

HOUSE BILL 133

56TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2024

INTRODUCED BY

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and Mimi Stewart

AN ACT

RELATING TO THE ENVIRONMENT; AMENDING THE OIL AND GAS ACT;
ALLOWING THE OIL CONSERVATION DIVISION OF THE ENERGY, MINERALS
AND NATURAL RESOURCES DEPARTMENT TO REGULATE CERTAIN TRANSFERS
OF OIL AND GAS WELLS AND AUTHORIZE THE CONVERSION OF OIL AND
GAS WELLS FOR ENERGY STORAGE AND GEOTHERMAL DEVELOPMENT;
INCREASING THE AMOUNT OF FEES AND FINANCIAL ASSURANCE
ASSOCIATED WITH OPERATING OIL AND GAS WELLS; INCREASING CIVIL
PENALTIES; ALLOWING FEES TO BE ADJUSTED TO ACCOUNT FOR
INFLATION; REQUIRING THE CAPTURE OF NINETY-EIGHT PERCENT OF
NATURAL GAS PRODUCED BEGINNING IN 2027; PROVIDING FOR CERTAIN
SETBACKS FROM OIL AND GAS FACILITIES.

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

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

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1 "70-2-12. ENUMERATION OF POWERS.--

2 A. The [~~oil conservation~~] division [~~of the energy,~~
3 ~~minerals and natural resources department~~] may:

4 (1) collect data;

5 (2) make investigations and inspections;

6 (3) examine properties, leases, papers, books
7 and records;

8 (4) examine, check, test and gauge oil and gas
9 wells, tanks, plants, refineries and all means and modes of
10 transportation and equipment;

11 (5) hold hearings;

12 (6) provide for the keeping of records and the
13 making of reports and for the checking of the accuracy of the
14 records and reports;

15 (7) limit and prorate production of crude
16 petroleum oil or natural gas or both as provided in the Oil and
17 Gas Act; and

18 (8) require either generally or in particular
19 areas certificates of clearance or tenders in connection with
20 the transportation of crude petroleum oil or natural gas or any
21 products of either or both oil and products or both natural gas
22 and products.

23 B. The [~~oil conservation~~] division may make rules
24 and orders [~~for the purposes and with respect to the subject~~
25 ~~matter stated in this subsection~~]:

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1 (1) to require dry or abandoned wells to be
2 plugged in a way so as to confine the crude petroleum oil,
3 natural gas or water in the strata in which it is found and to
4 prevent it from escaping into other strata; pursuant to Section
5 70-2-14 NMSA 1978, the division shall require financial
6 assurance conditioned for the performance of the rules;

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

10 (3) to require reports showing locations of
11 all oil or gas wells and for the filing of logs and drilling
12 records or reports;

13 (4) to prevent the drowning by water of any
14 stratum or part thereof capable of producing oil or gas or both
15 oil and gas in paying quantities and to prevent the premature
16 and irregular encroachment of water or any other kind of water
17 encroachment that reduces or tends to reduce the total ultimate
18 recovery of crude petroleum oil or gas or both oil and gas from
19 any pool;

20 (5) to prevent fires;

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

24 (7) to require wells to be drilled, operated
25 and produced in such manner as to prevent injury to neighboring

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1 leases or properties;

2 (8) to identify the ownership of oil or gas
3 producing leases, properties, wells, tanks, refineries,
4 pipelines, plants, structures and all transportation equipment
5 and facilities;

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

8 (10) to fix the spacing of wells;

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

13 (12) to determine the limits of any pool
14 producing crude petroleum oil or natural gas or both and from
15 time to time redetermine the limits;

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

19 (14) to permit the injection of natural gas or
20 of any other substance into any pool in this state for the
21 purpose of repressuring, cycling, pressure maintenance,
22 secondary or any other enhanced recovery operations;

23 (15) to regulate the disposition, handling,
24 transport, storage, recycling, treatment and disposal of
25 produced water during, or for reuse in, the exploration,

