

## CHAPTER 331

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**NATURAL RESOURCES**

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**SENATE BILL 22-198**

BY SENATOR(S) Fenberg and Scott, Bridges, Buckner, Ginal, Hansen, Jaquez Lewis, Lee, Pettersen, Priola, Story, Winter, Zenzinger;  
also REPRESENTATIVE(S) Weissman and Will, Amabile, Bernett, Bird, Boesenecker, Froelich, Gonzales-Gutierrez, Hooton, Jodeh, Kipp, Lindsay, McCormick, McLachlan, Ricks, Titone.

**AN ACT**

**CONCERNING MEASURES TO ADDRESS ORPHANED WELLS IN COLORADO, AND, IN CONNECTION THEREWITH, CREATING THE ORPHANED WELLS MITIGATION ENTERPRISE.**

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1. Legislative declaration.** (1) The general assembly finds that:

(a) Orphaned wells present significant potential for adverse impacts to public health, safety, and welfare, as well as to the environment and to wildlife resources; and

(b) It is necessary, appropriate, and in the best interests of oil and gas well operators for the state to ensure that orphaned wells and associated facilities are plugged, reclaimed, and remediated in a timely manner.

(2) The general assembly also finds that:

(a) Current law authorizes the Colorado oil and gas conservation commission (commission) to require operators to provide and demonstrate certain financial assurances in order to plug, reclaim, and remediate orphaned wells; and

(b) The existing statutory and rule-based mechanisms provided for such financial assurances may not provide sufficient funding to plug, reclaim, and remediate orphaned wells in all circumstances.

(3) Now, therefore, the general assembly declares that:

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*Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.*

(a) It is in the public interest to create an enterprise within the department of natural resources that is solely committed to the plugging, reclaiming, and remediating of orphaned wells;

(b) The activities of the orphaned wells mitigation enterprise (enterprise) shall be funded by revenue generated from mitigation fees imposed upon, and paid by, operators of oil and gas wells in Colorado;

(c) It is appropriate that operators should pay such mitigation fees, as operators are the direct beneficiaries of the service provided by the enterprise, which is the plugging, reclaiming, and remediating of orphaned wells;

(d) Operators benefit from the plugging, reclaiming, and remediating services provided by the enterprise pursuant to this act because such services allow operators to operate oil and gas wells in Colorado despite the risk that some wells will be orphaned;

(e) Operators also benefit from the service provided by the enterprise because without such service, it may be necessary to require operators to submit significantly higher amounts of financial assurance to the commission to ensure that the public does not become responsible for paying the costs of plugging, reclaiming, and remediating orphaned wells;

(f) Consistent with the determination of the Colorado supreme court in *Nicholl v. E-470 Public Highway Authority*, 896 P.2d 859 (Colo. 1995), that the power to impose taxes is inconsistent with enterprise status under section 20 of article X of the state constitution, and in accordance with the determination of the Colorado supreme court in *Colorado Union of Taxpayers Foundation v. City of Aspen*, 2018 CO 36, the general assembly concludes that the mitigation fees are fees, and the enterprise operates as a business, because:

(I) By providing financing for plugging, reclaiming, and remediating services as authorized by this section, this enterprise provides a benefit to operators when orphaned wells are plugged, reclaimed, and remediated;

(II) The mitigation fee is imposed for the specific purpose of allowing the enterprise to finance plugging, reclaiming, and remediating services, which allow operators to operate oil and gas wells in Colorado despite the risk of wells being orphaned;

(III) The mitigation fee is imposed for the specific purpose of allowing the enterprise to finance plugging, reclaiming, and remediating services, which reduces the total amount of financial assurance that operators must provide in order to operate in Colorado; and

(IV) The mitigation fee is collected in amounts that are reasonably calculated based on the impacts caused by fee payers and the benefits enjoyed by fee payers; and

(g) So long as the enterprise qualifies as an enterprise for purposes of section 20 of article X of the state constitution, the revenue from the mitigation fees collected

by the enterprise is not state fiscal year spending, as defined in section 24-77-102 (17), Colorado Revised Statutes, or state revenues, as defined in section 24-77-103.6 (6)(c), Colorado Revised Statutes, and does not count against either the state fiscal year spending limit imposed by section 20 of article X of the state constitution or the excess state revenues cap, as defined in section 24-77-103.6 (6)(b)(I)(G), Colorado Revised Statutes.

