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1 HOUSE BILL 133
2 **56TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2024**
3 INTRODUCED BY
4 Kristina Orteç and Matthew McQueen and Cristina Parajón
5 and Mimi Stewart
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10 AN ACT
11 RELATING TO THE ENVIRONMENT; AMENDING THE OIL AND GAS ACT;
12 ALLOWING THE OIL CONSERVATION DIVISION OF THE ENERGY, MINERALS
13 AND NATURAL RESOURCES DEPARTMENT TO REGULATE CERTAIN TRANSFERS
14 OF OIL AND GAS WELLS AND AUTHORIZE THE CONVERSION OF OIL AND
15 GAS WELLS FOR ENERGY STORAGE AND GEOTHERMAL DEVELOPMENT;
16 INCREASING THE AMOUNT OF FEES AND FINANCIAL ASSURANCE
17 ASSOCIATED WITH OPERATING OIL AND GAS WELLS; INCREASING CIVIL
18 PENALTIES; ALLOWING FEES TO BE ADJUSTED TO ACCOUNT FOR
19 INFLATION; REQUIRING THE CAPTURE OF NINETY-EIGHT PERCENT OF
20 NATURAL GAS PRODUCED BEGINNING IN 2027; PROVIDING FOR CERTAIN
21 SETBACKS FROM OIL AND GAS FACILITIES.
22
23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:
24 SECTION 1. Section 70-2-12 NMSA 1978 (being Laws 1978,
25 Chapter 71, Section 1, as amended) is amended to read:

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1 "70-2-12. ENUMERATION OF POWERS.--

2 A. The [oil conservation] division [of the energy,
3 ~~minerals and natural resources department~~] may:

4 (1) collect data;

5 (2) make investigations and inspections;

6 (3) examine properties, leases, papers, books
7 and records;

8 (4) examine, check, test and gauge oil and gas
9 wells, tanks, plants, refineries and all means and modes of
10 transportation and equipment;

11 (5) hold hearings;

12 (6) provide for the keeping of records and the
13 making of reports and for the checking of the accuracy of the
14 records and reports;

15 (7) limit and prorate production of crude
16 petroleum oil or natural gas or both as provided in the Oil and
17 Gas Act; and

18 (8) require either generally or in particular
19 areas certificates of clearance or tenders in connection with
20 the transportation of crude petroleum oil or natural gas or any
21 products of either or both oil and products or both natural gas
22 and products.

23 B. The [oil conservation] division may make rules
24 and orders [for the purposes and with respect to the subject
25 ~~matter stated in this subsection~~]:

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1 (1) to require dry or abandoned wells to be
2 plugged in a way so as to confine the crude petroleum oil,
3 natural gas or water in the strata in which it is found and to
4 prevent it from escaping into other strata; pursuant to Section
5 70-2-14 NMSA 1978, the division shall require financial
6 assurance conditioned for the performance of the rules;

7 (2) to prevent crude petroleum oil, natural
8 gas or water from escaping from strata in which it is found
9 into other strata;

10 (3) to require reports showing locations of
11 all oil or gas wells and for the filing of logs and drilling
12 records or reports;

13 (4) to prevent the drowning by water of any
14 stratum or part thereof capable of producing oil or gas or both
15 oil and gas in paying quantities and to prevent the premature
16 and irregular encroachment of water or any other kind of water
17 encroachment that reduces or tends to reduce the total ultimate
18 recovery of crude petroleum oil or gas or both oil and gas from
19 any pool;

20 (5) to prevent fires;

21 (6) to prevent "blow-ups" and "caving" in the
22 sense that the conditions indicated by such terms are generally
23 understood in the oil and gas business;

24 (7) to require wells to be drilled, operated
25 and produced in such manner as to prevent injury to neighboring

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1 leases or properties;

2 (8) to identify the ownership of oil or gas
3 producing leases, properties, wells, tanks, refineries,
4 pipelines, plants, structures and all transportation equipment
5 and facilities;

6 (9) to require the operation of wells with
7 efficient gas-oil ratios and to fix such ratios;

8 (10) to fix the spacing of wells;

9 (11) to determine whether a particular well or
10 pool is a gas or oil well or a gas or oil pool, as the case may
11 be, and from time to time to classify and reclassify wells and
12 pools accordingly;

13 (12) to determine the limits of any pool
14 producing crude petroleum oil or natural gas or both and from
15 time to time redetermine the limits;

16 (13) to regulate the methods and devices
17 employed for storage in this state of oil or natural gas or any
18 product of either, including subsurface storage;

19 (14) to permit the injection of natural gas or
20 of any other substance into any pool in this state for the
21 purpose of repressuring, cycling, pressure maintenance,
22 secondary or any other enhanced recovery operations;

23 (15) to regulate the disposition, handling,
24 transport, storage, recycling, treatment and disposal of
25 produced water during, or for reuse in, the exploration,

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1 drilling, production, treatment or refinement of oil or gas,
2 including disposal by injection pursuant to authority delegated
3 under the federal Safe Drinking Water Act, in a manner that
4 protects public health, the environment and fresh water
5 resources;

6 (16) to determine the limits of any area
7 containing commercial potash deposits and from time to time
8 redetermine the limits;

9 (17) to regulate and, where necessary,
10 prohibit drilling or producing operations for oil or gas within
11 any area containing commercial deposits of potash where the
12 operations would have the effect unduly to reduce the total
13 quantity of the commercial deposits of potash that may
14 reasonably be recovered in commercial quantities or where the
15 operations would interfere unduly with the orderly commercial
16 development of the potash deposits;

17 (18) to spend the oil and gas reclamation fund
18 and do all acts necessary and proper to plug dry and abandoned
19 oil and gas wells and to restore and remediate abandoned well
20 sites and associated production facilities in accordance with
21 the provisions of the Oil and Gas Act, the rules adopted under
22 that act and the Procurement Code, including disposing of
23 salvageable equipment and material removed from oil and gas
24 wells being plugged by the state;

25 (19) to make well price category

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1 determinations pursuant to the provisions of the federal
2 Natural Gas Policy Act of 1978 or any successor act and, by
3 regulation, to adopt fees for such determinations, which fees
4 shall not exceed twenty-five dollars (\$25.00) per filing. Such
5 fees shall be credited to the account of the [oil conservation]
6 division by the state treasurer and may be expended as
7 authorized by the legislature;

8 (20) to regulate the construction and
9 operation of oil treating plants and to require the posting of
10 bonds for the reclamation of treating plant sites after
11 cessation of operations;

12 (21) to regulate the disposition of
13 nondomestic wastes resulting from the exploration, development,
14 production or storage of crude oil or natural gas to protect
15 public health and the environment; ~~and~~

16 (22) to regulate the disposition of
17 nondomestic wastes resulting from the oil field service
18 industry, the transportation of crude oil or natural gas, the
19 treatment of natural gas or the refinement of crude oil to
20 protect public health and the environment, including
21 administering the Water Quality Act as provided in Subsection E
22 of Section 74-6-4 NMSA 1978;

23 (23) to regulate the transfer of oil and gas
24 wells or facilities, including limitations on transfers when:

25 (a) the transferor, the transferee or an

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1 entity that owns more than a twenty-five percent interest in a
2 transferor or transferee has a significant history of
3 noncompliance with the Oil and Gas Act or rules adopted
4 pursuant to that act;

5 (b) the transferee fails to provide
6 adequate financial assurance as required by the division;

7 (c) the transferee lacks sufficient
8 financial capacity to manage liabilities associated with the
9 oil and gas wells or facilities; or

10 (d) the division deems the limitations
11 to be necessary for the purposes of mitigating risk to the
12 state from potential inactive or abandoned oil and gas wells or
13 facilities; and

14 (24) to authorize the conversion of an oil and
15 gas well to a facility that supports energy storage or
16 geothermal development, including establishing fees and
17 financial assurance requirements specific to an energy storage
18 or geothermal use."

19 SECTION 2. Section 70-2-14 NMSA 1978 (being Laws 1977,
20 Chapter 237, Section 3, as amended) is amended to read:

21 "70-2-14. REQUIREMENT FOR FINANCIAL ASSURANCE.--

22 A. Each person, firm, corporation or association
23 who operates ~~[any]~~ an oil, gas or service well within the state
24 shall, as a condition precedent to drilling or producing the
25 well, furnish financial assurance in the form of an irrevocable

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1 letter of credit, ~~[or]~~ a cash or surety bond or a ~~[well-~~
2 ~~specific]~~ plugging insurance policy pursuant to the provisions
3 of this section to the ~~[oil conservation]~~ division ~~[of the~~
4 ~~energy, minerals and natural resources department]~~ running to
5 the benefit of the state and conditioned that the covered well
6 be plugged and abandoned in ~~[compliance with the rules of the~~
7 ~~oil conservation]~~ accordance with division rules. The ~~[oil~~
8 ~~conservation]~~ division shall establish categories of financial
9 assurance by rule after notice and hearing. Such categories
10 shall include, at a minimum, a blanket plugging financial
11 assurance ~~[which shall be set by rule]~~ in an amount not to
12 exceed ~~[two hundred fifty thousand dollars (\$250,000), a~~
13 ~~blanket plugging financial assurance for temporarily abandoned~~
14 ~~status wells, which shall be set by rule at amounts greater~~
15 ~~than fifty thousand dollars (\$50,000)]~~ ten million dollars
16 (\$10,000,000) ~~[and]~~ or a one-well plugging financial assurance
17 in amounts determined sufficient to reasonably pay the cost of
18 plugging the well or wells covered by the financial assurance.
19 In establishing categories of financial assurance, the ~~[oil~~
20 ~~conservation]~~ division shall consider the depth of the well
21 involved, the length of time since the well was produced, the
22 cost of plugging similar wells and ~~[such]~~ other factors ~~[as]~~
23 the ~~[oil conservation]~~ division deems relevant. The ~~[oil~~
24 ~~conservation]~~ division shall require a one-well financial
25 assurance on any well that has been held in a temporarily

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1 abandoned status for more than two years or, at the election of
2 the operator, may allow an operator to increase its blanket
3 plugging financial assurance to cover wells held in temporarily
4 abandoned status. All financial assurance shall remain in
5 force until released by the ~~[oil conservation]~~ division. The
6 ~~[oil conservation]~~ division shall release financial assurance
7 when ~~[it]~~ the division is satisfied that the conditions of the
8 financial assurance have been fully performed.

9 B. If any of the requirements of the Oil and Gas
10 Act or the rules promulgated pursuant to that act have not been
11 complied with, the ~~[oil conservation]~~ division, after notice
12 and hearing, may order any well plugged and abandoned by the
13 operator or surety or both in accordance with division rules.
14 If the order is not complied with in the time period set out in
15 the order, the financial assurance shall be forfeited.

16 C. When any financial assurance is forfeited pursuant
17 to the provisions of the Oil and Gas Act or rules promulgated
18 pursuant to that act, the director of the ~~[oil conservation]~~
19 division shall ~~[give notice to the attorney general, who shall]~~
20 collect the forfeiture without delay.

21 D. All forfeitures shall be deposited in the state
22 treasury in the oil and gas reclamation fund.

23 E. When the financial assurance proves insufficient
24 to cover the cost of plugging oil and gas wells on land other
25 than federal land and funds must be expended from the oil and

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1 gas reclamation fund to meet the additional expenses, the [~~oil~~
2 ~~conservation~~] division is authorized to bring suit against the
3 operator in the district court of the county in which the well
4 is located for indemnification for all costs incurred by the
5 [~~oil conservation~~] division in plugging the well. All funds
6 collected pursuant to a judgment in a suit for indemnification
7 brought under the provisions of this section shall be deposited
8 in the oil and gas reclamation fund.

