SENATE BILL 409

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

Steven P. Neville and Peter Wirth

AN ACT

RELATING TO INDUSTRIAL REGULATION; TRANSFERRING AUTHORITY OVER PIPELINES, PIPELINE SAFETY AND EXCAVATION OF UNDERGROUND FACILITIES FROM THE PUBLIC REGULATION COMMISSION TO THE OIL CONSERVATION DIVISION OF THE ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT; AMENDING THE PIPELINE SAFETY ACT AND CHAPTER 62, ARTICLE 14 NMSA 1978; TRANSFERRING FUNCTIONS, PERSONNEL, APPROPRIATIONS, PROPERTY, RECORDS AND CONTRACTS; MAKING CONFORMING AND TECHNICAL CHANGES; AMENDING AND REPEALING SECTIONS OF THE NMSA 1978; RECOMPILING SECTION 8-8-11 NMSA 1978 (BEING LAWS 1998, CHAPTER 108, SECTION 11); AMENDING LAWS 2020, CHAPTER 9, SECTION 59; PROVIDING A JANUARY 1, 2023 EFFECTIVE DATE.

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

SECTION 1. Section 60-13-38 NMSA 1978 (being Laws 1967, .219033.1
Chapter 199, Section 41, as amended) is amended to read:

"60-13-38. CERTIFICATES OF COMPETENCE--EXAMINATION--JOURNEYMAN.--

A. A person shall not engage in the occupation or trade of journeyman unless [he] the person holds a certificate of competence issued by the division for the occupation or trade in which [he] the person desires to engage.

B. The categories for certificates of competence are: journeyman electrician, journeyman plumber, journeyman gas fitter, journeyman pipe fitter, journeyman sheet metal worker, journeyman boiler operator, residential wireman and journeyman welder working on pipelines, collection lines or compressor stations.

C. An applicant for a certificate of competence shall be required to take an examination approved and adopted by the division as to [his] knowledge of the orders and rules governing the occupation or trade for which a certificate is sought, and as to [his] technical knowledge and ability pertaining to [his] the particular trade. The examination may be oral, written or demonstrative or any combination thereof, as required by rules of the commission.

D. The division shall issue a certificate of competence to [any] a journeyman welder working on pipelines, collection lines or compressor stations who shows evidence of having satisfactorily completed an examination administered by
an independent testing organization or public utility employing
engineers registered with the state, such examination meeting
the minimum pipeline safety standards set by the [public
regulation commission] oil conservation division of the energy,
minerals and natural resources department.

E. Applications for certificates of competence
shall be in the form and shall contain [such] the information
and attachments as the division prescribes.

F. The division shall establish a reasonable fee
for [any] an examination or issuance of certificate of
competence.

G. A person is not eligible to take an examination
for a certificate of competence unless [he] the person has had
two years' experience in the occupation or trade for which a
certificate of competence is sought, or the equivalent thereof
as determined by the commission, or has successfully completed
a course in the trade approved by the instructional support and
vocational education division of the [state department of]
public education department.

H. Employment of an apprentice working under the
direct supervision of a certified journeyman is not prohibited
by the Construction Industries Licensing Act.

I. A person is eligible to take an examination for
a journeyman electrician certificate of competence after at
least:

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(1) four years of accredited training in the electrical trade;

(2) four years of apprenticeship in the electrical trade;

(3) four years of practical experience in the electrical trade, of which two years are in the commercial trade, industrial trade or the equivalent as determined by the commission; or

(4) successfully completing an electrical trade program approved by the instructional support and vocational education division of the [state department of] public education department and two years of practical experience in the commercial electrical trade.

J. Continuing education requirements for a journeyman electrician shall include at least sixteen hours of continuing education in every three-year period between national electrical code updates, of which eight hours are code change instructions and eight hours are other industry-related instruction. All continuing education curricula and instructors shall be approved by the commission based on recommendations by the electrical bureau.

K. A certificate of competence shall not be renewed until a complete application for renewal has been received by the division. Proof of completion of the continuing education requirements shall be submitted to the division with the .219033.1
application for renewal of certificate of competence. An application for renewal that is not accompanied by proof of completion of the continuing education requirements is incomplete and shall not be processed. The continuing education requirements in this subsection shall only apply to a journeyman electrician with the designation "EE-98J" or "JE98". This does not apply to EE98.

L. A person is eligible to take an examination for a residential wireman's certificate of competence after at least:

(1) two years of accredited training or apprenticeship in the electrical trade;

(2) two years of practical experience in wiring residential dwellings; or

(3) successfully completing a course in the trade approved by the instructional support and vocational education division of the [state department of] public education department and one year of practical experience in wiring residential dwellings.

M. The provisions of Subsections I and L of this section do not apply to a person who was enrolled as a full-time student before June 20, 2003 in an electrical trade program approved by the instructional support and vocational education division of the [state department of] public education department."
SECTION 2. Section 62-14-2 NMSA 1978 (being Laws 1973, Chapter 252, Section 2, as amended) is amended to read:

"62-14-2. DEFINITIONS.--As used in Chapter 62, Article 14 NMSA 1978:

A. "advance notice" means two working days;

B. "blasting" means the use of an explosive to excavate;

C. "cable television lines and related facilities" means the facilities of any cable television system or closed-circuit coaxial cable communications system or other similar transmission service used in connection with any cable television system or other similar closed-circuit coaxial cable communications system;

D. ["commission" means the public regulation commission] "division" means the oil conservation division of the energy, minerals and natural resources department;

E. "emergency excavation" means an excavation that must be performed due to circumstances beyond the excavator's control and that affects public safety, health or welfare;

F. "excavate" means the movement or removal of earth using mechanical excavating equipment or blasting and includes augering, backfilling, digging, ditching, drilling, grading, plowing in, pulling in, ripping, scraping, trenching, tunneling and directional boring;

