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SENATE BILL 164

**56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

INTRODUCED BY

Bill Tallman and Debra M. Sariñana and Harold Pope

AN ACT

RELATING TO PUBLIC LANDS; SETTING THE ROYALTY RATE ON FUTURE OIL AND GAS DEVELOPMENT LEASES ON STATE TRUST LANDS TO ENHANCE REVENUE FOR BENEFICIARIES; REQUIRING ROYALTY ON VENTED OR FLARED GAS.

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

SECTION 1. Section 19-10-4.3 NMSA 1978 (being Laws 1985, Chapter 195, Section 5) is amended to read:

"19-10-4.3. DEVELOPMENT FORM OF LEASE--PREMIUM RESTRICTED LAND.--The following form is designed as the "Development Form". It may be used by the commissioner for oil and gas leases on lands classified as restricted lands and categorized as Premium and issued on or after July 1, 2023:

"LEASE NO. \_\_\_\_\_ APPLICATION NO. \_\_\_\_\_

OIL AND GAS LEASE

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(Development Form)

This agreement, dated \_\_\_\_\_, [19] 20\_\_\_\_,  
between the state of New Mexico, acting by and through its  
commissioner of public lands, hereinafter called the "lessor",  
and \_\_\_\_\_,  
whose address is \_\_\_\_\_  
\_\_\_\_\_,  
hereinafter called the "lessee",

WITNESSETH:

WHEREAS, the lessee has filed in the office of the  
commissioner of public lands an application for an oil and gas  
lease covering the lands hereinafter described and has tendered  
therewith the required first payment; and

WHEREAS, all of the requirements of law relative to the  
application and tender have been duly complied with;

THEREFORE, in consideration of the premises as well as the  
sum of \_\_\_\_\_  
dollars (\$\_\_\_\_\_), the same being the amount of the  
tender above mentioned, and the further sum of \$\_\_\_\_\_  
filing fee, and of the covenants and agreements hereinafter  
contained, the lessor does hereby grant, demise, lease and let  
unto the [said] lessee, exclusively, for the sole and only  
purpose of exploration, development and production of oil or  
gas (including carbon dioxide and helium), or both thereon and  
therefrom with the right to own all oil and gas so produced and

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1 saved therefrom and not reserved as royalty by the lessor under  
2 the terms of this lease, together with [~~rights of way~~] rights  
3 of way, easements and servitudes for pipelines, telephone  
4 lines, tanks, power houses, stations, gasoline plants and  
5 fixtures for producing, treating and caring for such products  
6 and housing and boarding employees and any and all rights and  
7 privileges necessary, incident to or convenient for the  
8 economical operation of [~~said~~] the land, for oil and gas, with  
9 right for such purposes to the free use of oil, gas, casing-  
10 head gas or water from [~~said~~] the lands, but not from the  
11 lessor's water wells, and with the rights of removing either  
12 during or after the term hereof, all and any improvements  
13 placed or erected on the premises by the lessee, including the  
14 right to pull all casing, subject, however, to the covenants  
15 and conditions hereinafter set out, the following described  
16 land situated in the county of \_\_\_\_\_, state of New  
17 Mexico, and more particularly described as follows:

<u>Line</u>	<u>SUBDIVISION</u>	<u>Sec.</u>	<u>Twp.</u>	<u>Rge.</u>	<u>Acres</u>	<u>Institution</u>
19	1	_____	_____	_____	_____	_____
20	2	_____	_____	_____	_____	_____
21	3	_____	_____	_____	_____	_____
22	4	_____	_____	_____	_____	_____
23	5	_____	_____	_____	_____	_____
24	6	_____	_____	_____	_____	_____
25	7	_____	_____	_____	_____	_____

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1           ~~[Said]~~ The lands having been awarded to the lessee and  
2 designated as Tract No. \_\_\_\_\_ at a public sale held by  
3 the commissioner of public lands on \_\_\_\_\_, ~~[19]~~  
4 20\_\_.

5           To have and to hold ~~[said]~~ the land, and all the rights  
6 and privileges granted hereunder, to and unto the lessee for a  
7 primary term of five years from the date hereof, and as long  
8 thereafter as oil and gas, or either of them, is produced in  
9 paying quantities from ~~[said]~~ the land by the lessee, subject  
10 to all of the terms and conditions as hereinafter set forth.

