

SENATE BILL 178

57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025

INTRODUCED BY

Harold Pope

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO WATER; AMENDING AND ENACTING SECTIONS OF THE PRODUCED WATER ACT; AMENDING THE WATER QUALITY ACT; AMENDING THE TAX ADMINISTRATION ACT; RESTRICTING THE USE OF PRODUCED WATER OFF THE OILFIELD FOR RESEARCH PURPOSES ONLY; IMPOSING A FIVE-CENT (\$.05) PRODUCED WATER FEE ON BARRELS OF PRODUCED WATER FROM OIL OR GAS WELLS; ~~SCONC→CREATING THE PLUGGING AND REMEDIATING ABANDONED WELLS FUND;~~←SCONC DEPOSITING MONEY COLLECTED FROM THE PRODUCED WATER FEE INTO THE ~~SCONC→PLUGGING~~

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~~AND REMEDIATING ABANDONED WELLS~~←SCONC SCONC→OIL AND GAS
RECLAMATION←SCONC FUND; MAKING AN APPROPRIATION.

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

SECTION 1. A new section of the Produced Water Act is enacted to read:

"[NEW MATERIAL] FEES--PRODUCED WATER FEE--IMPOSITION AND ADMINISTRATION SCONC→~~--PLUGGING AND REMEDIATING ABANDONED WELLS~~←SCONC SCONC→FUND~~--CREATION~~←SCONC .--

A. There is imposed on the working interest owners of an oil or gas well in New Mexico a fee of five cents (\$.05) per barrel of produced water from the oil or gas well, except for produced water that is:

- (1) used for enhanced or secondary oil;
- (2) recycled or reused at a well or facility that is permitted by the oil conservation division of the energy, minerals and natural resources department; or
- (3) for a use regulated by the water quality control commission pursuant to the Water Quality Act and for which a permit from the department of environment is required.

B. The fee imposed by this section may be referred to as the "produced water fee".

SCONC→C. ~~The "plugging and remediating abandoned wells fund" is created as a nonreverting fund in the state treasury. Money in the fund shall be administered by the oil conservation division to plug abandoned wells and remediate~~

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~~well sites. Money in the fund is appropriated to the division for plugging and remediating abandoned wells pursuant to rules promulgated by the division.~~←SCONC

SCONC→~~B.~~←SCONC SCONC→~~C.~~←SCONC The produced water fee shall be collected by the taxation and revenue department in a manner prescribed by that department. All money collected by the taxation and revenue department from the produced water fee shall be deposited in the SCONC→~~plugging and remediating abandoned wells fund~~←SCONC SCONC→oil and gas reclamation fund administered by the oil conservation division of the energy, minerals and natural resources department←SCONC .

SCONC→~~E.~~←SCONC SCONC→~~D.~~←SCONC The produced water fee shall be paid to the taxation and revenue department on or before the twenty-fifth day of the month following the month in which the water is produced.

SCONC→~~F.~~←SCONC SCONC→~~E.~~←SCONC The oil conservation division shall promulgate rules to require reporting and accounting of each barrel of produced water for purposes of this section.

SCONC→~~G.~~←SCONC SCONC→~~F.~~←SCONC The taxation and revenue department shall administer and enforce the collection of the produced water fee, and the Tax Administration Act applies to the administration and enforcement of the fee."

SECTION 2. Section 70-13-1 NMSA 1978 (being Laws 2019, Chapter 197, Section 1) is amended to read:

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"70-13-1. SHORT TITLE.--~~[Sections 1 through 5 of this act]~~ Chapter 70, Article 13 NMSA 1978 may be cited as the "Produced Water Act"."

SECTION 3. Section 74-6-4 NMSA 1978 (being Laws 1967, Chapter 190, Section 4, as amended) is amended to read:

"74-6-4. DUTIES AND POWERS OF COMMISSION.--The commission:

A. may accept and supervise the administration of loans and grants from the federal government and from other sources, public or private, which loans and grants shall not be expended for other than the purposes for which provided;

B. shall adopt a comprehensive water quality management program and develop a continuing planning process;

C. shall not adopt or promulgate a standard or regulation that exceeds a grant of rulemaking authority listed in the statutory section of the Water Quality Act authorizing the standard or regulation;

D. shall adopt water quality standards for surface and ground waters of the state based on credible scientific data and other evidence appropriate under the Water Quality Act. The standards shall include narrative standards and, as appropriate, the designated uses of the waters and the water quality criteria necessary to protect such uses. The standards shall at a minimum protect the public health or welfare, enhance the quality of water and serve the purposes of the

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Water Quality Act. In making standards, the commission shall give weight it deems appropriate to all facts and circumstances, including the use and value of the water for water supplies, propagation of fish and wildlife, recreational purposes and agricultural, industrial and other purposes;

