

1 SENATE BILL 178

2 **57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025**

3 INTRODUCED BY

4 Harold Pope

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9  
10 AN ACT

11 RELATING TO WATER; AMENDING AND ENACTING SECTIONS OF THE  
12 PRODUCED WATER ACT; AMENDING THE WATER QUALITY ACT; AMENDING  
13 THE TAX ADMINISTRATION ACT; RESTRICTING THE USE OF PRODUCED  
14 WATER OFF THE OILFIELD FOR RESEARCH PURPOSES ONLY; IMPOSING A  
15 FIVE-CENT (\$.05) PRODUCED WATER FEE ON BARRELS OF PRODUCED  
16 WATER FROM OIL OR GAS WELLS; CREATING THE PLUGGING AND  
17 REMEDIATING ABANDONED WELLS FUND; DEPOSITING MONEY COLLECTED  
18 FROM THE PRODUCED WATER FEE INTO THE PLUGGING AND REMEDIATING  
19 ABANDONED WELLS FUND; MAKING AN APPROPRIATION.

20  
21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

24 "[NEW MATERIAL] FEES--PRODUCED WATER FEE--IMPOSITION AND  
25 ADMINISTRATION--PLUGGING AND REMEDIATING ABANDONED WELLS

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1 FUND--CREATION.--

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

6 (1) used for enhanced or secondary oil;

7 (2) recycled or reused at a well or facility  
8 that is permitted by the oil conservation division of the  
9 energy, minerals and natural resources department; or

10 (3) for a use regulated by the water quality  
11 control commission pursuant to the Water Quality Act and for  
12 which a permit from the department of environment is required.

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

15 C. The "plugging and remediating abandoned wells  
16 fund" is created as a nonreverting fund in the state treasury.  
17 Money in the fund shall be administered by the oil conservation  
18 division to plug abandoned wells and remediate well sites.  
19 Money in the fund is appropriated to the division for plugging  
20 and remediating abandoned wells pursuant to rules promulgated  
21 by the division.

22 D. The produced water fee shall be collected by the  
23 taxation and revenue department in a manner prescribed by that  
24 department. All money collected by the taxation and revenue  
25 department from the produced water fee shall be deposited in

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1 the plugging and remediating abandoned wells fund.

2 E. The produced water fee shall be paid to the  
3 taxation and revenue department on or before the twenty-fifth  
4 day of the month following the month in which the water is  
5 produced.

6 F. The oil conservation division shall promulgate  
7 rules to require reporting and accounting of each barrel of  
8 produced water for purposes of this section.

9 G. The taxation and revenue department shall  
10 administer and enforce the collection of the produced water  
11 fee, and the Tax Administration Act applies to the  
12 administration and enforcement of the fee."

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

15 "70-13-1. SHORT TITLE.--~~[Sections 1 through 5 of this~~  
16 ~~act]~~ Chapter 70, Article 13 NMSA 1978 may be cited as the  
17 "Produced Water Act"."

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

20 "74-6-4. DUTIES AND POWERS OF COMMISSION.--The  
21 commission:

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

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

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

7           D. shall adopt water quality standards for surface  
8 and ground waters of the state based on credible scientific  
9 data and other evidence appropriate under the Water Quality  
10 Act. The standards shall include narrative standards and, as  
11 appropriate, the designated uses of the waters and the water  
12 quality criteria necessary to protect such uses. The standards  
13 shall at a minimum protect the public health or welfare,  
14 enhance the quality of water and serve the purposes of the  
15 Water Quality Act. In making standards, the commission shall  
16 give weight it deems appropriate to all facts and  
17 circumstances, including the use and value of the water for  
18 water supplies, propagation of fish and wildlife, recreational  
19 purposes and agricultural, industrial and other purposes;

20           E. shall adopt, promulgate and publish regulations  
21 to prevent or abate water pollution in the state or in any  
22 specific geographic area, aquifer or watershed of the state or  
23 in any part thereof, or for any class of waters, and to govern  
24 the disposal of septage and sludge and the use of sludge for  
25 various beneficial purposes. The regulations governing the