11           In consideration of the premises, the parties covenant and  
12 agree as follows:

13           1. Subject to the free use without royalty, as  
14 hereinbefore provided, the lessee shall pay the lessor as  
15 royalty \_\_\_\_\_ (not less than three-sixteenths nor more than  
16 ~~[one-fifth]~~ one-fourth) part of the oil produced and saved from  
17 the leased premises or the cash value thereof, at the option of  
18 the lessor, such value to be the price prevailing the day oil  
19 is run into a pipeline, if the oil be run into a pipeline, or  
20 into storage tanks, if the oil is stored.

21           2. Subject to the free use without royalty, as  
22 hereinbefore provided, at the option of the lessor at any time  
23 and from time to time, the lessee shall pay the lessor as  
24 royalty \_\_\_\_\_ (not less than three-sixteenths nor more than  
25 ~~[one-fifth]~~ one-fourth) part of the gas produced and saved from

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1 the leased premises, including casing-head gas. Unless [~~said~~]  
2 the option is exercised by the lessor, the lessee shall pay the  
3 lessor as royalty \_\_\_\_\_ (not less than three-sixteenths nor  
4 more than [~~one-fifth~~] one-fourth) of the cash value of the gas,  
5 including casing-head gas, produced and saved from the leased  
6 premises and marketed or utilized, such value to be equal to  
7 the net proceeds derived from the sale of such gas in the  
8 field; provided, however, the cash value for royalty purposes  
9 of carbon dioxide gas and of hydrocarbon gas delivered to a  
10 gasoline plant for extraction of liquid hydrocarbons shall be  
11 equal to the net proceeds derived from the sale of such gas,  
12 including any liquid hydrocarbons recovered therefrom.

13 Notwithstanding the foregoing provisions, the lessor may  
14 require the payment of royalty for all or any part of the gas  
15 produced and saved under this lease and marketed or [~~utilized~~]  
16 used at a price per m.c.f. equal to the maximum price being  
17 paid for gas of like kind and quality and under like conditions  
18 in the same field or area or may reduce the royalty value of  
19 any such gas (to any amount not less than the net proceeds of  
20 sale thereof, in the field) if the commissioner of public lands  
21 shall determine such action to be necessary to the successful  
22 operation of the lands for oil or gas purposes or to  
23 encouragement [~~or~~] of the greatest ultimate recovery of oil or  
24 gas or to the promotion or conservation of oil or gas or in the  
25 public interest.

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1           3. This lease shall not expire at the end of the primary  
2 term hereof if there is a well capable of producing gas in  
3 paying quantities located upon some part of the lands embraced  
4 herein, or upon lands pooled or communitized herewith, where  
5 such well is shut-in due to the inability of the lessee to  
6 obtain a pipeline connection or to market the gas therefrom,  
7 and if the lessee timely pays an annual royalty on or before  
8 the annual rental paying date next ensuing after the expiration  
9 of ninety days from the date [~~said~~] the well was shut-in and on  
10 or before [~~said~~] the rental date thereafter. The payment of  
11 [~~said~~] the annual royalty shall be considered for all purposes  
12 the same as if gas were being produced in paying quantities and  
13 upon the commencement of marketing of gas from said well or  
14 wells the royalty paid for the lease year in which the gas is  
15 first marketed shall be credited upon the royalty payable  
16 hereunder to the lessor for such year. The provisions of this  
17 section shall also apply where gas is being marketed from  
18 [~~said~~] the leasehold premises and through no fault of the  
19 lessee, the pipeline connection or market is lost or ceases, in  
20 which case this lease shall not expire so long as [~~said~~] the  
21 annual royalty is paid as herein provided. The amount of any  
22 annual royalty payable under this section shall equal twice the  
23 annual rental due by the lessee under the terms of this lease  
24 but not less than three hundred twenty dollars (\$320) per well  
25 per year; provided, however, that any such annual royalty for

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1 any month beginning on or after ten years from the date hereof  
2 shall equal four times the annual rental due by the lessee  
3 under the terms of this lease but not less than two thousand  
4 dollars (\$2,000) per well per year; provided further, that no  
5 annual royalty shall be payable under this section if  
6 equivalent amounts are timely paid pursuant to another lease  
7 issued by the lessor and if such other lease includes lands  
8 communitized with lands granted hereunder for the purpose of  
9 prorationally sharing in the shut-in well. Notwithstanding the  
10 provisions of this section to the contrary, this lease shall  
11 not be continued after five years from the date hereof for any  
12 period of more than ten years by the payment of [~~said~~] the  
13 annual royalty unless, for good cause shown, the commissioner  
14 of public lands, in [~~his~~] the commissioner's discretion, grants  
15 such a continuance.