9 F. An operator required to file financial assurance
10 for a well pursuant to this section is considered to have met
11 that requirement if the operator obtains a plugging insurance
12 policy that includes the specific well and that:

13 (1) is approved by the office of superintendent
14 of insurance;

15 (2) names the state of New Mexico as owner of
16 the policy and contingent beneficiary;

17 (3) names a primary beneficiary who agrees to
18 plug the specified wellbore;

19 (4) is fully prepaid and cannot be canceled or
20 surrendered;

21 (5) provides that the policy continues in effect
22 until the specified wellbore has been plugged;

23 (6) provides that benefits will be paid when,
24 but not before, the specified wellbore has been plugged in
25 accordance with rules of the [~~oil conservation~~] division in

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1 effect at the time of plugging; and

2 (7) provides benefits that are not less than an
3 amount equal to the one-well financial assurance required by
4 ~~[oil conservation]~~ division rules.

5 G. If, subsequent to an operator obtaining an
6 insurance policy as provided in this section, the one-well
7 financial assurance requirement applicable to the operator's
8 well is increased, either because the well is deepened or ~~[the~~
9 ~~rules of the oil conservation]~~ division rules are amended, the
10 operator is considered to have met the revised requirement if:

11 (1) the existing policy benefit equals or
12 exceeds the revised requirement;

13 (2) the operator obtains an amendment increasing
14 the policy benefit by the amount of the increase in the
15 applicable financial assurance requirement; or

16 (3) the operator obtains financial assurance
17 equal to the amount, if any, by which the revised requirement
18 exceeds the policy benefit."

19 **SECTION 3.** Section 70-2-31 NMSA 1978 (being Laws 1981,
20 Chapter 362, Section 1, as amended) is amended to read:

21 "70-2-31. VIOLATIONS OF THE OIL AND GAS ACT--PENALTIES.--

22 A. Whenever the division determines that a person
23 violated or is violating the Oil and Gas Act or any provision
24 of any rule, order, permit or authorization issued pursuant to
25 that act, the division may seek compliance and civil penalties

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1 by:

2 (1) issuing a notice of violation;

3 (2) commencing a civil action in district court
4 for appropriate relief, including injunctive relief; or

5 (3) issuing a temporary cessation order if the
6 division determines that the violation is causing or will cause
7 an imminent danger to public health or safety or a significant
8 imminent environmental harm. The cessation order will remain
9 in effect until the earlier of when the violation is abated or
10 thirty days unless a hearing is held before the division and a
11 new order is issued.

12 B. A notice of violation issued pursuant to Paragraph
13 (1) of Subsection A of this section shall:

14 (1) state with reasonable specificity the nature
15 of the violation; [~~shall~~]

16 (2) require compliance immediately or within a
17 specified time period; [~~shall~~]

18 (3) provide notice of the availability of an
19 informal review and the date of a hearing before the division;
20 and [~~shall~~]

21 (4) provide notice of potential sanctions,
22 including assessing a penalty, suspending, canceling or
23 terminating a permit or authorization, shutting in a well and
24 plugging and abandonment of a well and forfeiting financial
25 assurance pursuant to Section 70-2-14 NMSA 1978.

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1 C. If the notice of violation is not resolved
2 informally within thirty days after service of the notice, the
3 division shall hold a hearing and determine whether the
4 violation should be upheld and whether any sanctions, including
5 civil penalties, shall be assessed. In assessing a penalty
6 authorized by this section, the division shall take into
7 account the seriousness of the violation, any good faith
8 efforts to comply with the applicable requirements, any history
9 of noncompliance under the Oil and Gas Act and other relevant
10 factors. When a decision is rendered by the division after a
11 hearing, any party of record adversely affected shall have the
12 right to have the matter heard de novo before the commission
13 pursuant to Section 70-2-13 NMSA 1978.

14 D. Any civil penalty assessed by a court or by the
15 division or commission pursuant to this section may not exceed
16 [~~two thousand five hundred dollars (\$2,500)~~] ten thousand
17 dollars (\$10,000) per day of noncompliance for each violation
18 unless the violation presents a risk either to the health or
19 safety of the public or of causing significant environmental
20 harm, or unless the noncompliance continues beyond a time
21 specified in the notice of violation or order issued by the
22 division, commission or court, whereupon the civil penalty may
23 not exceed [~~ten thousand dollars (\$10,000)~~] twenty-five
24 thousand dollars (\$25,000) per day of noncompliance for each
25 violation. [~~No penalty assessed by the division or commission~~
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1 ~~after a hearing may exceed two hundred thousand dollars~~
2 ~~(\$200,000); provided that such limitation does not apply to~~
3 ~~penalties assessed by a court.]~~

4 E. The commission shall make rules, pursuant to
5 Section 70-2-12.2 NMSA 1978, providing procedures for the
6 issuance of notices of violations, the assessment of penalties
7 and the conduct of informal proceedings and hearings pursuant
8 to this section.

9 F. It is unlawful, subject to a criminal penalty of a
10 fine of not more than five thousand dollars (\$5,000) or
11 imprisonment for a term not exceeding three years or both such
12 fine and imprisonment, for any person to knowingly and
13 willfully:

14 (1) violate any provision of the Oil and Gas Act
15 or any rule, regulation or order of the commission or the
16 division issued pursuant to that act; or

17 (2) do any of the following for the purpose of
18 evading or violating the Oil and Gas Act or any rule,
19 regulation or order of the commission or the division issued
20 pursuant to that act:

21 (a) make any false entry or statement in a
22 report required by the Oil and Gas Act or by any rule,
23 regulation or order of the commission or division issued
24 pursuant to that act;

25 (b) make or cause to be made any false entry

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1 in any record, account or memorandum required by the Oil and
2 Gas Act or by any rule, regulation or order of the commission
3 or division issued pursuant to that act;

4 (c) omit or cause to be omitted from any
5 such record, account or memorandum full, true and correct
6 entries; or

7 (d) remove from this state or destroy,
8 mutilate, alter or falsify any such record, account or
9 memorandum.

10 G. For the purposes of Subsection F of this section,
11 each day of violation shall constitute a separate offense.

12 H. Any person who knowingly and willfully procures,
13 counsels, aids or abets the commission of any act described in
14 Subsection A or F of this section shall be subject to the same
15 penalties as are prescribed in Subsection D or F of this
16 section."

17 **SECTION 4.** Section 70-2-39 NMSA 1978 (being Laws 2019,
18 Chapter 260, Section 1) is amended to read:

19 "70-2-39. FEES--~~[APPROPRIATION]~~ FEE ADJUSTMENTS--OIL
20 CONSERVATION DIVISION SYSTEMS AND HEARINGS FUND CREATED.--

21 A. Beginning January 1, 2027 and on January 1 of each
22 successive year, the fees provided by this section may be
23 adjusted for inflation as provided in Subsection B of this
24 section. The following fees are required to be paid to the
25 ~~[oil conservation] division [of the energy, minerals and~~

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1 ~~natural resources department]~~ with each application for:

2 (1) ~~[with each application for]~~ a non-federal
3 and non-Indian permit to drill, deepen, plug back or reenter a
4 well, the applicant shall submit to the division a
5 nonrefundable fee of ~~[five hundred dollars (\$500)]~~ one thousand
6 five hundred dollars (\$1,500);

7 (2) ~~[with each individual application for]~~
8 administrative approval of a non-standard location, downhole
9 commingle, surface commingle, off-lease measurement, release
10 notification and corrective action, change of operator,
11 application for modification to surface waste management
12 facility, request for the creation of a new pool, proposed
13 alternative method permit or closure plan application or
14 authorization to move produced water, the applicant shall
15 submit to the division a nonrefundable fee of ~~[one hundred~~
16 ~~fifty dollars (\$150)]~~ four hundred fifty dollars (\$450);

17 (3) ~~[with each application for]~~ a fluid
18 injection well permit, the applicant shall submit to the
19 division a nonrefundable fee of ~~[five hundred dollars (\$500)]~~
20 one thousand five hundred dollars (\$1,500) per well;

21 (4) ~~[with each application for]~~ a permit for a
22 commercial surface waste management facility, landfill or
23 landfarm, the applicant shall submit to the division a
24 nonrefundable fee of ten thousand dollars (\$10,000) per
25 facility;

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1 (5) [~~with each application for~~] an
2 administrative hearing, re-hearing or de novo hearing before
3 the division or commission, the applicant shall submit to the
4 division a nonrefundable fee of [~~five hundred dollars (\$500)~~]
5 one thousand five hundred dollars (\$1,500) per application; and

6 (6) [~~with each application for~~] a continuance of
7 an administrative hearing, re-hearing or de novo hearing before
8 the division or commission, the applicant shall submit to the
9 division a nonrefundable fee of [~~one hundred fifty dollars~~
10 ~~(\$150)~~] four hundred fifty dollars (\$450) per application.

11 B. On January 1, 2027 and on January 1 of each
12 successive year, the division may adjust the fees provided by
13 Subsection A of this section by multiplying the fee as of
14 January 1, 2026 by a fraction, the numerator of which is the
15 consumer price index ending in September of the previous year
16 and the denominator of which is the consumer price index ending
17 September 2025; provided that the fees shall not be adjusted
18 below the minimum amounts provided in Subsection A of this
19 section as a result of a decrease in the consumer price index.
20 By November 1, 2026 and by November 1 of each successive year,
21 the division shall post on its website the fees in Subsection A
22 of this section for the next year.

23 [~~B.~~] C. An application for an administrative hearing,
24 re-hearing or de novo hearing before the oil conservation
25 division or commission will be considered to be materially

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1 amended if the amendment is made for a purpose other than to
2 correct:

3 (1) typographical errors; or

4 (2) clerical errors.

5 ~~[G.]~~ D. The "oil conservation division systems and
6 hearings fund" is created in the state treasury as a
7 nonreverting fund. All funds received by the ~~[oil~~
8 ~~conservation]~~ division from fees imposed pursuant to Subsection
9 A of this section shall be delivered to the state treasurer and
10 deposited in the fund. Disbursements from the fund shall be
11 made upon warrants drawn by the secretary of finance and
12 administration pursuant to vouchers signed by the secretary of
13 energy, minerals and natural resources or the secretary's
14 authorized representative. Money in the fund is subject to
15 appropriation by the legislature to the division to develop and
16 modernize the division's online application processing system,
17 online case management system, online data reporting and
18 visualization systems and online case file system and for other
19 technological and equipment upgrades necessary to support the
20 efficient and transparent implementation and enforcement of the
21 Oil and Gas Act, including hiring necessary information
22 technology personnel, and for hearing administration costs.
23 Any unexpended or unencumbered balance remaining in the fund at
24 the end of a fiscal year shall not revert to the general fund.
25 ~~[Money in the fund in fiscal year 2020 may be expended by the~~

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1 ~~division for the purposes of the fund.]~~

2 E. As used in this section, "consumer price index"
3 means the consumer price index, not seasonally adjusted, for
4 all urban consumers, United States city average for all items,
5 or its successor index, as published by the United States
6 department of labor for a twelve-month period ending September
7 30."

8 **SECTION 5.** A new section of the Oil and Gas Act is
9 enacted to read:

10 "[NEW MATERIAL] NATURAL GAS CAPTURE REQUIREMENTS--RULES.--

11 A. Beginning January 1, 2027, an operator shall
12 ensure that at least ninety-eight percent of the natural gas
13 produced or gathered by the operator's facilities is captured
14 in a calendar year; provided that natural gas released during
15 an emergency or that is beneficially used by the operator does
16 not count as gas released for the purpose of determining an
17 operator's overall capture percentage.

18 B. The division shall adopt rules necessary to
19 implement the provisions of this section and an application for
20 a permit to drill shall be subject to the rules to be valid.

21 C. As used in this section, "operator" means a person
22 that is duly authorized to construct, manage or operate an oil
23 or gas well or associated facilities or a natural gas gathering
24 system."

25 **SECTION 6.** A new section of the Oil and Gas Act is

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1 enacted to read:

2 "[NEW MATERIAL] SETBACKS FROM HUMAN AND ENVIRONMENTAL
3 RECEPTORS--RULES.--

4 A. Beginning July 1, 2024, a new well pad, production
5 facility, tank battery, compressor station or gas plant shall
6 be at least:

7 (1) two thousand two hundred fifty feet from a
8 health facility, correctional facility, multifamily residential
9 structure, community college, public, private or charter school
10 or state educational institution;

11 (2) two thousand two hundred fifty feet from a
12 detached single-family occupied residence, including a
13 manufactured home, unless the homeowner at the time a
14 development is proposed provides consent in a manner provided
15 by the division, in which case the setback in this paragraph
16 may be reduced to seven hundred fifty feet without prior
17 approval;

18 (3) six hundred sixty feet from a perennial or
19 intermittent stream, lake, pond, delineated wetland or
20 irrigation infrastructure that is in use; and

21 (4) three hundred feet from a surface water of
22 the state not listed in Paragraph (3) of this subsection, a
23 state park, state game commission land, a designated critical
24 habitat for a federal or state endangered animal species or
25 other environmental resource identified by commission rule.

