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HOUSE MEMORIAL 29

54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020

INTRODUCED BY

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A MEMORIAL

REQUESTING A REVIEW OF STATEWIDE REMEDIATION AND RECLAMATION
BONDS AND EXPRESSING SUPPORT FOR ESTABLISHING SUFFICIENT
BONDING AMOUNTS FOR ENERGY OPERATIONS.

WHEREAS, New Mexico is one of North America's leading
energy producers; and

WHEREAS, multiple state agencies are tasked with ensuring
adequate bonding protection for energy- and extraction-related
activities on public and private lands; and

WHEREAS, the commissioner of public lands, as the chief
executive of the state land office, has a constitutional and
statutory duty to manage and care for approximately nine
million acres of surface land and thirteen million acres of
mineral estate throughout New Mexico; and

WHEREAS, the energy, minerals and natural resources

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1 department regulates mining, oil and gas activities and
2 produced water disposal and manages clean energy programs; and

3 WHEREAS, the department of environment's mission is to
4 protect and restore the environment for future generations; and

5 WHEREAS, persons engaged in energy- and extraction-related
6 activities can be required by law and contract to reclaim lands
7 disturbed by those activities and remediate surface and
8 subsurface contamination caused by those activities; and

9 WHEREAS, a fidelity or surety bond is a contractual
10 promise made by a third-party surety to pay a stipulated amount
11 in the event that a party with the primary duty to perform an
12 obligation fails to perform; and

13 WHEREAS, requiring that persons engaged in energy- and
14 extraction-related activities provide regulators and land
15 management agencies with bonds or personal financial security
16 can be an effective way to ensure that the persons engaged in
17 those activities perform their obligations to reclaim the land
18 and remediate surface and subsurface contamination; and

19 WHEREAS, bonds help prevent or reduce taxpayer losses; and

20 WHEREAS, bonds should be set at amounts that provide
21 sufficient financial assurance to prevent remediation and
22 compliance costs, such as the costs of remediating sites and
23 removing infrastructure, from falling on taxpayers or state
24 land trust beneficiaries; and

25 WHEREAS, there are approximately fifty-seven thousand four

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1 hundred one active oil and gas wells and sixty-four thousand
2 eight hundred fifty-eight inactive wells statewide, of which
3 seven hundred eleven wells are orphaned wells and fourteen
4 thousand sixty active and seventeen thousand six hundred
5 eighty-six inactive oil and gas wells are on state trust lands;
6 and

7 WHEREAS, the average cost in New Mexico to plug a well is
8 twenty-eight thousand three hundred eighteen dollars (\$28,318),
9 and the cost to remediate a single lease can range from five
10 thousand dollars (\$5,000) to millions of dollars, depending on
11 the extent of contamination; and

12 WHEREAS, the current state land office bonding
13 requirements require a maximum bond of twenty-five thousand
14 dollars (\$25,000), which covers an unlimited number of oil and
15 gas and mineral leases, as well as rights of way, recycling
16 facilities and all other types of leases issued on state land
17 statewide to a single lessee; and

18 WHEREAS, bond requirements of the oil conservation
19 division of the energy, minerals and natural resources
20 department are generally limited to plugging and abandonment
21 costs, in an amount that varies depending on the number of
22 wells per operator, with the maximum amount set at two hundred
23 fifty thousand dollars (\$250,000) for over one hundred wells;
24 and

25 WHEREAS, the existing exposure for plugging inactive well

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1 sites on state lands alone is over five million dollars
2 (\$5,000,000), and the cost of remediating these sites would
3 cost additional unknown millions of dollars; and

4 WHEREAS, there are over ten thousand miles of hydrocarbon,
5 produced water, fresh water, carbon dioxide and nitro sulfide
6 pipelines in rights of way throughout the state; and

7 WHEREAS, the existing exposure for decommissioning
8 pipelines and remediating rights of way on state lands alone is
9 hundreds of millions of dollars, and the cost of remediating
10 these rights of way would cost additional unknown millions of
11 dollars; and

12 WHEREAS, in a September 2019 report, the United States
13 government accountability office reviewed whether bonding
14 inadequacies exist and found that oil and gas bond amounts set
15 by the bureau of land management of the United States
16 department of the interior largely have not been updated in
17 forty years or more and fail to serve their intended purpose
18 and recommended that bond minimums be raised to more closely
19 reflect actual remediation and reclamation costs; and

20 WHEREAS, the bureau of land management concurred with the
21 report's findings to routinely review oil and gas bonds and set
22 amounts that appropriately reflect the risks and liabilities
23 posed by lessees and operators to protect taxpayers; and

24 WHEREAS, the minimum bond amounts utilized by the bureau
25 of land management and found to be insufficient are in many

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1 cases the same rates applicable to state land office and oil
2 conservation division bond thresholds;

3 NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF
4 REPRESENTATIVES OF THE STATE OF NEW MEXICO that support be
5 expressed for establishing bonding amounts that are sufficient
6 to cover remediation and reclamation costs and lease
7 obligations; and

8 BE IT FURTHER RESOLVED that the state land office, the
9 energy, minerals and natural resources department and the
10 department of environment be requested to conduct a bond
11 adequacy review related to energy production and
12 infrastructure; and

13 BE IT FURTHER RESOLVED that the agencies be requested to
14 evaluate how to collectively ensure adequate bonding to fulfill
15 their respective statutory obligations to avoid having excess
16 expenses fall on taxpayers or state land trust beneficiaries
17 and to report their findings to the appropriate legislative
18 interim committee by December 1, 2020; and

19 BE IT FURTHER RESOLVED that copies of this memorial be
20 transmitted to the commissioner of public lands, the secretary
21 of environment, the secretary of energy, minerals and natural
22 resources and the director of the legislative finance
23 committee.