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1 drilling, production, treatment or refinement of oil or gas,
2 including disposal by injection pursuant to authority delegated
3 under the federal Safe Drinking Water Act, in a manner that
4 protects public health, the environment and fresh water
5 resources;

6 (16) to determine the limits of any area
7 containing commercial potash deposits and from time to time
8 redetermine the limits;

9 (17) to regulate and, where necessary,
10 prohibit drilling or producing operations for oil or gas within
11 any area containing commercial deposits of potash where the
12 operations would have the effect unduly to reduce the total
13 quantity of the commercial deposits of potash that may
14 reasonably be recovered in commercial quantities or where the
15 operations would interfere unduly with the orderly commercial
16 development of the potash deposits;

17 (18) to spend the oil and gas reclamation fund
18 and do all acts necessary and proper to plug dry and abandoned
19 oil and gas wells and to restore and remediate abandoned well
20 sites and associated production facilities in accordance with
21 the provisions of the Oil and Gas Act, the rules adopted under
22 that act and the Procurement Code, including disposing of
23 salvageable equipment and material removed from oil and gas
24 wells being plugged by the state;

25 (19) to make well price category

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1 determinations pursuant to the provisions of the federal
2 Natural Gas Policy Act of 1978 or any successor act and, by
3 regulation, to adopt fees for such determinations, which fees
4 shall not exceed twenty-five dollars (\$25.00) per filing. Such
5 fees shall be credited to the account of the [~~oil conservation~~]
6 division by the state treasurer and may be expended as
7 authorized by the legislature;

8 (20) to regulate the construction and
9 operation of oil treating plants and to require the posting of
10 bonds for the reclamation of treating plant sites after
11 cessation of operations;

12 (21) to regulate the disposition of
13 nondomestic wastes resulting from the exploration, development,
14 production or storage of crude oil or natural gas to protect
15 public health and the environment; [~~and~~]

16 (22) to regulate the disposition of
17 nondomestic wastes resulting from the oil field service
18 industry, the transportation of crude oil or natural gas, the
19 treatment of natural gas or the refinement of crude oil to
20 protect public health and the environment, including
21 administering the Water Quality Act as provided in Subsection E
22 of Section 74-6-4 NMSA 1978;

23 (23) to regulate the transfer of oil and gas
24 wells or facilities, including limitations on transfers when:

25 (a) the transferor, the transferee or an

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1 entity that owns more than a twenty-five percent interest in a
2 transferor or transferee has a significant history of
3 noncompliance with the Oil and Gas Act or rules adopted
4 pursuant to that act;

5 (b) the transferee fails to provide
6 adequate financial assurance as required by the division;

7 (c) the transferee lacks sufficient
8 financial capacity to manage liabilities associated with the
9 oil and gas wells or facilities; or

10 (d) the division deems the limitations
11 to be necessary for the purposes of mitigating risk to the
12 state from potential inactive or abandoned oil and gas wells or
13 facilities; and

14 (24) to authorize the conversion of an oil and
15 gas well to a facility that supports energy storage or
16 geothermal development, including establishing fees and
17 financial assurance requirements specific to an energy storage
18 or geothermal use."

19 SECTION 2. Section 70-2-14 NMSA 1978 (being Laws 1977,
20 Chapter 237, Section 3, as amended) is amended to read:

21 "70-2-14. REQUIREMENT FOR FINANCIAL ASSURANCE.--

22 A. Each person, firm, corporation or association
23 who operates [~~any~~] an oil, gas or service well within the state
24 shall, as a condition precedent to drilling or producing the
25 well, furnish financial assurance in the form of an irrevocable