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1 B. For purposes of determining whether a new well
2 pad, production facility, tank battery, compressor station or
3 gas plant complies with the requirements of this section,
4 measurements shall be made from the outer edge of the human and
5 environmental receptors listed in Subsection A of this section
6 to the nearest operational equipment on a well pad, production
7 facility, tank battery, compressor station or gas plant. For a
8 building or structure, the outer edge shall be measured from
9 the nearest portion of the building wall to the facilities
10 covered by this section. For a water body, the outer edge
11 shall be measured from the nearest ordinary high water mark or
12 the transition between riparian and upland habitat to the
13 facilities covered by this section.

14 C. The commission may approve deviations from the
15 setbacks established in this section upon an application from
16 the impacted operator demonstrating that:

17 (1) disallowing development within the setback
18 is inconsistent with a directive or order from another state or
19 federal agency;

20 (2) disallowing development will significantly
21 impair correlative rights even after accounting for the
22 division's or commission's ability to authorize variances from
23 well spacing or other development requirements; or

24 (3) disallowing development will significantly
25 contribute to underground waste.

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1 D. An oil and gas well or associated facility for
2 which the commission approves a deviation pursuant to this
3 section shall be inspected at least monthly by the operator to
4 identify any spills or releases, unless more frequent
5 inspections are required by law.

6 E. An application for a deviation from the setbacks
7 established in this section may be denied for an operator that
8 has received a notice of violation of the Oil and Gas Act from
9 the division within twelve months of the application or is the
10 subject of an unresolved notice of violation of the Oil and Gas
11 Act issued by the division.

12 F. The commission may adopt rules:

13 (1) to increase the setback distances and
14 identify additional resources subject to the setbacks
15 established by Paragraphs (3) and (4) of Subsection A of this
16 section when the commission determines that the proximity of an
17 environmental resource to a new well pad, production facility,
18 tank battery, compressor station or gas plant may significantly
19 impair the environmental resource and increasing the distance
20 between the resource and the facility would address such
21 impairment;

22 (2) to increase the setback distances
23 established by Paragraphs (1) and (2) of Subsection A of this
24 section when the commission can demonstrate that the increases
25 would result in direct reductions to exposures for individuals

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underscored material = new
~~[bracketed material] = delete~~

1 with elevated risk of adverse health impacts as a result of
2 exposure;

3 (3) to provide for administrative proceedings
4 before the division for the processing of requests to deviate
5 from a setback established by this section or commission rule;
6 and

7 (4) necessary to implement the provisions of
8 this section.

9 G. This section does not apply to a new development
10 on an existing well pad, production facility, tank battery,
11 compressor station or gas plant, so long as the new development
12 at an existing facility does not result in a one-time expansion
13 of the external boundary of the existing facility of more than
14 fifteen percent as determined by the boundaries in existence as
15 of May 15, 2024, with the burden being on the operator to
16 establish the boundaries, unless the operator demonstrates to
17 the division that the one-time expansion will consolidate
18 development and provide a demonstrable reduction of overall
19 impacts to human health and the environment, in which case the
20 division may approve an expansion of up to thirty percent.

21 H. The setbacks provided by this section shall not
22 apply to a new well pad, production facility, tank battery,
23 compressor station or gas plant if an operator demonstrates
24 that:

25 (1) a deviation from the setback requirements is
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~~[bracketed material]~~ = delete

1 authorized by or necessary to effectuate the development of
2 facilities pursuant to an application for a permit to drill,
3 division order or commission order issued prior to May 15,
4 2024; or

5 (2) the facilities are located on the land or
6 allotted lands of a federally recognized Indian nation, tribe
7 or pueblo.

8 I. The burden to demonstrate the applicability of the
9 provisions of Subsection H of this section rests solely on the
10 operator.

11 J. The division shall provide an annual report by
12 December 1 of each year to the appropriate interim legislative
13 committee on any approved setback deviations, including setback
14 deviations made pursuant to Subsection H of this section.

15 K. An oil and gas well in existence on July 1, 2024
16 within a setback provided by this section or established by
17 commission rule that has been inactive for a period of greater
18 than twenty-four months based on records maintained by the
19 division shall be considered abandoned, and the division may
20 order the plugging of the well after thirty days' notice to the
21 registered operator of the well. An order issued pursuant to
22 this subsection may be appealed to the commission.

23 L. As used in this section:

24 (1) "correctional facility" means a jail, prison
25 or other detention facility that is used for the confinement of

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underscored material = new
~~[bracketed material] = delete~~

1 adult or juvenile persons, whether operated by the state or a
2 political subdivision of the state or a private contractor on
3 behalf of the state or a political subdivision of the state;

4 (2) "health facility" means a public hospital,
5 profit or nonprofit private hospital, general or special
6 hospital, outpatient facility, crisis triage center,
7 freestanding birth center, adult daycare facility, nursing
8 home, intermediate care facility, assisted living facility,
9 boarding home not under the control of an institution of higher
10 learning, child care facility, shelter care home, diagnostic
11 and treatment center, rehabilitation center, infirmary,
12 community mental health center that serves both children and
13 adults or adults only, residential treatment center that serves
14 persons up to twenty-one years of age, community mental health
15 center that serves only persons up to twenty-one years of age,
16 day treatment center that serves persons up to twenty-one years
17 of age, health service organization operating as a freestanding
18 hospice or a home health agency or facilities that, by federal
19 regulation, are required to be licensed by the state to obtain
20 or maintain full or partial, permanent or temporary federal
21 funding, but does not include the offices and treatment rooms
22 of licensed private practitioners; and

23 (3) "state educational institution" means an
24 institution enumerated in Article 12, Section 11 of the
25 constitution of New Mexico."

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HOUSE ENERGY, ENVIRONMENT AND NATURAL RESOURCES
COMMITTEE SUBSTITUTE FOR
HOUSE BILL 133

56TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2024

AN ACT

RELATING TO THE ENVIRONMENT; AMENDING THE OIL AND GAS ACT;
ALLOWING THE OIL CONSERVATION DIVISION OF THE ENERGY, MINERALS
AND NATURAL RESOURCES DEPARTMENT TO REGULATE CERTAIN TRANSFERS
OF OIL AND GAS WELLS AND AUTHORIZE THE CONVERSION OF OIL AND
GAS WELLS FOR ENERGY STORAGE AND GEOTHERMAL DEVELOPMENT;
INCREASING THE AMOUNT OF FEES AND FINANCIAL ASSURANCE
ASSOCIATED WITH OPERATING OIL AND GAS WELLS; INCREASING CIVIL
PENALTIES; ALLOWING FEES TO BE ADJUSTED TO ACCOUNT FOR
INFLATION; REQUIRING THE CAPTURE OF NINETY-EIGHT PERCENT OF
NATURAL GAS PRODUCED BEGINNING IN 2027.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 70-2-12 NMSA 1978 (being Laws 1978,
Chapter 71, Section 1, as amended) is amended to read:

"70-2-12. ENUMERATION OF POWERS.--

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1 A. The ~~[oil conservation]~~ division ~~[of the energy,~~
2 ~~minerals and natural resources department]~~ may:

- 3 (1) collect data;
- 4 (2) make investigations and inspections;
- 5 (3) examine properties, leases, papers, books
6 and records;
- 7 (4) examine, check, test and gauge oil and gas
8 wells, tanks, plants, refineries and all means and modes of
9 transportation and equipment;
- 10 (5) hold hearings;
- 11 (6) provide for the keeping of records and the
12 making of reports and for the checking of the accuracy of the
13 records and reports;
- 14 (7) limit and prorate production of crude
15 petroleum oil or natural gas or both as provided in the Oil and
16 Gas Act; and
- 17 (8) require either generally or in particular
18 areas certificates of clearance or tenders in connection with
19 the transportation of crude petroleum oil or natural gas or any
20 products of either or both oil and products or both natural gas
21 and products.

22 B. The ~~[oil conservation]~~ division may make rules
23 and orders ~~[for the purposes and with respect to the subject~~
24 ~~matter stated in this subsection]~~:

- 25 (1) to require dry or abandoned wells to be

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1 plugged in a way so as to confine the crude petroleum oil,
2 natural gas or water in the strata in which it is found and to
3 prevent it from escaping into other strata; pursuant to Section
4 70-2-14 NMSA 1978, the division shall require financial
5 assurance conditioned for the performance of the rules;

6 (2) to prevent crude petroleum oil, natural
7 gas or water from escaping from strata in which it is found
8 into other strata;

9 (3) to require reports showing locations of
10 all oil or gas wells and for the filing of logs and drilling
11 records or reports;

12 (4) to prevent the drowning by water of any
13 stratum or part thereof capable of producing oil or gas or both
14 oil and gas in paying quantities and to prevent the premature
15 and irregular encroachment of water or any other kind of water
16 encroachment that reduces or tends to reduce the total ultimate
17 recovery of crude petroleum oil or gas or both oil and gas from
18 any pool;

19 (5) to prevent fires;

20 (6) to prevent "blow-ups" and "caving" in the
21 sense that the conditions indicated by such terms are generally
22 understood in the oil and gas business;

23 (7) to require wells to be drilled, operated
24 and produced in such manner as to prevent injury to neighboring
25 leases or properties;

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~~[bracketed material]~~ = delete

- 1 (8) to identify the ownership of oil or gas
2 producing leases, properties, wells, tanks, refineries,
3 pipelines, plants, structures and all transportation equipment
4 and facilities;
5 (9) to require the operation of wells with
6 efficient gas-oil ratios and to fix such ratios;
7 (10) to fix the spacing of wells;
8 (11) to determine whether a particular well or
9 pool is a gas or oil well or a gas or oil pool, as the case may
10 be, and from time to time to classify and reclassify wells and
11 pools accordingly;
12 (12) to determine the limits of any pool
13 producing crude petroleum oil or natural gas or both and from
14 time to time redetermine the limits;
15 (13) to regulate the methods and devices
16 employed for storage in this state of oil or natural gas or any
17 product of either, including subsurface storage;
18 (14) to permit the injection of natural gas or
19 of any other substance into any pool in this state for the
20 purpose of repressuring, cycling, pressure maintenance,
21 secondary or any other enhanced recovery operations;
22 (15) to regulate the disposition, handling,
23 transport, storage, recycling, treatment and disposal of
24 produced water during, or for reuse in, the exploration,
25 drilling, production, treatment or refinement of oil or gas,

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1 including disposal by injection pursuant to authority delegated
2 under the federal Safe Drinking Water Act, in a manner that
3 protects public health, the environment and fresh water
4 resources;

5 (16) to determine the limits of any area
6 containing commercial potash deposits and from time to time
7 redetermine the limits;

8 (17) to regulate and, where necessary,
9 prohibit drilling or producing operations for oil or gas within
10 any area containing commercial deposits of potash where the
11 operations would have the effect unduly to reduce the total
12 quantity of the commercial deposits of potash that may
13 reasonably be recovered in commercial quantities or where the
14 operations would interfere unduly with the orderly commercial
15 development of the potash deposits;

16 (18) to spend the oil and gas reclamation fund
17 and do all acts necessary and proper to plug dry and abandoned
18 oil and gas wells and to restore and remediate abandoned well
19 sites and associated production facilities in accordance with
20 the provisions of the Oil and Gas Act, the rules adopted under
21 that act and the Procurement Code, including disposing of
22 salvageable equipment and material removed from oil and gas
23 wells being plugged by the state;

24 (19) to make well price category
25 determinations pursuant to the provisions of the federal

