

PROPOSED COMMITTEE SUBSTITUTE FOR
HOUSE BILL 680

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

DISCUSSION DRAFT

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;
AMENDING AND ENACTING SECTIONS OF THE OIL AND GAS ACT
CONCERNING POWERS OF THE OIL CONSERVATION COMMISSION AND THE
OIL CONSERVATION DIVISION OF THE ENERGY, MINERALS AND NATURAL
RESOURCES DEPARTMENT TO ADDRESS VIOLATIONS; PROVIDING FOR CIVIL
AND CRIMINAL PENALTIES; AMENDING AND ADDING DEFINITIONS USED IN
THE OIL AND GAS ACT; MAKING TECHNICAL CONFORMING CHANGES.

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

SECTION 1. Section 70-2-4 NMSA 1978 (being Laws 1935,
Chapter 72, Section 3, as amended) is amended to read:

"70-2-4. OIL CONSERVATION COMMISSION--MEMBERS--TERM--
OFFICERS--QUORUM--POWER TO ADMINISTER OATHS.--There is created
an "oil conservation commission" [~~hereinafter in the Oil and
Gas Act called the "commission"~~] to be composed of a designee

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1 of the commissioner of public lands, a designee of the
2 secretary of energy, minerals and natural resources and the
3 director of the oil conservation division. The designees of
4 the commissioner of public lands and the secretary of energy,
5 minerals and natural resources shall be persons who have
6 expertise in the regulation of petroleum production by virtue
7 of education or training. No salary or compensation shall be
8 paid any member of the commission for [~~his~~] services as a
9 member of the commission. The term of office of each member of
10 the commission shall be concurrent with the other office held
11 by [~~him~~] that member. The commission shall organize by
12 electing a [~~chairman~~] chair from its membership. Two members
13 of the commission shall constitute a quorum for all purposes.
14 The commission shall adopt a seal, and the seal affixed to any
15 paper signed by the director of the oil conservation division
16 shall be prima facie evidence of due execution. [~~The attorney~~
17 ~~general shall be the attorney for the commission.~~] Any member
18 of the commission or the director of the oil conservation
19 division or any employee of the commission or division shall
20 have power to administer oaths to any witness in any hearing,
21 investigation or proceeding contemplated [~~by~~] pursuant to the
22 Oil and Gas Act [~~or by any other law of this state relating to~~
23 ~~the conservation of oil and gas~~]."

24 SECTION 2. Section 70-2-28 NMSA 1978 (being Laws 1935,
25 Chapter 72, Section 19, as amended) is amended to read:

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1 "70-2-28. ACTIONS FOR VIOLATIONS.--

2 A. Whenever it [~~shall appear~~] appears that any
3 person is violating or threatening to violate [~~any statute of~~
4 ~~this state with respect to the conservation of oil and gas or~~
5 ~~both or~~] any provision of [~~this~~] the Oil and Gas Act or any
6 rule, [~~regulation or~~] order [~~made thereunder~~] or permit issued
7 pursuant to that act, the division [~~through the attorney~~
8 ~~general shall~~] may:

9 (1) bring suit against [~~such~~] that person for
10 penalties in the county of the residence of the [~~defendant or~~]
11 person, in the county of the residence of any [~~defendant~~]
12 person, if there [~~be~~] is more than one defendant, [~~or~~] in the
13 county where the violation is alleged to have occurred [~~for~~
14 ~~penalties, if any are applicable~~] or in the first judicial
15 district and to restrain [~~such~~] the person from continuing
16 [~~such~~] the violation or from carrying out the threat of
17 violation. In [~~such~~] the suit, the division may obtain
18 injunctions, prohibitory and mandatory, including temporary
19 restraining orders and temporary injunctions, as the facts may
20 warrant, including, when appropriate, an injunction restraining
21 any person from moving or disposing of illegal [~~oil or illegal~~
22 ~~oil product or illegal gas or illegal gas~~] product, and any or
23 all [~~such~~] commodities or funds derived from the sale thereof
24 may be ordered to be impounded or placed under the control of
25 an agent appointed by the court if, in the judgment of the

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1 court, such action is advisable; or

2 (2) issue a compliance order stating with
3 reasonable specificity the nature of the violation and:

4 (a) requiring compliance immediately or
5 within a specified time period;

6 (b) assessing a civil penalty in
7 accordance with Section 70-2-31 NMSA 1978;

8 (c) suspending or terminating the permit
9 allegedly violated; or

10 (d) any combination of the foregoing.

11 B. A compliance order issued pursuant to this
12 section shall become final unless a person named in the
13 compliance order submits a written request to the commission
14 for a public hearing no later than thirty days after the
15 compliance order was served. Rehearings and appeals of a final
16 compliance order shall proceed in accordance with Sections
17 70-2-25 and 70-2-26 NMSA 1978.