G. "excavator" means a person that excavates;
H. "master meter system and operators" means a pipeline system that distributes natural gas or liquid propane gas within a public place, such as a mobile home park, housing project, apartment complex, school, university or hospital where the operator of the master meter system purchases gas from a distributor through a single large meter and resells the gas through a gas distribution pipeline system. The resale may occur as a payment included in a rental payment or association dues or as a separately metered system;

I. "means of location" means a mark such as a stake, a flag, whiskers or paint that is conspicuous in nature and that is designed to last at least ten working days if not disturbed;

J. "mechanical excavating equipment" means all equipment powered by any motor, engine or hydraulic or pneumatic device used for excavating and includes trenchers, bulldozers, backhoes, power shovels, scrapers, draglines, clam shells, augers, drills, cable and pipe plows or other plowing-in or pulling-in equipment;

K. "one-call notification system" means a communication system in which an operation center provides telephone services or other reliable means of communication for the purpose of receiving excavation notice and damage reporting information and distributing that information to owners and operators of pipelines and other underground facilities;
L. "person" means the legal representative of or an individual, partnership, corporation, joint venture, state, subdivision or instrumentality of the state or an association;

M. "pipeline" means a pipeline or system of pipelines and appurtenances for the transportation or movement of any oil or gas, or oil or gas products and their byproducts subject to the jurisdiction of federal law or regulation, with the exception of master meter systems and operators;

N. "positive response" means a response, within the advance notice period, initiated by owners or operators of pipelines and underground facilities by reliable means of communication, to the one-call notification system's positive response registry system. A positive response allows the excavator to verify whether all affected pipeline and underground facility owners or operators have marked their underground facilities pursuant to Section 62-14-5 NMSA 1978 prior to commuting to the excavation site and commencing excavation;

O. "reasonable efforts" means notifying the appropriate one-call notification center or underground facility owner or operator of planned excavation;

P. "underground facility" means any tangible property described in Subsections C, M and Q of this section that is underground, but does not include residential sprinklers or low-voltage lighting; and
Q. "underground utility line" means an underground conduit or cable, including fiber optics, and related facilities for transportation and delivery of electricity, telephonic or telegraphic communications or water, sewer and fire protection lines, with the exception of master meter systems and operators."

SECTION 3. Section 62-14-3 NMSA 1978 (being Laws 1973, Chapter 252, Section 3, as amended) is amended to read:

"62-14-3. EXCAVATION.--A person who prepares engineering plans for excavation or who engages in excavation shall:

A. determine the location of any underground facility in or near the area where the excavation is to be conducted, including a request to the owner or operator of the underground facility to locate the underground facility pursuant to Section 62-14-5 NMSA 1978;

B. plan the excavation to avoid or minimize interference or damage to underground facilities in or near the excavation area;

C. provide telephonic advance notice of the commencement, extent and duration of the excavation work to the one-call notification system operating in the intended excavation area, and to the owners or operators of any existing underground facility in and near the excavation area that are not members of the local one-call notification center, in order to allow the owners to locate and mark the location of the
underground facility as described in Section 62-14-5 NMSA 1978
prior to the commencement of work in the excavation area, and
shall request reaffirmation of line location every ten working
days after the initial request to locate;

D. prior to initial exposure of the underground
facility, maintain at least an estimated clearance of eighteen
inches between existing underground facilities for which the
owners or operators have previously identified the location and
the cutting edge or point of any mechanical excavating
equipment utilized in the excavation and continue excavation in
a manner necessary to prevent damage;

E. provide such support for existing underground
facilities in or near the excavation area necessary to prevent
damage to them;

F. backfill all excavations in a manner and with
materials as may be necessary to prevent damage to and provide
reliable support during and following backfilling activities
for preexisting underground facilities in or near the
excavation area;

G. immediately notify the one-call notification
system operating in the area in the form and format required by
the [commission] division and by telephone the owner of any
underground facilities that may have been damaged or dislocated
during the excavation work; and

H. not move or obliterate markings made pursuant to
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Chapter 62, Article 14 NMSA 1978 or fabricate markings in an unmarked location for the purpose of concealing or avoiding liability for a violation of or noncompliance with the provisions of Chapter 62, Article 14 NMSA 1978."

SECTION 4. Section 62-14-4 NMSA 1978 (being Laws 1973, Chapter 252, Section 4, as amended) is amended to read:

"62-14-4. EMERGENCY EXCAVATION.--Every person who engages in emergency excavation shall take all necessary and reasonable precaution to avoid or minimize interference with or damage to existing underground facilities in and near the excavation area and shall notify as promptly as possible the owners of underground facilities located in and near the emergency excavation area and the one-call notification system operating in the area in the form and format required by the [commission division]. In the event of any damage to or dislocation of any underground facility caused by the emergency excavation work, the person responsible for the excavation shall immediately notify the owner of the underground facility and the one-call notification system operating in the area in the form and format required by the [commission division]."

SECTION 5. Section 62-14-7.1 NMSA 1978 (being Laws 1997, Chapter 30, Section 1, as amended) is amended to read:

"62-14-7.1. ONE-CALL NOTIFICATION SYSTEM.--

A. An owner or operator of an underground facility subject to Chapter 62, Article 14 NMSA 1978 shall be a member .219033.1
of a one-call notification system operating in the region with
the exception of private underground facilities owned by a
homeowner and operated and located on residential property. A
one-call notification system may be for a region of the state
or statewide in scope, unless federal law provides otherwise.

B. Each one-call notification system shall be
operated by:

(1) an owner or operator of pipeline
facilities;

(2) a private contractor;

(3) a state or local government agency; or

(4) a person who is otherwise eligible under
state law to operate a one-call notification system.

