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SENATE BILL 135

**53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018**

INTRODUCED BY

Daniel A. Ivey-Soto

AN ACT

RELATING TO ENERGY PRODUCTION; AMENDING THE ADMINISTRATIVE  
HEARINGS OFFICE ACT TO PROVIDE FOR AN APPEAL OF  
ADMINISTRATIVELY IMPOSED CIVIL PENALTIES PURSUANT TO THE OIL  
AND GAS ACT; AMENDING THE OIL AND GAS ACT TO PROVIDE FOR THE  
ADMINISTRATIVE IMPOSITION OF CIVIL PENALTIES; AMENDING  
PENALTIES.

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

**SECTION 1.** Section 7-1B-1 NMSA 1978 (being Laws 2015,  
Chapter 73, Section 1) is amended to read:

"7-1B-1. SHORT TITLE.--~~[Sections 1 through 9 of this act]~~  
Chapter 7, Article 1B NMSA 1978 may be cited as the  
"Administrative Hearings Office Act"."

**SECTION 2.** Section 7-1B-6 NMSA 1978 (being Laws 2015,  
Chapter 73, Section 6) is amended to read:

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1 "7-1B-6. HEARING OFFICER CODE OF CONDUCT--INDEPENDENCE.--

2 A. The chief hearing officer shall:

3 (1) adopt and promulgate a hearing officer  
4 code of conduct; and

5 (2) periodically evaluate each hearing  
6 officer's performance for competency, efficiency and  
7 professional demeanor in accord with relevant legal standards  
8 and the hearing officer code of conduct.

9 B. The chief hearing officer shall ensure that each  
10 hearing officer has decisional independence; however, the chief  
11 hearing officer may:

12 (1) consult with a hearing officer about a  
13 genuine question of law; and

14 (2) review with a hearing officer any issue on  
15 appeal addressed by a court of this state.

16 C. The administrative hearings office shall:

17 (1) hear all tax protests pursuant to the  
18 provisions of the Tax Administration Act;

19 (2) hear property tax protests pursuant to the  
20 provisions of the Property Tax Code;

21 (3) hear all certificate-denial protests  
22 pursuant to the provisions of Section 13-1-22 NMSA 1978;

23 (4) conduct all adjudicatory hearings pursuant  
24 to the Motor Vehicle Code;

25 (5) conduct all driver's license revocation

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1 hearings pursuant to the provisions of the Implied Consent Act;  
2 and

3 (6) hear all protests of civil penalties  
4 administratively imposed by the oil conservation commission or  
5 the oil conservation division of the energy, minerals and  
6 natural resources department pursuant to the Oil and Gas Act.

7 [~~6~~] D. The administrative hearings office shall  
8 make and preserve a complete record of all proceedings. [~~and~~

9 ~~7~~] E. In a hearing conducted pursuant to the Tax  
10 Administration Act, the administrative hearings office shall  
11 maintain confidentiality regarding taxpayer information as  
12 required by the provisions of Section 7-1-8 NMSA 1978.

13 [~~D~~] F. In hearings conducted pursuant to the Tax  
14 Administration Act, Section 13-1-22 NMSA 1978, the Oil and Gas  
15 Act and the Motor Vehicle Code:

16 (1) the Rules of Evidence do not apply. The  
17 hearing officer may require reasonable substantiation of  
18 statements or records tendered, the accuracy or truth of which  
19 is in reasonable doubt, to rule on the admissibility of  
20 evidence. [~~A taxpayer or the taxation and revenue department~~]  
21 Either party in a dispute subject to a hearing may request a  
22 written ruling on a contested question of evidence in a matter  
23 in which the [taxpayer] protesting person has filed a written  
24 protest and for which that protest is pending. The  
25 administrative hearings office shall issue a copy of its

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1 written ruling to the [~~taxation and revenue department~~] agency  
2 whose decision is being protested at the time the ruling is  
3 issued to the [~~taxpayer~~] protesting person;

4 (2) the Rules of Civil Procedure for the  
5 District Courts do not apply. The hearing officer shall  
6 conduct a hearing to allow the ample and fair presentation of  
7 complaints and defenses. The hearing officer shall hear  
8 arguments, permit discovery, entertain and dispose of motions,  
9 require written expositions of the case as the circumstances  
10 justify and render a decision in accordance with the law and  
11 the evidence presented and admitted. A [~~taxpayer or the~~  
12 ~~taxation and revenue department~~] protesting person or the  
13 agency may request a written ruling on a contested question of  
14 procedure in a matter in which the [~~taxpayer~~] protesting person  
15 has filed a written protest and for which that protest is  
16 pending. The administrative hearings office shall issue a copy  
17 of its written ruling to the [~~taxation and revenue department~~]  
18 agency at the time the ruling is issued to the [~~taxpayer~~]  
19 protesting person; and

20 (3) the hearing officer may administer oaths  
21 and issue subpoenas for the attendance of witnesses and the  
22 production of relevant books and papers, and for hearings  
23 conducted for a license suspension pursuant to Section 66-5-30  
24 NMSA 1978, the hearing officer may require a reexamination of  
25 the licensee."