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1 letter of credit, ~~[or]~~ a cash or surety bond or a ~~[well-~~
2 ~~specific]~~ plugging insurance policy pursuant to the provisions
3 of this section to the ~~[oil conservation]~~ division ~~[of the~~
4 ~~energy, minerals and natural resources department]~~ running to
5 the benefit of the state and conditioned that the covered well
6 be plugged and abandoned in ~~[compliance with the rules of the~~
7 ~~oil conservation]~~ accordance with division rules. The ~~[oil~~
8 ~~conservation]~~ division shall establish categories of financial
9 assurance by rule after notice and hearing. Such categories
10 shall include, at a minimum, a blanket plugging financial
11 assurance ~~[which shall be set by rule]~~ in an amount not to
12 exceed ~~[two hundred fifty thousand dollars (\$250,000), a~~
13 ~~blanket plugging financial assurance for temporarily abandoned~~
14 ~~status wells, which shall be set by rule at amounts greater~~
15 ~~than fifty thousand dollars (\$50,000)]~~ ten million dollars
16 (\$10,000,000) ~~[and]~~ or a one-well plugging financial assurance
17 in amounts determined sufficient to reasonably pay the cost of
18 plugging the well or wells covered by the financial assurance.
19 In establishing categories of financial assurance, the ~~[oil~~
20 ~~conservation]~~ division shall consider the depth of the well
21 involved, the length of time since the well was produced, the
22 cost of plugging similar wells and ~~[such]~~ other factors ~~[as]~~
23 the ~~[oil conservation]~~ division deems relevant. The ~~[oil~~
24 ~~conservation]~~ division shall require a one-well financial
25 assurance on any well that has been held in a temporarily

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1 abandoned status for more than two years or, at the election of
2 the operator, may allow an operator to increase its blanket
3 plugging financial assurance to cover wells held in temporarily
4 abandoned status. All financial assurance shall remain in
5 force until released by the [~~oil conservation~~] division. The
6 [~~oil conservation~~] division shall release financial assurance
7 when [~~it~~] the division is satisfied that the conditions of the
8 financial assurance have been fully performed.

9 B. If any of the requirements of the Oil and Gas
10 Act or the rules promulgated pursuant to that act have not been
11 complied with, the [~~oil conservation~~] division, after notice
12 and hearing, may order any well plugged and abandoned by the
13 operator or surety or both in accordance with division rules.
14 If the order is not complied with in the time period set out in
15 the order, the financial assurance shall be forfeited.

16 C. When any financial assurance is forfeited pursuant
17 to the provisions of the Oil and Gas Act or rules promulgated
18 pursuant to that act, the director of the [~~oil conservation~~]
19 division shall [~~give notice to the attorney general, who shall~~]
20 collect the forfeiture without delay.

21 D. All forfeitures shall be deposited in the state
22 treasury in the oil and gas reclamation fund.

23 E. When the financial assurance proves insufficient
24 to cover the cost of plugging oil and gas wells on land other
25 than federal land and funds must be expended from the oil and

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1 gas reclamation fund to meet the additional expenses, the [~~oil~~
2 ~~conservation~~] division is authorized to bring suit against the
3 operator in the district court of the county in which the well
4 is located for indemnification for all costs incurred by the
5 [~~oil conservation~~] division in plugging the well. All funds
6 collected pursuant to a judgment in a suit for indemnification
7 brought under the provisions of this section shall be deposited
8 in the oil and gas reclamation fund.

9 F. An operator required to file financial assurance
10 for a well pursuant to this section is considered to have met
11 that requirement if the operator obtains a plugging insurance
12 policy that includes the specific well and that:

13 (1) is approved by the office of superintendent
14 of insurance;

15 (2) names the state of New Mexico as owner of
16 the policy and contingent beneficiary;

17 (3) names a primary beneficiary who agrees to
18 plug the specified wellbore;

19 (4) is fully prepaid and cannot be canceled or
20 surrendered;

21 (5) provides that the policy continues in effect
22 until the specified wellbore has been plugged;

23 (6) provides that benefits will be paid when,
24 but not before, the specified wellbore has been plugged in
25 accordance with rules of the [~~oil conservation~~] division in

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1 effect at the time of plugging; and

2 (7) provides benefits that are not less than an
3 amount equal to the one-well financial assurance required by
4 [~~oil conservation~~] division rules.