C. If the one-call notification system is operated
by owners or operators of pipeline facilities, it shall be
established as a nonprofit entity governed by a board of
directors that shall establish the operating processes,
procedures and technology needed for a one-call notification
system. The board shall further establish a procedure or
formula to determine the equitable share of each member for the
costs of the one-call notification system. The board may
include representatives of excavators or other persons deemed
eligible to participate in the system who are not owners or
operators.

D. Excavators shall give advance notice to the one-
call notification system operating in the intended excavation area and provide information established by rule of the [commission] division, except when excavations are by or for a person that:

(1) owns or leases or owns a mineral leasehold interest in the real property on which the excavation occurs; and

(2) operates all underground facilities located in the intended excavation area.

E. The one-call notification system shall promptly transmit excavation notice information to owners or operators of pipeline facilities and other underground facilities in the intended excavation area.

F. After receiving advance notice, owners and operators of pipeline facilities and other underground facilities shall locate and mark their facilities in the intended excavation area and shall provide a positive response. The one-call notification center shall make available to the [commission] division appropriate positive response records for investigations of alleged violations of Chapter 62, Article 14 NMSA 1978.

G. The one-call notification system shall provide a toll-free telephone number or another comparable and reliable means of communication to receive advance notice of excavation. Means of communication to distribute excavation notice to .219033.1

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owners or operators of pipeline facilities and other underground facilities shall be reliable and capable of coordination with one-call notification systems operating in other regions of the state.

H. Operators of one-call notification systems shall notify the [commission] division of its members and the name and telephone number of the contact person for each member and make available to the [commission] division appropriate records in investigations of alleged violations of Chapter 62, Article 14 NMSA 1978.

I. One-call notification systems and owners and operators of pipeline facilities shall promote public awareness of the availability and operation of one-call notification systems and work with state and local governmental agencies charged with issuing excavation permits to provide information concerning and promoting awareness by excavators of one-call notification systems.

J. The [commission] division may prescribe reasonable maximum rates for the provision of one-call services in New Mexico, provided that if the reasonableness of such rates is contested in the manner provided by [commission] division rule, the burden of proof to show the unreasonableness of such rates shall be upon the person contesting their reasonableness."

SECTION 6. Section 62-14-8 NMSA 1978 (being Laws 1973, .219033.1

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Chapter 252, Section 8, as amended) is amended to read:

"62-14-8. PENALTIES.--In addition to any other liability imposed by law, an excavator, after a formal hearing and upon a finding, who has failed to comply with Subsection C of Section 62-14-3 NMSA 1978 is subject to an administrative penalty of up to five thousand dollars ($5,000) for a first offense as assessed by the commission division. Thereafter, the commission division may assess an administrative penalty of up to a maximum of twenty-five thousand dollars ($25,000) for subsequent violations of Subsection C of Section 62-14-3 NMSA 1978. In addition to any other penalty imposed by law, an operator of underground pipeline facilities or underground utilities, excavator or operator of a one-call notification system, after formal hearing and upon a finding, who has willfully failed to comply with Chapter 62, Article 14 NMSA 1978 shall be subject to an administrative penalty of up to five thousand dollars ($5,000) for a first offense as assessed by the commission division. Thereafter, upon finding that a violation of Chapter 62, Article 14 NMSA 1978 has occurred, the commission division may, upon consideration of the nature, circumstances, gravity of the violation, history of prior violations, effect on public health, safety or welfare and good faith on the part of the person in attempting to remedy the cause of the violation, assess an administrative penalty up to a maximum of twenty-five thousand dollars ($25,000) per
violation consistent with federal law. No offense occurring
more than five years prior to the current offense charged shall
be considered for any purpose. All actions to recover the
penalties provided for in this section shall be brought by the
[commission] division. All penalties recovered in any such
action shall be paid into the state general fund."

SECTION 7. Section 62-14-9 NMSA 1978 (being Laws 1997,
Chapter 30, Section 2) is amended to read:

"62-14-9. ENFORCEMENT.--If any person excavates or
intends to excavate in violation of Chapter 62, Article 14 NMSA
1978, the [commission] division or any interested or affected
owner or operator of an underground facility may file, in the
district court of the county in which the excavation is
occurring or intended, an action seeking to enjoin the
excavation."

SECTION 8. Section 62-14-9.1 NMSA 1978 (being Laws 2001,
Chapter 150, Section 8) is amended to read:

"62-14-9.1. ALTERNATIVE DISPUTE RESOLUTION.--The
[commission] division shall promulgate rules for voluntary
alternative dispute resolution procedures available to owners
or operators, excavators and other interested parties regarding
disputes that cannot be resolved through consultation and
negotiation arising from damage to underground facilities,
including any cost or damage incurred by the owner or operator
or the excavator as a result of any delay in an excavation
project while an underground facility is restored, repaired or
replaced. The alternative dispute resolution procedure shall
not affect civil penalties levied pursuant to Section 62-14-8
NMSA 1978 or change the basis for civil liability for damages."

SECTION 9. Section 62-14-10 NMSA 1978 (being Laws 1997,
Chapter 30, Section 3) is amended to read:

"62-14-10. RULEMAKING.--The [commission] division shall
promulgate rules and regulations to implement the provisions of
Chapter 62, Article 14 NMSA 1978."

SECTION 10. Section 8-8-11 NMSA 1978 (being Laws 1998,
Chapter 108, Section 11) is recompiled as Section 62-19-16 NMSA
1978 and is amended to read:

"62-19-16. TRANSPORTATION DIVISION.--The transportation
division shall serve as staff to the commission for the
following functions, as provided by law:

A. motor carrier regulation and enforcement;
B. railroad safety enforcement; and
[C. pipeline safety; and
D. [C. ambulance standards."

