

LFC Requester:

Austin Davidson

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: Jan 29, 2025

Check all that apply:

Bill Number: SB178

Original Correction
Amendment Substitute

Sponsor: Sen. Harold Pope

Agency Name and Code Number: 305 – New Mexico Department of Justice

Person Writing

Short Title: Produced Water & Abandoned Wells Fund

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
 Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

Synopsis:

This bill amends and enacts sections of the Produced Water Act (PWA), the Water Quality Act (WQA), the and the Tax Administration Act (TAA).

Section 1 creates a new section of the PWA to charge a fee (the “produced water fee” or the Fee) of five cents per barrel of produced water imposed on the working interest owners of an oil or gas well, except the fee would not apply in instances where the water is used for enhanced or secondary oil (reinjecting); recycled or reused at an energy, minerals and natural resources department (EMNRD)-licensed facility permitted by the oil conservation division (OCD); or for a use regulated by the water quality control commission (WQCC) under the WQA and for which a permit from the Dept of Env. is required.

Section 1 also creates a “plugging and remediating abandoned wells fee” (the Fund) a nonreverting fund in the state treasury that shall be administrated by the OCD to plug (cap) such abandoned wells and remediate well sites. The OCD is tasked with promulgating rules to appropriate the fund for this purpose, as well as to require reporting and accounting of each barrel under this section. The Fee is to be collected and enforced (under the TAA) by tax & rev, as set forth in the statute and as prescribed by tax & rev, and then deposited into the Fund.

Section 2 amends NMSA 1978, § 70-13-1 to allow for statutory expansion of the PWA.

Section 3 amends NMSA 1978, § 74-6-4(P) to state that the WQCC shall adopt rules (not regulations for the use of produced water permitted by the Dept of Env., which shall be for research purposes only, and expressly precludes permits for use to allow the discharge of produced water or use of produced water for agriculture, irrigation, or other necessary uses (enumerated therein). The Section deletes prior language that allowed for regulation of various uses of produced water.

Section 4 amends NMSA 1978, § 7-1-2(C) to add a subsection (8) thereunder reading “the produced water fee.” This expressly permits tax and rev to administer and enforce the Fee under the TAA.

FISCAL IMPLICATIONS

N/A.

SIGNIFICANT ISSUES

The creation of the Fund under this bill—specifically to plug abandoned wells and remediate well sites—may be duplicative. The “Oil and Gas Reclamation fund” already exists to be administrated by the OCD of EMNRD and is used for plugging/remediation operations and energy education. *See* NMSA 1978, § 70-2-38.

It is unclear in Section 4 of the bill how the “produced water fee” is to be interpreted in the context of the Tax Administration Act as well as how to interpret it in harmony with the proceeding environmental fees, which also contain the “which fee shall be considered a tax” language.

PERFORMANCE IMPLICATIONS

N/A.

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

This bill conflicts with HB137, Strategic Water Supply Act. HB137 likewise would impose a 5-cent fee on barrels of produced water. However, it would establish a strategic water supply program fund for the tax to be deposited into, rather than the plugging and remediating abandoned wells fund contemplated by this bill. Additionally, HB137 does not have the same permitting restrictions as this bill.

TECHNICAL ISSUES

There seems to be a missing word in Section 1 (page 2, line 6): either “recovery” or “production” should likely follow “oil.”

OTHER SUBSTANTIVE ISSUES

N/A.

ALTERNATIVES

N/A.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS