

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: Feb 20, 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), 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. (NMED) is required.

The fee would be deposited into the oil and gas reclamation fund, which is administered by EMNRD. The fee is to be collected and enforced (under the TAA) by the Tax & Revenue Department, 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(M), to remove NMED’s permitting of agricultural irrigation where specific practices have been shown to be hazardous to the environment or use produced water. It further amends § 74-6-4(P) to state that the WQCC shall adopt rules to be administered by NMED regarding the permitting for use of produced water. Use of produced water is to be permitted for research purposes only, and the section 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.

The Amendment removes the original bill’s creation of a new fund for the deposit of the produced water fee, instead directing the fee to the existing oil and gas reclamation fund that

already serves the same purpose. It further revises the original bill to clarify that NMED is not allowed to issue a permit for using produced water to irrigate crops.

FISCAL IMPLICATIONS

N/A.

SIGNIFICANT ISSUES

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 fee on barrels of produced water, however the most recent committee substitution has this fee at 3 cents, rather than this bill’s 5 cents. Additionally, HB137 would deposit this fee into a strategic water supply program fund, rather than the oil and gas reclamation fund. Additionally, HB137 does not have the same permitting restrictions as this bill.

This bill may conflict with HB311, the Reclaimed Water Act, which appears to contemplate the reclamation and use of produced water by Reclaimed Water Authorities created by that act.

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

N/A.