5 G. If, subsequent to an operator obtaining an
6 insurance policy as provided in this section, the one-well
7 financial assurance requirement applicable to the operator's
8 well is increased, either because the well is deepened or [~~the~~
9 ~~rules of the oil conservation~~] division rules are amended, the
10 operator is considered to have met the revised requirement if:

11 (1) the existing policy benefit equals or
12 exceeds the revised requirement;

13 (2) the operator obtains an amendment increasing
14 the policy benefit by the amount of the increase in the
15 applicable financial assurance requirement; or

16 (3) the operator obtains financial assurance
17 equal to the amount, if any, by which the revised requirement
18 exceeds the policy benefit."

19 SECTION 3. Section 70-2-31 NMSA 1978 (being Laws 1981,
20 Chapter 362, Section 1, as amended) is amended to read:

21 "70-2-31. VIOLATIONS OF THE OIL AND GAS ACT--PENALTIES.--

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

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1 by:

2 (1) issuing a notice of violation;

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

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

12 B. A notice of violation issued pursuant to Paragraph
13 (1) of Subsection A of this section shall:

14 (1) state with reasonable specificity the nature
15 of the violation; [~~shall~~]

16 (2) require compliance immediately or within a
17 specified time period; [~~shall~~]

18 (3) provide notice of the availability of an
19 informal review and the date of a hearing before the division;
20 and [~~shall~~]

21 (4) provide notice of potential sanctions,
22 including assessing a penalty, suspending, canceling or
23 terminating a permit or authorization, shutting in a well and
24 plugging and abandonment of a well and forfeiting financial
25 assurance pursuant to Section 70-2-14 NMSA 1978.

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1 C. If the notice of violation is not resolved
2 informally within thirty days after service of the notice, the
3 division shall hold a hearing and determine whether the
4 violation should be upheld and whether any sanctions, including
5 civil penalties, shall be assessed. In assessing a penalty
6 authorized by this section, the division shall take into
7 account the seriousness of the violation, any good faith
8 efforts to comply with the applicable requirements, any history
9 of noncompliance under the Oil and Gas Act and other relevant
10 factors. When a decision is rendered by the division after a
11 hearing, any party of record adversely affected shall have the
12 right to have the matter heard de novo before the commission
13 pursuant to Section 70-2-13 NMSA 1978.

14 D. Any civil penalty assessed by a court or by the
15 division or commission pursuant to this section may not exceed
16 [~~two thousand five hundred dollars (\$2,500)~~] ten thousand
17 dollars (\$10,000) per day of noncompliance for each violation
18 unless the violation presents a risk either to the health or
19 safety of the public or of causing significant environmental
20 harm, or unless the noncompliance continues beyond a time
21 specified in the notice of violation or order issued by the
22 division, commission or court, whereupon the civil penalty may
23 not exceed [~~ten thousand dollars (\$10,000)~~] twenty-five
24 thousand dollars (\$25,000) per day of noncompliance for each
25 violation. [~~No penalty assessed by the division or commission~~

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1 ~~after a hearing may exceed two hundred thousand dollars~~
2 ~~(\$200,000); provided that such limitation does not apply to~~
3 ~~penalties assessed by a court.]~~

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

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

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

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

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

25 (b) make or cause to be made any false entry

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1 in any record, account or memorandum required by the Oil and
2 Gas Act or by any rule, regulation or order of the commission
3 or division issued pursuant to that act;

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

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

10 G. For the purposes of Subsection F of this section,
11 each day of violation shall constitute a separate offense.

12 H. Any person who knowingly and willfully procures,
13 counsels, aids or abets the commission of any act described in
14 Subsection A or F of this section shall be subject to the same
15 penalties as are prescribed in Subsection D or F of this
16 section."