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1 Natural Gas Policy Act of 1978 or any successor act and, by
 2 regulation, to adopt fees for such determinations, which fees
 3 shall not exceed twenty-five dollars (\$25.00) per filing. Such
 4 fees shall be credited to the account of the [~~oil conservation~~]
 5 division by the state treasurer and may be expended as
 6 authorized by the legislature;

7 (20) to regulate the construction and
 8 operation of oil treating plants and to require the posting of
 9 bonds for the reclamation of treating plant sites after
 10 cessation of operations;

11 (21) to regulate the disposition of
 12 nondomestic wastes resulting from the exploration, development,
 13 production or storage of crude oil or natural gas to protect
 14 public health and the environment; [~~and~~]

15 (22) to regulate the disposition of
 16 nondomestic wastes resulting from the oil field service
 17 industry, the transportation of crude oil or natural gas, the
 18 treatment of natural gas or the refinement of crude oil to
 19 protect public health and the environment, including
 20 administering the Water Quality Act as provided in Subsection E
 21 of Section 74-6-4 NMSA 1978;

22 (23) to regulate the transfer of oil and gas
 23 wells, including limitations on transfers when:

24 (a) the transferor, the transferee or an
 25 entity that owns more than a twenty-five percent interest in a

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transferor or transferee has a significant history of noncompliance with the Oil and Gas Act or rules adopted pursuant to that act, including multiple notices of violations or spills or releases that are not in the process of being corrected or addressed;

(b) the transferee fails to provide adequate financial assurance as required by the division;

(c) the transferee lacks sufficient financial capacity based on known or projected production to manage liabilities associated with the oil and gas wells; or

(d) the division issues a written finding that the limitations on transfer are necessary for the purposes of mitigating risk to the state from potential inactive or abandoned oil and gas wells; and

(24) to authorize the conversion of an oil and gas well to a facility that supports energy storage or geothermal development, including establishing fees and financial assurance requirements specific to an energy storage or geothermal use."

SECTION 2. Section 70-2-14 NMSA 1978 (being Laws 1977, Chapter 237, Section 3, as amended) is amended to read:

"70-2-14. REQUIREMENT FOR FINANCIAL ASSURANCE.--

A. Each person, firm, corporation or association who operates ~~[any]~~ an oil, gas or service well within the state shall, as a condition precedent to drilling or producing the

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1 well, furnish financial assurance in the form of an irrevocable
2 letter of credit, ~~[or]~~ a cash or surety bond, a well plugging
3 risk pool fee or a ~~[well-specific]~~ plugging insurance policy
4 pursuant to the provisions of this section to the ~~[oil~~
5 ~~conservation]~~ division ~~[of the energy, minerals and natural~~
6 ~~resources department]~~ running to the benefit of the state and
7 conditioned that the covered well be plugged and abandoned in
8 ~~[compliance with the rules of the oil conservation]~~ accordance
9 with division rules. The ~~[oil conservation]~~ division shall
10 establish categories of financial assurance by rule after
11 notice and hearing. Such categories shall include a blanket
12 plugging financial assurance ~~[which shall be set by rule]~~
13 tiered to reflect operator size and relative risk in an amount
14 not to exceed ~~[two hundred fifty thousand dollars (\$250,000), a~~
15 ~~blanket plugging financial assurance for temporarily abandoned~~
16 ~~status wells, which shall be set by rule at amounts greater~~
17 ~~than fifty thousand dollars (\$50,000) and]~~ ten million dollars
18 (\$10,000,000), a well plugging risk pool fee or a one-well
19 plugging financial assurance in amounts determined sufficient
20 to reasonably pay the cost of plugging the well or wells
21 covered by the financial assurance. In establishing categories
22 of financial assurance, the ~~[oil conservation]~~ division shall
23 consider the depth of the well involved, the length of time
24 since the well was produced, the cost of plugging similar wells
25 and ~~[such]~~ other factors ~~[as]~~ the ~~[oil conservation]~~ division

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1 deems relevant, such as operator size and relative risk. The
2 ~~[oil conservation]~~ division shall require a one-well financial
3 assurance on any well that has been held in a temporarily
4 abandoned status for more than two years or, at the election of
5 the operator, may allow an operator to increase its blanket
6 plugging financial assurance to cover wells held in temporarily
7 abandoned status. All financial assurance shall remain in
8 force until released by the ~~[oil conservation]~~ division. The
9 ~~[oil conservation]~~ division shall release financial assurance
10 when ~~[it]~~ the division is satisfied that the conditions of the
11 financial assurance have been fully performed.

12 B. The division may assess a non-refundable monthly
13 well plugging risk pool fee on a per well basis on a subset of
14 an operator's wells not to exceed five hundred dollars (\$500)
15 per well to offset bonding obligations. A well plugging risk
16 pool fee collected by the division shall be deposited in the
17 oil and gas reclamation fund.

18 ~~[B.]~~ C. If any of the requirements of the Oil and
19 Gas Act or the rules promulgated pursuant to that act have not
20 been complied with, the ~~[oil conservation]~~ division, after
21 notice and hearing, may order any well plugged and abandoned by
22 the operator or surety or both in accordance with division
23 rules. If the order is not complied with in the time period
24 set out in the order, the financial assurance shall be
25 forfeited.

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1 ~~[G.]~~ D. When any financial assurance is forfeited
2 pursuant to the provisions of the Oil and Gas Act or rules
3 promulgated pursuant to that act, the director of the ~~[oil~~
4 ~~conservation]~~ division shall ~~[give notice to the attorney~~
5 ~~general, who shall]~~ collect the forfeiture without delay.

6 ~~[D.]~~ E. All forfeitures shall be deposited in the
7 state treasury in the oil and gas reclamation fund.

8 ~~[E.]~~ F. When the financial assurance proves
9 insufficient to cover the cost of plugging oil and gas wells on
10 land other than federal land and funds must be expended from
11 the oil and gas reclamation fund to meet the additional
12 expenses, the ~~[oil conservation]~~ division is authorized to
13 bring suit against the operator in the district court of the
14 county in which the well is located for indemnification for all
15 costs incurred by the ~~[oil conservation]~~ division in plugging
16 the well. All funds collected pursuant to a judgment in a suit
17 for indemnification brought under the provisions of this
18 section shall be deposited in the oil and gas reclamation fund.

19 ~~[F.]~~ G. An operator required to file financial
20 assurance for a well pursuant to this section is considered to
21 have met that requirement if the operator obtains a plugging
22 insurance policy that includes the specific well and that:

23 (1) is approved by the office of
24 superintendent of insurance;

25 (2) names the state of New Mexico as owner of

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1 the policy and contingent beneficiary;

2 (3) names a primary beneficiary who agrees to
3 plug the specified wellbore;

4 (4) is fully prepaid and cannot be canceled or
5 surrendered;

6 (5) provides that the policy continues in
7 effect until the specified wellbore has been plugged;

8 (6) provides that benefits will be paid when,
9 but not before, the specified wellbore has been plugged in
10 accordance with rules of the [~~oil conservation~~] division in
11 effect at the time of plugging; and

12 (7) provides benefits that are not less than
13 an amount equal to the one-well financial assurance required by
14 [~~oil conservation~~] division rules.

15 [~~G.~~] H. If, subsequent to an operator obtaining an
16 insurance policy as provided in this section, the one-well
17 financial assurance requirement applicable to the operator's
18 well is increased, either because the well is deepened or [~~the~~
19 ~~rules of the oil conservation~~] division rules are amended, the
20 operator is considered to have met the revised requirement if:

21 (1) the existing policy benefit equals or
22 exceeds the revised requirement;

23 (2) the operator obtains an amendment
24 increasing the policy benefit by the amount of the increase in
25 the applicable financial assurance requirement; or

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1 (3) the operator obtains financial assurance
2 equal to the amount, if any, by which the revised requirement
3 exceeds the policy benefit."

4 SECTION 3. Section 70-2-31 NMSA 1978 (being Laws 1981,
5 Chapter 362, Section 1, as amended) is amended to read:

6 "70-2-31. VIOLATIONS OF THE OIL AND GAS ACT--PENALTIES.--

7 A. Whenever the division determines that a person
8 violated or is violating the Oil and Gas Act or any provision
9 of any rule, order, permit or authorization issued pursuant to
10 that act, the division may seek compliance and civil penalties
11 by:

12 (1) issuing a notice of violation;

13 (2) commencing a civil action in district
14 court for appropriate relief, including injunctive relief; or

15 (3) issuing a temporary cessation order if the
16 division determines that the violation is causing or will cause
17 an imminent danger to public health or safety or a significant
18 imminent environmental harm. The cessation order will remain
19 in effect until the earlier of when the violation is abated or
20 thirty days unless a hearing is held before the division and a
21 new order is issued.

22 B. A notice of violation issued pursuant to
23 Paragraph (1) of Subsection A of this section shall:

24 (1) state with reasonable specificity the
25 nature of the violation; ~~[shall]~~

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1 (2) require compliance immediately or within a
2 specified time period; [~~shall~~]

3 (3) provide notice of the availability of an
4 informal review and the date of a hearing before the division;
5 and [~~shall~~]

6 (4) provide notice of potential sanctions,
7 including assessing a penalty, suspending, canceling or
8 terminating a permit or authorization, shutting in a well and
9 plugging and abandonment of a well and forfeiting financial
10 assurance pursuant to Section 70-2-14 NMSA 1978.

11 C. If the notice of violation is not resolved
12 informally within thirty days after service of the notice, the
13 division shall hold a hearing and determine whether the
14 violation should be upheld and whether any sanctions, including
15 civil penalties, shall be assessed. In assessing a penalty
16 authorized by this section, the division shall take into
17 account the seriousness of the violation, any good faith
18 efforts to comply with the applicable requirements, any history
19 of noncompliance under the Oil and Gas Act and other relevant
20 factors. When a decision is rendered by the division after a
21 hearing, any party of record adversely affected shall have the
22 right to have the matter heard de novo before the commission
23 pursuant to Section 70-2-13 NMSA 1978.

24 D. Any civil penalty assessed by a court or by the
25 division or commission pursuant to this section may not exceed

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1 ~~[two thousand five hundred dollars (\$2,500)]~~ ten thousand
 2 dollars (\$10,000) per day of noncompliance for each violation
 3 unless the violation presents a risk either to the health or
 4 safety of the public or of causing significant environmental
 5 harm, or unless the noncompliance continues beyond a time
 6 specified in the notice of violation or order issued by the
 7 division, commission or court, whereupon the civil penalty may
 8 not exceed ~~[ten thousand dollars (\$10,000)]~~ twenty-five
 9 thousand dollars (\$25,000) per day of noncompliance for each
 10 violation. ~~[No penalty assessed by the division or commission~~
 11 ~~after a hearing may exceed two hundred thousand dollars~~
 12 ~~(\$200,000); provided that such limitation does not apply to~~
 13 ~~penalties assessed by a court.]~~

14 E. The commission shall make rules, pursuant to
 15 Section 70-2-12.2 NMSA 1978, providing procedures for the
 16 issuance of notices of violations, the assessment of penalties
 17 and the conduct of informal proceedings and hearings pursuant
 18 to this section.

19 F. It is unlawful, subject to a criminal penalty of
 20 a fine of not more than five thousand dollars (\$5,000) or
 21 imprisonment for a term not exceeding three years or both such
 22 fine and imprisonment, for any person to knowingly and
 23 willfully:

24 (1) violate any provision of the Oil and Gas
 25 Act or any rule, regulation or order of the commission or the

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1 division issued pursuant to that act; or

2 (2) do any of the following for the purpose of
3 evading or violating the Oil and Gas Act or any rule,
4 regulation or order of the commission or the division issued
5 pursuant to that act:

6 (a) make any false entry or statement in
7 a report required by the Oil and Gas Act or by any rule,
8 regulation or order of the commission or division issued
9 pursuant to that act;

10 (b) make or cause to be made any false
11 entry in any record, account or memorandum required by the Oil
12 and Gas Act or by any rule, regulation or order of the
13 commission or division issued pursuant to that act;

14 (c) omit or cause to be omitted from any
15 such record, account or memorandum full, true and correct
16 entries; or

17 (d) remove from this state or destroy,
18 mutilate, alter or falsify any such record, account or
19 memorandum.