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1           SECTION 3. A new section of the Administrative Hearings  
2 Office Act is enacted to read:

3           "[NEW MATERIAL] OIL AND GAS ACT PENALTY PROTESTS--  
4 PROCEDURES.--

5           A. A person may dispute a civil penalty imposed  
6 administratively pursuant to the Oil and Gas Act. Upon timely  
7 receipt of a protest, the chief hearing officer shall promptly  
8 designate a hearing officer to conduct a hearing and shall set  
9 a date for the hearing. On that date, the hearing officer  
10 shall hear the protest.

11           B. A person may appear at a hearing set pursuant to  
12 the provisions of Subsection A of this section for the person's  
13 self or be represented by a bona fide employee or an attorney.  
14 If the oil conservation commission or the oil conservation  
15 division of the energy, minerals and natural resources  
16 department and the protestant agree, a hearing may be conducted  
17 via videoconference. A hearing officer may postpone or  
18 continue a hearing.

19           C. At the beginning of the hearing, the hearing  
20 officer shall inform the protestant of the protestant's right  
21 to representation. Within thirty days after the hearing, the  
22 hearing officer shall inform the person in writing of the  
23 decision and of the protestant's right to, and the requirements  
24 for perfection of, an appeal from the decision to the district  
25 court and of the consequences of a failure to appeal. The

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1 written decision shall embody an order granting or denying the  
2 relief requested or granting such part of the relief requested,  
3 as appropriate.

4 D. If the protestant or the oil conservation  
5 division is dissatisfied with the decision and order of the  
6 hearing officer, the party may appeal pursuant to the  
7 provisions of Section 39-3-1.1 NMSA 1978.

8 E. No court of this state has jurisdiction to  
9 entertain a proceeding by any person in which the person calls  
10 into question the administrative imposition of a civil penalty  
11 pursuant to the Oil and Gas Act, except as a consequence of the  
12 appeal by that person to the district court from the action and  
13 order of the hearing officer as provided for in this section.

14 F. Nothing in this section shall be construed to  
15 authorize a criminal proceeding or to authorize an  
16 administrative protest of the issuance of a subpoena or  
17 summons."

18 SECTION 4. Section 70-2-12 NMSA 1978 (being Laws 1978,  
19 Chapter 71, Section 1, as amended) is amended to read:

20 "70-2-12. ENUMERATION OF POWERS.--

21 A. [~~Included in the power given to~~] The oil  
22 conservation division of the energy, minerals and natural  
23 resources department [~~is the authority to~~] may:

24 (1) collect data; [~~to~~]

25 (2) make investigations and inspections; [~~to~~]

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1                   (3) examine properties, leases, papers, books  
2 and records; [~~to~~]

3                   (4) examine, check, test and gauge oil and gas  
4 wells, tanks, plants, refineries and all means and modes of  
5 transportation and equipment; [~~to~~]

6                   (5) hold hearings; [~~to~~]

7                   (6) provide for the keeping of records and the  
8 making of reports and for the checking of the accuracy of the  
9 records and reports; [~~to~~]

10                  (7) limit and prorate production of crude  
11 petroleum oil or natural gas or both as provided in the Oil and  
12 Gas Act; [~~and to~~]

13                  (8) require either generally or in particular  
14 areas certificates of clearance or tenders in connection with  
15 the transportation of crude petroleum oil or natural gas or any  
16 products of either or both oil and products or both natural gas  
17 and products; and

18                   (9) administratively impose civil penalties  
19 for a violation of any provision of the Oil and Gas Act or a  
20 rule, order or permit issued pursuant to that act.

