

1 SENATE BILL 375

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

3 INTRODUCED BY

4 Howie C. Morales

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10 AN ACT

11 RELATING TO THE STATE LAND OFFICE; GRANTING THE COMMISSIONER OF
12 PUBLIC LANDS SPECIFIC AUTHORITY TO RAISE THE ROYALTY RATE AND
13 THE POINT OF APPLICATION OF THE ROYALTY RATE FOR OIL AND GAS ON
14 STATE TRUST LANDS TO ENHANCE REVENUE FOR BENEFICIARIES;
15 REQUIRING REPORTS ON VENTED OR FLARED GAS.

16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

18 SECTION 1. Section 19-10-4 NMSA 1978 (being Laws 1985,
19 Chapter 195, Section 2) is amended to read:

20 "19-10-4. AUTHORIZATION TO LEASE--LEASE PROVISIONS.--In
21 issuing oil and gas leases, the commissioner shall:

22 A. use the exploratory lease form as set forth in
23 Section 19-10-4.1 NMSA 1978 for oil and gas leases of tracts
24 classified as nonrestricted lands under Section 19-10-3 NMSA
25 1978;

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1 B. use the discovery lease form as set forth in
2 Section 19-10-4.2 NMSA 1978 or the exploratory lease form for
3 oil and gas leases of tracts classified as restricted lands and
4 categorized as regular under Section 19-10-3 NMSA 1978; [~~and~~]

5 C. use the development lease form as set forth in
6 Section 19-10-4.3 NMSA 1978, the discovery lease form or the
7 exploratory lease form for oil and gas leases of tracts
8 classified as restricted lands and categorized as premium under
9 Section 19-10-3 NMSA 1978 [~~provided that in using the~~
10 ~~development lease form for a tract receiving less than ninety~~
11 ~~total percentage points under Section 19-10-3 NMSA 1978, the~~
12 ~~royalty rate shall not exceed three-sixteenths~~];

13 D. have the authority to set royalty rates for
14 premium development leases not higher than one-fourth, but not
15 less than three-sixteenths;

16 E. have the authority to modify the lease terms to
17 levy royalties for all oil and gas extracted from the ground,
18 not just the gas produced and saved by the lessee; and

19 F. have the authority to modify lease terms to
20 require lessees to report monthly to the state land office the
21 amount of gas that the lessee vents, flares or otherwise allows
22 to escape into the atmosphere."

23 SECTION 2. Section 19-10-4.3 NMSA 1978 (being Laws 1985,
24 Chapter 195, Section 5) is amended to read:

25 "19-10-4.3. DEVELOPMENT FORM OF LEASE--PREMIUM RESTRICTED

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1 LAND.--The following form is designed as the "Development
2 Form". It may be used by the commissioner for oil and gas
3 leases on lands classified as restricted lands and categorized
4 as Premium:

5 LEASE NO. _____ APPLICATION NO. _____

6 OIL AND GAS LEASE
7 (Development Form)

8 This agreement, dated _____, [19] 20____,
9 between the state of New Mexico, acting by and through its
10 commissioner of public lands, hereinafter called the "lessor",
11 and _____,
12 whose address is _____
13 _____,
14 hereinafter called the "lessee",

15 WITNESSETH:

16 WHEREAS, the lessee has filed in the office of the
17 commissioner of public lands an application for an oil and gas
18 lease covering the lands hereinafter described and has tendered
19 therewith the required first payment; and

20 WHEREAS, all of the requirements of law relative to the
21 application and tender have been duly complied with;

22 THEREFORE, in consideration of the premises as well as the
23 sum of _____
24 dollars (\$ _____), the same being the amount of the
25 tender above mentioned, and the further sum of \$ _____

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1 filing fee, and of the covenants and agreements hereinafter
2 contained, the lessor does hereby grant, demise, lease and let
3 unto the [~~said~~] lessee, exclusively, for the sole and only
4 purpose of exploration, development and production of oil or
5 gas (including carbon dioxide and helium), or both thereon and
6 therefrom with the right to own all oil and gas so produced and
7 saved therefrom and not reserved as royalty by the lessor under
8 the terms of this lease, together with [~~rights-of-way~~] rights
9 of way, easements and servitudes for pipelines, telephone
10 lines, tanks, power houses, stations, gasoline plants and
11 fixtures for producing, treating and caring for such products
12 and housing and boarding employees and any and all rights and
13 privileges necessary, incident to or convenient for the
14 economical operation of [~~said~~] the land, for oil and gas, with
15 right for such purposes to the free use of oil, gas, casing-
16 head gas or water from [~~said~~] the lands, but not from lessor's
17 water wells, and with the rights of removing either during or
18 after the term hereof, all and any improvements placed or
19 erected on the premises by the lessee, including the right to
20 pull all casing, subject, however, to the covenants and
21 conditions hereinafter set out, the following described land
22 situated in the county of _____, state of New Mexico, and
23 more particularly described as follows:

24 Line SUBDIVISION Sec. Twp. Rge. Acres Institution

25 1 _____

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7 [~~Said~~] The lands having been awarded to lessee and
8 designated as Tract No. _____ at a public sale held by
9 the commissioner of public lands on _____, [~~19~~]
10 20__.

11 To have and to hold said land, and all the rights and
12 privileges granted hereunder, to and unto the lessee for a
13 primary term of five years from the date hereof, and as long
14 thereafter as oil and gas, or either of them, is produced in
15 paying quantities from said land by lessee, subject to all of
16 the terms and conditions as hereinafter set forth.

17 In consideration of the premises, the parties covenant and
18 agree as follows:

19 1. Subject to the free use without royalty, as
20 hereinbefore provided, the lessee shall pay the lessor as
21 royalty _____ (not less than three-sixteenths nor more than
22 [~~one-fifth~~] one-fourth) part of the oil produced and saved from
23 the leased premises or the cash value thereof, at the option of
24 the lessor, such value to be the price prevailing the day oil
25 is run into a pipeline, if the oil be run into a pipeline, or

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1 into storage tanks, if the oil is stored.

2 2. Subject to the free use without royalty, as
3 hereinbefore provided, at the option of the lessor at any time
4 and from time to time, the lessee shall pay the lessor as
5 royalty _____ (not less than three-sixteenths nor more than
6 [~~one-fifth~~ one-fourth) part of the gas produced and saved from
7 the leased premises, including casing-head gas. Unless said
8 option is exercised by lessor, the lessee shall pay the lessor
9 as royalty _____ (not less than three-sixteenths nor more
10 than [~~one-fifth~~ one-fourth) of the cash value of the gas,
11 including casing-head gas, produced and saved from the leased
12 premises and marketed or utilized, such value to be equal to
13 the net proceeds derived from the sale of such gas in the
14 field; provided, however, the cash value for royalty purposes
15 of carbon dioxide gas and of hydrocarbon gas delivered to a
16 gasoline plant for extraction of liquid hydrocarbons shall be
17 equal to the net proceeds derived from the sale of such gas,
18 including any liquid hydrocarbons recovered therefrom.

19 Notwithstanding the foregoing provisions, the lessor may
20 require the payment of royalty for all or any part of the gas
21 [~~produced and saved~~] extracted under this lease [~~and marketed~~
22 ~~or utilized at a~~]. The royalty payment for gas extracted from
23 the leased premises shall be the price per m.c.f. equal to the
24 maximum price being paid for gas of like kind and quality and
25 under like conditions in the same field or area or may reduce

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1 the royalty value of any such gas (to any amount not less than
2 the net proceeds of sale thereof, in the field) if the
3 commissioner of public lands shall determine such action to be
4 necessary to the successful operation of the lands for oil or
5 gas purposes or to encouragement or the greatest ultimate
6 recovery of oil or gas or to the promotion or conservation of
7 oil or gas or in the public interest.

