

FIFTY-FOURTH LEGISLATURE
FIRST SESSION, 2019

HB 546/a

March 12, 2019

Mr. President:

Your **JUDICIARY COMMITTEE**, to whom has been referred

**HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE ENERGY, ENVIRONMENT AND NATURAL RESOURCES
COMMITTEE SUBSTITUTE FOR
HOUSE BILL 546**

has had it under consideration and reports same with recommendation that it **DO PASS**, amended as follows:

1. On page 1, line 19, after "CHANGES", insert "; AMENDING THE OIL AND GAS ACT REGARDING VIOLATIONS; PROVIDING FOR PENALTIES; REQUIRING ANNUAL REPORTS; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978".

2. On page 11, between lines 23 and 24, insert the following new section:

"SECTION 7. Section 70-2-31 NMSA 1978 (being Laws 1981, Chapter 362, Section 1) is amended to read:

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

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

FIFTY-FOURTH LEGISLATURE
FIRST SESSION, 2019

SJC/HB 546

Page 2

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

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

(1) issuing a notice of violation;

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

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

B. A notice of violation issued pursuant to Paragraph (1) of Subsection A of this section shall state with reasonable specificity the nature of the violation, shall require compliance immediately or within a specified time period, shall provide notice of the availability of an informal review and the date of a hearing before the division and shall provide notice of potential sanctions, including assessing a penalty, suspending, canceling or terminating a permit or authorization, shutting in a well and plugging and abandonment of a well and forfeiting financial assurance pursuant to Section 70-2-14 NMSA 1978.

C. If the notice of violation is not resolved informally within thirty days after service of the notice, the division shall hold a hearing and determine whether the violation should be upheld

FIFTY-FOURTH LEGISLATURE
FIRST SESSION, 2019

SJC/HB 546

Page 3

and whether any sanctions, including civil penalties, shall be assessed. In assessing a penalty authorized by this section, the division shall take into account the seriousness of the violation, any good faith efforts to comply with the applicable requirements, any history of noncompliance under the Oil and Gas Act and other relevant factors. When a decision is rendered by the division after a hearing, any party of record adversely affected shall have the right to have the matter heard de novo before the commission pursuant to Section 70-2-13 NMSA 1978.

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

E. The commission shall make rules, pursuant to Section 70-2-12.2 NMSA 1978, providing procedures for the issuance of notices of violations, the assessment of penalties and the conduct of informal proceedings and hearings pursuant to this section.

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

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

**FIFTY-FOURTH LEGISLATURE
FIRST SESSION, 2019**

SJC/HB 546

Page 4

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

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

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

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

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

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

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

3. On page 14, line 10, strike "and".

4. On page 14, line 13, strike the period and closing quotation mark and insert in lieu thereof a semicolon.

5. On page 14, between lines 13 and 14, insert the following:

"L. "commission" means the oil conservation commission;
and

**FIFTY-FOURTH LEGISLATURE
FIRST SESSION, 2019**

SJC/HB 546

Page 5

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

SECTION 9. A new section of the Oil and Gas Act is enacted to read:

"[NEW MATERIAL] REPORTING REQUIREMENT.--No later than October 1 of each year, the division shall report to the appropriate interim committee of the legislature and to the governor and shall post on the agency website:

A. the number of notices of violation that the division issued pursuant to the Oil and Gas Act during the previous fiscal year;

B. the total amount of penalties collected by the division for violations pursuant to the Oil and Gas Act during the previous fiscal year;

C. for each penalty collected, the following information:

(1) the name of the person penalized and the location of the violation; and

(2) the nature of the violation and the calculation of the penalty collected; and

D. the number and nature of lawsuits filed for a violation of the Oil and Gas Act, including the names of defendants, the nature of the violation and the outcome of the litigation."".

6. On page 25, line 19, strike "may" and insert in lieu thereof "shall".

7. On page 26, between lines 3 and 4, insert the following new section:

FIFTY-FOURTH LEGISLATURE
FIRST SESSION, 2019

SJC/HB 546

Page 6

"SECTION 12. REPEAL.--Section 70-2-28 NMSA 1978 (being Laws 1935, Chapter 72, Section 19, as amended) is repealed."

8. On page 26, lines 6 and 7, strike Section 11 in its entirety and insert in lieu thereof the following new section:

"SECTION 14. EFFECTIVE DATE.--

A. The effective date of the provisions of Sections 1 through 6, 8, 10, 11 and 13 of this act is July 1, 2019.

B. The effective date of the provisions of Sections 7, 9 and 12 of this act is January 1, 2020."

9. Renumber sections to correspond to these amendments.

Respectfully submitted,

Richard C. Martinez, Chairman

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 10 For 0 Against

Yes: 10

No: 0

Excused: Cervantes

Absent: None

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