SECTION 11. 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.--
A. The oil conservation division of the energy,
minerals and natural resources department may:

(1) collect data;

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(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 .219033.1
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 oil conservation
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; and

   (23) to regulate pipelines, enforce pipeline
safety and regulate the transportation of crude oil, natural
gas and other products by pipeline and excavations."

SECTION 12. Section 70-3-1 NMSA 1978 (being Laws 1953,
Chapter 42, Section 2) is amended to read:

"70-3-1. PIPELINE COMMON CARRIERS--INTRASTATE RATES.--The
[corporation commission] oil conservation division of the

energy, minerals and natural resources department may prescribe reasonable maximum rates for the transportation of oil and the products derived [therefrom] from oil, where such products are transported by a pipeline common carrier from any point in New Mexico to an ultimate destination in New Mexico; provided, in the event the reasonableness of [such] the rates [are] is contested in the manner provided by law, the burden of proof to show the unreasonableness of [such] the rates shall be upon the person, firm, association or corporation contesting the [same] rates."

SECTION 13. Section 70-3-2 NMSA 1978 (being Laws 1953, Chapter 42, Section 3, as amended) is amended to read:

"70-3-2. LICENSE--FEES--DISPOSITION.--[Each] An operator of a pipeline [or pipelines] operated in the state [of New Mexico] for the transportation of crude oil, natural gas or the products derived [therefrom] from either shall, during the month of July, obtain a license for the operation of [such] the pipeline. Application for [such] license shall be made upon a form to be provided by the [corporation commission] oil conservation division of the energy, minerals and natural resources department and shall be accompanied by the license fee determined as [hereinafter] provided in this section. On receipt of [such] the application and license fee, the [corporation commission] oil conservation division shall issue a license to the applicant for the current fiscal year. All
license fees [so] collected shall be paid to the state
treasurer and [by him] credited to the general fund.

SCHEDULE OF ANNUAL LICENSE FEES

A. [Each] A person, firm, association or
corporation transporting natural gas or [the] its products
[derived therefrom] by pipeline [or pipelines] in New Mexico
and operating a pipeline [or pipelines] and appurtenant
facilities within New Mexico shall pay an annual license fee of
five hundred dollars ($500) at the time of making the
application required by this section. An additional fee shall
be paid, measured by the aggregate installed rated horsepower
of compression facilities located within New Mexico and
operated by the licensee, in accordance with the following
schedule:

(1) not exceeding [10,000] ten thousand
horsepower, the minimum fee with no additional fee;

(2) more than [10,000] ten thousand horsepower
and not more than [30,000] thirty thousand horsepower, the
minimum fee plus [$2,275.00] two thousand two hundred seventy-
five dollars ($2,275);

(3) more than [30,000] thirty thousand
horsepower and not more than [50,000] fifty thousand
horsepower, the minimum fee plus [$4,000.00] four thousand
dollars ($4,000);

(4) more than [50,000] fifty thousand
horsepower and not more than [75,000] seventy-five thousand horsepower, the minimum fee plus [5,000] five thousand dollars ($5,000);

(5) more than [75,000] seventy-five thousand horsepower and not more than [100,000] one hundred thousand horsepower, the minimum fee plus [5,500] five thousand five hundred dollars ($5,500); and

(6) more than [100,000] one hundred thousand horsepower, the minimum fee plus [5,925] five thousand nine hundred twenty-five dollars ($5,925) and plus seventy-five dollars ($75) additional for each [10,000] ten thousand horsepower or fraction thereof in excess of [100,000] one hundred thousand horsepower.

B. [Each] An operator of a pipeline [or pipelines] for the transportation of oil or [the] its products [derived therefrom] shall pay [the following fees, based on the number of miles of such line operated in New Mexico] a basic fee of five hundred dollars ($500) [and in addition] plus fees based on the number of miles of pipeline operated in New Mexico, computed in accordance with the following schedule:

(1) for all lines up to and including eight inches in diameter:

$13.00 per mile for the first 50 miles;
$ 7.00 per mile for the next 25 miles;
$ 4.00 per mile for the next 25 miles; and

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$1.00 per mile for each mile in excess of 100 miles; and

(2) for all lines more than eight inches in diameter:

$18.00 per mile for the first 25 miles;
$13.00 per mile for the next 25 miles;
$ 9.00 per mile for the next 25 miles;
$ 6.00 per mile for the next 25 miles; and

$ 2.00 per mile for each mile in excess of 100 miles.

C. For the purposes of determining the license fees payable under the provisions of this Subsection B of this section, any pipeline owned by two or more persons, firms or corporations shall be considered to be a separate pipeline operation to be licensed as such in the name of the operator or owners thereof. The basic fee to be paid in the licensing of such lines under the fee schedule provided in Subsection B of this section shall be:

(1) five hundred dollars ($500) on lines less than twenty inches in diameter; and

(2) eight hundred fifty dollars ($850) on lines twenty inches or more in diameter."

SECTION 14. Section 70-3-3 NMSA 1978 (being Laws 1953, Chapter 42, Section 4, as amended) is amended to read:

"70-3-3. EXCEPTIONS.--The provisions of Section [65-4-3 NMSA 1953] 70-3-2 NMSA 1978 shall not apply to gathering lines or systems operated exclusively for the
gathering of oil or gas in any field or area; to any gas
distribution system; or to pipelines constituting a part of any
tank farm, plant facilities of any processing plant, gasoline
plant, refinery, carbon-black plant, pressure maintenance,
underground storage projects, recycling system or other similar
operations and such lines and systems shall not be included in
computing the fees payable under the licensing provision of
Section [65-4-3 NMSA 1953] 70-3-2 NMSA 1978."