16 4. The lessee shall use all reasonable means, as defined  
17 by commissioner rule, to prevent the underground or surface  
18 waste of oil or gas and to avoid the physical waste, venting or  
19 flaring of gas produced from the leased premises. The lessee  
20 shall pay royalty as provided above on all oil or gas wasted,  
21 including all gas vented or flared, spills, uncontrolled  
22 releases, theft and any other loss. Upon written request by  
23 the lessee, the lessor may, in its sole discretion, waive the  
24 royalty due for gas necessarily vented or flared on the lease.

25 [~~3.~~] 5. The lessee agrees to make full settlement on the

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1 twentieth day of each month for all royalties due the lessor  
2 for the preceding month, under this lease, and to permit the  
3 lessor or its agents, at all reasonable hours, to examine the  
4 lessee's books relating to the production and disposition of  
5 oil and gas produced. The lessee further agrees to submit to  
6 the lessor annually upon forms furnished by the lessor,  
7 verified reports showing the lessee's operations for the  
8 preceding year.

9 [4.] 6. An annual rental at the rate of \$ \_\_\_\_\_  
10 per acre shall become due and payable to the lessor by the  
11 lessee, upon each acre of the land above described and then  
12 claimed by such lessee and the same shall be due and payable in  
13 advance to the lessor on the successive anniversary dates of  
14 this lease, but the annual rental on any assignment shall in no  
15 event be less than forty dollars (\$40.00).

16 In the event the lessee shall elect to surrender any or  
17 all of said acreage, [~~he~~] the lessee shall deliver to the  
18 lessor a duly executed release thereof and in event said lease  
19 has been recorded then [~~he~~] the lessee shall upon request  
20 furnish and deliver to the lessor a certified copy of a duly  
21 recorded release.

22 [5.] 7. The lessee may at any time by paying to the  
23 lessor all amounts then due as provided herein and the further  
24 sum of forty dollars (\$40.00), surrender and cancel this lease  
25 insofar as the same covers all or any portion of the lands

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1 herein leased and be relieved from further obligations or  
2 liability hereunder, in the manner as hereinbefore provided.  
3 Provided, this surrender clause and the option herein reserved  
4 to the lessee shall cease and become absolutely inoperative  
5 immediately and concurrently with the institution of any suit  
6 in any court of law or equity by the lessee, lessor or any  
7 assignee, to enforce this lease, or any of its terms expressed  
8 or implied.

9 ~~[6-]~~ 8. All payments due hereunder shall be made on or  
10 before the day such payment is due, at the office of the  
11 commissioner of public lands in Santa Fe, New Mexico.

12 ~~[7-]~~ 9. The lessee with the consent of the lessor shall  
13 have the rights to assign this lease in whole or in part.  
14 Provided, however, that no assignment of an undivided interest  
15 in the lease or in any part thereof nor any assignment of less  
16 than a legal subdivision shall be recognized or approved by the  
17 lessor. Upon approval in writing by the lessor of an  
18 assignment, the assignor shall stand relieved from all  
19 obligations to the lessor with respect to the lands embraced in  
20 the assignment and the lessor shall likewise be relieved from  
21 all obligations to the assignor as to such tracts, and the  
22 assignee shall succeed to all of the rights and privileges of  
23 the assignor with respect to such tracts and shall be held to  
24 have assumed all of the duties and obligations of the assignor  
25 to the lessor as to such tracts.

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1           ~~[8-]~~ 10. In the event a well or wells producing oil or  
2 gas in paying quantities should be brought in on adjacent land  
3 ~~[which]~~ that is draining the leased premises, the lessee shall  
4 drill such offset well or wells as a reasonably prudent  
5 operator would drill under the same or similar circumstances,  
6 provided that no such offset well shall be required if  
7 compensatory royalties are paid pursuant to an agreement  
8 between the lessor and the lessee.