17 SECTION 4. Section 70-2-39 NMSA 1978 (being Laws 2019,
18 Chapter 260, Section 1) is amended to read:

19 "70-2-39. FEES--~~[APPROPRIATION]~~ FEE ADJUSTMENTS--OIL
20 CONSERVATION DIVISION SYSTEMS AND HEARINGS FUND CREATED.--

21 A. Beginning January 1, 2027 and on January 1 of each
22 successive year, the fees provided by this section may be
23 adjusted for inflation as provided in Subsection B of this
24 section. The following fees are required to be paid to the
25 [~~oil conservation~~] division [~~of the energy, minerals and~~

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1 ~~natural resources department~~] with each application for:

2 (1) ~~[with each application for]~~ a non-federal
3 and non-Indian permit to drill, deepen, plug back or reenter a
4 well, the applicant shall submit to the division a
5 nonrefundable fee of ~~[five hundred dollars (\$500)]~~ one thousand
6 five hundred dollars (\$1,500);

7 (2) ~~[with each individual application for]~~
8 administrative approval of a non-standard location, downhole
9 commingle, surface commingle, off-lease measurement, release
10 notification and corrective action, change of operator,
11 application for modification to surface waste management
12 facility, request for the creation of a new pool, proposed
13 alternative method permit or closure plan application or
14 authorization to move produced water, the applicant shall
15 submit to the division a nonrefundable fee of ~~[one hundred~~
16 ~~fifty dollars (\$150)]~~ four hundred fifty dollars (\$450);

17 (3) ~~[with each application for]~~ a fluid
18 injection well permit, the applicant shall submit to the
19 division a nonrefundable fee of ~~[five hundred dollars (\$500)]~~
20 one thousand five hundred dollars (\$1,500) per well;

21 (4) ~~[with each application for]~~ a permit for a
22 commercial surface waste management facility, landfill or
23 landfarm, the applicant shall submit to the division a
24 nonrefundable fee of ten thousand dollars (\$10,000) per
25 facility;

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1 (5) ~~[with each application for]~~ an
2 administrative hearing, re-hearing or de novo hearing before
3 the division or commission, the applicant shall submit to the
4 division a nonrefundable fee of ~~[five hundred dollars (\$500)]~~
5 one thousand five hundred dollars (\$1,500) per application; and

6 (6) ~~[with each application for]~~ a continuance of
7 an administrative hearing, re-hearing or de novo hearing before
8 the division or commission, the applicant shall submit to the
9 division a nonrefundable fee of ~~[one hundred fifty dollars~~
10 ~~(\$150)]~~ four hundred fifty dollars (\$450) per application.

11 B. On January 1, 2027 and on January 1 of each
12 successive year, the division may adjust the fees provided by
13 Subsection A of this section by multiplying the fee as of
14 January 1, 2026 by a fraction, the numerator of which is the
15 consumer price index ending in September of the previous year
16 and the denominator of which is the consumer price index ending
17 September 2025; provided that the fees shall not be adjusted
18 below the minimum amounts provided in Subsection A of this
19 section as a result of a decrease in the consumer price index.
20 By November 1, 2026 and by November 1 of each successive year,
21 the division shall post on its website the fees in Subsection A
22 of this section for the next year.

23 ~~[B.]~~ C. An application for an administrative hearing,
24 re-hearing or de novo hearing before the oil conservation
25 division or commission will be considered to be materially

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1 amended if the amendment is made for a purpose other than to
2 correct:

- 3 (1) typographical errors; or
- 4 (2) clerical errors.

5 ~~[G.]~~ D. The "oil conservation division systems and
6 hearings fund" is created in the state treasury as a
7 nonreverting fund. All funds received by the ~~[oil~~
8 ~~conservation]~~ division from fees imposed pursuant to Subsection
9 A of this section shall be delivered to the state treasurer and
10 deposited in the fund. Disbursements from the fund shall be
11 made upon warrants drawn by the secretary of finance and
12 administration pursuant to vouchers signed by the secretary of
13 energy, minerals and natural resources or the secretary's
14 authorized representative. Money in the fund is subject to
15 appropriation by the legislature to the division to develop and
16 modernize the division's online application processing system,
17 online case management system, online data reporting and
18 visualization systems and online case file system and for other
19 technological and equipment upgrades necessary to support the
20 efficient and transparent implementation and enforcement of the
21 Oil and Gas Act, including hiring necessary information
22 technology personnel, and for hearing administration costs.
23 Any unexpended or unencumbered balance remaining in the fund at
24 the end of a fiscal year shall not revert to the general fund.
25 ~~[Money in the fund in fiscal year 2020 may be expended by the~~

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1 ~~division for the purposes of the fund.]~~

2 E. As used in this section, "consumer price index"
3 means the consumer price index, not seasonally adjusted, for
4 all urban consumers, United States city average for all items,
5 or its successor index, as published by the United States
6 department of labor for a twelve-month period ending September
7 30."