SECTION 15. Section 70-3-4 NMSA 1978 (being Laws 1953,
Chapter 42, Section 6, as amended) is amended to read:

"70-3-4. PIPELINES--CROSSING OF RAILROADS AND HIGHWAYS.--
The crossing of any pipeline operated for the conveyance of
oil, natural gas, carbon dioxide gas or the products derived
therefrom under any railroad or public road or highway in this
state, outside of the confines of any municipal corporation,
shall be constructed and maintained according to reasonable
rules [and regulations] adopted by the [corporation commission
of New Mexico] oil conservation division of the energy,
minerals and natural resources department, not inconsistent,
however, with the applicable requirements of the [state
highway] department of transportation."

SECTION 16. Section 70-3-5 NMSA 1978 (being Laws 1953,
Chapter 42, Section 8, as amended) is amended to read:

"70-3-5. EMINENT DOMAIN POWER.--

A. Any person, firm, association or corporation may
exercise the right of eminent domain to take and acquire the necessary [right-of-way] right of way for the construction, maintenance and operation of pipelines, including microwave systems and structures and other necessary facilities for the purpose of conveyance of petroleum, natural gas and carbon dioxide gas and the products derived therefrom, but any such [right-of-way] right of way shall in all cases be so located as to do the least damage to private or public property consistent with proper use and economical construction. Such land and [right-of-way] right of way shall be acquired in the manner provided by the Eminent Domain Code. Pursuant to the requirements of Sections 42A-1-8 through 42A-1-12 NMSA 1978, the engineers, surveyors and other employees of such person, firm, association or corporation shall have the right to enter upon the lands and property of the state and of private persons and of private and public corporations for the purpose of making necessary surveys and examinations for selecting and locating suitable routes for [such] pipelines, microwave systems, structures and other necessary facilities, subject to responsibility for any damage done to [such] the property in making surveys and examinations.

B. The authorization provided for pursuant to Subsection A of this section for pipelines conveying petroleum, natural gas and carbon dioxide gas and products derived therefrom shall apply to trunk lines, including lines owned or

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operated by public utilities or interstate pipelines connecting a well [or wells] under a purchase or conveying contract, and shall not apply to gathering lines other than pipelines owned or operated by public utilities or their affiliates or interstate pipelines or to operators of pipelines whose rates are prescribed or whose operations are licensed by the [state corporation commission] oil conservation division of the energy, minerals and natural resources department pursuant to Section 70-3-1 or 70-3-2 NMSA 1978. For the purposes of this subsection, the term "trunk line" is defined as the main transmission line [which] that transports petroleum, natural gas and carbon dioxide gas and the products derived therefrom from a producing area to the area where the petroleum, natural gas and carbon dioxide gas and the products derived therefrom are to be used. All other pipelines used in connection with [such] transportation of petroleum, natural gas and carbon dioxide gas and the products derived therefrom are defined as "gathering lines".

SECTION 17. Section 70-3-11 NMSA 1978 (being Laws 1969, Chapter 71, Section 1) is amended to read:

"70-3-11. SHORT TITLE.--[This act] Sections 70-3-11 through 70-3-20 NMSA 1978 may be cited as the "Pipeline Safety Act".

SECTION 18. Section 70-3-12 NMSA 1978 (being Laws 1969, Chapter 71, Section 2, as amended) is amended to read:

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"70-3-12. DEFINITIONS.--As used in the Pipeline Safety Act:

A. "person" means an individual, firm, joint venture, partnership, corporation, association, state, municipality, political subdivision, cooperative association, joint stock association or any combination thereof and includes any receiver, trustee, assignee or personal representative thereof;

B. ["commission" means the public regulation commission] "division" means the oil conservation division of the energy, minerals and natural resources department;

C. "gas" means natural gas, flammable gas or gas that is toxic or corrosive;

D. "oil" means crude oil and liquid hydrocarbons and manufactured products derived from either;

E. "transportation of gas" means the gathering, transmission or distribution of gas by pipeline or its storage, except that it shall not include the gathering of gas in those rural locations that lie outside the limits of any municipality or unincorporated city, town or village or any residential or commercial area such as a subdivision, a business or shopping center, a community development or any similar populated area that the [commission] division may define by order as a nonrural area;

F. "transportation of oil" means the transmission
of oil by pipeline, except pipelines operated exclusively for
the gathering of oil in any field or area or pipelines
constituting a part of any tank farm, plant facilities of any
processing plant, gasoline plant, refinery, carbon-black plant,
recycling system or similar operations;

G. "gas pipeline facilities" means new and existing
pipeline rights of way and any equipment, facility or structure
used in the transportation of gas or the treatment of gas
during the course of transportation;

H. "oil pipeline facilities" means new and existing
pipeline rights of way and any equipment, facility or structure
used in the transportation of oil;

I. "intrastate pipeline facilities" means oil
pipeline facilities or gas pipeline facilities within the state
that are not gas pipeline facilities subject to the
jurisdiction of the federal energy regulatory commission
pursuant to the federal Natural Gas Act or oil pipeline
facilities used in the transportation of oil in interstate or
foreign commerce, except that it shall include pipeline
facilities within the state that transport gas from an
interstate gas pipeline to a direct sales customer within the
state purchasing gas for its own consumption;

J. "distribution main" means a pipeline other than
a gathering or transmission line that serves as a common source
of supply for more than one service line;
K. "master meter" means a pipeline system for distributing gas within, but not limited to, a definable area, such as a mobile home park, housing project or apartment complex, where the operator purchases metered gas from an outside source for resale through a gas distribution pipeline system. The master meter system supplies the ultimate consumer who either purchases the gas directly through a meter or by other means such as by rents, as more fully set forth in federal laws and regulations; and

L. "service line" means a pipeline that transports gas from a common source of supply, such as a distribution main, to:

(1) a customer meter or the connection to a customer's piping, whichever is further downstream; or

(2) the connection to a customer's piping if there is no customer meter. A "customer meter" is the meter that measures the transfer of gas from an operator to a customer.