20 G. For the purposes of Subsection F of this
21 section, each day of violation shall constitute a separate
22 offense.

23 H. Any person who knowingly and willfully procures,
24 counsels, aids or abets the commission of any act described in
25 Subsection A or F of this section shall be subject to the same

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penalties as are prescribed in Subsection D or F of this section."

SECTION 4. Section 70-2-39 NMSA 1978 (being Laws 2019, Chapter 260, Section 1) is amended to read:

"70-2-39. FEES--~~[APPROPRIATION]~~ FEE ADJUSTMENTS--OIL CONSERVATION DIVISION SYSTEMS AND HEARINGS FUND CREATED.--

A. Beginning January 1, 2027 and on January 1 of each successive year, the fees provided by this section may be adjusted for inflation as provided in Subsection B of this section. The following fees are required to be paid to the ~~[oil conservation] division [of the energy, minerals and natural resources department]~~ with each application for:

(1) ~~[with each application for]~~ a non-federal and non-Indian permit to drill, deepen, plug back or reenter a well, the applicant shall submit to the division a nonrefundable fee of ~~[five hundred dollars (\$500)]~~ one thousand five hundred dollars (\$1,500);

(2) ~~[with each individual application for]~~ administrative approval of a non-standard location, downhole commingle, surface commingle, off-lease measurement, release notification and corrective action, change of operator, application for modification to surface waste management facility, request for the creation of a new pool, proposed alternative method permit or closure plan application or authorization to move produced water, the applicant shall

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1 submit to the division a nonrefundable fee of [~~one hundred~~
2 ~~fifty dollars (\$150)~~] four hundred fifty dollars (\$450);

3 (3) [~~with each application for~~] a fluid
4 injection well permit, the applicant shall submit to the
5 division a nonrefundable fee of [~~five hundred dollars (\$500)~~]
6 one thousand five hundred dollars (\$1,500) per well;

7 (4) [~~with each application for~~] a permit for a
8 commercial surface waste management facility, landfill or
9 landfarm, the applicant shall submit to the division a
10 nonrefundable fee of ten thousand dollars (\$10,000) per
11 facility;

12 (5) [~~with each application for~~] an
13 administrative hearing, re-hearing or de novo hearing before
14 the division or commission, the applicant shall submit to the
15 division a nonrefundable fee of [~~five hundred dollars (\$500)~~]
16 one thousand five hundred dollars (\$1,500) per application; and

17 (6) [~~with each application for~~] a continuance
18 of an administrative hearing, re-hearing or de novo hearing
19 before the division or commission, the applicant shall submit
20 to the division a nonrefundable fee of [~~one hundred fifty~~
21 ~~dollars (\$150)~~] four hundred fifty dollars (\$450) per
22 application.

23 B. On January 1, 2027 and on January 1 of each
24 successive year, the division may adjust the fees provided by
25 Subsection A of this section by multiplying the fee as of

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1 January 1, 2026 by a fraction, the numerator of which is the
 2 consumer price index ending in September of the previous year
 3 and the denominator of which is the consumer price index ending
 4 September 2025; provided that the fees shall not be adjusted
 5 below the minimum amounts provided in Subsection A of this
 6 section as a result of a decrease in the consumer price index.
 7 By November 1, 2026 and by November 1 of each successive year,
 8 the division shall post on its website the fees in Subsection A
 9 of this section for the next year.

10 [B-] C. An application for an administrative
 11 hearing, re-hearing or de novo hearing before the oil
 12 conservation division or commission will be considered to be
 13 materially amended if the amendment is made for a purpose other
 14 than to correct:

- 15 (1) typographical errors; or
- 16 (2) clerical errors.

17 [G-] D. The "oil conservation division systems and
 18 hearings fund" is created in the state treasury as a
 19 nonreverting fund. All funds received by the [oil
 20 conservation] division from fees imposed pursuant to Subsection
 21 A of this section shall be delivered to the state treasurer and
 22 deposited in the fund. Disbursements from the fund shall be
 23 made upon warrants drawn by the secretary of finance and
 24 administration pursuant to vouchers signed by the secretary of
 25 energy, minerals and natural resources or the secretary's

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1 authorized representative. Money in the fund is subject to
 2 appropriation by the legislature to the division to develop and
 3 modernize the division's online application processing system,
 4 online case management system, online data reporting and
 5 visualization systems and online case file system and for other
 6 technological and equipment upgrades necessary to support the
 7 efficient and transparent implementation and enforcement of the
 8 Oil and Gas Act, including hiring necessary information
 9 technology personnel, and for hearing administration costs.

10 Any unexpended or unencumbered balance remaining in the fund at
 11 the end of a fiscal year shall not revert to the general fund.

12 ~~[Money in the fund in fiscal year 2020 may be expended by the~~
 13 ~~division for the purposes of the fund.]~~

14 E. As used in this section, "consumer price index"
 15 means the consumer price index, not seasonally adjusted, for
 16 all urban consumers, United States city average for all items,
 17 or its successor index, as published by the United States
 18 department of labor for a twelve-month period ending September
 19 30."

20 **SECTION 5.** A new section of the Oil and Gas Act is
 21 enacted to read:

22 "[NEW MATERIAL] NATURAL GAS CAPTURE REQUIREMENTS--RULES.--

23 A. Beginning January 1, 2027, an operator shall
 24 ensure that at least ninety-eight percent of the natural gas
 25 produced or gathered by the operator's facilities is captured

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1 in a calendar year; provided that natural gas released during
2 an emergency or that is beneficially used by the operator or is
3 essential for drilling, completion, recompletion, gas gathering
4 or production operations does not count as gas released for the
5 purpose of determining an operator's overall capture
6 percentage.

7 B. The division shall adopt rules necessary to
8 implement the provisions of this section and an application for
9 a permit to drill shall be subject to the rules to be valid.

10 C. As used in this section, "operator" means a
11 person that is duly authorized to construct, manage or operate
12 an oil or gas well or associated facilities or a natural gas
13 gathering system."

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HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR HOUSE ENERGY,
ENVIRONMENT AND NATURAL RESOURCES COMMITTEE SUBSTITUTE FOR
HOUSE BILL 133

56TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2024

AN ACT

RELATING TO THE ENVIRONMENT; AMENDING THE OIL AND GAS ACT;
ALLOWING THE OIL CONSERVATION DIVISION OF THE ENERGY, MINERALS
AND NATURAL RESOURCES DEPARTMENT TO REGULATE CERTAIN TRANSFERS
OF OIL AND GAS WELLS AND AUTHORIZE THE CONVERSION OF OIL AND
GAS WELLS FOR ENERGY STORAGE AND GEOTHERMAL DEVELOPMENT;
INCREASING THE AMOUNT OF FEES AND FINANCIAL ASSURANCE
ASSOCIATED WITH OPERATING OIL AND GAS WELLS; INCREASING CIVIL
PENALTIES; ALLOWING FEES TO BE ADJUSTED TO ACCOUNT FOR
INFLATION; REQUIRING THE CAPTURE OF NINETY-EIGHT PERCENT OF
NATURAL GAS PRODUCED BEGINNING IN 2027.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 70-2-12 NMSA 1978 (being Laws 1978,
Chapter 71, Section 1, as amended) is amended to read:

"70-2-12. ENUMERATION OF POWERS.--

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1 A. The ~~[oil conservation]~~ division ~~[of the energy,~~
2 ~~minerals and natural resources department]~~ may:

- 3 (1) collect data;
- 4 (2) make investigations and inspections;
- 5 (3) examine properties, leases, papers, books
6 and records;
- 7 (4) examine, check, test and gauge oil and gas
8 wells, tanks, plants, refineries and all means and modes of
9 transportation and equipment;
- 10 (5) hold hearings;
- 11 (6) provide for the keeping of records and the
12 making of reports and for the checking of the accuracy of the
13 records and reports;
- 14 (7) limit and prorate production of crude
15 petroleum oil or natural gas or both as provided in the Oil and
16 Gas Act; and
- 17 (8) require either generally or in particular
18 areas certificates of clearance or tenders in connection with
19 the transportation of crude petroleum oil or natural gas or any
20 products of either or both oil and products or both natural gas
21 and products.

22 B. The ~~[oil conservation]~~ division may make rules
23 and orders ~~[for the purposes and with respect to the subject~~
24 ~~matter stated in this subsection]~~:

- 25 (1) to require dry or abandoned wells to be

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1 plugged in a way so as to confine the crude petroleum oil,
2 natural gas or water in the strata in which it is found and to
3 prevent it from escaping into other strata; pursuant to Section
4 70-2-14 NMSA 1978, the division shall require financial
5 assurance conditioned for the performance of the rules;

6 (2) to prevent crude petroleum oil, natural
7 gas or water from escaping from strata in which it is found
8 into other strata;

9 (3) to require reports showing locations of
10 all oil or gas wells and for the filing of logs and drilling
11 records or reports;

12 (4) to prevent the drowning by water of any
13 stratum or part thereof capable of producing oil or gas or both
14 oil and gas in paying quantities and to prevent the premature
15 and irregular encroachment of water or any other kind of water
16 encroachment that reduces or tends to reduce the total ultimate
17 recovery of crude petroleum oil or gas or both oil and gas from
18 any pool;

19 (5) to prevent fires;

20 (6) to prevent "blow-ups" and "caving" in the
21 sense that the conditions indicated by such terms are generally
22 understood in the oil and gas business;

23 (7) to require wells to be drilled, operated
24 and produced in such manner as to prevent injury to neighboring
25 leases or properties;

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- 1 (8) to identify the ownership of oil or gas
2 producing leases, properties, wells, tanks, refineries,
3 pipelines, plants, structures and all transportation equipment
4 and facilities;
5 (9) to require the operation of wells with
6 efficient gas-oil ratios and to fix such ratios;
7 (10) to fix the spacing of wells;
8 (11) to determine whether a particular well or
9 pool is a gas or oil well or a gas or oil pool, as the case may
10 be, and from time to time to classify and reclassify wells and
11 pools accordingly;
12 (12) to determine the limits of any pool
13 producing crude petroleum oil or natural gas or both and from
14 time to time redetermine the limits;
15 (13) to regulate the methods and devices
16 employed for storage in this state of oil or natural gas or any
17 product of either, including subsurface storage;
18 (14) to permit the injection of natural gas or
19 of any other substance into any pool in this state for the
20 purpose of repressuring, cycling, pressure maintenance,
21 secondary or any other enhanced recovery operations;
22 (15) to regulate the disposition, handling,
23 transport, storage, recycling, treatment and disposal of
24 produced water during, or for reuse in, the exploration,
25 drilling, production, treatment or refinement of oil or gas,

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1 including disposal by injection pursuant to authority delegated
2 under the federal Safe Drinking Water Act, in a manner that
3 protects public health, the environment and fresh water
4 resources;

5 (16) to determine the limits of any area
6 containing commercial potash deposits and from time to time
7 redetermine the limits;

8 (17) to regulate and, where necessary,
9 prohibit drilling or producing operations for oil or gas within
10 any area containing commercial deposits of potash where the
11 operations would have the effect unduly to reduce the total
12 quantity of the commercial deposits of potash that may
13 reasonably be recovered in commercial quantities or where the
14 operations would interfere unduly with the orderly commercial
15 development of the potash deposits;

16 (18) to spend the oil and gas reclamation fund
17 and do all acts necessary and proper to plug dry and abandoned
18 oil and gas wells and to restore and remediate abandoned well
19 sites and associated production facilities in accordance with
20 the provisions of the Oil and Gas Act, the rules adopted under
21 that act and the Procurement Code, including disposing of
22 salvageable equipment and material removed from oil and gas
23 wells being plugged by the state;

24 (19) to make well price category
25 determinations pursuant to the provisions of the federal

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1 Natural Gas Policy Act of 1978 or any successor act and, by
 2 regulation, to adopt fees for such determinations, which fees
 3 shall not exceed twenty-five dollars (\$25.00) per filing. Such
 4 fees shall be credited to the account of the [~~oil conservation~~]
 5 division by the state treasurer and may be expended as
 6 authorized by the legislature;

7 (20) to regulate the construction and
 8 operation of oil treating plants and to require the posting of
 9 bonds for the reclamation of treating plant sites after
 10 cessation of operations;

11 (21) to regulate the disposition of
 12 nondomestic wastes resulting from the exploration, development,
 13 production or storage of crude oil or natural gas to protect
 14 public health and the environment; [~~and~~]

15 (22) to regulate the disposition of
 16 nondomestic wastes resulting from the oil field service
 17 industry, the transportation of crude oil or natural gas, the
 18 treatment of natural gas or the refinement of crude oil to
 19 protect public health and the environment, including
 20 administering the Water Quality Act as provided in Subsection E
 21 of Section 74-6-4 NMSA 1978;

22 (23) to regulate the transfer of oil and gas
 23 wells, including limitations on transfers when:

24 (a) the transferor, the transferee or an
 25 entity that owns more than a twenty-five percent interest in a

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transferor or transferee has a significant history of noncompliance with the Oil and Gas Act or rules adopted pursuant to that act, including multiple notices of violations or spills or releases that are not in the process of being corrected or addressed;

(b) the transferee fails to provide adequate financial assurance as required by the division;

(c) the transferee lacks sufficient financial capacity based on known or projected production to manage liabilities associated with the oil and gas wells; or

(d) the division issues a written finding that the limitations on transfer are necessary for the purposes of mitigating risk to the state from potential inactive or abandoned oil and gas wells; and

(24) to authorize the conversion of an oil and gas well to a facility that supports energy storage or geothermal development, including establishing fees and financial assurance requirements specific to an energy storage or geothermal use."

