

HOUSE ENERGY, ENVIRONMENT AND NATURAL RESOURCES
COMMITTEE SUBSTITUTE FOR
HOUSE MEMORIAL 29

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

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-related and oil-and-gas-
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 oil conservation division of the energy,

1 minerals and natural resources department regulates mining, oil
2 and gas activities and produced water disposal, and the
3 department manages clean energy programs; and

4 WHEREAS, the department of environment regulates energy-
5 related activities not exclusively regulated under the Oil and
6 Gas Act; and

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

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

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

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

24 WHEREAS, bonds should be set at amounts that provide
25 sufficient financial assurance to prevent remediation and

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1 compliance costs, such as the costs of remediating sites and
2 removing infrastructure, from falling on taxpayers or state
3 land trust beneficiaries; and

4 WHEREAS, there are approximately fifty-seven thousand four
5 hundred one active oil and gas wells and sixty-four thousand
6 eight hundred fifty-eight inactive wells statewide, of which
7 seven hundred eleven wells are orphaned wells and fourteen
8 thousand sixty active and seventeen thousand six hundred
9 eighty-six inactive oil and gas wells are on state trust lands;
10 and

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

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

22 WHEREAS, bond requirements of the oil conservation
23 division of the energy, minerals and natural resources
24 department are generally limited to plugging and abandonment
25 costs, in an amount that varies depending on the number of

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1 wells per operator, with the maximum amount set at two hundred
2 fifty thousand dollars (\$250,000) for over one hundred wells;
3 and

4 WHEREAS, the existing exposure for plugging inactive well
5 sites on state lands alone is over five million dollars
6 (\$5,000,000), and the cost of remediating these sites would
7 cost additional unknown millions of dollars; and

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

11 WHEREAS, the existing exposure for decommissioning
12 pipelines and remediating rights of way on state lands alone is
13 hundreds of millions of dollars, and the cost of remediating
14 these rights of way if, for example, leaks and spills occur,
15 would cost additional unknown millions of dollars; and

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

24 WHEREAS, the bureau of land management concurred with the
25 report's findings to routinely review oil and gas bonds and set

1 amounts that appropriately reflect the risks and liabilities
2 posed by lessees and operators to protect taxpayers; and

3 WHEREAS, the minimum bond amounts utilized by the bureau
4 of land management and found to be insufficient are in many
5 cases the same rates applicable to state land office and oil
6 conservation division bond thresholds;

7 NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF
8 REPRESENTATIVES OF THE STATE OF NEW MEXICO that support be
9 expressed for establishing bonding amounts that are sufficient
10 to cover reasonably anticipated remediation and reclamation
11 costs and lease obligations for energy-related and oil-and-gas-
12 extraction-related activities; and

13 BE IT FURTHER RESOLVED that the state land office, in
14 consultation with the oil conservation division of the energy,
15 minerals and natural resources department and the department of
16 environment, be requested to conduct a bond adequacy review
17 related to energy production and infrastructure; and

18 BE IT FURTHER RESOLVED that the agencies be requested to
19 evaluate how to collectively ensure adequate bonding,
20 appropriate use of funds from forfeited bonds and adequate
21 funding and appropriate use of statutorily dedicated
22 reclamation funds to avoid having excess expenses fall on
23 taxpayers or state land trust beneficiaries and to report
24 findings to the appropriate legislative interim committee by
25 December 1, 2020; and

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1 BE IT FURTHER RESOLVED that the commissioner of public
2 lands, or the commissioner's designee, form and chair an
3 advisory group to meet, share information and evaluate existing
4 requirements for and limits on bonding and to assess the need
5 for changes to laws, rules and policies to achieve the
6 objectives of this memorial; and

7 BE IT FURTHER RESOLVED that the advisory group be composed
8 of representatives from the following groups:

- 9 A. the state land office;
- 10 B. the oil and conservation division of the energy,
11 minerals and natural resources department;
- 12 C. the department of environment; and
- 13 D. affected stakeholders, including representatives
14 of large and small oil and gas producers, midstream operators,
15 other energy project operators, environmental and conservation
16 advocacy organizations and interested members of the public;
17 and

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