SECTION 19. Section 70-3-13 NMSA 1978 (being Laws 1969, Chapter 71, Section 3, as amended) is amended to read:

"70-3-13. POWERS AND DUTIES OF [COMMISSION] DIVISION.---
The [commission] division:

A. shall promulgate, amend, enforce and repeal reasonable [regulations] rules establishing minimum safety standards for the transportation of oil, hazardous liquids as
defined in 49 CFR 195.2 and gas and for the design, installation, inspection, testing, construction, extension, operation, replacement and maintenance, including internal and external surveillance for pipe integrity and installation of emergency flow restricting devices, of oil, hazardous liquid and gas pipeline facilities as may be required by federal law. Safety standards shall not be applicable to oil, hazardous liquid or gas pipeline facilities in existence on the date the safety standards are adopted; provided, however, that whenever the [commission] division upon investigation and hearing determines that an oil, hazardous liquid or gas pipeline facility is hazardous to life or property, it may require the person operating the oil, hazardous liquid or gas pipeline facility to take the steps necessary to remove the hazards. Safety [regulations] rules shall be practicable and designed to meet the need for pipeline safety. Safety rules promulgated for oil, hazardous liquid and gas pipeline facilities or the transportation of oil, hazardous liquids and gas shall be consistent with federal law and rules. Safety rules adopted hereunder shall not apply to any transportation of oil or oil pipeline facilities regulated by the federal department of transportation. Rules adopted pursuant to the Pipeline Safety Act shall substantially conform to federal pipeline safety rules;

B. may advise, consult, contract and cooperate with
any agency of the federal government or any other state in
projects of common interest in the regulation of safety of oil,
hazardous liquid and gas pipeline facilities and the
transportation of oil, hazardous liquids and gas and administer
the authority delegated to the [commission] division by any
contract with the federal government or any agency thereof;

C. may accept, receive, apply for or administer
grants or other funds or gifts from public or private agencies,
including the federal government, or from any other person;

D. may make investigations consistent with the
Pipeline Safety Act and, in connection therewith, enter private
or public property at all reasonable times. The results of
investigations shall be reduced to writing if any enforcement
action is contemplated and a copy thereof furnished to the
operator of the oil, hazardous liquid or gas pipeline
facilities investigated before any enforcement action is
initiated; and

E. may require persons subject to the Pipeline
Safety Act to maintain the records, file the reports and
develop the plans for inspection and maintenance of oil,
hazardous liquid or gas pipeline facilities as the [commission]
division may, by rule, require for proper administration of the
Pipeline Safety Act; provided, however, that the use of the
term "rights of way" does not authorize the [commission]
division to prescribe the location or routing of any oil,
hazardous liquid or gas pipeline facility."

SECTION 20. Section 70-3-13.1 NMSA 1978 (being Laws 2004, Chapter 80, Section 2) is amended to read:

"70-3-13.1. MASTER METER OUTREACH AND EDUCATION.--On the effective date of this legislation, the [commission] division shall:

A. commence a continuing industry outreach to coordinate and conduct education and certification programs concerning pipeline safety laws and [regulations] rules with respect to master meters;

B. develop agreements with the building and construction oversight divisions of the state and of local governments with the intent of minimizing dual jurisdiction of master meters; and

C. apply the waiver provisions of Section 70-3-16 NMSA 1978 to violations of safety [regulations] rules pertaining to master meters occurring prior to July 1, 2004."

SECTION 21. Section 70-3-15 NMSA 1978 (being Laws 1969, Chapter 71, Section 5) is amended to read:

"70-3-15. VALIDITY OF [REGULATION] RULE--JUDICIAL REVIEW.--

A. Any person who is a party to any proceeding before the [commission] division and who is or may be adversely affected by a [regulation] rule adopted by the [commission] division or by any order of the [commission] division may .219033.1
appeal by petition to the court of appeals for such relief as
may be granted by the court, charging in the petition that the
[regulation] rule or order is unreasonable, unlawful,
capricious, arbitrary, inappropriate for the particular type of
pipeline transportation or fails to contribute to the public
safety. The petition shall name the [New Mexico corporation
commission] division as the appellee [therein] and shall state
briefly the nature of the proceeding before the [commission] 
division and shall set forth the [regulation] rule or order
complained of and the grounds upon which the petitioner will
rely. Appeals shall be upon the record made at the
[commission] division hearing on the [regulation] rule or order
and shall be taken:

(1) within thirty days after the [regulation]
rule is filed in accordance with the provisions of the State
Rules Act; or

(2) within thirty days after the effective
date of the [commission's] division's order, whichever is the
later date.

B. An appeal does not stay the operation of the
[commission's] division's order or [regulation] rule unless the
court of appeals orders a stay of the operation of the order or
[regulation] rule on such terms as it deems just and in
accordance with the practice of the courts exercising equity
jurisdiction."
SECTION 22. Section 70-3-16 NMSA 1978 (being Laws 1969, Chapter 71, Section 6) is amended to read:

"70-3-16. WAIVER OF [REGULATIONS] RULES.--Upon application by any person engaged in the transportation of gas or oil or owning or operating gas or oil pipeline facilities, the [commission] division may, after notice and opportunity for hearing and under such terms and conditions and to such extent as the [commission] division deems appropriate, waive compliance with any [regulation] rule established under the Pipeline Safety Act if the [commission] division determines that a waiver of compliance with the [regulation] rule is not inconsistent with pipeline safety. Any waiver for the transportation of gas or for gas pipeline facilities shall be subject to approval by the federal agency having jurisdiction as provided in Section 3(e) of the Natural Gas Pipeline Safety Act of 1968 [being Public Law 90-451]."

