financial information to ensure it can perform under the terms of the existing lease. The Commission typically requires the assignee, transferee, or

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sublessee to maintain the bonding and insurance requirements applicable to the existing lessee, and to be responsible for paying all rent and royalties associated with the lease. But while this is the Commission's practice, the statute, Public Resources Code section 6804, lacks specificity about what factors the Commission should consider when reviewing an application.

Public Resources Code section 6804 authorizes the Commission to transfer, assign, or sublease an oil or gas lease or permit. This statute, however, does not specify the conditions the Commission should consider when evaluating an application to transfer, assign or sublease an oil or gas lease permit.

AB 1472 specifies that when considering an oil or gas lease assignment, transfer, or sublease, the Commission may consider whether a proposed assignee is likely to comply with the provisions of the assigned lease for the duration of the lease term as determined by: 1) the proposed assignee's prior experience with offshore oil production; 2) any financial or economic considerations that may affect a proposed assignee and its ability to comply with the lease terms; 3) any information about the proposed assignee's compliance or noncompliance with other contractual obligations to the state or to another party; and 4) any record of noncompliance with other laws or regulations.

AB 1472 also defines an assignee as the person or entity in whose name the lease will be held and any other person or entity that has functional management and control over that person or entity. This definition clarifies that not just changes to the assignee, but mergers, acquisitions or changes in the overall controlling structure where the leasing entity, such as a corporation or limited liability company, remains unchanged but the ownership or control of that leasing entity changes, constitutes an assignment that must be approved by the Commission. This protects the Commission and the state from operational changes that could affect a leasing entity's ability to meet its ongoing obligations under its lease.

### **STAFF RECOMMENDATION:**

Commission staff recommends that the Commission support AB 1472 (Limon) to clarify in statute the conditions the Commission may consider when considering an application to assign, transfer, or sublease an oil or gas lease and to define an assignee.

### **EXHIBIT:**

- A. Copy of AB 1472 (Limon)

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**RECOMMENDED ACTION:**

It is recommended that the Commission:

Support state legislation (AB 1472, Limon) that would clarify in statute the conditions the Commission may consider when evaluating an application to assign, transfer, or sublease an oil or gas lease and would define an assignee.

AMENDED IN ASSEMBLY APRIL 4, 2017

AMENDED IN ASSEMBLY MARCH 14, 2017

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1472**

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**Introduced by Assembly Member Limón**

February 17, 2017

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1472, as amended, Limón. Public lands: assignments and transfers: 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.

This bill would authorize the commission, in considering an approval of an assignment, transfer, or sublet of a lease under those provisions, to consider whether the proposed assignee, as defined, is likely to comply with all provisions of the assigned lease for the duration of the lease term, as determined by specified factors.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*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 if that assignee, transferee, or sublessee were the original lessee or permittee, 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 that approval shall release and discharge the assignor or transferor from all obligations thereafter accruing under that lease or permit with respect to the assigned or transferred lands, zones, or horizons, 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

1 of parts of leases that are in their extended term because of  
2 production, and the segregated lease of any undeveloped lands,  
3 zones, or horizons shall continue in full force and effect for two  
4 years and so long thereafter as oil or gas or minerals are produced  
5 in paying quantities from the segregated lease lands, zones, or  
6 horizons.

7 (b) (1) In considering the approval of an assignment, transfer,  
8 or sublet of a lease under subdivision (a), the commission may  
9 consider whether a proposed assignee is likely to comply with the  
10 provisions of the assigned, transferred, or sublet lease for the  
11 duration of the lease term, as determined by all of the following  
12 factors:

13 (A) The proposed assignee's prior experience with offshore oil  
14 production.

15 (B) Any financial or economic considerations that may affect  
16 a proposed assignee and its ability to comply with the terms of a  
17 lease.

18 (C) Any information concerning the proposed assignee's  
19 compliance or noncompliance with other contractual obligations  
20 to the state or any other party.

21 (D) Any record of noncompliance with any other laws or  
22 regulations.

23 (2) For purposes of this section, "proposed assignee" means the  
24 person or entity in whose name the lease will be held after  
25 assignment, transfer, or sublet of a lease, ~~any subsidiary or principal~~  
26 ~~owner of that person or entity, any entity having a common parent~~  
27 ~~entity with that person or entity, or any person or entity having~~  
28 ~~functional management and control over that person or entity. or~~  
29 *any person or entity that makes managerial decisions for or*  
30 *exercises managerial control over the assignee.*