8 SECTION 5. A new section of the Oil and Gas Act is
9 enacted to read:

10 "[NEW MATERIAL] NATURAL GAS CAPTURE REQUIREMENTS--RULES.--

11 A. Beginning January 1, 2027, an operator shall
12 ensure that at least ninety-eight percent of the natural gas
13 produced or gathered by the operator's facilities is captured
14 in a calendar year; provided that natural gas released during
15 an emergency or that is beneficially used by the operator does
16 not count as gas released for the purpose of determining an
17 operator's overall capture percentage.

18 B. The division shall adopt rules necessary to
19 implement the provisions of this section and an application for
20 a permit to drill shall be subject to the rules to be valid.

21 C. As used in this section, "operator" means a person
22 that is duly authorized to construct, manage or operate an oil
23 or gas well or associated facilities or a natural gas gathering
24 system."

25 SECTION 6. A new section of the Oil and Gas Act is

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1 enacted to read:

2 "[NEW MATERIAL] SETBACKS FROM HUMAN AND ENVIRONMENTAL
3 RECEPTORS--RULES.--

4 A. Beginning July 1, 2024, a new well pad, production
5 facility, tank battery, compressor station or gas plant shall
6 be at least:

7 (1) two thousand two hundred fifty feet from a
8 health facility, correctional facility, multifamily residential
9 structure, community college, public, private or charter school
10 or state educational institution;

11 (2) two thousand two hundred fifty feet from a
12 detached single-family occupied residence, including a
13 manufactured home, unless the homeowner at the time a
14 development is proposed provides consent in a manner provided
15 by the division, in which case the setback in this paragraph
16 may be reduced to seven hundred fifty feet without prior
17 approval;

18 (3) six hundred sixty feet from a perennial or
19 intermittent stream, lake, pond, delineated wetland or
20 irrigation infrastructure that is in use; and

21 (4) three hundred feet from a surface water of
22 the state not listed in Paragraph (3) of this subsection, a
23 state park, state game commission land, a designated critical
24 habitat for a federal or state endangered animal species or
25 other environmental resource identified by commission rule.

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1 B. For purposes of determining whether a new well
2 pad, production facility, tank battery, compressor station or
3 gas plant complies with the requirements of this section,
4 measurements shall be made from the outer edge of the human and
5 environmental receptors listed in Subsection A of this section
6 to the nearest operational equipment on a well pad, production
7 facility, tank battery, compressor station or gas plant. For a
8 building or structure, the outer edge shall be measured from
9 the nearest portion of the building wall to the facilities
10 covered by this section. For a water body, the outer edge
11 shall be measured from the nearest ordinary high water mark or
12 the transition between riparian and upland habitat to the
13 facilities covered by this section.

14 C. The commission may approve deviations from the
15 setbacks established in this section upon an application from
16 the impacted operator demonstrating that:

17 (1) disallowing development within the setback
18 is inconsistent with a directive or order from another state or
19 federal agency;

20 (2) disallowing development will significantly
21 impair correlative rights even after accounting for the
22 division's or commission's ability to authorize variances from
23 well spacing or other development requirements; or

24 (3) disallowing development will significantly
25 contribute to underground waste.

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1 D. An oil and gas well or associated facility for
2 which the commission approves a deviation pursuant to this
3 section shall be inspected at least monthly by the operator to
4 identify any spills or releases, unless more frequent
5 inspections are required by law.

6 E. An application for a deviation from the setbacks
7 established in this section may be denied for an operator that
8 has received a notice of violation of the Oil and Gas Act from
9 the division within twelve months of the application or is the
10 subject of an unresolved notice of violation of the Oil and Gas
11 Act issued by the division.