**SECTION 2.** In Colorado Revised Statutes, **add** 34-60-133 as follows:

**34-60-133. Orphaned wells mitigation enterprise - creation - powers and duties - enterprise board created - mitigation fees - cash fund created - rules - definitions - repeal.** (1) **Enterprise created.** (a) THE ORPHANED WELLS MITIGATION ENTERPRISE IS CREATED IN THE DEPARTMENT FOR THE PURPOSE OF:

(I) IMPOSING AND COLLECTING MITIGATION FEES;

(II) FUNDING THE PLUGGING, RECLAIMING, AND REMEDIATING OF ORPHANED WELLS IN THE STATE;

(III) ENSURING THAT THE COSTS ASSOCIATED WITH PLUGGING, RECLAIMING, AND REMEDIATING ORPHANED WELLS ARE BORNE BY OPERATORS IN THE FORM OF MITIGATION FEES; AND

(IV) DETERMINING THE AMOUNT OF MITIGATION FEES.

(b) THE ENTERPRISE BOARD, IN CONSULTATION WITH THE COMMISSION, SHALL ADMINISTER THE ENTERPRISE IN ACCORDANCE WITH THIS SECTION.

(c) (I) THE ENTERPRISE CONSTITUTES AN ENTERPRISE FOR PURPOSES OF SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION SO LONG AS IT RETAINS THE AUTHORITY TO ISSUE REVENUE BONDS AND RECEIVES LESS THAN TEN PERCENT OF ITS TOTAL REVENUES IN GRANTS, AS DEFINED IN SECTION 24-77-102 (7), FROM ALL COLORADO STATE AND LOCAL GOVERNMENTS COMBINED. SO LONG AS IT CONSTITUTES AN ENTERPRISE, THE ENTERPRISE IS NOT A DISTRICT FOR PURPOSES OF SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION.

(II) THE ENTERPRISE IS AUTHORIZED TO ISSUE REVENUE BONDS FOR THE EXPENSES OF THE ENTERPRISE, SECURED BY REVENUE OF THE ENTERPRISE.

(2) **Powers and duties.** IN ADDITION TO ANY OTHER POWERS AND DUTIES SPECIFIED IN THIS SECTION, THE ENTERPRISE BOARD HAS THE FOLLOWING GENERAL POWERS AND DUTIES ON BEHALF OF THE ENTERPRISE:

(a) TO ADOPT PROCEDURES FOR CONDUCTING ITS AFFAIRS;

(b) TO ACQUIRE, HOLD TITLE TO, AND DISPOSE OF REAL AND PERSONAL PROPERTY;

(c) IN CONSULTATION WITH THE DIRECTOR OF THE COMMISSION OR THE DIRECTOR'S DESIGNEE, TO EMPLOY AND SUPERVISE INDIVIDUALS, PROFESSIONAL CONSULTANTS, AND CONTRACTORS AS ARE NECESSARY IN ITS JUDGMENT TO CARRY OUT ITS BUSINESS PURPOSES;

(d) TO CONTRACT WITH ANY PUBLIC OR PRIVATE ENTITY, INCLUDING STATE AGENCIES, CONSULTANTS, AND THE ATTORNEY GENERAL'S OFFICE, FOR PROFESSIONAL AND TECHNICAL ASSISTANCE, OFFICE SPACE AND ADMINISTRATIVE SERVICES, ADVICE, AND OTHER SERVICES RELATED TO THE CONDUCT OF THE AFFAIRS OF THE ENTERPRISE;