9           ~~[9-]~~ 11. The lessee agrees to notify the lessor of the  
10 location of each well before commencing drilling thereon, to  
11 keep a complete and accurate log of each well drilled and to  
12 furnish a copy thereof, verified by some person having actual  
13 knowledge of the facts, to the lessor upon the completion of  
14 any well, and to furnish the log of any unfinished well at any  
15 time when requested to do so by the lessor.

16           If any lands embraced in this lease shall be included in  
17 any deed or contract of purchase outstanding and subsisting  
18 issued pursuant to any sale made of the surface of such lands  
19 prior to the date of this lease, it is agreed and understood  
20 that no drilling operation shall be commenced on any such lands  
21 so sold unless and until the lessee shall have filed a good and  
22 sufficient bond with the lessor as required by law, to secure  
23 the payment for such damage to the livestock, range, water,  
24 crops or tangible improvements on such lands as may be suffered  
25 by the purchaser holding such deed or contract of purchase, or

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1     ~~[his]~~ the lessee's successors, by reason of the developments,  
2     use and occupation of such lands by such lessee.  Provided,  
3     however, that no such bond shall be required if such purchaser  
4     shall waive the right to require such bond to be given in the  
5     manner provided by law.

6             ~~[10-]~~ 12.  In drilling wells, all water-bearing strata  
7     shall be noted in the log, and the lessor reserves the right to  
8     require that all or any part of the casing shall be left in any  
9     nonproductive well when the lessor deems it to the interest of  
10    the beneficiaries of the lands granted hereunder to maintain  
11    ~~[said]~~ the well or wells for water.  For such casing so left in  
12    wells the lessor shall pay to the lessee the reasonable value  
13    thereof.

14            ~~[11-]~~ 13.  The lessee shall be liable and agree to pay for  
15    all damages to the range, livestock, growing crops or  
16    improvements caused by the lessee's operations on ~~[said]~~ the  
17    lands.  When requested by the lessor, the lessee shall bury  
18    pipelines below plow depth.

19            ~~[12-]~~ 14.  The lessee shall not remove any machinery or  
20    fixtures placed on ~~[said]~~ the premises, nor draw the casing  
21    from any well unless and until all payments and obligations due  
22    the lessor under the terms of this agreement shall have been  
23    paid or satisfied.  The lessee's right to remove the casing is  
24    subject to the provision of Paragraph ~~[10]~~ 12 above.

25            ~~[13-]~~ 15.  Upon failure or default of the lessee to comply  
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1 with any of the provisions or covenants hereof, the lessor is  
2 hereby authorized to cancel this lease and such cancellation  
3 shall extend to and include all rights hereunder as to the  
4 whole of the tract so claimed, or possessed by the lessee, but  
5 shall not extend to, nor affect the rights of any other lessee  
6 or assignee claiming any portion of the lands upon which no  
7 default has been made; provided, however, that before any such  
8 cancellation shall be made, the lessor shall mail to the lessee  
9 so defaulting, by registered or certified mail, addressed to  
10 the post office address of such lessee as shown by the records  
11 of the state land office, a notice of intention of cancellation  
12 specifying the default for which cancellation is to be made,  
13 and if within thirty days from the date of mailing [~~said~~] the  
14 notice the [~~said~~] lessee shall remedy the default specified in  
15 said notice, cancellation shall not be made.

16 [~~14.~~] 16. If this lease shall have been maintained in  
17 accordance with the provisions hereof and if at the expiration  
18 of the primary term provided for herein oil or gas is not being  
19 produced on [~~said~~] the land but the lessee is then engaged in  
20 bona fide drilling or reworking operations thereon, this lease  
21 shall remain in full force and effect so long as such  
22 operations are diligently prosecuted and, if they result in the  
23 production of oil or gas, so long thereafter as oil and gas in  
24 paying quantities, or either of them, is produced from [~~said~~]  
25 the land; provided, however, such operations extending beyond

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1 the primary term shall be approved by the lessor upon written  
2 application filed with the lessor on or before the expiration  
3 of [~~said~~] the term, and a report of the status of all of such  
4 operations shall be made by the lessee to the lessor every  
5 thirty days and a cessation of such operations for more than  
6 twenty consecutive days shall be considered as an abandonment  
7 of such operations and this lease shall thereupon terminate.