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1 disposal of septage and sludge may include the use of tracking  
2 and permitting systems or other reasonable means necessary to  
3 assure that septage and sludge are designated for disposal in,  
4 and arrive at, disposal facilities, other than facilities on  
5 the premises where the septage and sludge is generated, for  
6 which a permit or other authorization has been issued pursuant  
7 to the federal act or the Water Quality Act. Regulations may  
8 specify a standard of performance for new sources that reflects  
9 the greatest reduction in the concentration of water  
10 contaminants that the commission determines to be achievable  
11 through application of the best available demonstrated control  
12 technology, processes, operating methods or other alternatives,  
13 including where practicable a standard permitting no discharge  
14 of pollutants. In making regulations, the commission shall  
15 give weight it deems appropriate to all relevant facts and  
16 circumstances, including:

17 (1) the character and degree of injury to or  
18 interference with health, welfare, environment and property;

19 (2) the public interest, including the social  
20 and economic value of the sources of water contaminants;

21 (3) the technical practicability and economic  
22 reasonableness of reducing or eliminating water contaminants  
23 from the sources involved and previous experience with  
24 equipment and methods available to control the water  
25 contaminants involved;

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1 (4) the successive uses, including domestic,  
2 commercial, industrial, pastoral, agricultural, wildlife and  
3 recreational uses;

4 (5) feasibility of a user or a subsequent user  
5 treating the water before a subsequent use;

6 (6) property rights and accustomed uses; and

7 (7) federal water quality requirements;

8 F. shall assign responsibility for administering  
9 its regulations to constituent agencies so as to assure  
10 adequate coverage and prevent duplication of effort. To this  
11 end, the commission may make such classification of waters and  
12 sources of water contaminants as will facilitate the assignment  
13 of administrative responsibilities to constituent agencies.

14 The commission shall also hear and decide disputes between  
15 constituent agencies as to jurisdiction concerning any matters  
16 within the purpose of the Water Quality Act. In assigning  
17 responsibilities to constituent agencies, the commission shall  
18 give priority to the primary interests of the constituent  
19 agencies. The department of environment shall provide  
20 technical services, including certification of permits pursuant  
21 to the federal act, and shall maintain a repository of the  
22 scientific data required by the Water Quality Act;

23 G. may enter into or authorize constituent agencies  
24 to enter into agreements with the federal government or other  
25 state governments for purposes consistent with the Water

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1 Quality Act and receive and allocate to constituent agencies  
2 funds made available to the commission;

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

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

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

4           K. shall specify in regulations the measures to be  
5 taken to prevent water pollution and to monitor water quality.  
6 The commission may adopt regulations for particular industries.  
7 The commission shall adopt regulations for the dairy industry  
8 and the copper industry. The commission shall consider, in  
9 addition to the factors listed in Subsection E of this section,  
10 the best available scientific information. The regulations may  
11 include variations in requirements based on site-specific  
12 factors, such as depth and distance to ground water and  
13 geological and hydrological conditions. The constituent agency  
14 shall establish an advisory committee composed of persons with  
15 knowledge and expertise particular to the industry category and  
16 other interested stakeholders to advise the constituent agency  
17 on appropriate regulations to be proposed for adoption by the  
18 commission. The regulations shall be developed and adopted in  
19 accordance with a schedule approved by the commission. The  
20 schedule shall incorporate an opportunity for public input and  
21 stakeholder negotiations;

22           L. may adopt regulations establishing pretreatment  
23 standards that prohibit or control the introduction into  
24 publicly owned sewerage systems of water contaminants that are  
25 not susceptible to treatment by the treatment works or that

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1 would interfere with the operation of the treatment works;

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

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

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

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

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

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

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

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

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

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

8 (9) gray water is not sprayed;

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

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

14 O. shall coordinate application procedures and  
15 funding cycles for loans and grants from the federal government  
16 and from other sources, public or private, with the local  
17 government division of the department of finance and  
18 administration pursuant to the New Mexico Community Assistance  
19 Act;

20 P. shall adopt [~~regulations~~] rules to be  
21 administered by the department of environment for the  
22 [~~discharge, handling, transport, storage, recycling or~~  
23 ~~treatment for the disposition of treated produced water,~~  
24 ~~including disposition in road construction maintenance, roadway~~  
25 ~~ice or dust control or other construction, or in the~~

