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.--

.227498.2
A. The [oil conservation] division [of the energy, minerals and natural resources department] may:

   (1) collect data;

   (2) make investigations and inspections;

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

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

   (5) hold hearings;

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

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

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

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

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

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

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

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

(5) to prevent fires;

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

(7) to require wells to be drilled, operated and produced in such manner as to prevent injury to neighboring leases or properties;
(8) to identify the ownership of oil or gas producing leases, properties, wells, tanks, refineries, pipelines, plants, structures and all transportation equipment and facilities;

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

(10) to fix the spacing of wells;

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

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

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

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

(15) to regulate the disposition, handling, transport, storage, recycling, treatment and disposal of produced water during, or for reuse in, the exploration, drilling, production, treatment or refinement of oil or gas,
including disposal by injection pursuant to authority delegated
under the federal Safe Drinking Water Act, in a manner that
protects public health, the environment and fresh water
resources;

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

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

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

(19) to make well price category
determinations pursuant to the provisions of the federal
Natural Gas Policy Act of 1978 or any successor act and, by regulation, to adopt fees for such determinations, which fees shall not exceed twenty-five dollars ($25.00) per filing. Such fees shall be credited to the account of the division by the state treasurer and may be expended as authorized by the legislature;

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

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

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

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

(a) the transferor, the transferee or an entity that owns more than a twenty-five percent interest in a
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
well, furnish financial assurance in the form of an irrevocable letter of credit, [or] a cash or surety bond, a well plugging risk pool fee or a [well-specific] plugging insurance policy pursuant to the provisions of this section to the [oil conservation] division [of the energy, minerals and natural resources department] running to the benefit of the state and conditioned that the covered well be plugged and abandoned in [compliance with the rules of the oil conservation] accordance with division rules. The [oil conservation] division shall establish categories of financial assurance by rule after notice and hearing. Such categories shall include a blanket plugging financial assurance [which shall be set by rule] tiered to reflect operator size and relative risk in an amount not to exceed [two hundred fifty thousand dollars ($250,000), a blanket plugging financial assurance for temporarily abandoned status wells, which shall be set by rule at amounts greater than fifty thousand dollars ($50,000) and] ten million dollars ($10,000,000), a well plugging risk pool fee or a one-well plugging financial assurance in amounts determined sufficient to reasonably pay the cost of plugging the well or wells covered by the financial assurance. In establishing categories of financial assurance, the [oil conservation] division shall consider the depth of the well involved, the length of time since the well was produced, the cost of plugging similar wells and [such] other factors [as] the [oil conservation] division
deems relevant, such as operator size and relative risk. The division shall require a one-well financial assurance on any well that has been held in a temporarily abandoned status for more than two years or, at the election of the operator, may allow an operator to increase its blanket plugging financial assurance to cover wells held in temporarily abandoned status. All financial assurance shall remain in force until released by the division. The division shall release financial assurance when the division is satisfied that the conditions of the financial assurance have been fully performed.

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

C. If any of the requirements of the Oil and Gas Act or the rules promulgated pursuant to that act have not been complied with, the division, after notice and hearing, may order any well plugged and abandoned by the operator or surety or both in accordance with division rules. If the order is not complied with in the time period set out in the order, the financial assurance shall be forfeited.
HENRC/HB 133

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

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

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

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

1. is approved by the office of superintendent of insurance;
2. names the state of New Mexico as owner of
the policy and contingent beneficiary;

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

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

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

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

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

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

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

(2) the operator obtains an amendment increasing the policy benefit by the amount of the increase in the applicable financial assurance requirement; or
(3) the operator obtains financial assurance equal to the amount, if any, by which the revised requirement exceeds the policy benefit."

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

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

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

(1) issuing a notice of violation;

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

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

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

(1) state with reasonable specificity the nature of the violation; [shall]
(2) require compliance immediately or within a specified time period; [shall]

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

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

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

D. Any civil penalty assessed by a court or by the division or commission pursuant to this section may not exceed .227498.2
[two thousand five hundred dollars ($2,500)] ten thousand
dollars ($10,000) per day of noncompliance for each violation
unless the violation presents a risk either to the health or
safety of the public or of causing significant environmental
harm, or unless the noncompliance continues beyond a time
specified in the notice of violation or order issued by the
division, commission or court, whereupon the civil penalty may
not exceed [ten thousand dollars ($10,000)] twenty-five
thousand dollars ($25,000) per day of noncompliance for each
violation. [No penalty assessed by the division or commission
after a hearing may exceed two hundred thousand dollars
($200,000), provided that such limitation does not apply to
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 commission or division issued pursuant to that act;

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

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

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

H. Any person who knowingly and willfully procures, counsels, aids or abets the commission of any act described in Subsection A or F of this section shall be subject to the same .227498.2
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
submit to the division a nonrefundable fee of \[\text{[one hundred fifty dollars ($150)] four hundred fifty dollars ($450)}\];

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

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

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

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

B. On January 1, 2027 and on January 1 of each successive year, the division may adjust the fees provided by Subsection A of this section by multiplying the fee as of .227498.2
January 1, 2026 by a fraction, the numerator of which is the consumer price index ending in September of the previous year and the denominator of which is the consumer price index ending September 2025; provided that the fees shall not be adjusted below the minimum amounts provided in Subsection A of this section as a result of a decrease in the consumer price index.

By November 1, 2026 and by November 1 of each successive year, the division shall post on its website the fees in Subsection A of this section for the next year.

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

(1) typographical errors; or
(2) clerical errors.

[C.][D. The "oil conservation division systems and hearings fund" is created in the state treasury as a nonreverting fund. All funds received by the [oil conservation] division from fees imposed pursuant to Subsection A of this section shall be delivered to the state treasurer and deposited in the fund. Disbursements from the fund shall be made upon warrants drawn by the secretary of finance and administration pursuant to vouchers signed by the secretary of energy, minerals and natural resources or the secretary's .227498.2
authorized representative. Money in the fund is subject to
appropriation by the legislature to the division to develop and
modernize the division's online application processing system,
online case management system, online data reporting and
visualization systems and online case file system and for other
technological and equipment upgrades necessary to support the
efficient and transparent implementation and enforcement of the
Oil and Gas Act, including hiring necessary information
technology personnel, and for hearing administration costs.
Any unexpended or unencumbered balance remaining in the fund at
the end of a fiscal year shall not revert to the general fund.
[Money in the fund in fiscal year 2020 may be expended by the
division for the purposes of the fund.]

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

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

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

A. Beginning January 1, 2027, an operator shall
ensure that at least ninety-eight percent of the natural gas
produced or gathered by the operator's facilities is captured
in a calendar year; provided that natural gas released during
an emergency or that is beneficially used by the operator or is
essential for drilling, completion, recompletion, gas gathering
or production operations does not count as gas released for the
purpose of determining an operator's overall capture
percentage.

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

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