

HOUSE RULES AND ORDER OF BUSINESS COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 319

**53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018**

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;  
PROVIDING FOR REMEDIATION OF THE CARLSBAD BRINE WELL; AMENDING  
THE POWERS AND DUTIES OF THE CARLSBAD BRINE WELL REMEDIATION  
AUTHORITY; ADMINISTRATIVELY ATTACHING THAT AUTHORITY TO THE  
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT; PROVIDING  
FOR THE ISSUANCE OF BONDS AND ACCEPTANCE OF LOANS; CREATING THE  
CARLSBAD BRINE WELL BONDING FUND WITHIN THE NEW MEXICO FINANCE  
AUTHORITY; MAKING A DISTRIBUTION TO THAT FUND FOR A CERTAIN  
PERIOD AND THEREAFTER TO THE STATE ROAD FUND; MAKING AN  
APPROPRIATION; DECLARING AN EMERGENCY.

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

SECTION 1. A new section of the New Mexico Finance  
Authority Act is enacted to read:

"[NEW MATERIAL] CARLSBAD BRINE WELL BONDING FUND--

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1       CREATED--PURPOSE--CONDITIONS.--

2               A.   The "Carlsbad brine well bonding fund" is  
3       created as a special fund within the authority.  The fund shall  
4       consist of motor vehicle excise tax revenues distributed to the  
5       fund pursuant to Section 7-14-10 NMSA 1978.  Earnings of the  
6       fund shall be credited to the fund.  Balances in the fund at  
7       the end of any fiscal year shall remain in the fund, except as  
8       provided in this section.

9               B.   Money in the fund is pledged for the payment of  
10      principal and interest on all bonds issued pursuant to Section  
11      6 of this 2018 act.  Money in the fund is appropriated to the  
12      authority for the purpose of paying debt service, including  
13      redemption premiums, if any, on the bonds and the expenses  
14      incurred in the issuance, payment and administration of the  
15      bonds.

16              C.   Any balance remaining in the fund shall be  
17      transferred to the state road fund upon certification by the  
18      authority that:

19                      (1)  the bonds issued pursuant to Section 6 of  
20      this 2018 act have been retired, that no additional obligations  
21      of the fund exist and that no additional expenditures from the  
22      fund are necessary; or

23                      (2)  a court of competent jurisdiction has  
24      ruled that the bonds have been retired, that no additional  
25      obligations of the fund exist and that no additional

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1 expenditures from the fund are necessary.

2 D. The fund shall be used only for the purposes  
3 specified in this section and is pledged first to pay the debt  
4 service on the bonds issued pursuant to Section 6 of this 2018  
5 act. Any law authorizing the distribution of taxes or other  
6 revenues to the fund or authorizing expenditures from the fund  
7 shall not be amended or repealed or otherwise modified so as to  
8 impair the bonds to which the fund is dedicated as provided in  
9 this section."

10 SECTION 2. Section 7-14-10 NMSA 1978 (being Laws 1988,  
11 Chapter 73, Section 20, as amended) is amended to read:

12 "7-14-10. DISTRIBUTION OF PROCEEDS.--The receipts from  
13 the tax and any associated interest and penalties shall be  
14 deposited in the "motor vehicle suspense fund", hereby created  
15 in the state treasury. As of the end of each month, the net  
16 receipts attributable to the tax and associated penalties and  
17 interest shall be distributed as follows:

18 A. four and fifteen-hundredths percent to the  
19 Carlsbad brine well bonding fund, until such time as the New  
20 Mexico finance authority certifies to the department that no  
21 further distributions are necessary for payment of principal  
22 and interest on all bonds issued pursuant to Section 6 of this  
23 2018 act, and thereafter to the state road fund; and

24 B. the remainder to the general fund."

25 SECTION 3. Section 75-11-1 NMSA 1978 (being Laws 2017,

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1 Chapter 11, Section 1 and Laws 2017, Chapter 118, Section 1) is  
2 amended to read:

3 "75-11-1. CARLSBAD BRINE WELL REMEDIATION [~~ADVISORY~~  
4 AUTHORITY--CREATED--MEMBERSHIP--~~[ADMINISTRATION OF THE CARLSBAD~~  
5 ~~BRINE WELL REMEDIATION]~~ POWERS AND DUTIES.--

6 A. The "Carlsbad brine well remediation [~~advisory~~  
7 authority" is created [~~The authority is a governmental entity~~  
8 ~~of the state]~~ and is administratively attached to the energy,  
9 minerals and natural resources department.