8 This lease shall not expire at the end of the primary term
9 hereof if there is a well capable of producing gas in paying
10 quantities located upon some part of the lands embraced herein,
11 or upon lands pooled or communitized herewith, where such well
12 is shut-in due to the inability of the lessee to obtain a
13 pipeline connection or to market the gas therefrom, and if the
14 lessee timely pays an annual royalty on or before the annual
15 rental paying date next ensuing after the expiration of ninety
16 days from the date said well was shut-in and on or before said
17 rental date thereafter. The payment of said annual royalty
18 shall be considered for all purposes the same as if gas were
19 being produced in paying quantities and upon the commencement
20 of marketing of gas from said well or wells the royalty paid
21 for the lease year in which the gas is first marketed shall be
22 credited upon the royalty payable hereunder to the lessor for
23 such year. The provisions of this section shall also apply
24 where gas is being marketed from said leasehold premises and
25 through no fault of the lessee, the pipeline connection or

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1 market is lost or ceases, in which case this lease shall not
2 expire so long as said annual royalty is paid as herein
3 provided. The amount of any annual royalty payable under this
4 section shall equal twice the annual rental due by the lessee
5 under the terms of this lease but not less than three hundred
6 twenty dollars (\$320) per well per year; provided, however,
7 that any such annual royalty for any month beginning on or
8 after ten years from the date hereof shall equal four times the
9 annual rental due by the lessee under the terms of this lease
10 but not less than two thousand dollars (\$2,000) per well per
11 year; provided further, that no annual royalty shall be payable
12 under this section if equivalent amounts are timely paid
13 pursuant to another lease issued by lessor and if such other
14 lease includes lands communitized with lands granted hereunder
15 for the purpose of prorationally sharing in the shut-in well.
16 Notwithstanding the provisions of this section to the contrary,
17 this lease shall not be continued after five years from the
18 date hereof for any period of more than ten years by the
19 payment of said annual royalty unless, for good cause shown,
20 the commissioner of public lands, in ~~[his]~~ the commissioner's
21 discretion, grants such a continuance.

22 3. Lessee agrees to make full settlement on the twentieth
23 day of each month for all royalties due the lessor for the
24 preceding month, under this lease, and to permit the lessor or
25 its agents, at all reasonable hours, to examine lessee's books

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1 relating to the production and disposition of oil and gas
2 produced. Lessee further agrees to submit to lessor annually
3 upon forms furnished by lessor, verified reports showing
4 lessee's operations for the preceding year.

5 4. An annual rental at the rate of _____ per
6 acre shall become due and payable to the lessor by the lessee,
7 upon each acre of the land above described and then claimed by
8 such lessee and the same shall be due and payable in advance to
9 the lessor on the successive anniversary dates of this lease,
10 but the annual rental on any assignment shall in no event be
11 less than forty dollars (\$40.00).

12 In the event the lessee shall elect to surrender any or
13 all of said acreage, ~~he~~ the lessee shall deliver to the
14 lessor a duly executed release thereof and in event said lease
15 has been recorded then ~~he~~ the lessee shall upon request
16 furnish and deliver to the lessor a certified copy of a duly
17 recorded release.

18 5. The lessee may at any time by paying to the lessor all
19 amounts then due as provided herein and the further sum of
20 forty dollars (\$40.00), surrender and cancel this lease insofar
21 as the same covers all or any portion of the lands herein
22 leased and be relieved from further obligations or liability
23 hereunder, in the manner as hereinbefore provided. Provided,
24 this surrender clause and the option herein reserved to the
25 lessee shall cease and become absolutely inoperative

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1 immediately and concurrently with the institution of any suit
2 in any court of law or equity by the lessee, lessor or any
3 assignee, to enforce this lease, or any of its terms expressed
4 or implied.

5 6. All payments due hereunder shall be made on or before
6 the day such payment is due, at the office of the commissioner
7 of public lands in Santa Fe, New Mexico.

8 7. The lessee with the consent of the lessor shall have
9 the rights to assign this lease in whole or in part. Provided,
10 however, that no assignment of an undivided interest in the
11 lease or in any part thereof nor any assignment of less than a
12 legal subdivision shall be recognized or approved by the
13 lessor. Upon approval in writing by the lessor of an
14 assignment, the assignor shall stand relieved from all
15 obligations to the lessor with respect to the lands embraced in
16 the assignment and the lessor shall likewise be relieved from
17 all obligations to the assignor as to such tracts, and the
18 assignee shall succeed to all of the rights and privileges of
19 the assignor with respect to such tracts and shall be held to
20 have assumed all of the duties and obligations of the assignor
21 to the lessor as to such tracts.