SECTION 23. Section 70-3-17 NMSA 1978 (being Laws 1969, Chapter 71, Section 7) is amended to read:

"70-3-17. CONTINUITY OF SERVICE.--When a proposed [regulation] rule or [commission] division order will or may affect continuity of any gas service, the [commission] division shall consult with any other state or federal agency having jurisdiction over the affected transportation of gas or gas pipeline facility before adopting the [regulation] rule or order and shall defer the effective date of the [regulation] rule or order.
rule or order until the other state or federal agency has had
reasonable opportunity to take such action as it [shall deem]
deems necessary."

SECTION 24. Section 70-3-18 NMSA 1978 (being Laws 1969,
Chapter 71, Section 8) is amended to read:

"70-3-18. COMPLIANCE.--

A. Each person who engages in the transportation of
oil or gas or who owns or operates oil or gas pipeline
facilities shall:

(1) at all times after the effective date of
any [regulation] rule, comply with the requirements of the
[regulation] rule;

(2) comply with any plan of inspection and
maintenance required to be filed with the [commission] division
by the person; and

(3) permit the [commission] division access to
or the copying of pertinent records and make reports or provide
information to the [commission] division as may be reasonably
required and permit entry to or inspection of its gas or oil
pipeline facilities by the [commission] division.

B. Nothing in the Pipeline Safety Act shall affect
the common law or statutory tort liability of any person."

SECTION 25. Section 70-3-19 NMSA 1978 (being Laws 1969,
Chapter 71, Section 9, as amended) is amended to read:

"70-3-19. ENFORCEMENT--PENALTIES.--

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A. If as a result of investigation the [commission] division has good cause to believe that any person is violating any provision of Subsection A of Section 70-3-18 NMSA 1978 or any [regulation] rule adopted by the [commission] division under the Pipeline Safety Act, the [commission] division shall, when practicable and except in the case of a knowing and willful violation, give the person notice of the violation and an opportunity to comply. If the [commission] division is unable within a reasonable time to obtain voluntary cooperation to prevent the continuing violation, the [commission] division may apply for an injunction in the district court of the county in which the violation occurs to secure compliance. The failure to give notice and afford an opportunity to comply shall not preclude the granting of injunctive relief.

B. The trial before the district court shall be before the court without jury, and the court shall enter judgment and orders enforcing the judgment as the public interest and equities of the case may require.

C. Any person owning or operating gas pipeline facilities or engaged in the transportation of gas or owning or operating oil pipeline facilities or engaged in the transportation of oil who has been determined by order of the [commission] division after hearing to have violated any provision of Subsection A of Section 70-3-18 NMSA 1978 or any [regulation] rule promulgated under the Pipeline Safety Act.
applicable to intrastate pipeline facilities shall be subject to a civil penalty in an amount not to exceed one hundred thousand dollars ($100,000) for each violation for each day that the violation persists, except that the maximum civil penalty shall not exceed one million dollars ($1,000,000) for any related series of violations.

D. In determining the amount of the penalty, the [commission] division shall consider the nature, circumstances and gravity of the violation and, with respect to the person found to have committed the violation, the degree of culpability, any history of prior violations, the effect on ability to continue to do business, any good faith in attempting to achieve compliance, ability to pay the penalty and other matters as justice may require.

E. Judicial review of any provision of this section may be accomplished in the same manner as is found in Section 70-3-15 NMSA 1978.

F. Any person who willfully and knowingly injures or destroys or attempts to injure or destroy an intrastate pipeline facility shall upon conviction be subject for each offense to a fine not to exceed twenty-five thousand dollars ($25,000) or imprisonment for a term not to exceed fifteen years, or both.

G. Any person who willfully and knowingly damages, removes or destroys any pipeline sign, right-of-way marker
required by the Pipeline Safety Act or any rule or
order issued pursuant to that act shall upon conviction be
subject for each offense to a fine of not more than five
thousand dollars ($5,000) or imprisonment for a term not to
exceed one year, or both."

SECTION 26. Section 70-3-20 NMSA 1978 (being Laws 1969,
Chapter 71, Section 10) is amended to read:

"70-3-20. PIPELINE SAFETY ENGINEER AND STAFF.--The
director of the division shall appoint a
professional engineer who shall have at least five years'
actual experience in the design, construction, maintenance and
operation of oil or gas pipeline facilities and who shall be
designated "pipeline safety engineer". The division shall retain such other personnel as may be necessary
to carry out the provisions of the Pipeline Safety Act, and the
division shall, subject to state laws and
rules covering classification and compensation of
state employees, be empowered and authorized to fix the
compensation to be paid the pipeline safety engineer.
The compensation of other personnel employed under the
authority of this section shall be subject to the state
Personnel Act."

SECTION 27. Section 70-3-21 NMSA 1978 (being Laws 2004,
Chapter 80, Section 1) is amended to read:

"70-3-21. PIPELINE SAFETY FUND--CREATED--ASSESSMENT AND
COLLECTION OF FEES.--

A. The "pipeline safety fund" is created in the state treasury for the purpose of enhancing the staffing and training of the pipeline safety bureau of the oil conservation division of the energy, minerals and natural resources department with the goal of assuming the function of inspection of interstate as well as intrastate pipelines. The fund shall consist of fees collected pursuant to Subsection D of this section, appropriations, gifts, grants, donations and earnings from investment of the fund. Balances in the fund shall not be transferred to the general fund at the end of any fiscal year.

B. The pipeline safety fund shall be administered by the energy, minerals and natural resources department. Money in the fund is appropriated to the energy, minerals and natural resources department for the oil conservation division to carry out its duties pursuant to the provisions of the Pipeline Safety Act and Chapter 62, Article 14 NMSA 1978. Not more than five percent of the fees collected pursuant to Subsection D of this section shall be used by the commission for administrative purposes.