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1 ~~application of treated produced water to land, for activities~~  
2 ~~unrelated to the exploration, drilling, production, treatment~~  
3 ~~or refinement of oil or gas]~~ use of produced water permitted by  
4 the department. Produced water shall be used for research  
5 purposes only, and permits for use shall not allow the:

6 (1) discharge of produced water; or

7 (2) use of produced water for agriculture,  
8 irrigation, potable water supplies, aquifer recharge,  
9 industrial processes, environmental restoration, road  
10 construction maintenance, roadway ice or dust control or other  
11 construction; and

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

14 SECTION 4. Section 7-1-2 NMSA 1978 (being Laws 1965,  
15 Chapter 248, Section 2, as amended) is amended to read:

16 "7-1-2. APPLICABILITY.--The Tax Administration Act  
17 applies to and governs:

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

21 (1) Income Tax Act;

22 (2) Withholding Tax Act;

23 (3) Oil and Gas Proceeds and Pass-Through  
24 Entity Withholding Tax Act;

25 (4) Gross Receipts and Compensating Tax Act,

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1 Interstate Telecommunications Gross Receipts Tax Act and Leased  
2 Vehicle Gross Receipts Tax Act;

3 (5) Liquor Excise Tax Act;

4 (6) Local Liquor Excise Tax Act;

5 (7) any municipal local option gross receipts  
6 tax or municipal compensating tax;

7 (8) any county local option gross receipts tax  
8 or county compensating tax;

9 (9) Special Fuels Supplier Tax Act;

10 (10) Gasoline Tax Act;

11 (11) petroleum products loading fee, which fee  
12 shall be considered a tax for the purpose of the Tax  
13 Administration Act;

14 (12) Alternative Fuel Tax Act;

15 (13) Cigarette Tax Act;

16 (14) Estate Tax Act;

17 (15) Railroad Car Company Tax Act;

18 (16) Investment Credit Act, rural job tax  
19 credit, Laboratory Partnership with Small Business Tax Credit  
20 Act, Technology Jobs and Research and Development Tax Credit  
21 Act, Film Production Tax Credit Act, Affordable Housing Tax  
22 Credit Act and high-wage jobs tax credit;

23 (17) Corporate Income and Franchise Tax Act;

24 (18) Uniform Division of Income for Tax  
25 Purposes Act;

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- 1 (19) Multistate Tax Compact;
- 2 (20) Tobacco Products Tax Act;
- 3 (21) the telecommunications relay service
- 4 surcharge imposed by Section 63-9F-11 NMSA 1978, which
- 5 surcharge shall be considered a tax for the purposes of the Tax
- 6 Administration Act;
- 7 (22) the Insurance Premium Tax Act;
- 8 (23) the Health Care Quality Surcharge Act;
- 9 (24) the Cannabis Tax Act; and
- 10 (25) the Health Care Delivery and Access Act;

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

- 14 (1) Resources Excise Tax Act;
- 15 (2) Severance Tax Act;
- 16 (3) any severance surtax;
- 17 (4) Oil and Gas Severance Tax Act;
- 18 (5) Oil and Gas Conservation Tax Act;
- 19 (6) Oil and Gas Emergency School Tax Act;
- 20 (7) Oil and Gas Ad Valorem Production Tax Act;
- 21 (8) Natural Gas Processors Tax Act;
- 22 (9) Oil and Gas Production Equipment Ad
- 23 Valorem Tax Act;
- 24 (10) Copper Production Ad Valorem Tax Act;
- 25 (11) any advance payment required to be made

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1 by any act specified in this subsection, which advance payment  
2 shall be considered a tax for the purposes of the Tax  
3 Administration Act;

4 (12) Enhanced Oil Recovery Act;

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

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

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

12 (1) Weight Distance Tax Act;

13 (2) the workers' compensation fee authorized  
14 by Section 52-5-19 NMSA 1978, which fee shall be considered a  
15 tax for purposes of the Tax Administration Act;

16 (3) Uniform Unclaimed Property Act (1995);

17 (4) 911 emergency surcharge and the network  
18 and database surcharge, which surcharges shall be considered  
19 taxes for purposes of the Tax Administration Act;

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

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

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(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."