E. shall adopt, promulgate and publish regulations to prevent or abate water pollution in the state or in any specific geographic area, aquifer or watershed of the state or in any part thereof, or for any class of waters, and to govern the disposal of septage and sludge and the use of sludge for various beneficial purposes. The regulations governing the disposal of septage and sludge may include the use of tracking and permitting systems or other reasonable means necessary to assure that septage and sludge are designated for disposal in, and arrive at, disposal facilities, other than facilities on the premises where the septage and sludge is generated, for which a permit or other authorization has been issued pursuant to the federal act or the Water Quality Act. Regulations may specify a standard of performance for new sources that reflects the greatest reduction in the concentration of water contaminants that the commission determines to be achievable through application of the best available demonstrated control technology, processes, operating methods or other alternatives, including where practicable a standard permitting no discharge of pollutants. In making regulations, the commission shall

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give weight it deems appropriate to all relevant facts and circumstances, including:

- (1) the character and degree of injury to or interference with health, welfare, environment and property;
- (2) the public interest, including the social and economic value of the sources of water contaminants;
- (3) the technical practicability and economic reasonableness of reducing or eliminating water contaminants from the sources involved and previous experience with equipment and methods available to control the water contaminants involved;
- (4) the successive uses, including domestic, commercial, industrial, pastoral, agricultural, wildlife and recreational uses;
- (5) feasibility of a user or a subsequent user treating the water before a subsequent use;
- (6) property rights and accustomed uses; and
- (7) federal water quality requirements;

F. shall assign responsibility for administering its regulations to constituent agencies so as to assure adequate coverage and prevent duplication of effort. To this end, the commission may make such classification of waters and sources of water contaminants as will facilitate the assignment of administrative responsibilities to constituent agencies. The commission shall also hear and decide disputes between

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constituent agencies as to jurisdiction concerning any matters within the purpose of the Water Quality Act. In assigning responsibilities to constituent agencies, the commission shall give priority to the primary interests of the constituent agencies. The department of environment shall provide technical services, including certification of permits pursuant to the federal act, and shall maintain a repository of the scientific data required by the Water Quality Act;

G. may enter into or authorize constituent agencies to enter into agreements with the federal government or other state governments for purposes consistent with the Water Quality Act and receive and allocate to constituent agencies funds made available to the commission;

H. may grant an individual variance from any regulation of the commission whenever it is found that compliance with the regulation will impose an unreasonable burden upon any lawful business, occupation or activity. The commission may only grant a variance conditioned upon a person effecting a particular abatement of water pollution within a reasonable period of time. Any variance shall be granted for the period of time specified by the commission. The commission shall adopt regulations specifying the procedure under which variances may be sought, which regulations shall provide for the holding of a public hearing before any variance may be granted;

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I. may adopt regulations to require the filing with it or a constituent agency of proposed plans and specifications for the construction and operation of new sewer systems, treatment works or sewerage systems or extensions, modifications of or additions to new or existing sewer systems, treatment works or sewerage systems. Filing with and approval by the federal housing administration of plans for an extension to an existing or construction of a new sewerage system intended to serve a subdivision solely residential in nature shall be deemed compliance with all provisions of this subsection;

J. may adopt regulations requiring notice to it or a constituent agency of intent to introduce or allow the introduction of water contaminants into waters of the state;

K. shall specify in regulations the measures to be taken to prevent water pollution and to monitor water quality. The commission may adopt regulations for particular industries. The commission shall adopt regulations for the dairy industry and the copper industry. The commission shall consider, in addition to the factors listed in Subsection E of this section, the best available scientific information. The regulations may include variations in requirements based on site-specific factors, such as depth and distance to ground water and geological and hydrological conditions. The constituent agency shall establish an advisory committee composed of persons with

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knowledge and expertise particular to the industry category and other interested stakeholders to advise the constituent agency on appropriate regulations to be proposed for adoption by the commission. The regulations shall be developed and adopted in accordance with a schedule approved by the commission. The schedule shall incorporate an opportunity for public input and stakeholder negotiations;

L. may adopt regulations establishing pretreatment standards that prohibit or control the introduction into publicly owned sewerage systems of water contaminants that are not susceptible to treatment by the treatment works or that would interfere with the operation of the treatment works;

M. shall not require a permit respecting the use of water in irrigated agriculture, except in the case of the employment of a specific practice in connection with such irrigation that documentation or actual case history has shown to be hazardous to public health ~~SCONC→or the environment or for the use of produced water←~~SCONC ;

N. shall not require a permit for applying less than two hundred fifty gallons per day of private residential gray water originating from a residence for the resident's household gardening, composting or landscape irrigation if:

(1) a constructed gray water distribution system provides for overflow into the sewer system or on-site wastewater treatment and disposal system;

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(2) a gray water storage tank is covered to restrict access and to eliminate habitat for mosquitos or other vectors;

(3) a gray water system is sited outside of a floodway;

(4) gray water is vertically separated at least five feet above the ground water table;

(5) gray water pressure piping is clearly identified as a nonpotable water conduit;

(6) gray water is used on the site where it is generated and does not run off the property lines;

(7) gray water is applied in a manner that minimizes the potential for contact with people or domestic pets;

(8) ponding is prohibited, application of gray water is managed to minimize standing water on the surface and to ensure that the hydraulic capacity of the soil is not exceeded;

(9) gray water is not sprayed;

