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SENATE BILL 493

47TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2006

INTRODUCED BY

Carroll H. Leavell

AN ACT

RELATING TO THE REGULATION OF OIL AND GAS; ENACTING A SECTION OF THE OIL AND GAS ACT TO PRESCRIBE THE PURPOSE OF ALL RULES ADOPTED PURSUANT TO THAT ACT; PROVIDING FOR A REVIEW OF ALL EXISTING RULES ENACTED PURSUANT TO THE OIL AND GAS ACT; MAKING AN APPROPRIATION.

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

Section 1. Section 9-5A-4 NMSA 1978 (being Laws 1987, Chapter 234, Section 4, as amended) is amended to read:

"9-5A-4. DIVISIONS--DUTIES.--In addition to the duties assigned to each division of the energy, minerals and natural resources department by the secretary of energy, minerals and natural resources:

A. the administrative services division shall provide clerical, recordkeeping and administrative support to

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1 the department in the areas of personnel, budget, procurement
2 and contracting;

3 B. the energy conservation and management division
4 shall plan, administer, review, provide technical assistance,
5 maintain records and monitor state and federal energy
6 conservation and alternative energy technology programs;

7 C. the forestry division shall enforce and
8 administer ~~[all]~~ laws and regulations relating to forestry on
9 lands within the state;

10 D. the mining and minerals division shall enforce
11 and administer laws and regulations relating to mine safety,
12 coal surface mine reclamation and abandoned mine lands
13 reclamation;

14 E. the oil conservation division shall administer
15 ~~[the]~~ laws and regulations relating to oil, gas and geothermal
16 resources ~~[except those laws specifically administered by
17 another authority];~~ and

18 F. the state ~~[park and recreation]~~ parks division
19 shall develop, maintain, manage and supervise all state parks
20 and state-owned or state-leased recreation areas."

21 Section 2. Section 70-2-11 NMSA 1978 (being Laws 1935,
22 Chapter 72, Section 9, as amended) is amended to read:

23 "70-2-11. POWER OF COMMISSION AND DIVISION TO PREVENT
24 WASTE AND PROTECT CORRELATIVE RIGHTS.--

25 A. The oil conservation division is ~~[hereby]~~

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1 empowered and it is its duty to prevent waste prohibited by
2 [~~this~~] the Oil and Gas Act and to protect correlative rights as
3 [~~in this act~~] provided in that act. To that end, pursuant to
4 the requirements of Section 70-2-12.1 NMSA 1978, the division
5 is empowered to make and enforce rules, regulations and orders
6 and to do whatever may be reasonably necessary to carry out the
7 purpose of [~~this~~] that act, whether or not indicated or
8 specified in any section [~~hereof~~] of that act.

9 B. The commission shall have concurrent
10 jurisdiction and authority with the oil conservation division
11 to the extent necessary for the commission to perform its
12 duties as required by law."

13 Section 3. Section 70-2-12 NMSA 1978 (being Laws 1978,
14 Chapter 71, Section 1, as amended) is amended to read:

15 "70-2-12. ENUMERATION OF POWERS.--

16 A. Included in the power given to the oil
17 conservation division of the energy, minerals and natural
18 resources department is the authority to collect data; to make
19 investigations and inspections; to examine properties, leases,
20 papers, books and records; to examine, check, test and gauge
21 oil and gas wells, tanks, plants, refineries and all means and
22 modes of transportation and equipment; to hold hearings; to
23 provide for the keeping of records and the making of reports
24 and for the checking of the accuracy of the records and
25 reports; to limit and prorate production of crude petroleum oil

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1 or natural gas or both as provided in the Oil and Gas Act; and
2 to require either generally or in particular areas certificates
3 of clearance or tenders in connection with the transportation
4 of crude petroleum oil or natural gas or any products of either
5 or both oil and products or both natural gas and products.

6 B. Apart from any authority, express or implied,
7 elsewhere given to or existing in the oil conservation division
8 by virtue of the Oil and Gas Act or the statutes of this state,
9 pursuant to the requirements of Section 70-2-12.1 NMSA 1978,
10 the division is authorized to make rules, regulations and
11 orders for the purposes and with respect to the subject matter
12 stated in this subsection:

13 (1) to require dry or abandoned wells to be
14 plugged in a way to confine the crude petroleum oil, natural
15 gas or water in the strata in which it is found and to prevent
16 it from escaping into other strata; the division shall require
17 a cash or surety bond in a sum not to exceed fifty thousand
18 dollars (\$50,000) conditioned for the performance of such
19 regulations;

20 (2) to prevent crude petroleum oil, natural
21 gas or water from escaping from strata in which it is found
22 into other strata;