SECTION 2. Section 70-2-14 NMSA 1978 (being Laws 1977, Chapter 237, Section 3, as amended) is amended to read:

"70-2-14. REQUIREMENT FOR FINANCIAL ASSURANCE.--

A. Each person, firm, corporation or association who operates ~~[any]~~ an oil, gas or service well within the state shall, as a condition precedent to drilling or producing the

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1 well, furnish financial assurance in the form of an irrevocable
2 letter of credit, ~~[or]~~ a cash or surety bond, a well plugging
3 risk pool fee or a ~~[well-specific]~~ plugging insurance policy
4 pursuant to the provisions of this section to the ~~[oil~~
5 ~~conservation]~~ division ~~[of the energy, minerals and natural~~
6 ~~resources department]~~ running to the benefit of the state and
7 conditioned that the covered well be plugged and abandoned in
8 ~~[compliance with the rules of the oil conservation]~~ accordance
9 with division rules. The ~~[oil conservation]~~ division shall
10 establish categories of financial assurance by rule after
11 notice and hearing. Such categories shall include: ~~[a blanket~~
12 ~~plugging financial assurance, which shall be set by rule in an~~
13 ~~amount not to exceed two hundred fifty thousand dollars~~
14 ~~(\$250,000), a blanket plugging financial assurance for~~
15 ~~temporarily abandoned status wells, which shall be set by rule~~
16 ~~at amounts greater than fifty thousand dollars (\$50,000), and~~
17 ~~one well plugging financial assurance in amounts determined~~
18 ~~sufficient to reasonably pay the cost of plugging the wells~~
19 ~~covered by the financial assurance]~~

20 (1) blanket plugging financial assurance for
21 an operator's active wells in an amount not to exceed:

22 (a) two hundred fifty thousand dollars
23 (\$250,000) for an operator with fewer than fifty wells and
24 total oil and gas production of fewer than one hundred thousand
25 barrels of oil equivalent per year;

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1 (b) three hundred fifty thousand dollars
 2 (\$350,000) for an operator not covered by Subparagraph (a) of
 3 this paragraph with fewer than one hundred wells and total oil
 4 and gas production of fewer than two hundred thousand barrels
 5 of oil equivalent per year;

6 (c) five hundred thousand dollars
 7 (\$500,000) for an operator not covered by Subparagraph (a) or
 8 (b) of this paragraph with fewer than one hundred fifty wells
 9 and total oil and gas production of fewer than five hundred
 10 thousand barrels of oil equivalent per year;

11 (d) seven hundred fifty thousand dollars
 12 (\$750,000) for an operator not covered by Subparagraph (a), (b)
 13 or (c) of this paragraph with fewer than three hundred wells or
 14 total oil and gas production of fewer than seven hundred fifty
 15 thousand barrels of oil equivalent per year;

16 (e) five million dollars (\$5,000,000)
 17 for an operator with between three hundred and five hundred
 18 wells or total oil and gas production of fewer than one million
 19 two hundred fifty thousand barrels of oil equivalent per year;
 20 or

21 (f) ten million dollars (\$10,000,000)
 22 for an operator with greater than five hundred wells and total
 23 oil and gas production of greater than one million two hundred
 24 fifty thousand barrels of oil equivalent per year;

25 (2) a well plugging risk pool fee; or

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1 (3) a one-well plugging financial assurance in
 2 an amount determined sufficient to reasonably pay the cost of
 3 plugging the well or wells covered by the financial assurance.

4 B. The division may determine blanket plugging
 5 financial assurance requirements for an operator based on well
 6 count and oil and gas production from wholly owned subsidiaries
 7 of the same corporate parent.

8 C. In establishing categories of financial
 9 assurance, the ~~[oil conservation]~~ division shall consider the
 10 depth of the well involved, the length of time since the well
 11 was produced, the cost of plugging similar wells and ~~[such]~~
 12 other factors ~~[as]~~ the ~~[oil conservation]~~ division deems
 13 relevant, such as operator size and relative risk. The ~~[oil~~
 14 ~~conservation]~~ division shall require a one-well financial
 15 assurance on any well that has been held in a temporarily
 16 abandoned status for more than two years or, at the election of
 17 the operator, may allow an operator to increase its blanket
 18 plugging financial assurance to cover wells held in temporarily
 19 abandoned status. All financial assurance shall remain in
 20 force until released by the ~~[oil conservation]~~ division. The
 21 ~~[oil conservation]~~ division shall release financial assurance
 22 when ~~[it]~~ the division is satisfied that the conditions of the
 23 financial assurance have been fully performed.

24 D. The division may assess a non-refundable monthly
 25 well plugging risk pool fee on a per well basis on a subset of

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1 an operator's wells not to exceed five hundred dollars (\$500)
2 per well to offset bonding obligations. A well plugging risk
3 pool fee collected by the division shall be deposited in the
4 oil and gas reclamation fund.

5 [B.] E. If any of the requirements of the Oil and
6 Gas Act or the rules promulgated pursuant to that act have not
7 been complied with, the [oil conservation] division, after
8 notice and hearing, may order any well plugged and abandoned by
9 the operator or surety or both in accordance with division
10 rules. If the order is not complied with in the time period
11 set out in the order, the financial assurance shall be
12 forfeited.

13 [C.] F. When any financial assurance is forfeited
14 pursuant to the provisions of the Oil and Gas Act or rules
15 promulgated pursuant to that act, the director of the [oil
16 conservation] division shall [give notice to the attorney
17 general, who shall] collect the forfeiture without delay.

18 [D.] G. All forfeitures shall be deposited in the
19 state treasury in the oil and gas reclamation fund.

20 [E.] H. When the financial assurance proves
21 insufficient to cover the cost of plugging oil and gas wells on
22 land other than federal land and funds must be expended from
23 the oil and gas reclamation fund to meet the additional
24 expenses, the [oil conservation] division is authorized to
25 bring suit against the operator in the district court of the

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1 county in which the well is located for indemnification for all
2 costs incurred by the [~~oil conservation~~] division in plugging
3 the well. All funds collected pursuant to a judgment in a suit
4 for indemnification brought under the provisions of this
5 section shall be deposited in the oil and gas reclamation fund.

6 [~~F.~~] I. An operator required to file financial
7 assurance for a well pursuant to this section is considered to
8 have met that requirement if the operator obtains a plugging
9 insurance policy that includes the specific well and that:

10 (1) is approved by the office of
11 superintendent of insurance;

12 (2) names the state of New Mexico as owner of
13 the policy and contingent beneficiary;

14 (3) names a primary beneficiary who agrees to
15 plug the specified wellbore;

16 (4) is fully prepaid and cannot be canceled or
17 surrendered;

18 (5) provides that the policy continues in
19 effect until the specified wellbore has been plugged;

20 (6) provides that benefits will be paid when,
21 but not before, the specified wellbore has been plugged in
22 accordance with rules of the [~~oil conservation~~] division in
23 effect at the time of plugging; and

24 (7) provides benefits that are not less than
25 an amount equal to the one-well financial assurance required by

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1 ~~[oil conservation]~~ division rules.

2 ~~[G.]~~ J. If, subsequent to an operator obtaining an
3 insurance policy as provided in this section, the one-well
4 financial assurance requirement applicable to the operator's
5 well is increased, either because the well is deepened or ~~[the~~
6 ~~rules of the oil conservation]~~ division rules are amended, the
7 operator is considered to have met the revised requirement if:

8 (1) the existing policy benefit equals or
9 exceeds the revised requirement;

10 (2) the operator obtains an amendment
11 increasing the policy benefit by the amount of the increase in
12 the applicable financial assurance requirement; or

13 (3) the operator obtains financial assurance
14 equal to the amount, if any, by which the revised requirement
15 exceeds the policy benefit."

16 **SECTION 3.** Section 70-2-31 NMSA 1978 (being Laws 1981,
17 Chapter 362, Section 1, as amended) is amended to read:

18 "70-2-31. VIOLATIONS OF THE OIL AND GAS ACT--PENALTIES.--

19 A. Whenever the division determines that a person
20 violated or is violating the Oil and Gas Act or any provision
21 of any rule, order, permit or authorization issued pursuant to
22 that act, the division may seek compliance and civil penalties
23 by:

24 (1) issuing a notice of violation;

25 (2) commencing a civil action in district

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1 court for appropriate relief, including injunctive relief; or

2 (3) issuing a temporary cessation order if the
3 division determines that the violation is causing or will cause
4 an imminent danger to public health or safety or a significant
5 imminent environmental harm. The cessation order will remain
6 in effect until the earlier of when the violation is abated or
7 thirty days unless a hearing is held before the division and a
8 new order is issued.

9 B. A notice of violation issued pursuant to
10 Paragraph (1) of Subsection A of this section shall:

11 (1) state with reasonable specificity the
12 nature of the violation; [~~shall~~]

13 (2) require compliance immediately or within a
14 specified time period; [~~shall~~]

15 (3) provide notice of the availability of an
16 informal review and the date of a hearing before the division;
17 and [~~shall~~]

18 (4) provide notice of potential sanctions,
19 including assessing a penalty, suspending, canceling or
20 terminating a permit or authorization, shutting in a well and
21 plugging and abandonment of a well and forfeiting financial
22 assurance pursuant to Section 70-2-14 NMSA 1978.

23 C. If the notice of violation is not resolved
24 informally within thirty days after service of the notice, the
25 division shall hold a hearing and determine whether the

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1 violation should be upheld and whether any sanctions, including
2 civil penalties, shall be assessed. In assessing a penalty
3 authorized by this section, the division shall take into
4 account the seriousness of the violation, any good faith
5 efforts to comply with the applicable requirements, any history
6 of noncompliance under the Oil and Gas Act and other relevant
7 factors. When a decision is rendered by the division after a
8 hearing, any party of record adversely affected shall have the
9 right to have the matter heard de novo before the commission
10 pursuant to Section 70-2-13 NMSA 1978.

11 D. Any civil penalty assessed by a court or by the
12 division or commission pursuant to this section may not exceed
13 ~~[two thousand five hundred dollars (\$2,500)]~~ ten thousand
14 dollars (\$10,000) per day of noncompliance for each violation
15 unless the violation presents a risk either to the health or
16 safety of the public or of causing significant environmental
17 harm, or unless the noncompliance continues beyond a time
18 specified in the notice of violation or order issued by the
19 division, commission or court, whereupon the civil penalty may
20 not exceed ~~[ten thousand dollars (\$10,000)]~~ twenty-five
21 thousand dollars (\$25,000) per day of noncompliance for each
22 violation. No penalty assessed by the division or commission
23 after a hearing may exceed ~~[two hundred thousand dollars~~
24 ~~(\$200,000)]~~ three million six hundred fifty thousand dollars
25 (\$3,650,000); provided that such limitation does not apply to

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penalties assessed by a court.

