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MEMORANDUM

To: Senate Committee on Ways and Means
From: Office of Revisor of Statutes
Date: February 11, 2021
Subject: House Bill 2022

House Bill 2022 amends statutes relating to the Kansas corporation commission's (KCC) oversight of abandoned oil and gas wells. HB 2022 combines two abandoned well plugging funds thereby creating one abandoned well plugging fund. HB 2022 also makes amendments to how the KCC determines who is legally responsible for an abandoned well and authorizes reimbursement for certain plugging operations.

Abandoned Oil and Gas Well Fund Consolidation

Current law establishes two abandoned oil and gas well plugging funds. These two funds are the well plugging assurance fund in K.S.A. 55-166 and the abandoned oil and gas well fund in K.S.A. 55-192. Both funds are to be used for investigations, plugging and remediation of abandoned wells but use of moneys in each fund depends upon the date a well was drilled. The well plugging assurance fund is used for wells drilled after July 1, 1996. The abandoned oil and gas well fund is used for wells drilled prior to July 1, 1996.

HB 2022 combines these two funds into one single fund. Specifically, all assets and liabilities of the well plugging assurance fund would be transferred to the abandoned oil and gas well fund and the abandoned oil and gas well fund would continue in existence. There would no longer be any requirement relating to the date upon which a well was drilled for fund use.

HB 2022 would also repeal K.S.A. 55-193 which would eliminate the statutory demand transfers required by such law. Currently, the statute requires an annual \$100,000 demand transfer from the state general fund and a \$200,000 demand transfer from the conservation fee fund to the abandoned oil and gas well fund. Current statute prohibits the state general fund demand transfer in FY 2020, 2021 and 2022.

Determinations of Legally Responsible Persons and Plugging Operations

HB 2022 would establish a new definition for an "abandoned well" in K.S.A. 55-178, 55-179 and 55-180. In these statutory sections, an abandoned well would be defined as a well that is not claimed on an operator's license that is active with the commission and is unplugged, improperly plugged or no longer effectively plugged.

Current law in K.S.A. 55-178 authorizes any person who has reason to believe that a well is causing or likely to cause pollution or loss of usable water to file a complaint with the KCC. Upon receipt of a complaint, the KCC is required to conduct an investigation to determine whether such well is causing or likely to cause pollution or loss of water. If so, the KCC must determine who is legally responsible for plugging or remediating the abandoned well.

Amendments to K.S.A. 55-178 would allow a person who has reason to believe that there is an imminent threat of pollution or loss of usable water to submit a complaint to the KCC alleging such threat. Complaints alleging that a well is causing or is likely to cause pollution or loss of usable water would continue to be authorized as well.

Under current law in K.S.A. 55-179, persons who can be held legally responsible for a well include, but are not limited to: Any operator of a waterflood or pressure maintenance program causing pollution or loss of usable water; the current or last operator of the lease; the original operator who plugged or abandoned the well; and any person who tampers with the well or removes equipment from the well without authorization. Also, under current law, no landowner or surface owner can be deemed a legally responsible person unless such person has operated or produced the well, has deliberately altered or tampered with such well, or has assumed responsibility through a written contract.

HB 2022's amendments to K.S.A. 55-179 would strike current law relating to who can be held responsible for an abandoned well. Under the provisions of HB 2022, a persons who can be held as responsible for an abandoned well shall be limited to one or more of the following:

1. Any person, including any operator of an injection well, disposal well, or pressure maintenance program, causing pollution or loss of usable water through the well;
2. The most recent operator to produce from or inject or dispose into the well, but if no production or injection has occurred, the person that caused the well to be drilled. A person shall not be legally responsible for a well pursuant to this paragraph if: (A) Such person can demonstrate that the well was physically

operating or was in compliance with temporary abandonment regulations immediately before such person transferred or assigned the well to an operator with an active operator's license; and (B) a completed report of transfer was filed pursuant to commission regulations if transferred or assigned after August 28, 1997;