23 (3) to require reports showing locations of
24 all oil or gas wells and for the filing of logs and drilling
25 records or reports;

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1 (4) to prevent the drowning by water of any
2 stratum or part thereof capable of producing oil or gas or both
3 oil and gas in paying quantities and to prevent the premature
4 and irregular encroachment of water or any other kind of water
5 encroachment that reduces or tends to reduce the total ultimate
6 recovery of crude petroleum oil or gas or both oil and gas from
7 any pool;

8 (5) to prevent fires;

9 (6) to prevent "blow-ups" and "caving" in the
10 sense that the conditions indicated by such terms are generally
11 understood in the oil and gas business;

12 (7) to require wells to be drilled, operated
13 and produced in such manner as to prevent injury to neighboring
14 leases or properties;

15 (8) to identify the ownership of oil or gas
16 producing leases, properties, wells, tanks, refineries,
17 pipelines, plants, structures and all transportation equipment
18 and facilities;

19 (9) to require the operation of wells with
20 efficient gas-oil ratios and to fix such ratios;

21 (10) to fix the spacing of wells;

22 (11) to determine whether a particular well or
23 pool is a gas or oil well or a gas or oil pool, as the case may
24 be, and from time to time to classify and reclassify wells and
25 pools accordingly;

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1 (12) to determine the limits of any pool
2 producing crude petroleum oil or natural gas or both and from
3 time to time redetermine the limits;

4 (13) to regulate the methods and devices
5 employed for storage in this state of oil or natural gas or any
6 product of either, including subsurface storage;

7 (14) to permit the injection of natural gas or
8 of any other substance into any pool in this state for the
9 purpose of repressuring, cycling, pressure maintenance,
10 secondary or any other enhanced recovery operations;

11 (15) to regulate the disposition of water
12 produced or used in connection with the drilling for or
13 producing of oil or gas or both and to direct surface or
14 subsurface disposal of the water, including disposition by use
15 in drilling for or production of oil or gas, in road
16 construction or maintenance or other construction, in the
17 generation of electricity or in other industrial processes, in
18 a manner that will afford reasonable protection against
19 contamination of fresh water supplies designated by the state
20 engineer;

21 (16) to determine the limits of any area
22 containing commercial potash deposits and from time to time
23 redetermine the limits;

24 (17) to regulate and, where necessary,
25 prohibit drilling or producing operations for oil or gas within

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1 any area containing commercial deposits of potash where the
2 operations would have the effect unduly to reduce the total
3 quantity of the commercial deposits of potash that may
4 reasonably be recovered in commercial quantities or where the
5 operations would interfere unduly with the orderly commercial
6 development of the potash deposits;

7 (18) to spend the oil and gas reclamation fund
8 and do all acts necessary and proper to plug dry and abandoned
9 oil and gas wells and to restore and remediate abandoned well
10 sites and associated production facilities in accordance with
11 the provisions of the Oil and Gas Act, the rules and
12 regulations adopted under that act and the Procurement Code,
13 including disposing of salvageable equipment and material
14 removed from oil and gas wells being plugged by the state;

15 (19) to make well price category
16 determinations pursuant to the provisions of the federal
17 Natural Gas Policy Act of 1978 or any successor act and, by
18 regulation, to adopt fees for such determinations, which fees
19 shall not exceed twenty-five dollars (\$25.00) per filing. Such
20 fees shall be credited to the account of the oil conservation
21 division by the state treasurer and may be expended as
22 authorized by the legislature;

23 (20) to regulate the construction and
24 operation of oil treating plants and to require the posting of
25 bonds for the reclamation of treating plant sites after

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1 cessation of operations;

2 (21) to regulate the disposition of
3 nondomestic wastes resulting from the exploration, development,
4 production or storage of crude oil or natural gas to protect
5 public health and the environment; and

6 (22) to regulate the disposition of
7 nondomestic wastes resulting from the oil field service
8 industry, the transportation of crude oil or natural gas, the
9 treatment of natural gas or the refinement of crude oil to
10 protect public health and the environment, including
11 administering the Water Quality Act as provided in Subsection E
12 of Section 74-6-4 NMSA 1978."

13 Section 4. Section 70-2-22 NMSA 1978 (being Laws 1935,
14 Chapter 72, Section 14, as amended) is amended to read:

15 "70-2-22. RULES AND REGULATIONS TO EFFECTUATE
16 PROHIBITIONS AGAINST PURCHASE OR HANDLING OF EXCESS OIL OR
17 NATURAL GAS--PENALTIES.--

18 A. Pursuant to the requirements of Section
19 70-2-12.2 NMSA 1978, the oil conservation division is
20 specifically authorized and directed to make such rules,
21 regulations and orders and may provide for such certificates of
22 clearance or tenders as may be necessary to make effective the
23 prohibitions contained in Section [~~65-3-18 NMSA 1953~~] 70-2-21
24 NMSA 1978.