(e) TO SEEK, ACCEPT, AND EXPEND GIFTS, GRANTS, DONATIONS, OR OTHER PAYMENTS FROM PRIVATE OR PUBLIC SOURCES FOR THE PURPOSES OF THIS SECTION, SO LONG AS THE TOTAL AMOUNT OF ALL GRANTS FROM COLORADO STATE AND LOCAL GOVERNMENTS RECEIVED IN ANY STATE FISCAL YEAR IS LESS THAN TEN PERCENT OF THE ENTERPRISE'S TOTAL ANNUAL REVENUE FOR THE STATE FISCAL YEAR. THE ENTERPRISE SHALL TRANSMIT ANY MONEY RECEIVED THROUGH GIFTS, GRANTS, DONATIONS, OR OTHER PAYMENTS TO THE STATE TREASURER, WHO SHALL CREDIT THE MONEY TO THE FUND.

(f) TO HAVE AND EXERCISE ALL RIGHTS AND POWERS NECESSARY OR INCIDENTAL TO OR IMPLIED FROM THE SPECIFIC POWERS AND DUTIES GRANTED BY THIS SECTION.

**(3) Enterprise board created - membership - repeal.** (a) THE ORPHANED WELLS MITIGATION ENTERPRISE BOARD IS CREATED TO ADMINISTER THE ENTERPRISE. THE ENTERPRISE BOARD INCLUDES THE FOLLOWING FIVE MEMBERS:

(I) THE CHAIR OF THE COMMISSION;

(II) THE DIRECTOR OF THE COMMISSION OR THE DIRECTOR'S DESIGNEE;

(III) AN INDIVIDUAL WITH SUBSTANTIAL EXPERIENCE IN THE OIL AND GAS INDUSTRY, TO BE APPOINTED BY THE GOVERNOR AND CONFIRMED BY THE SENATE;

(IV) A LOCAL GOVERNMENT OFFICIAL, PREFERABLY FROM A JURISDICTION THAT HAS OIL AND GAS DEVELOPMENT AND ORPHANED WELLS, TO BE APPOINTED BY THE GOVERNOR AND CONFIRMED BY THE SENATE; AND

(V) AN INDIVIDUAL WITH FORMAL TRAINING OR SUBSTANTIAL EXPERIENCE IN LAND RECLAMATION PROJECTS, TO BE APPOINTED BY THE GOVERNOR AND CONFIRMED BY THE SENATE.

(b)(I) THE GOVERNOR SHALL APPOINT THE INITIAL MEMBERS OF THE ENTERPRISE BOARD PURSUANT TO SUBSECTIONS (3)(a)(III), (3)(a)(IV), AND (3)(a)(V) OF THIS SECTION ON OR BEFORE SEPTEMBER 1, 2022.

(II) THIS SUBSECTION (3)(b) IS REPEALED, EFFECTIVE JULY 1, 2023.

(c) THE MEMBERS OF THE ENTERPRISE BOARD DESCRIBED IN SUBSECTIONS (3)(a)(III), (3)(a)(IV), AND (3)(a)(V) OF THIS SECTION SHALL EACH SERVE TERMS OF THREE YEARS; EXCEPT THAT THE INITIAL TERM OF THE MEMBER APPOINTED PURSUANT TO SUBSECTION (3)(a)(III) OF THIS SECTION IS ONE YEAR, AND THE INITIAL TERM OF THE MEMBER APPOINTED PURSUANT TO SUBSECTION (3)(a)(IV) OF THIS SECTION IS TWO YEARS. IN THE EVENT OF A VACANCY, THE GOVERNOR MAY APPOINT AN INDIVIDUAL TO COMPLETE THE TERM OF THE MEMBER WHOSE SEAT HAS BECOME VACANT.

(d) AN INDIVIDUAL MAY BE APPOINTED AS A MEMBER OF THE ENTERPRISE BOARD PURSUANT TO SUBSECTION (3)(a)(III), (3)(a)(IV), OR (3)(a)(V) OF THIS SECTION AN UNLIMITED NUMBER OF TIMES.