8 If during the drilling or reworking of any well under this  
9 section, the lessee loses or junks the hole or well and after  
10 diligent efforts in good faith is unable to complete [~~said~~] the  
11 operations, then within twenty days after the abandonment of  
12 [~~said~~] the operations, the lessee may commence another well  
13 within three hundred thirty feet of the lost or junked hole or  
14 well and drill the same with due diligence.

15 Operations commenced and continued as herein provided  
16 shall extend this lease as to all lands as to which the same is  
17 in full force and effect as of the time [~~said~~] the drilling  
18 operations are commenced; provided, however, this lease shall  
19 be subject to cancellation in accordance with Paragraph [~~13~~] 15  
20 hereof for failure to pay rentals or file reports [~~which~~] that  
21 may become due while operations are being conducted hereunder.

22 [~~15-~~] 17. Should production of oil and gas or either of  
23 them in paying quantities be obtained while this lease is in  
24 force and effect and should thereafter cease from any cause  
25 after the expiration of five years from the date hereof, this

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1 lease shall not terminate if the lessee commences additional  
2 drilling or reworking operations within sixty days after the  
3 cessation of such production and shall remain in full force and  
4 effect so long as such operations are prosecuted in good faith  
5 with no cessation of more than twenty consecutive days, and if  
6 such operations result in the production of oil or gas in  
7 paying quantities, so long thereafter as oil or gas in paying  
8 quantities is produced from ~~[said]~~ the land; provided, however,  
9 written notice of intention to commence such operations shall  
10 be filed with the lessor within thirty days after the cessation  
11 of such production, and a report of the status of such  
12 operations shall be made by the lessee to the lessor every  
13 thirty days, and the cessation of such operations for more than  
14 twenty consecutive days shall be considered as an abandonment  
15 of such operations and this lease shall thereupon terminate.

16 ~~[16-]~~ 18. Lessees, including their heirs, assigns, agents  
17 and contractors, shall at their own expense fully comply with  
18 all laws, regulations, rules, ordinances and requirements of  
19 the city, county, state and federal authorities and agencies,  
20 in all matters and things affecting the premises and operations  
21 thereon ~~[which]~~ that may be enacted or promulgated under the  
22 governmental police powers pertaining to public health and  
23 welfare, including but not limited to conservation, sanitation,  
24 aesthetics, pollution, cultural properties, fire and ecology.  
25 Such agencies are not to be deemed third party beneficiaries

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1 hereunder, however this clause is enforceable by the lessor in  
2 any manner provided in this lease or by law.

3 ~~[17.]~~ 19. Should the lessor desire to exercise its rights  
4 to take in-kind its royalty share of oil, gas or associated  
5 substances or purchase all or any part of the oil, gas or  
6 associated substances produced from the lands covered by this  
7 lease, the lessee hereby irrevocably consents to the lessor  
8 exercising its right. Such consent is a consent to the  
9 termination of any supplier/purchaser relationship between the  
10 lessor and the lessee deemed to exist under federal  
11 regulations. The lessee further agrees that it will require  
12 any purchaser of oil, gas or associated substances to likewise  
13 waive any such rights.

14 ~~[18.]~~ 20. The lessor reserves a continuing option to  
15 purchase at any time and from time to time, at the market price  
16 prevailing in the area on the date of purchase, all or any part  
17 of the minerals (oil and gas) that will be produced from the  
18 lands covered by this lease.

19 ~~[19.]~~ 21. The lessor reserves the right to execute leases  
20 for geothermal resource development and operation thereon; the  
21 right to sell or dispose of the geothermal resources of such  
22 lands; and the right to grant rights of way and easements for  
23 these purposes.

24 ~~[20.]~~ 22. All terms of this agreement shall extend to and  
25 bind the heirs, executors, administrators, successors and

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1 assigns of the parties hereto.

2 In witness whereof, the party of the first part has  
3 [~~hereunto~~] signed and caused its name to be signed by its  
4 commissioner of public lands [~~thereunto~~] duly authorized, with  
5 the seal of [~~his~~] office affixed, and the lessee has signed  
6 this agreement the day and year first above written.

7 STATE OF NEW MEXICO

8 By \_\_\_\_\_

9 Commissioner of Public Lands, Lessor

10 \_\_\_\_\_

11 \_\_\_\_\_ (Seal)

12 Lessee"."

13 SECTION 2. EFFECTIVE DATE.--The effective date of the  
14 provisions of this act is July 1, 2023.

15 - 16 -