18 C. The remedies provided by this section are
19 cumulative and do not limit any other rights or remedies of the
20 division or the commission with respect to any violation of the
21 Oil and Gas Act or of any rule, order or permit issued pursuant
22 to that act."

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

25 "70-2-31. VIOLATIONS OF THE OIL AND GAS ACT--PENALTIES.--

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1 A. ~~[Any]~~ A person who ~~[knowingly and willfully]~~
2 violates any provision of the Oil and Gas Act or any provision
3 of any rule ~~[or]~~, order or permit issued pursuant to that act
4 shall be subject to a civil penalty of not more than ~~[one~~
5 ~~thousand dollars (\$1,000)]~~ fifteen thousand dollars (\$15,000)
6 for each day of each violation. ~~[For purposes of this~~
7 ~~subsection, in the case of a continuing violation, each day of~~
8 ~~violation shall constitute a separate violation. The penalties~~
9 ~~provided in this subsection shall be recoverable by]~~

10 B. In assessing the penalty, the division or the
11 commission may consider the extent of the violation's impact on
12 waste, correlative rights, public health and the environment,
13 any good-faith efforts to comply with the applicable
14 requirement and any other relevant factors.

15 C. If a penalty, including a penalty assessed
16 pursuant to a compliance order, is not paid within thirty days
17 after the order assessing the penalty becomes final or within
18 the time frame prescribed by the order:

19 (1) the division, commission or court may
20 assess an additional civil penalty in an amount not to exceed
21 twenty-five thousand dollars (\$25,000) for each day that the
22 penalty remains unpaid; or

23 (2) the penalty may be recovered by a civil
24 suit filed by [the attorney general in the name and on behalf
25 of] the commission or the division in the district court of the

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1 county in which the defendant resides or in which any defendant
2 resides if there ~~[be]~~ is more than one defendant, ~~[or]~~ in the
3 district court of any county in which the violation occurred or
4 in the first judicial district.

5 D. If any final order, including a compliance
6 order, assessing a penalty is appealed to the district court
7 pursuant to Section 70-2-25 NMSA 1978, the division or the
8 commission may seek recovery of the penalty by a counterclaim
9 in that case.

10 E. The payment of ~~[such]~~ a penalty shall not
11 operate to legalize any ~~[illegal oil, illegal gas or]~~ illegal
12 product involved in the violation for which the penalty is
13 imposed or relieve a person on whom the penalty is imposed from
14 liability to any other person for damages arising out of ~~[such]~~
15 the violation.

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

21 ~~(1) violate]~~

22 F. A person is guilty of a third degree felony and
23 upon conviction shall be sentenced pursuant to Section 31-18-15
24 NMSA 1978 if the person knowingly violates any provision of the
25 Oil and Gas Act or any rule, ~~[regulation or order of the~~

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1 ~~commission or the division~~ order or permit issued pursuant to
2 that act [~~or~~

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

7 ~~(a) make~~ or if the person knowingly:

8 (1) makes or causes to be made any false entry
9 or statement in a required form, report, [~~required by the Oil~~
10 ~~and Gas Act or by any rule, regulation or order of the~~
11 ~~commission or division issued pursuant to that act;~~

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

16 ~~(c) omit~~ record, account or memorandum;

17 (2) omits or [cause] causes to be omitted from
18 [~~any such~~] a required form, report, record, account or
19 memorandum full, true and correct entries; or

20 [~~(d) remove~~]

21 (3) removes from this state or [~~destroy,~~
22 ~~mutilate, alter or falsify any such~~] destroys, mutilates,
23 alters or falsifies a required form, report, record, account or
24 memorandum.

25 [~~G.~~] G. For the purposes of Subsection [~~B~~] F of

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1 this section, each day of violation shall constitute a separate
2 offense.

3 ~~[D.]~~ H. Any person who knowingly ~~[and willfully]~~
4 procures, counsels, ~~[aides]~~ aids or abets the commission of any
5 act described in Subsection A ~~[or B]~~ or F of this section shall
6 be subject to the same penalties as are prescribed ~~[therein]~~
7 for violations of those subsections."

8 **SECTION 4.** Section 70-2-33 NMSA 1978 (being Laws 1935,
9 Chapter 72, Section 24, as amended) is amended to read:

10 "70-2-33. DEFINITIONS.--As used in the Oil and Gas Act:

11 A. "person" means:

12 (1) any individual, estate, trust, receiver,
13 cooperative association, club, corporation, company, firm,
14 partnership, joint venture, syndicate or other entity; or

15 (2) the United States or any agency or
16 instrumentality thereof or the state or any political
17 subdivision thereof;

18 B. "pool" means an underground reservoir containing
19 a common accumulation of crude petroleum oil or natural gas or
20 both. Each zone of a general structure, which zone is
21 completely separate from any other zone in the structure, is
22 covered by the word "pool" as used in the Oil and Gas Act.