(e) ENTERPRISE BOARD MEMBERS SERVING PURSUANT TO SUBSECTIONS (3)(a)(III), (3)(a)(IV), AND (3)(a)(V) OF THIS SECTION MAY RECEIVE COMPENSATION FROM THE DEPARTMENT ON A PER DIEM BASIS FOR REASONABLE EXPENSES ACTUALLY INCURRED IN THE PERFORMANCE OF DUTIES REQUIRED OF ENTERPRISE BOARD MEMBERS UNDER THIS SECTION.

(f) THE GOVERNOR SHALL SELECT A MEMBER OF THE ENTERPRISE BOARD TO SERVE AS CHAIR OF THE ENTERPRISE BOARD.

(4) **Enterprise board - duties.** IN ADDITION TO ADMINISTERING THE ENTERPRISE, AT LEAST ANNUALLY, THE ENTERPRISE BOARD SHALL:

(a) CONSIDER WHETHER THE AMOUNTS OF THE MITIGATION FEES SHOULD BE INCREASED OR REDUCED, BASED ON CURRENT CIRCUMSTANCES AND REASONABLY ANTICIPATED FUTURE EXPENDITURES FROM THE FUND;

(b) IF THE ENTERPRISE BOARD DETERMINES THAT AN INCREASE OR REDUCTION OF THE MITIGATION FEE AMOUNTS IS WARRANTED, ADJUST THE MITIGATION FEE AMOUNTS; EXCEPT THAT THE ENTERPRISE BOARD SHALL NOT SET THE FEE AMOUNTS IN AN AMOUNT THAT RESULTS IN A VIOLATION OF SUBSECTION (6)(b) OF THIS SECTION; AND

(c) ADVISE THE COMMISSION OF THE OUTCOME OF THE ENTERPRISE BOARD'S DELIBERATIONS PURSUANT TO THIS SUBSECTION (4).

(5) **Mitigation fees.** (a) ON OR BEFORE AUGUST 1, 2022; ON OR BEFORE APRIL 30, 2023; AND ON OR BEFORE APRIL 30 EACH YEAR THEREAFTER, EACH OPERATOR SHALL PAY A MITIGATION FEE TO THE ENTERPRISE FOR EACH WELL OF AN OPERATOR THAT HAS BEEN SPUD BUT IS NOT YET PLUGGED AND ABANDONED, IN ACCORDANCE WITH RULES OF THE COMMISSION. MITIGATION FEES DUE BY AUGUST 1, 2022, SHALL BE PAID IN THE FOLLOWING AMOUNTS:

(I) FOR OPERATORS WITH PRODUCTION THAT IS EQUAL TO OR LESS THAN A THRESHOLD TO BE DETERMINED BY RULES OF THE COMMISSION, ONE HUNDRED TWENTY-FIVE DOLLARS FOR EACH WELL; AND

(II) FOR OPERATORS WITH PRODUCTION THAT EXCEEDS A THRESHOLD TO BE DETERMINED BY RULES OF THE COMMISSION, TWO HUNDRED TWENTY-FIVE DOLLARS FOR EACH WELL.

(b) MITIGATION FEES PAID AFTER AUGUST 1, 2022, SHALL BE PAID IN THE AMOUNTS DESCRIBED IN SUBSECTION (5)(a) OF THIS SECTION, AS SUCH AMOUNTS MAY BE ADJUSTED BY THE ENTERPRISE BOARD PURSUANT TO SUBSECTION (4) OF THIS SECTION.

(c) THE ENTERPRISE SHALL TRANSFER ALL MONEY COLLECTED AS MITIGATION FEES PURSUANT TO THIS SUBSECTION (5) TO THE STATE TREASURER, WHO SHALL

CREDIT THE MONEY TO THE FUND.