22 8. In the event a well or wells producing oil or gas in
23 paying quantities should be brought in on adjacent land [~~which~~]
24 that is draining the leased premises, lessee shall drill such
25 offset well or wells as a reasonably prudent operator would

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1 drill under the same or similar circumstances; provided that no
2 such offset well shall be required if compensatory royalties
3 are paid pursuant to an agreement between the lessor and the
4 lessee.

5 9. The lessee agrees to notify the lessor of the location
6 of each well before commencing drilling thereon, to keep a
7 complete and accurate log of each well drilled and to furnish a
8 copy thereof, verified by some person having actual knowledge
9 of the facts, to the lessor upon the completion of any well,
10 and to furnish the log of any unfinished well at any time when
11 requested to do so by the lessor.

12 If any lands embraced in this lease shall be included in
13 any deed or contract of purchase outstanding and subsisting
14 issued pursuant to any sale made of the surface of such lands
15 prior to the date of this lease, it is agreed and understood
16 that no drilling operation shall be commenced on any such lands
17 so sold unless and until the lessee shall have filed a good and
18 sufficient bond with the lessor as required by law, to secure
19 the payment for such damage to the livestock, range, water,
20 crops or tangible improvements on such lands as may be suffered
21 by the purchaser holding such deed or contract of purchase, or
22 [~~his~~] the lessee's successors, by reason of the developments,
23 use and occupation of such lands by such lessee. Provided,
24 however, that no such bond shall be required if such purchaser
25 shall waive the right to require such bond to be given in the

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1 manner provided by law.

2 10. In drilling wells, all water-bearing strata shall be
3 noted in the log, and the lessor reserves the right to require
4 that all or any part of the casing shall be left in any
5 nonproductive well when lessor deems it to the interest of the
6 beneficiaries of the lands granted hereunder to maintain said
7 well or wells for water. For such casing so left in wells the
8 lessor shall pay to the lessee the reasonable value thereof.

9 11. Lessee shall be liable and agree to pay for all
10 damages to the range, livestock, growing crops or improvements
11 caused by lessee's operations on said lands. When requested by
12 the lessor the lessee shall bury pipelines below plow depth.

13 12. The lessee shall not remove any machinery or fixtures
14 placed on said premises, nor draw the casing from any well
15 unless and until all payments and obligations due the lessor
16 under the terms of this agreement shall have been paid or
17 satisfied. The lessee's right to remove the casing is subject
18 to the provision of Paragraph 10 above.

19 13. Upon failure or default of the lessee to comply with
20 any of the provisions or covenants hereof, the lessor is hereby
21 authorized to cancel this lease and such cancellation shall
22 extend to and include all rights hereunder as to the whole of
23 the tract so claimed, or possessed by the lessee, but shall not
24 extend to, nor affect the rights of any other lessee or
25 assignee claiming any portion of the lands upon which no

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1 default has been made; provided, however, that before any such
2 cancellation shall be made, the lessor shall mail to the
3 lessee, so defaulting, by registered or certified mail,
4 addressed to the post office address of such lessee as shown by
5 the records of the state land office, a notice of intention of
6 cancellation specifying the default for which cancellation is
7 to be made, and if within thirty days from the date of mailing
8 said notice the said lessee shall remedy the default specified
9 in said notice, cancellation shall not be made.

10 14. If this lease shall have been maintained in
11 accordance with the provisions hereof and if at the expiration
12 of the primary term provided for herein oil or gas is not being
13 produced on said land but lessee is then engaged in bona fide
14 drilling or reworking operations thereon, this lease shall
15 remain in full force and effect so long as such operations are
16 diligently prosecuted and, if they result in the production of
17 oil or gas, so long thereafter as oil and gas in paying
18 quantities, or either of them, is produced from said land;
19 provided, however, such operations extending beyond the primary
20 term shall be approved by the lessor upon written application
21 filed with the lessor on or before the expiration of said term,
22 and a report of the status of all of such operations shall be
23 made by the lessee to the lessor every thirty days and a
24 cessation of such operations for more than twenty consecutive
25 days shall be considered as an abandonment of such operations

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1 and this lease shall thereupon terminate.

2 If during the drilling or reworking of any well under this
3 section, lessee loses or junks the hole or well and after
4 diligent efforts in good faith is unable to complete said
5 operations, then within twenty days after the abandonment of
6 said operations, lessee may commence another well within three
7 hundred thirty feet of the lost or junked hole or well and
8 drill the same with due diligence.