10 B. The membership of the board of directors of the  
11 authority shall consist of the following eight members:

12 (1) the [~~mayor of the city of Carlsbad or the~~  
13 ~~mayor's]~~ secretary of energy, minerals and natural resources or  
14 the secretary's designee, who shall serve as chair of the  
15 board;

16 (2) the chair of the Eddy county board of  
17 county commissioners or the chair's designee;

18 (3) the [~~secretary of energy, minerals and~~  
19 ~~natural resources or the secretary's]~~ mayor of the city of  
20 Carlsbad or the mayor's designee;

21 (4) the secretary of environment or the  
22 secretary's designee;

23 (5) the secretary of transportation or the  
24 secretary's designee;

25 (6) the manager of the Carlsbad irrigation

1 .district or the manager's designee;

2 (7) the state engineer or the state engineer's  
3 designee; and

4 (8) the attorney general or the attorney  
5 general's designee.

6 ~~[B.]~~ C. The ~~[advisory]~~ authority ~~[(1)]~~ shall  
7 ~~[recommend policy for and advise the oil conservation division~~  
8 ~~of the energy, minerals and natural resources department on~~  
9 ~~the]~~ set policy and regulate, supervise and administer the  
10 remediation of the Carlsbad brine well [located at: Unit  
11 Letter M (SW/4 of the SW/4) in Section 17, Township 22 South,  
12 Range 27 East, NMPM; Eddy County, New Mexico; and (2) is  
13 granted all powers necessary and appropriate to provide advice  
14 to the division for a revenue source dedicated to the Carlsbad  
15 brine well remediation fund].

16 D. The authority may:

17 (1) promulgate rules to carry out the  
18 provisions of this section;

19 (2) make and execute all contracts and other  
20 instruments;

21 (3) contract with the municipality or county  
22 in fulfillment of its duties;

23 (4) acquire, maintain or contract for  
24 property;

25 (5) exercise the power of eminent domain over

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1 lands adjacent to the Carlsbad brine well as provided by law  
2 for the condemnation of private property for public use with  
3 just compensation;

4 (6) use the police power to provide for the  
5 safety of persons or property;

6 (7) borrow money for the remediation of the  
7 Carlsbad brine well subject to the approval of the state board  
8 of finance; and

9 (8) certify to the New Mexico finance  
10 authority the need for the issuance of bonds for remediation of  
11 the Carlsbad brine well or acquisition of property adjacent to  
12 the Carlsbad brine well as is required for its remediation.

13 E. The authority shall not incur debt as a general  
14 obligation of the state or pledge the full faith and credit of  
15 nor the general taxing power of the state or any of its  
16 political subdivisions to repay debt.

17 F. On or before November 15 of each year, the  
18 authority shall report to the radioactive and hazardous  
19 materials interim committee and the legislative finance  
20 committee on the status of the remediation of the Carlsbad  
21 brine well and expenditures from the Carlsbad brine well  
22 remediation fund.

23 ~~[G.]~~ G. Nothing in this section shall be construed  
24 as a waiver or alteration of the immunity from liability  
25 granted pursuant to the Tort Claims Act or as a waiver of any

1 other immunity or privilege under law.

2 H. For the purposes of this section:

3 (1) "authority" means the Carlsbad brine well  
4 remediation authority; and

5 (2) "Carlsbad brine well" means the brine well  
6 located at SW/4 of the SW/4 in Section 17, Township 22 South,  
7 Range 27 East, NMPM; Eddy County, New Mexico."

8 SECTION 4. Section 75-11-2 NMSA 1978 (being Laws 2017,  
9 Chapter 11, Section 2 and Laws 2017, Chapter 118, Section 2) is  
10 amended to read:

11 "75-11-2. CARLSBAD BRINE WELL REMEDIATION FUND--CREATED--  
12 PURPOSE--CONDITIONS.--

13 A. [~~There is created~~] The "Carlsbad brine well  
14 remediation fund" is created in the state treasury. The  
15 [~~energy, minerals and natural resources department~~] Carlsbad  
16 brine well remediation authority shall administer the fund.  
17 The fund shall be used by the [~~oil conservation division of the~~  
18 ~~energy, minerals and natural resources department~~] Carlsbad  
19 brine well remediation authority to the extent that revenues  
20 are available to remediate the Carlsbad brine well or to  
21 acquire property adjacent to the Carlsbad brine well as  
22 required for its remediation; provided that the Carlsbad brine  
23 well remediation authority shall consult with the department of  
24 transportation on the expenditure of money from the fund.

25 B. Money in the fund may consist of federal grants,

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1 appropriations, donations, earnings from investment of the  
2 fund, bond or loan proceeds and other revenue that from time to  
3 time may accrue to the fund from other sources for remediation  
4 of the Carlsbad brine well or for acquisition of property  
5 adjacent to the Carlsbad brine well as required for its  
6 remediation.