21                  B. Apart from any authority, express or implied,  
22 elsewhere given to or existing in the oil conservation division  
23 by virtue of the Oil and Gas Act or the statutes of this state,  
24 the division [~~is authorized to~~] may make rules [~~regulations~~]  
25 and orders for the purposes and with respect to the subject

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1 matter stated in this subsection to:

2 (1) [~~to~~] require dry or abandoned wells to be  
3 plugged in a way to confine the crude petroleum oil, natural  
4 gas or water in the strata in which it is found and to prevent  
5 it from escaping into other strata; the division shall require  
6 a cash or surety bond in a sum not to exceed fifty thousand  
7 dollars (\$50,000) conditioned for the performance of such  
8 regulations;

9 (2) [~~to~~] prevent crude petroleum oil, natural  
10 gas or water from escaping from the strata in which it is found  
11 into other strata;

12 (3) [~~to~~] require reports showing locations of  
13 all oil or gas wells and for the filing of logs and drilling  
14 records or reports;

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

22 (5) [~~to~~] prevent fires;

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

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1 (7) ~~[(t)]~~ require wells to be drilled, operated  
2 and produced in such manner as to prevent injury to neighboring  
3 leases or properties;

4 (8) ~~[(t)]~~ identify the ownership of oil or gas  
5 producing leases, properties, wells, tanks, refineries,  
6 pipelines, plants, structures and all transportation equipment  
7 and facilities;

8 (9) ~~[(t)]~~ require the operation of wells with  
9 efficient gas-oil ratios and to fix such ratios;

10 (10) ~~[(t)]~~ fix the spacing of wells;

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

15 (12) ~~[(t)]~~ determine the limits of any pool  
16 producing crude petroleum oil or natural gas or both and from  
17 time to time redetermine the limits;

18 (13) ~~[(t)]~~ regulate the methods and devices  
19 employed for storage in this state of oil or natural gas or any  
20 product of either, including subsurface storage;

21 (14) ~~[(t)]~~ permit the injection of natural gas  
22 or of any other substance into any pool in this state for the  
23 purpose of repressuring, cycling, pressure maintenance,  
24 secondary or any other enhanced recovery operations;

25 (15) ~~[(t)]~~ regulate the disposition of water

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1 produced or used in connection with the drilling for or  
2 producing of oil or gas or both and to direct surface or  
3 subsurface disposal of the water, including disposition by use  
4 in drilling for or production of oil or gas, in road  
5 construction or maintenance or other construction, in the  
6 generation of electricity or in other industrial processes, in  
7 a manner that will afford reasonable protection against  
8 contamination of fresh water supplies designated by the state  
9 engineer;

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

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

21 (18) ~~to~~ spend the oil and gas reclamation  
22 fund and do all acts necessary and proper to plug dry and  
23 abandoned oil and gas wells and to restore and remediate  
24 abandoned well sites and associated production facilities in  
25 accordance with the provisions of the Oil and Gas Act, the

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1 rules and regulations adopted under that act and the  
2 Procurement Code, including disposing of salvageable equipment  
3 and material removed from oil and gas wells being plugged by  
4 the state;

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

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

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

21 (22) ~~to~~ regulate the disposition of  
22 nondomestic wastes resulting from the oil field service  
23 industry, the transportation of crude oil or natural gas, the  
24 treatment of natural gas or the refinement of crude oil to  
25 protect public health and the environment, including

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1 administering the Water Quality Act as provided in Subsection E  
2 of Section 74-6-4 NMSA 1978; and

3 (23) establish by rule a process for the  
4 administrative imposition of a civil penalty for a violation of  
5 the Oil and Gas Act or a rule, order or permit issued pursuant  
6 to that act."

7 SECTION 5. Section 70-2-28 NMSA 1978 (being Laws 1935,  
8 Chapter 72, Section 19, as amended) is amended to read:

9 "70-2-28. ACTIONS FOR VIOLATIONS--INJUNCTIVE RELIEF.--  
10 Whenever it [~~shall appear~~] appears that any person is violating  
11 or threatening to violate any statute of this state with  
12 respect to the conservation of oil and gas or both or any  
13 provision of [~~this~~] the Oil and Gas Act or any rule,  
14 [~~regulation or order made thereunder~~] order or permit issued  
15 pursuant to that act, the oil conservation division through the  
16 attorney general shall bring suit against [~~such~~] that person in  
17 the county [~~of the residence of the defendant or in the county~~  
18 ~~of the residence of any defendant, if there be more than one~~  
19 ~~defendant, or in the county~~] where the violation is alleged to  
20 be threatened or to have occurred [~~for penalties, if any are~~  
21 ~~applicable, and~~] to restrain [~~such~~] the person from continuing  
22 [~~such~~] the violation or from carrying out the threat of  
23 violation. In [~~such~~] the suit, the division may obtain  
24 injunctions, prohibitory and mandatory, including temporary  
25 restraining orders and temporary injunctions, as the facts may

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1 warrant, including, when appropriate, an injunction restraining  
2 any person from moving or disposing of illegal oil or illegal  
3 oil product or illegal gas or illegal gas product, and any or  
4 all such commodities or funds derived from the sale thereof may  
5 be ordered to be impounded or placed under the control of an  
6 agent appointed by the court if, in the judgment of the court,  
7 such action is advisable."