23 "Pool" is synonymous with "common source of supply" and with
24 "common reservoir";

25 C. "field" means the general area that is underlaid

1 or appears to be underlaid by at least one pool and also
2 includes the underground reservoir or reservoirs containing the
3 crude petroleum oil or natural gas or both. The words "field"
4 and "pool" mean the same thing when only one underground
5 reservoir is involved; however, "field", unlike "pool", may
6 relate to two or more pools;

7 D. "product" means any commodity or thing made or
8 manufactured from crude petroleum oil or natural gas and all
9 derivatives of crude petroleum oil or natural gas, including
10 refined crude oil, crude tops, topped crude, processed crude
11 petroleum, residue from crude petroleum, cracking stock,
12 uncracked fuel oil, treated crude oil, fuel oil, residuum, gas
13 oil, naphtha, distillate, gasoline, kerosene, benzine, wash
14 oil, waste oil, lubricating oil and blends or mixtures of crude
15 petroleum oil or natural gas or any derivative thereof;

16 E. "owner" means the person who has the right to
17 drill into and to produce from any pool and to appropriate the
18 production either for [~~himself~~] the person or for [~~himself~~] the
19 person and another;

20 F. "producer" means the owner of a well capable of
21 producing crude petroleum oil or natural gas or both in paying
22 quantities;

23 G. "gas transportation facility" means a pipeline
24 in operation serving gas wells for the transportation of
25 natural gas or some other device or equipment in like operation

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1 whereby natural gas produced from gas wells connected therewith
2 can be transported or used for consumption;

3 H. "correlative rights" means the opportunity
4 afforded, so far as it is practicable to do so, to the owner of
5 each property in a pool to produce without waste [~~his~~] the
6 owner's just and equitable share of the crude petroleum oil or
7 natural gas or both in the pool, being an amount, so far as can
8 be practicably determined and so far as can be practicably
9 obtained without waste, substantially in the proportion that
10 the quantity of recoverable oil or gas or both under the
11 property bears to the total recoverable crude petroleum oil or
12 natural gas or both in the pool and, for such purpose, to use
13 [~~his~~] the owner's just and equitable share of the reservoir
14 energy;

15 I. "potash" means the naturally occurring bedded
16 deposits of the salts of the element potassium;

17 J. "casinghead gas" means any gas or vapor or both
18 indigenous to an oil stratum and produced from such stratum
19 with oil, including any residue gas remaining after the
20 processing of casinghead gas to remove its liquid components;
21 [~~and~~]

22 K. "produced water" means water that is an
23 incidental byproduct from drilling for or the production of
24 crude petroleum oil and natural gas;

25 L. "commission" means the oil conservation

1 commission; and

2 M. "division" means the oil conservation division
3 of the energy, minerals and natural resources department."

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

6 "[NEW MATERIAL] REPORTING REQUIREMENT.--

7 A. No later than October 1 of each year, the
8 division shall report to the legislature and to the governor:

9 (1) the number of violations that the division
10 has investigated pursuant to the Oil and Gas Act during the
11 previous fiscal year;

12 (2) the total amount of penalties imposed by
13 the division for violations pursuant to the Oil and Gas Act
14 during the previous fiscal year;

15 (3) the total amount of penalties collected by
16 the division for violations pursuant to the Oil and Gas Act
17 during the previous fiscal year;

18 (4) for each penalty assessed, the following
19 information shall be provided:

20 (a) the name and location of the person
21 penalized;

22 (b) the actual penalty assessed,
23 including the number of days for which the penalty was assessed
24 and the amount of the penalty per day of the violation;

25 (c) the reasons underlying the

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1 determination of the amount of the penalty, including
2 mitigating circumstances;

3 (d) whether the violation was part of a
4 pattern of violations by the same person; and

5 (e) any other rationale used in
6 determining the amount and duration of the penalty; and

7 (5) the number and nature of lawsuits filed
8 for a violation of the Oil and Gas Act, including the names of
9 defendants, the nature of the violation and the outcome of the
10 litigation.

11 B. The annual report required pursuant to
12 Subsection A of this section shall simultaneously be made
13 available to the public, including on a website maintained by
14 the division."

15 SECTION 6. EFFECTIVE DATE.--The effective date of the
16 provisions of this act is July 1, 2019.