E. The commission shall make rules, pursuant to Section 70-2-12.2 NMSA 1978, providing procedures for the issuance of notices of violations, the assessment of penalties and the conduct of informal proceedings and hearings pursuant to this section.

F. It is unlawful, subject to a criminal penalty of a fine of not more than five thousand dollars (\$5,000) or imprisonment for a term not exceeding three years or both such fine and imprisonment, for any person to knowingly and willfully:

(1) violate any provision of the Oil and Gas Act or any rule, regulation or order of the commission or the division issued pursuant to that act; or

(2) do any of the following for the purpose of evading or violating the Oil and Gas Act or any rule, regulation or order of the commission or the division issued pursuant to that act:

(a) make any false entry or statement in a report required by the Oil and Gas Act or by any rule, regulation or order of the commission or division issued pursuant to that act;

(b) make or cause to be made any false entry in any record, account or memorandum required by the Oil and Gas Act or by any rule, regulation or order of the

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1 commission or division issued pursuant to that act;

2 (c) omit or cause to be omitted from any
3 such record, account or memorandum full, true and correct
4 entries; or

5 (d) remove from this state or destroy,
6 mutilate, alter or falsify any such record, account or
7 memorandum.

8 G. For the purposes of Subsection F of this
9 section, each day of violation shall constitute a separate
10 offense.

11 H. Any person who knowingly and willfully procures,
12 counsels, aids or abets the commission of any act described in
13 Subsection A or F of this section shall be subject to the same
14 penalties as are prescribed in Subsection D or F of this
15 section."

16 SECTION 4. Section 70-2-39 NMSA 1978 (being Laws 2019,
17 Chapter 260, Section 1) is amended to read:

18 "70-2-39. FEES--~~[APPROPRIATION]~~ FEE ADJUSTMENTS--OIL
19 CONSERVATION DIVISION SYSTEMS AND HEARINGS FUND CREATED.--

20 A. Beginning January 1, 2027 and on January 1 of
21 each successive year, the fees provided by this section may be
22 adjusted for inflation as provided in Subsection B of this
23 section. The following fees are required to be paid to the
24 ~~[oil conservation] division [of the energy, minerals and~~
25 ~~natural resources department]~~ with each application for:

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1 (1) ~~[with each application for]~~ a non-federal
2 and non-Indian permit to drill, deepen, plug back or reenter a
3 well, the applicant shall submit to the division a
4 nonrefundable fee of ~~[five hundred dollars (\$500)]~~ one thousand
5 five hundred dollars (\$1,500);

6 (2) ~~[with each individual application for]~~
7 administrative approval of a non-standard location, downhole
8 commingle, surface commingle, off-lease measurement, release
9 notification and corrective action, change of operator,
10 application for modification to surface waste management
11 facility, request for the creation of a new pool, proposed
12 alternative method permit or closure plan application or
13 authorization to move produced water, the applicant shall
14 submit to the division a nonrefundable fee of ~~[one hundred~~
15 ~~fifty dollars (\$150)]~~ four hundred fifty dollars (\$450);

16 (3) ~~[with each application for]~~ a fluid
17 injection well permit, the applicant shall submit to the
18 division a nonrefundable fee of ~~[five hundred dollars (\$500)]~~
19 one thousand five hundred dollars (\$1,500) per well;

20 (4) ~~[with each application for]~~ a permit for a
21 commercial surface waste management facility, landfill or
22 landfarm, the applicant shall submit to the division a
23 nonrefundable fee of ten thousand dollars (\$10,000) per
24 facility;

25 (5) ~~[with each application for]~~ an

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1 administrative hearing, re-hearing or de novo hearing before
 2 the division or commission, the applicant shall submit to the
 3 division a nonrefundable fee of [~~five hundred dollars (\$500)~~]
 4 one thousand five hundred dollars (\$1,500) per application; and

5 (6) [~~with each application for~~] a continuance
 6 of an administrative hearing, re-hearing or de novo hearing
 7 before the division or commission, the applicant shall submit
 8 to the division a nonrefundable fee of [~~one hundred fifty~~
 9 ~~dollars (\$150)~~] four hundred fifty dollars (\$450) per
 10 application.

11 B. On January 1, 2027 and on January 1 of each
 12 successive year, the division may adjust the fees provided by
 13 Subsection A of this section by multiplying the fee as of
 14 January 1, 2026 by a fraction, the numerator of which is the
 15 consumer price index ending in September of the previous year
 16 and the denominator of which is the consumer price index ending
 17 September 2025; provided that the fees shall not be adjusted
 18 below the minimum amounts provided in Subsection A of this
 19 section as a result of a decrease in the consumer price index.
 20 By November 1, 2026 and by November 1 of each successive year,
 21 the division shall post on its website the fees in Subsection A
 22 of this section for the next year.

23 [~~B.~~] C. An application for an administrative
 24 hearing, re-hearing or de novo hearing before the [~~oil~~
 25 ~~conservation~~] division or commission will be considered to be

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1 materially amended if the amendment is made for a purpose other
2 than to correct:

3 (1) typographical errors; or

4 (2) clerical errors.

5 ~~[C.]~~ D. The "oil conservation division systems and
6 hearings fund" is created in the state treasury as a
7 nonreverting fund. All funds received by the ~~[oil~~
8 ~~conservation]~~ division from fees imposed pursuant to Subsection
9 A of this section shall be delivered to the state treasurer and
10 deposited in the fund. Disbursements from the fund shall be
11 made upon warrants drawn by the secretary of finance and
12 administration pursuant to vouchers signed by the secretary of
13 energy, minerals and natural resources or the secretary's
14 authorized representative. Money in the fund is subject to
15 appropriation by the legislature to the division to develop and
16 modernize the division's online application processing system,
17 online case management system, online data reporting and
18 visualization systems and online case file system and for other
19 technological and equipment upgrades necessary to support the
20 efficient and transparent implementation and enforcement of the
21 Oil and Gas Act, including hiring necessary information
22 technology personnel, and for hearing administration costs.
23 Any unexpended or unencumbered balance remaining in the fund at
24 the end of a fiscal year shall not revert to the general fund.
25 ~~[Money in the fund in fiscal year 2020 may be expended by the~~

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1 ~~division for the purposes of the fund.]~~

2 E. As used in this section, "consumer price index"
3 means the consumer price index, not seasonally adjusted, for
4 all urban consumers, United States city average for all items,
5 or its successor index, as published by the United States
6 department of labor for a twelve-month period ending September
7 30."

8 SECTION 5. A new section of the Oil and Gas Act is
9 enacted to read:

10 "[NEW MATERIAL] NATURAL GAS CAPTURE REQUIREMENTS--RULES.--

11 A. Beginning January 1, 2027, an operator shall
12 ensure that at least ninety-eight percent of the natural gas
13 produced or gathered by the operator's facilities is captured
14 in a calendar year; provided that natural gas does not count as
15 gas released for the purpose of determining an operator's
16 overall capture percentage if that gas is:

- 17 (1) released during an emergency;
18 (2) beneficially used by the operator;
19 (3) not suitable for transportation or
20 processing due to nitrogen, hydrogen sulfide or carbon dioxide
21 concentrations;
22 (4) vented as a result of normal operation of
23 pneumatic controllers and pumps; or
24 (5) vented or flared from an exploratory well.

25 B. The division shall adopt rules necessary to

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1 implement the provisions of this section and an application for
2 a permit to drill shall be subject to the rules to be valid.

3 C. As used in this section, "operator" means a
4 person that is duly authorized to construct, manage or operate
5 an oil or gas well or associated facilities or a natural gas
6 gathering system."

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Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the Legislature. LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

FISCAL IMPACT REPORT

SPONSOR <u>HJC</u>	LAST UPDATED <u>02/02/24</u> ORIGINAL DATE <u>01/22/24</u>
SHORT TITLE <u>Oil & Gas Act Changes</u>	BILL NUMBER <u>CS/CS/House Bill 133/HENRCS/HJCS</u> ANALYST <u>Torres, Ismael/ Wan Smith</u>

REVENUE* (dollars in thousands)

Type	FY24	FY25	FY26	FY27	FY28	Recurring or Nonrecurring	Fund Affected
Application Fees	\$393.5 to \$455.2	\$3,148.3 to \$3,641.6	\$3,148.3 to \$3,641.6	\$3,148.3 to \$3,641.6	\$3,148.3 to \$3,641.6	Recurring	OCD Systems and Hearings Fund
Oil and Gas Severance Tax**		(\$530.0)	(\$4,150.0)	(\$14,280.0)	(\$21,380.0)	Recurring	Severance Tax Bonding Fund
Severance Tax Bonding Capacity**		Dependent upon bonding, negative	Dependent upon bonding, negative	Dependent upon bonding, negative	Dependent upon bonding, negative	Recurring	Capital Outlay
Oil and Gas Emergency School Tax**		(\$510.0)	(\$3,500.0)			Recurring	Early Childhood Trust Fund
Oil and Gas Emergency School Tax**			\$3,400.0	(\$12,420.0)	(\$18,630.0)	Recurring	Severance Tax Permanent Fund
Oil and Gas Conservation Tax**		(\$10.0)	(\$40.0)	(\$140.0)	(\$210.0)	Recurring	Oil and Gas Reclamation Fund
Oil and Gas Conservation Tax**		(\$20.0)	(\$170.0)	(\$580.0)	(\$870.0)	Recurring	General Fund
Oil and Gas Ad Valorem Production Tax**		Dependent on local property tax rates	Dependent on local property tax rates	Dependent on local property tax rates	Dependent on local property tax rates	Recurring	Local govts/ GOBs
Oil and Gas Ad Valorem Equipment Tax**		Dependent on local property tax rates	Dependent on local property tax rates	Dependent on local property tax rates	Dependent on local property tax rates	Recurring	Local govts/ GOBs
State Land Office Rental and Bonus Income**		Negative	Negative	Negative	Negative	Recurring	General Fund
State Land Office Royalty Payments**		(\$620.0)	(\$4,530.0)	(\$15,640.0)	(\$23,440.0)	Recurring	Land Grant Permanent Fund

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Federal Land Rental and Bonus Income**		Negative	Negative	Negative	Negative	Recurring	General Fund
Federal Land Royalty Payments**		(\$1,000.0)	(\$6,860.0)			Recurring	Early Childhood Trust Fund
Federal Land Royalty Payments**			(\$200.0)	(\$24,370.0)	(\$36,550.0)	Recurring	Severance Tax Permanent Fund
Investment Income Distributions from Permanent Funds**					(\$20.0)	Recurring	General Fund
Gross Receipts Tax**		(\$150.0)	(\$2,400.0)	(\$8,180.0)	(\$12,150.0)	Recurring	General Fund
Gross Receipts Tax**		(\$10.0)	(\$180.0)	(\$630.0)	(\$930.0)	Recurring	Local Gov.
Well Plugging Risk Pool Fee		Indeterminate but minimal gain	Indeterminate but minimal gain	Indeterminate but minimal gain	Indeterminate but minimal gain	Recurring	Oil and Gas Reclamation Fund

Parentheses () indicate revenue decreases.

*Estimates on the impacts of this bill are particularly difficult to discern. Numbers provided are intended to illustrate a potential magnitude of impact and not an exact amount. Please see *Fiscal Implications* for more information.

**Values for revenue types are the upper limits for the revenue impacts.

Relates to House Bills 30, House Bill 31, and House Bill 32

Sources of Information

LFC Files

Because of the short timeframe between the introduction of this bill and its first hearing, LFC has yet to receive analysis from state, education, or judicial agencies. This analysis could be updated if that analysis is received.