12 F. The commission may adopt rules:

13 (1) to increase the setback distances and
14 identify additional resources subject to the setbacks
15 established by Paragraphs (3) and (4) of Subsection A of this
16 section when the commission determines that the proximity of an
17 environmental resource to a new well pad, production facility,
18 tank battery, compressor station or gas plant may significantly
19 impair the environmental resource and increasing the distance
20 between the resource and the facility would address such
21 impairment;

22 (2) to increase the setback distances
23 established by Paragraphs (1) and (2) of Subsection A of this
24 section when the commission can demonstrate that the increases
25 would result in direct reductions to exposures for individuals

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1 with elevated risk of adverse health impacts as a result of
2 exposure;

3 (3) to provide for administrative proceedings
4 before the division for the processing of requests to deviate
5 from a setback established by this section or commission rule;
6 and

7 (4) necessary to implement the provisions of
8 this section.

9 G. This section does not apply to a new development
10 on an existing well pad, production facility, tank battery,
11 compressor station or gas plant, so long as the new development
12 at an existing facility does not result in a one-time expansion
13 of the external boundary of the existing facility of more than
14 fifteen percent as determined by the boundaries in existence as
15 of May 15, 2024, with the burden being on the operator to
16 establish the boundaries, unless the operator demonstrates to
17 the division that the one-time expansion will consolidate
18 development and provide a demonstrable reduction of overall
19 impacts to human health and the environment, in which case the
20 division may approve an expansion of up to thirty percent.

21 H. The setbacks provided by this section shall not
22 apply to a new well pad, production facility, tank battery,
23 compressor station or gas plant if an operator demonstrates
24 that:

25 (1) a deviation from the setback requirements is

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1 authorized by or necessary to effectuate the development of
2 facilities pursuant to an application for a permit to drill,
3 division order or commission order issued prior to May 15,
4 2024; or

5 (2) the facilities are located on the land or
6 allotted lands of a federally recognized Indian nation, tribe
7 or pueblo.

8 I. The burden to demonstrate the applicability of the
9 provisions of Subsection H of this section rests solely on the
10 operator.

11 J. The division shall provide an annual report by
12 December 1 of each year to the appropriate interim legislative
13 committee on any approved setback deviations, including setback
14 deviations made pursuant to Subsection H of this section.

15 K. An oil and gas well in existence on July 1, 2024
16 within a setback provided by this section or established by
17 commission rule that has been inactive for a period of greater
18 than twenty-four months based on records maintained by the
19 division shall be considered abandoned, and the division may
20 order the plugging of the well after thirty days' notice to the
21 registered operator of the well. An order issued pursuant to
22 this subsection may be appealed to the commission.

23 L. As used in this section:

24 (1) "correctional facility" means a jail, prison
25 or other detention facility that is used for the confinement of

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1 adult or juvenile persons, whether operated by the state or a
2 political subdivision of the state or a private contractor on
3 behalf of the state or a political subdivision of the state;

4 (2) "health facility" means a public hospital,
5 profit or nonprofit private hospital, general or special
6 hospital, outpatient facility, crisis triage center,
7 freestanding birth center, adult daycare facility, nursing
8 home, intermediate care facility, assisted living facility,
9 boarding home not under the control of an institution of higher
10 learning, child care facility, shelter care home, diagnostic
11 and treatment center, rehabilitation center, infirmary,
12 community mental health center that serves both children and
13 adults or adults only, residential treatment center that serves
14 persons up to twenty-one years of age, community mental health
15 center that serves only persons up to twenty-one years of age,
16 day treatment center that serves persons up to twenty-one years
17 of age, health service organization operating as a freestanding
18 hospice or a home health agency or facilities that, by federal
19 regulation, are required to be licensed by the state to obtain
20 or maintain full or partial, permanent or temporary federal
21 funding, but does not include the offices and treatment rooms
22 of licensed private practitioners; and

23 (3) "state educational institution" means an
24 institution enumerated in Article 12, Section 11 of the
25 constitution of New Mexico."

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