C. Payments from the pipeline safety fund shall be made upon vouchers issued and signed by the secretary of the administrative services division of the energy, minerals and natural resources or
[director's] secretary's authorized representative upon warrants drawn by the secretary of finance and administration.

D. The [commission] oil conservation division shall collect annual pipeline safety fees for the duties relating to inspection of intrastate pipelines from persons subject to the Pipeline Safety Act in accordance with and not to exceed the following amounts:

(1) for the transportation of gas:
   (a) two dollars ($2.00) per domestic service line;
   (b) thirty-five dollars ($35.00) per commercial service line;
   (c) thirty-five dollars ($35.00) per mile of line for the transportation of gas subject to inspection by the [pipeline safety bureau] oil conservation division, with a minimum assessment of four hundred dollars ($400); and
   (d) one hundred dollars ($100) per master meter, direct sales lateral or liquified petroleum gas system; and

(2) for the transportation of oil, thirty-five dollars ($35.00) per mile of transmission line subject to inspection by the [pipeline safety bureau] oil conservation division, with a minimum assessment of four hundred dollars ($400). A fee shall not be assessed on mileage under the
jurisdiction of or inspected by the federal department of transportation.

E. The [commission] oil conservation division shall annually conduct a public review of the fees collected and payments made from the fund and provide a summary to the legislative finance committee and the department of finance and administration. Based upon its findings, the [commission] oil conservation division shall adjust the annual fee rates authorized by Subsection D of this section in order to collect only that amount estimated to be necessary to carry out the provisions of the Pipeline Safety Act and Chapter 62, Article 14 NMSA 1978; provided that the fees shall not be greater than the amounts set forth in Subsection D of this section."

SECTION 28. Section 70-3-22 NMSA 1978 (being Laws 2004, Chapter 80, Section 4) is amended to read:

"70-3-22. PIPELINE SAFETY FEE.--A public utility that is assessed a pipeline safety fee shall be entitled to collect the fee from its rate payers without the requirement of a request for a change in rates. The utility shall notify the public regulation commission in writing of the imposition and amount of the fee and, if practicable, shall show the fee as a separate line item on its bill statements to consumers."

SECTION 29. Section 70-5-9 NMSA 1978 (being Laws 1970, Chapter 65, Section 2, as amended) is amended to read:

"70-5-9. ANNUAL LICENSE FEES--INSPECTION FEES.--
A. For the purpose of defraying the expenses of administering the laws relating to the use of CNG in motor vehicles or the LP gas industry, each person, firm or corporation, at the time of application for a license and annually thereafter on or before December 31 of each calendar year, shall pay to the bureau reasonable license fees as set, classified and defined by the bureau for each operating location. Provided, the total annual fees charged any one licensee for a combination of LP gas activities at one location and subject to licensure under this section shall not exceed three hundred fifty dollars ($350), and the fee charged for any single activity or operation as set, classified and defined by the bureau shall not exceed one hundred fifty dollars ($150).

B. Nothing in the LPG and CNG Act is intended to alter the jurisdiction of the [state corporation commission pipeline safety department] oil conservation division of the energy, minerals and natural resources department with regard to pipeline safety.

C. In addition, there shall be paid a reasonable fee for the safety inspection, made by a representative of the bureau, of each LP gas bulk storage plant, LP gas liquid transfer facility and of the LP gas equipment on each vehicular unit used for transportation of LP gas in bulk quantities. The fee shall be set by the bureau and shall not be assessed more frequently than once in each twelve months. The bureau may
also charge a reasonable fee for late payment of any fees.

D. No annual license fee fixed by the bureau as
provided in this section shall become effective until after
notice to each licensee has been made and hearing held on the
proposed annual license fees in the manner provided by Section
70-5-14 NMSA 1978. At the conclusion of any hearing, the
bureau shall enter its findings and decision in writing as a
regulation, and the regulation shall be filed as provided by
the State Rules Act."

SECTION 30. Laws 2020, Chapter 9, Section 59 is amended
to read:

"SECTION 59. TEMPORARY PROVISION--RECOMPILATION.--
Sections 8-8-4 through 8-8-8, 8-8-10, 8-8-12 through 8-8-17 and
8-8-20 NMSA 1978 (being Laws 1998, Chapter 108, Section 4; Laws
2009, Chapter 216, Section 1; Laws 1998, Chapter 108, Sections
5 through 8, [and] 10 [through] and 12; Laws 2000, Chapter 100,
Section 1 and Laws 2000, Chapter 102, Section 1; and Laws 1998,
Chapter 108, Sections 13 through 17 and 20, as amended) are
recompiled as part of the Public Regulation Commission Act."

SECTION 31. TEMPORARY PROVISION--TRANSFER OF FUNCTIONS,
PERSONNEL, APPROPRIATIONS, PROPERTY, RECORDS AND CONTRACTS.--

A. On January 1, 2023, all staff positions,
functions, personnel, appropriations, money, records,
equipment, supplies, other property and contractual obligations
of the pipeline safety bureau of the transportation division of
the public regulation commission are transferred to the energy, minerals and natural resources department.

B. Beginning on January 1, 2023, all references in law, rules, orders and other official acts to the pipeline safety bureau of the transportation division of the public regulation commission shall be deemed references to the energy, minerals and natural resources department.

C. Beginning on January 1, 2023, all contractual obligations of the pipeline safety bureau of the transportation division of the public regulation commission are binding on the energy, minerals and natural resources department.

SECTION 32. REPEAL.--Section 70-3-14 NMSA 1978 (being Laws 1969, Chapter 71, Section 4) is repealed.

SECTION 33. EFFECTIVE DATE.--The effective date of the provisions of this act is January 1, 2023.