8 SECTION 6. Section 70-2-31 NMSA 1978 (being Laws 1981,  
9 Chapter 362, Section 1) is amended to read:

10 "70-2-31. VIOLATIONS OF THE OIL AND GAS ACT--STRICT  
11 LIABILITY VIOLATION--KNOWING AND WILLING VIOLATION--CIVIL  
12 PENALTIES.--

13 ~~[A. Any person who knowingly and willfully violates~~  
14 ~~any provision of the Oil and Gas Act or any provision of any~~  
15 ~~rule or order issued pursuant to that act shall be subject to a~~  
16 ~~civil penalty of not more than one thousand dollars (\$1,000)~~  
17 ~~for each violation. For purposes of this subsection, in the~~  
18 ~~case of a continuing violation, each day of violation shall~~  
19 ~~constitute a separate violation. The penalties provided in~~  
20 ~~this subsection shall be recoverable by a civil suit filed by~~  
21 ~~the attorney general in the name and on behalf of the~~  
22 ~~commission or the division in the district court of the county~~  
23 ~~in which the defendant resides or in which any defendant~~  
24 ~~resides if there be more than one defendant or in the district~~  
25 ~~court of any county in which the violation occurred. The~~

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1 ~~payment of such penalty shall not operate to legalize any~~  
2 ~~illegal oil, illegal gas or illegal product involved in the~~  
3 ~~violation for which the penalty is imposed or relieve a person~~  
4 ~~on whom the penalty is imposed from liability to any other~~  
5 ~~person for damages arising out of such violation.~~

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

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

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

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

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

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1 not exceed a total of twenty-five thousand dollars (\$25,000)  
2 for one site inspection, operational event or incident;

3 (2) an administratively imposed civil penalty  
4 shall be based on the:

5 (a) person's history of compliance with  
6 or violation of the Oil and Gas Act or any rule, order or  
7 permit issued under that act;

8 (b) seriousness of the violation;

9 (c) cause of the violation; and

10 (d) demonstrated good faith by the  
11 person in attempting to achieve compliance or remediation;

12 (3) a person aggrieved by an administratively  
13 imposed civil penalty may appeal to the administrative hearings  
14 office; provided that, pursuant to rule issued by the  
15 commission, prior to appeal the person may choose to request a  
16 reconsideration hearing of the penalty by the oil conservation  
17 division; and

18 (4) a decision by the administrative hearings  
19 office may only be appealed to the district court of the county  
20 in which the violation occurred pursuant to the provisions of  
21 Section 39-3-1.1 NMSA 1978.

22 C. A penalty for a knowing and willful violation of  
23 the Oil and Gas Act or any rule, order or permit issued  
24 pursuant to that act shall be recoverable by a civil suit filed  
25 by the attorney general in the name and on behalf of the

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1 commission or the oil conservation division in the district  
2 court of the county in which the violation occurred.

3 D. The payment of a civil penalty shall not operate  
4 to legalize any illegal oil, illegal gas or illegal product  
5 involved in the violation for which the penalty is imposed or  
6 relieve a person on whom the penalty is imposed from liability  
7 to any other person for damages arising out of the violation."

8 SECTION 7. A new section of the Oil and Gas Act, Section  
9 70-2-31.1 NMSA 1978, is enacted to read:

10 "70-2-31.1. [NEW MATERIAL] VIOLATIONS OF THE OIL AND GAS  
11 ACT--CRIMINAL PENALTIES.--

12 A. It is unlawful for any person to knowingly and  
13 willfully:

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

17 (2) do any of the following for the purpose of  
18 evading or violating the Oil and Gas Act or any rule or order  
19 of the commission or the oil conservation division of the  
20 energy, minerals and natural resources department issued  
21 pursuant to that act:

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

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1 (b) make or cause to be made any false  
2 entry in any record, account or memorandum required by the Oil  
3 and Gas Act or by any rule, order or permit of the commission  
4 or oil conservation division issued pursuant to that act;

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

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

11 B. A person who commits a violation under Paragraph  
12 (2) of Subsection A of this section is guilty of a misdemeanor  
13 and shall be sentenced pursuant to Subsection A of Section  
14 31-19-1 NMSA 1978; however, if the violation causes a discharge  
15 that is not subject to regulation and penalty under the Water  
16 Quality Act and causes water to exceed a contaminant standard  
17 adopted pursuant to the Water Quality Act, that person is  
18 guilty of a fourth degree felony and shall be sentenced  
19 pursuant to Section 31-18-15 NMSA 1978."

20 SECTION 8. EFFECTIVE DATE.--The effective date of the  
21 provisions of this act is July 1, 2018.

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