(10) gray water is not discharged to a watercourse; and

(11) gray water use within municipalities or counties complies with all applicable municipal or county ordinances enacted pursuant to Chapter 3, Article 53 NMSA 1978;

0. shall coordinate application procedures and

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funding cycles for loans and grants from the federal government and from other sources, public or private, with the local government division of the department of finance and administration pursuant to the New Mexico Community Assistance Act;

P. shall adopt [~~regulations~~] rules to be administered by the department of environment for the [~~discharge, handling, transport, storage, recycling or treatment for the disposition of treated produced water, including disposition in road construction maintenance, roadway ice or dust control or other construction, or in the application of treated produced water to land, for activities unrelated to the exploration, drilling, production, treatment or refinement of oil or gas~~] use of produced water permitted by the department. Produced water shall be used for research purposes only, and permits for use shall not allow the:

- (1) discharge of produced water; or
- (2) use of produced water for agriculture, irrigation, potable water supplies, aquifer recharge, industrial processes, environmental restoration, road construction maintenance, roadway ice or dust control or other construction; and

Q. may adopt regulations to be administered by the department of environment for surface water discharges."

SECTION 4. Section 7-1-2 NMSA 1978 (being Laws 1965,

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Chapter 248, Section 2, as amended) is amended to read:

"7-1-2. APPLICABILITY.--The Tax Administration Act applies to and governs:

A. the administration and enforcement of the following taxes or tax acts as they now exist or may hereafter be amended:

- (1) Income Tax Act;
- (2) Withholding Tax Act;
- (3) Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act;
- (4) Gross Receipts and Compensating Tax Act, Interstate Telecommunications Gross Receipts Tax Act and Leased Vehicle Gross Receipts Tax Act;
- (5) Liquor Excise Tax Act;
- (6) Local Liquor Excise Tax Act;
- (7) any municipal local option gross receipts tax or municipal compensating tax;
- (8) any county local option gross receipts tax or county compensating tax;
- (9) Special Fuels Supplier Tax Act;
- (10) Gasoline Tax Act;
- (11) petroleum products loading fee, which fee shall be considered a tax for the purpose of the Tax Administration Act;
- (12) Alternative Fuel Tax Act;

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- (13) Cigarette Tax Act;
- (14) Estate Tax Act;
- (15) Railroad Car Company Tax Act;
- (16) Investment Credit Act, rural job tax credit, Laboratory Partnership with Small Business Tax Credit Act, Technology Jobs and Research and Development Tax Credit Act, Film Production Tax Credit Act, Affordable Housing Tax Credit Act and high-wage jobs tax credit;
- (17) Corporate Income and Franchise Tax Act;
- (18) Uniform Division of Income for Tax Purposes Act;
- (19) Multistate Tax Compact;
- (20) Tobacco Products Tax Act;
- (21) the telecommunications relay service surcharge imposed by Section 63-9F-11 NMSA 1978, which surcharge shall be considered a tax for the purposes of the Tax Administration Act;
- (22) the Insurance Premium Tax Act;
- (23) the Health Care Quality Surcharge Act;
- (24) the Cannabis Tax Act; and
- (25) the Health Care Delivery and Access Act;

B. the administration and enforcement of the following taxes, surtaxes, advanced payments or tax acts as they now exist or may hereafter be amended:

- (1) Resources Excise Tax Act;

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- (2) Severance Tax Act;
- (3) any severance surtax;
- (4) Oil and Gas Severance Tax Act;
- (5) Oil and Gas Conservation Tax Act;
- (6) Oil and Gas Emergency School Tax Act;
- (7) Oil and Gas Ad Valorem Production Tax Act;
- (8) Natural Gas Processors Tax Act;
- (9) Oil and Gas Production Equipment Ad

Valorem Tax Act;

- (10) Copper Production Ad Valorem Tax Act;

(11) any advance payment required to be made by any act specified in this subsection, which advance payment shall be considered a tax for the purposes of the Tax Administration Act;

- (12) Enhanced Oil Recovery Act;

(13) Natural Gas and Crude Oil Production Incentive Act; and

(14) intergovernmental production tax credit and intergovernmental production equipment tax credit;

C. the administration and enforcement of the following taxes, surcharges, fees or acts as they now exist or may hereafter be amended:

- (1) Weight Distance Tax Act;

(2) the workers' compensation fee authorized by Section 52-5-19 NMSA 1978, which fee shall be considered a

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tax for purposes of the Tax Administration Act;

(3) Uniform Unclaimed Property Act (1995);

(4) 911 emergency surcharge and the network and database surcharge, which surcharges shall be considered taxes for purposes of the Tax Administration Act;

(5) the solid waste assessment fee authorized by the Solid Waste Act, which fee shall be considered a tax for purposes of the Tax Administration Act;

(6) the water conservation fee imposed by Section 74-1-13 NMSA 1978, which fee shall be considered a tax for the purposes of the Tax Administration Act; ~~and~~

(7) the gaming tax imposed pursuant to the Gaming Control Act; and

(8) the produced water fee; and

D. the administration and enforcement of all other laws, with respect to which the department is charged with responsibilities pursuant to the Tax Administration Act, but only to the extent that the other laws do not conflict with the Tax Administration Act."