9 Operations commenced and continued as herein provided
10 shall extend this lease as to all lands as to which the same is
11 in full force and effect as of the time said drilling
12 operations are commenced; provided, however, this lease shall
13 be subject to cancellation in accordance with Paragraph 13
14 hereof for failure to pay rentals or file reports [~~which~~] that
15 may become due while operations are being conducted hereunder.

16 15. Should production of oil and gas or either of them in
17 paying quantities be obtained while this lease is in force and
18 effect and should thereafter cease from any cause after the
19 expiration of five years from the date hereof, this lease shall
20 not terminate if lessee commences additional drilling or
21 reworking operations within sixty days after the cessation of
22 such production and shall remain in full force and effect so
23 long as such operations are prosecuted in good faith with no
24 cessation of more than twenty consecutive days, and if such
25 operations result in the production of oil or gas in paying

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1 quantities, so long thereafter as oil or gas in paying
2 quantities is produced from said land; provided, however,
3 written notice of intention to commence such operations shall
4 be filed with the lessor within thirty days after the cessation
5 of such production, and a report of the status of such
6 operations shall be made by the lessee to the lessor every
7 thirty days, and the cessation of such operations for more than
8 twenty consecutive days shall be considered as an abandonment
9 of such operations and this lease shall thereupon terminate.

10 16. Lessees, including their heirs, assigns, agents and
11 contractors, shall at their own expense fully comply with all
12 laws, regulations, rules, ordinances and requirements of the
13 city, county, state, federal authorities and agencies, in all
14 matters and things affecting the premises and operations
15 thereon [~~which~~] that may be enacted or promulgated under the
16 governmental police powers pertaining to public health and
17 welfare, including but not limited to conservation, sanitation,
18 aesthetics, pollution, cultural properties, fire and ecology.
19 Such agencies are not to be deemed third party beneficiaries
20 hereunder; however, this clause is enforceable by the lessor in
21 any manner provided in this lease or by law.

22 17. Should lessor desire to exercise its rights to take
23 in-kind its royalty share of oil, gas or associated substances
24 or purchase all or any part of the oil, gas or associated
25 substances produced from the lands covered by this lease, the

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1 lessee hereby irrevocably consents to the lessor exercising its
2 right. Such consent is a consent to the termination of any
3 supplier/purchaser relationship between the lessor and the
4 lessee deemed to exist under federal regulations. Lessee
5 further agrees that it will require any purchaser of oil, gas
6 or associated substances to likewise waive any such rights.

7 18. Lessor reserves a continuing option to purchase at
8 any time and from time to time, at the market price prevailing
9 in the area on the date of purchase, all or any part of the
10 minerals (oil and gas) that will be produced from the lands
11 covered by this lease.

12 19. Lessor reserves the right to execute leases for
13 geothermal resource development and operation thereon; the
14 right to sell or dispose of the geothermal resources of such
15 lands; and the right to grant rights of way and easements for
16 these purposes.

17 20. All terms of this agreement shall extend to and bind
18 the heirs, executors, administrators, successors and assigns of
19 the parties hereto.

20 In witness whereof, the party of the first part has
21 hereunto signed and caused its name to be signed by its
22 commissioner of public lands thereunto duly authorized, with
23 the seal of [~~his~~] office affixed, and the lessee has signed
24 this agreement the day and year first above written.

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By _____
Commissioner of Public Lands, Lessor

_____(Seal)".
Lessee."

SECTION 3. A new section of Chapter 19, Article 10 NMSA
1978 is enacted to read:

"[NEW MATERIAL] COMMISSIONER--DATA COLLECTION ON WASTED
GAS.--The commissioner shall collect data on the amount of gas
that lessees of state trust lands vent, flare, leak or
otherwise allow to escape into the atmosphere and publish that
data on the state land office's website every August, beginning
in August 2018. To meet this requirement, the commissioner may
use data already submitted to the oil conservation division of
the energy, minerals and natural resources department. If the
commissioner does not require lessees to report that data to
the state land office, the commissioner shall hire an
independent auditor or the oil conservation division to gather
and analyze the data."