3. The person that most recently accepted responsibility for the well by accepting an assignment or by signing an agreement or other written document, between private parties, in which the person accepted responsibility. Accepting an assignment of a lease, obtaining a new lease or signing an agreement or any other written document between private parties shall not in and of itself create responsibility for a well located upon the land covered thereby unless such instrument adequately identifies the well and expressly transfers responsibility for such well;
4. The operator that most recently filed a completed report of transfer with the commission in which such operator accepted responsibility for the well or, if no completed report of transfer has been filed, the operator that most recently filed a well inventory with the commission in which such operator accepted responsibility for the well. Any modification made by commission staff of any such documents shall not alter legal responsibility unless the operator was informed of such modification and approved of the modification in writing;
5. The operator that most recently plugged the well, if no commission funds were used;
6. Any person that does any of the following to an abandoned well without authorization from the commission: (A) Tampers with or removes surface or downhole equipment that was physically attached to the well or inside the well bore; (B) intentionally destroys, buries or damages the well; (C) intentionally alters the physical status of the well in a manner that will result in more than a de minimis increase in plugging costs; or (D) conducts any physical operations upon the well.

Both current law and HB 2022 require the KCC to determine whether a person is legally responsible for an abandoned well and cause any such person to come before the commission for an administrative hearing. Upon a finding of legal responsibility, the KCC would be authorized to order the plugging of the well or take other administrative actions. If the KCC determines that no person is legally responsible for the abandoned well or that all such persons are dead or insolvent, HB 2022 authorizes the KCC to plug the well using funds from the abandoned oil and gas well fund.

HB 2022 also amends K.S.A. 55-180 to expressly authorize any person to plug a well if such person has written consent from the surface owner and its done by a person licensed by the commission. If a well has been abandoned for five years or more, HB 2022 would authorize any person who plugs such well to seek reimbursement from the abandoned oil and gas well fund. The bill requires the KCC to adopt rules and regulations to govern these reimbursements.

HB 2022 also provides that no person shall become legally responsible for a well solely on the basis of having appropriately plugged such well.

LEGALLY RESPONSIBLE PERSONS COMPARISON
CURRENT LAW vs. HB 2022

Current Law	HB 2022
"shall include, but is not limited to, one or more of the following:"	"shall be limited to one or more of the following:"
<ul style="list-style-type: none"> Any operator of a waterflood or other pressure maintenance program deemed to be causing pollution or loss of usable water; 	<ul style="list-style-type: none"> (1) Any person, including any operator of an injection well, disposal well, or pressure maintenance program, causing pollution or loss of usable water through the well;
<ul style="list-style-type: none"> The current or last operator of the lease upon which such well is located, irrespective of whether such operator plugged or abandoned such well; 	<ul style="list-style-type: none"> (2) the most recent operator to produce from or inject or dispose into the well, but if no production or injection has occurred, the person that caused the well to be drilled. A person shall not be legally responsible for a well pursuant to this paragraph if: (A) Such person can demonstrate that the well was physically operating or was in compliance with temporary abandonment regulations immediately before such person transferred or assigned the well to an operator with an active operator's license; and (B) a completed report of transfer was filed pursuant to commission regulations if transferred or assigned after August 28, 1997;
	<ul style="list-style-type: none"> (3) the person that most recently accepted responsibility for the well by accepting an assignment or by signing an agreement or other written document, between private parties, in which the person accepted responsibility. Accepting an assignment of a lease, obtaining a new lease or signing an agreement or any other written document between private parties shall not in and of itself create responsibility for a well located upon the land covered thereby unless such instrument adequately identifies the well and expressly transfers responsibility for such well;

	<ul style="list-style-type: none">• (4) the operator that most recently filed a completed report of transfer with the commission in which such operator accepted responsibility for the well or, if no completed report of transfer has been filed, the operator that most recently filed a well inventory with the commission in which such operator accepted responsibility for the well. Any modification made by commission staff of any such documents shall not alter legal responsibility unless the operator was informed of such modification and approved of the modification in writing;
<ul style="list-style-type: none">• The original operator who plugged or abandoned such well; and	<ul style="list-style-type: none">• (5) The operator that most recently plugged the well, if no commission funds were used;
<ul style="list-style-type: none">• Any person who without authorization tampers with or removes surface equipment or downhole equipment from an abandoned well.	<ul style="list-style-type: none">• (6) any person that does any of the following to an abandoned well without authorization from the commission: (A) Tampers with or removes surface or downhole equipment that was physically attached to the well or inside the well bore; (B) intentionally destroys, buries or damages the well; (C) intentionally alters the physical status of the well in a manner that will result in more than a de minimis increase in plugging costs; or (D) conducts any physical operations upon the well.