SUMMARY

Synopsis of HJC Substitute for House Bill 133

The House Judiciary Committee Substitute for House Bill 133 makes several changes to the Oil and Gas Act (Chapter 70 Article 2 NMSA 1978). First, the bill amends Section 70-2-12 NMSA 1978 to give the Oil Conservation Division (OCD) of the Energy, Minerals and Natural Resources Department (EMNRD) additional authority.

Specifically, OCD would be authorized to:

- Regulate the transfer of oil and gas wells or facilities, including placing limitations on transfers to mitigate risk to the state or when an entity has a significant history of noncompliance, fails to provide adequate financial assurance, or lacks sufficient financial capacity to cover facility liabilities; and
- Permit the conversion of an oil and gas well to a facility for energy storage or geothermal development and establish fees and financial assurance requirements for these purposes.

The substitute bill amends the financial assurance requirements of the Oil and Gas Act (Section 70-2-14 NMSA 1978) to establish tiers of blanket plugging financial assurance based on an operator's quantity of active wells and to increase the maximum blanket bond from \$250 thousand to \$10 million. Maximum amounts for each tier are set as follows:

1. \$250 thousand for an operator with fewer than 50 wells and total oil and gas production of fewer than 100 thousand barrels of oil equivalent per year
2. \$350 thousand for an operator with between 50 and 99 wells and total oil and gas production of 100 thousand to 199 thousand barrels of oil equivalent per year
3. \$500 thousand for an operator with between 99 and 149 wells and total oil and gas production of 200 thousand to 499 thousand barrels of oil equivalent per year
4. \$750 thousand for an operator with between 150 and 299 wells or total oil and gas production of 500 thousand to 749 thousand barrels of oil equivalent per year
5. \$5 million for an operator with between 300 and 500 wells or total oil and gas production of fewer than 1.25 million barrels of oil equivalent per year
6. \$10 million for an operator with more than 500 wells and total oil and gas production of greater than 1.25 million barrels of oil equivalent per year

The HJC substitute also adds to the categories of financial assurance the option of a well plugging risk pool fee, not to exceed \$500 per well, that OCD may assess on a subset of an operator's wells to offset bonding obligations. The monthly risk pool fee is nonrefundable and would be deposited in the oil reclamation fund. The bill adds a third category of one-well plugging financial assurance in an amount determined sufficient to reasonably pay the cost of plugging the well or wells covered by the financial assurance.

The bill specifies that, in establishing categories of financial assurance, OCD shall consider operator size and relative risk among the factors already named in statute. In addition, the bill moves the responsibility for collecting a forfeiture of financial assurance from the Office of the Attorney General (NMAG) to OCD.

The remaining amendments to existing statute made by the committee substitute relate to penalties and fees. The bill increases the maximum daily civil penalty for noncompliance with the Oil and Gas Act from \$2,500 to \$10 thousand per violation; in cases where a risk to public health and safety or the environment exists, the penalty is increased from \$10 thousand to \$25 thousand. Additionally, the existing \$200 thousand cap on administrative penalties is increased to \$3.65 million.

The substitute bill increases all but one¹ of OCD's application fees by a factor of three and gives OCD authority, beginning in 2027, to annually adjust fees for inflation. The bill also expands the allowable uses of the OCD systems and hearings fund, where application fees are deposited. Currently, money in that fund is appropriated to OCD "to develop and modernize the division's online application processing system, online case management system and online case file system and for other technological upgrades and hearing administration costs." The bill adds "data reporting and visualization systems" to the list of items the fund should be used to develop and specifies that appropriations may also be used for equipment upgrades and information technology personnel "necessary to support the efficient and transparent implementation and enforcement of the Oil and Gas Act."

¹ The fee for commercial surface waste facility permitting is not increased by the legislation.

The committee substitute creates a new section of the Oil and Gas Act that requires operators to ensure at least 98 percent of natural gas produced or gathered by the operator's facilities is captured in a calendar year, beginning in 2027. The new language states that natural gas meeting any of the following conditions does not count as uncaptured gas:

- Released during an emergency;
- Beneficially used by the operator;
- Not suitable for transportation or processing due to nitrogen, hydrogen sulfide, or carbon dioxide concentrations;
- Vented as a result of normal operation of pneumatic controllers and pumps;
- Vented or flared from an exploratory well

The bill requires OCD to adopt rules for implementing the new provisions.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns, or May 15, 2024, if enacted.

FISCAL IMPLICATIONS

Potential Impacts to Production of Oil and Gas

The table on page one presents an estimate of potential impacts intended to illustrate a magnitude rather than an exact amount. To gauge potential impacts on production, LFC staff utilized data from Rystad Energy, an energy analytics firm.

Firstly, future oil and gas production was estimated by considering completed wells, wells currently in progress, wells in the drilling phase, legacy wells, drilled but uncompleted wells, and already permitted wells. This analysis focused only on the remaining estimated future production attributed to not-yet-permitted wells, which, on average, accounts for approximately 16 percent of the projected future production. Fiscal implications for already permitted wells were not considered in this bill's analysis. As a result, fiscal impacts are delayed until production begins for not-yet-permitted wells. If this legislation negatively impacts production from already permitted wells, the financial costs estimated on page one could increase significantly and commence earlier than indicated.

Secondly, staff further refined the production impacts from not-yet-permitted wells by applying the share of oil and gas produced by smaller, private producers as a proxy for the wells most likely affected by increased financial assurances, capture requirements, and other regulatory costs. Producers with less than 1 million barrels of production a year in 2023 were chosen for this proxy and represent less than 2.3 percent of New Mexico's total production. This amount was chosen from cash flow analysis based on LFC analysis; however, costs vary greatly by producer and producers with half the production may still be able to produce profitably under these methodological assumptions. Therefore, the actual number of impacted producers is likely to be less than what is estimated here. This share of smaller producers was applied to the not-yet-permitted oil production. Larger producers, presumed more capable of handling increased regulatory costs, were not expected to be significantly impacted. However, if this legislation does substantially and negatively affect production from these larger sources beyond the estimated impact, the financial costs projected on page one could increase significantly.

Finally, the first and second estimates of impacts were applied to production representing a potential impact of less than 1 percent of future production that could be affected. The resulting fiscal impact analysis applied production impacts to the consensus revenue estimating group forecast for prices and taxable deductions, published in December 2023. Revenue impacts were then calculated by the affected fund. Similarly, for gross receipts tax impacts, a regression on Eddy County and Lea County matched taxable gross receipts and oil production was used to convert the possible impact to those collections. The lowest possible tax rate was used to determine losses. If losses occur in higher tax districts, oil prices rise, or deductions fall, costs represented on page one could increase significantly. Similarly, if oil prices fall or deductions rise, costs represented on page one could decrease significantly.

Other General Fund Revenues

Civil penalties assessed by OCD are reverted to the general fund. Raising the penalty caps may therefore increase general fund revenue, but by an indeterminate or negligible amount due to the unknown effect increased penalties will have on deterrence. Additionally, most notices of violation are resolved in settlement, so the impact of penalty limits on the eventual amount assessed on an operator is minimal, according to the agency. In FY23, violations of the Oil and Gas Act resulted in \$2.15 million in civil penalties reverted to the general fund.

Agency Revenues

Application fees collected by OCD are deposited in the OCD systems and hearings fund. The committee substitute increases the fees for four of the five application types by a factor of three. In FY23, revenue from the application fees amended by the legislation was \$1.82 million. EMNRD therefore estimates annual revenue to the systems and hearings fund would be three times that amount, or approximately \$5.46 million, in the first full fiscal year after the bill's fee increases take effect. This would be a revenue increase of \$3.64 million beginning in FY25. Using the FY20-FY23 average OCD fee revenue instead of the FY23 total to estimate the revenue impact, the projected FY25 increase is \$3.15 million.

Because the legislation would go into effect on May 15, 2024, if enacted, the estimated revenue increase for FY24 is between \$393.5 thousand and \$455.2 thousand, which is the estimated range of the annual revenue increase prorated for one and a half months.

The bill's increase to OCD's blanket financial assurance requirement has no estimable direct revenue impact, since the state only receives bonds that are forfeited. It may, however, eventually affect the balance of the oil reclamation fund, which is OCD's source of funding for plugging orphan wells beyond the costs covered by operators' financial assurance. An orphan well is an inactive well that has no viable operator of record, meaning the well's owner is bankrupt or no longer exists and therefore cannot carry out its well-plugging responsibilities. The current average cost to plug an orphan well, according to OCD, is \$125 thousand. Remediation costs vary much more widely: The division uses an estimate of \$110 thousand for projection purposes, but an individual remediation could cost millions of dollars if the site had a significant leak.

The oil reclamation fund derives most of its revenue (typically 90-100 percent) from a portion of oil and gas conservation tax proceeds. Other revenue comes from forfeited financial assurance: when an operator forfeits a bond, the proceeds are deposited in the oil reclamation fund. Bond

forfeitures, however, are rare and only cover a small portion of OCD spending on well remediation. For example, in the last five fiscal years, only \$250.3 thousand in forfeited bonds has been collected, while OCD has spent over \$9 million on orphan well plugging. Therefore, although raising the blanket bond limit would have an impact of uncertain magnitude on the oil reclamation fund, it would undoubtedly increase the proportion of well remediation expenditures funded by operators' financial assurance.

The committee substitute's addition of a well plugging risk pool fee would generate new revenue for the oil reclamation fund. Because the bill language leaves the assessment of the risk pool fee to the discretion of OCD, the amount of revenue generated will depend on how the division decides to implement the new policy. Without analysis from EMNRD on this provision of the committee substitute, an estimate of additional revenue is not known.

Oil and gas conservation tax revenue is projected to take a hit due to the potential production impacts discussed previously. As this is the main source of revenue for the oil reclamation fund, in a typical year, declines could negatively affect OCD's ability to remediate orphan wells. However, in FY22, conservation tax revenue increased by 377 percent, bringing the balance of the fund to \$27 million. Therefore, the projected decrease in conservation tax revenue would have a negligible effect on the oil reclamation fund.

SIGNIFICANT ISSUES

OCD Authority

The changes made by Section 1 of the substitute bill to OCD's authority regarding well transfers allow the division to consider operator compliance and other risk factors when evaluating applications. This primarily has relevance to potential transfers from large operators to small operators that buy wells when average production volume is lower. According to EMNRD, these small operators have less capacity to provide adequate financial assurance and fewer resources to comply with OCD requirements. Consequently, well transfers of this nature frequently result in an orphaned well that the state must assume responsibility for and remediate using funds from OCD's oil reclamation fund. Taking into account the likelihood that a well transfer would increase the state's liability would give OCD more opportunities to prevent abandoned well occurrences that consume state resources.

The other piece of the expanded authority granted to OCD by Section 1 relates to repurposing abandoned wells for uses outside of oil and gas development or wastewater reinjection. As the state and the energy industry continue to move away from fossil fuel extraction, interest in converting wells to kinetic energy storage or geothermal development site, for example, is rising. Authorizing OCD to create a regulatory framework for such conversions would allow for continued economic activity at former well sites outside of the oil and gas industry.

Gas Capture Requirement

In Section 5, the bill requires operators capture at least 98 percent of natural gas produced or gathered by the operator's facilities in a calendar year. However, NMAG points out that OCD regulations already require a 98 percent natural gas capture rate by December 31, 2026 (see NMAC 19.15.27.9), making the proposed statutory amendments redundant. NMAG further notes that the bill's language is more general than the existing regulations, and it is thus unclear "whether the bill is intended to impose any requirements not already in place." This creates a

potential interpretation of Section 5 of the bill that the existing natural gas capture rule does not comport with legislative intent.

ADMINISTRATIVE IMPLICATIONS

If this bill is enacted, EMNRD will need to promulgate rules to update NMAC 19.15.7., 19.1.58, 19.15.15, 19.15.25, and 19.15.107.

Eliminating the requirement for NMAG to collect forfeited financial assurance would reduce the administrative burden on that agency and streamline forfeiture collections by keeping the entire process in OCD.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

House Bill 133 duplicates, in part, House Bill 30, House Bill 31, and House Bill 32. House Bill 133 also conflicts, in part, with House Bill 30, House Bill 31, and House Bill 32.

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