25 B. Unless and until the oil conservation division
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1 provides for certificates of clearance or tenders or some other
2 method so that any person may have an opportunity to determine
3 whether any contemplated transaction of sale or purchase or
4 acquisition or of transportation, refining, processing or
5 handling in any other way involves illegal oil or illegal oil
6 product or illegal gas or illegal gas product, no penalty shall
7 be imposed for the sale or purchase or acquisition or the
8 transportation, refining, processing or handling in any other
9 way of illegal oil or illegal oil product or illegal gas or
10 illegal gas product except under circumstances stated in the
11 [~~succeeding~~] provisions of this [~~paragraph~~] subsection.

12 Penalties shall be imposed for the commission of each
13 transaction prohibited in Section [~~65-3-18 NMSA 1953~~] 70-2-21
14 NMSA 1978 when the person committing the [~~same~~] transaction
15 knows that illegal oil or illegal oil product or illegal gas or
16 illegal gas product is involved in [~~such~~] the transaction or
17 when [~~such~~] the person could have known or determined [~~such~~]
18 the fact by the exercise of reasonable diligence or from facts
19 within [~~his~~] the person's knowledge. However, regardless of
20 lack of actual notice or knowledge, penalties as provided in
21 [~~this~~] the Oil and Gas Act shall apply to any sale or purchase
22 or acquisition and to the transportation, refining, processing
23 or handling in any other way of illegal oil or illegal oil
24 product or illegal gas or illegal gas product where
25 administrative provision is made for identifying the character

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1 of the commodity as to its legality. It shall likewise be a
2 violation for which penalties shall be imposed for any person
3 to sell or purchase or acquire or to transport, refine, process
4 or handle in any way any crude petroleum oil or natural gas or
5 any product [~~thereof~~] of either without complying with the
6 rule, regulation or order of the commission or oil conservation
7 division relating thereto."

8 Section 5. A new section of the Oil and Gas Act, Section
9 70-2-12.2 NMSA 1978, is enacted to read:

10 "70-2-12.2. [NEW MATERIAL] SCOPE OF RULES--RULE REVIEW.--

11 A. The legislature recognizes the important and
12 vital role that the oil and gas industry provides to the
13 residents of New Mexico. The regulatory burden borne by the
14 oil and gas industry has greatly increased to the point where
15 opportunities to develop oil and gas in this state are not
16 pursued, thereby potentially impacting state revenues.
17 Therefore, the following criteria shall govern all rules
18 adopted by the oil conservation commission or the oil
19 conservation division of the energy, minerals and natural
20 resources department pursuant to the provisions of the Oil and
21 Gas Act:

22 (1) all rules shall be directly related to the
23 protection of correlative rights, minimizing waste or
24 protecting the environment through the disposition or storage
25 of production resulting from oil field exploration or

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1 production; and

2 (2) prior to the adoption of a rule, the
3 commission or division shall attempt to reduce the regulatory
4 burden imposed in protecting legitimate state interests by:

5 (a) taking into consideration the
6 economic impact upon mineral owners and oil and gas lessees,
7 the technical feasibility of complying with the rule, the
8 protection of correlative rights, the prevention of waste, the
9 risk to persons and property and the legitimate concerns of the
10 state;

11 (b) basing all technical rules upon
12 peer-reviewed science; and

13 (c) analyzing the time and expense that
14 an oil and gas operator or oil and gas owner must expend in
15 complying with the rule.

16 B. The oil conservation commission and the oil
17 conservation division of the energy, minerals and natural
18 resources department have exclusive jurisdiction to regulate
19 oil and gas exploration, drilling development and production in
20 this state, as well as the disposal of all waste that results
21 from such activities.

22 C. During fiscal years 2007 and 2008, the energy,
23 minerals and natural resources department, the oil conservation
24 division and the oil conservation commission shall conduct a
25 review of all existing rules enacted by those agencies that

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1 affect the oil and gas industry to ensure that they are in
2 compliance with this section. If a rule is determined not to
3 be in compliance with the requirements of this section, the
4 department, division or commission shall propose to revise the
5 rule so that it is in compliance with those requirements."

6 Section 6. APPROPRIATION.--Two hundred fifty thousand
7 dollars (\$250,000) is appropriated from the general fund to the
8 energy, minerals and natural resources department for
9 expenditure in fiscal year 2007 to review and revise existing
10 rules pursuant to Subsection C of Section 70-2-12.2 NMSA 1978.
11 Any unexpended or unencumbered balance remaining at the end of
12 fiscal year 2007 shall revert to the general fund.