(6) **Cash fund.** (a) THE ORPHANED WELLS MITIGATION ENTERPRISE CASH FUND IS CREATED IN THE STATE TREASURY. THE FUND CONSISTS OF:

(I) MONEY RECEIVED AS MITIGATION FEES;

(II) ANY MONEY RECEIVED FROM THE ISSUANCE OF REVENUE BONDS, AS DESCRIBED IN SUBSECTION (1)(c)(II) OF THIS SECTION;

(III) ANY GIFTS, GRANTS, OR DONATIONS RECEIVED PURSUANT TO SUBSECTION (2)(e) OF THIS SECTION; AND

(IV) ANY OTHER MONEY THAT THE GENERAL ASSEMBLY MAY APPROPRIATE OR TRANSFER TO THE FUND.

(b) THE TOTAL AMOUNT OF MONEY CREDITED TO THE FUND AS MITIGATION FEES MAY NOT EXCEED ONE HUNDRED MILLION DOLLARS IN THE FIRST FIVE FISCAL YEARS OF THE ENTERPRISE, BEGINNING WITH THE 2022-23 STATE FISCAL YEAR.

(c) THE STATE TREASURER SHALL CREDIT ALL INTEREST AND INCOME DERIVED FROM THE DEPOSIT AND INVESTMENT OF MONEY IN THE FUND TO THE FUND. ANY UNEXPENDED AND UNENCUMBERED MONEY REMAINING IN THE FUND AT THE END OF A FISCAL YEAR REMAINS IN THE FUND AND SHALL NOT BE CREDITED OR TRANSFERRED TO THE GENERAL FUND.

(d) MONEY CREDITED TO THE FUND IS CONTINUOUSLY APPROPRIATED TO THE FUND FOR USE BY THE ENTERPRISE AND SHALL BE EXPENDED TO:

(I) PROVIDE PLUGGING, RECLAIMING, AND REMEDIATING SERVICES AT THE REQUEST OF THE DIRECTOR OF THE COMMISSION;

(II) PAY THE ENTERPRISE'S REASONABLE AND NECESSARY OPERATING EXPENSES; AND

(III) OTHERWISE EXERCISE THE ENTERPRISE'S POWERS AND PERFORM ITS DUTIES AS AUTHORIZED BY THIS SECTION.

(7) **Rules.** THE COMMISSION SHALL PROMULGATE RULES FOR THE IMPLEMENTATION OF SUBSECTION (5)(a) OF THIS SECTION AND AS MAY BE OTHERWISE NECESSARY TO IMPLEMENT THIS SECTION.

(8) **Definitions.** AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "DEPARTMENT" MEANS THE DEPARTMENT OF NATURAL RESOURCES.

(b) "ENTERPRISE" MEANS THE ORPHANED WELLS MITIGATION ENTERPRISE CREATED IN SUBSECTION (1) OF THIS SECTION.

(c) "ENTERPRISE BOARD" MEANS THE ORPHANED WELLS MITIGATION ENTERPRISE

BOARD CREATED IN SUBSECTION (3) OF THIS SECTION.

(d) "FUND" MEANS THE ORPHANED WELLS MITIGATION ENTERPRISE CASH FUND CREATED IN SUBSECTION (6) OF THIS SECTION.

(e) "MITIGATION FEE" MEANS A MITIGATION FEE AUTHORIZED AND IMPOSED PURSUANT TO SUBSECTION (5) OF THIS SECTION.

(f) "ORPHANED WELL" MEANS AN OIL AND GAS WELL, LOCATION, OR FACILITY IN THE STATE FOR WHICH NO OWNER OR OPERATOR CAN BE FOUND OR THE OWNER OR OPERATOR IS UNWILLING OR UNABLE TO PAY THE COSTS OF PLUGGING, RECLAIMING, AND REMEDIATING.

**SECTION 3. Effective date.** This act takes effect July 1, 2022.

**SECTION 4. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.

Approved: June 2, 2022