7 C. Money in the fund [~~shall be subject to~~  
8 ~~appropriation by the legislature~~] is appropriated to the  
9 Carlsbad brine well remediation authority and shall not revert  
10 at the end of any fiscal year; provided that when the  
11 remediation of the Carlsbad brine well is complete, the  
12 secretary of energy, minerals and natural resources shall  
13 certify the completion to the secretary of finance and  
14 administration and, upon the secretary of energy, minerals and  
15 natural resources' certification, money in the fund shall  
16 transfer to the state road fund.

17 D. Money in the fund shall be disbursed on warrants  
18 signed by the secretary of finance and administration pursuant  
19 to vouchers signed by the secretary of energy, minerals and  
20 natural resources or the secretary's authorized  
21 representative."

22 SECTION 5. Section 75-11-3 NMSA 1978 (being Laws 2017,  
23 Chapter 11, Section 3 and Laws 2017, Chapter 118, Section 3) is  
24 amended to read:

25 "75-11-3. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--

1 The Carlsbad brine well remediation [~~advisory~~] authority is  
2 terminated on July 1, 2029 pursuant to the Sunset Act. The  
3 [~~advisory~~] authority shall continue to operate according to the  
4 provisions of this act until July 1, 2030. Effective July 1,  
5 2030, this act is repealed."

6 SECTION 6. A new section of Chapter 75, Article 11 NMSA  
7 1978 is enacted to read:

8 "[NEW MATERIAL] NEW MEXICO FINANCE AUTHORITY--AUTHORITY TO  
9 ISSUE BONDS.--

10 A. The New Mexico finance authority may issue and  
11 sell revenue bonds in compliance with the New Mexico Finance  
12 Authority Act in installments or at one time in an amount not  
13 exceeding fifty million dollars (\$50,000,000), for the purpose  
14 of remediating the Carlsbad brine well or for acquiring  
15 property adjacent to the Carlsbad brine well as required for  
16 its remediation.

17 B. The New Mexico finance authority may issue and  
18 sell revenue bonds authorized by this section when the Carlsbad  
19 brine well remediation authority certifies the need for  
20 issuance of the bonds and the New Mexico finance authority  
21 certifies that there are sufficient revenues pledged to the  
22 Carlsbad brine well bonding fund for the repayment of the  
23 bonds. The net proceeds from the sale of the bonds are to be  
24 held by the New Mexico finance authority to be requisitioned by  
25 the Carlsbad brine well remediation authority for the purpose

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1 described in Subsection A of this section and consistent with  
2 the provisions of Section 75-11-2 NMSA 1978.

3 C. The money deposited into the Carlsbad brine well  
4 bonding fund within the New Mexico finance authority shall be  
5 pledged irrevocably for the payment of the principal, interest  
6 and other expenses or obligations related to the bonds.

7 D. All revenue bonds issued by the New Mexico  
8 finance authority pursuant to this section are obligations of  
9 the authority payable solely from the revenues, income and  
10 money of the authority deposited into the Carlsbad brine well  
11 bonding fund. The revenue bonds shall not create an  
12 obligation, debt or liability of the state, and no breach of  
13 any pledge, obligation or agreement of the authority shall  
14 impose a pecuniary liability or charge upon the general faith  
15 and credit nor the general taxing power of the state or any of  
16 its political subdivisions.

17 E. The New Mexico finance authority may purchase  
18 the revenue bonds with the public project revolving fund  
19 pursuant to Subsection J of Section 6-21-6 NMSA 1978."

20 SECTION 7. A new section of Chapter 75, Article 11 NMSA  
21 1978 is enacted to read:

22 "[NEW MATERIAL] LOANS--ACCEPTANCE UNDER CERTAIN  
23 CONDITIONS.--

24 A. The Carlsbad brine well remediation authority  
25 may accept a no- or low-interest loan for remediation of the

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1 Carlsbad brine well under the following conditions:

2 (1) the legislature has pledged a statutory  
3 revenue source sufficient to repay the loan within a reasonable  
4 time;

5 (2) the loan shall be payable solely from  
6 pledgeable revenue and shall not constitute an indebtedness or  
7 general obligation of the state or any of its political  
8 subdivisions;

9 (3) the pledgeable revenue shall be deposited  
10 into a sinking fund used solely to repay the loan, and the  
11 state treasurer shall make loan payments from the sinking fund;

12 (4) the loan and all loan documents are  
13 approved by the state board of finance and the loan documents  
14 shall contain a statement that neither the state nor the  
15 authority shall be obligated to pay the loan or interest on the  
16 loan except from pledgeable revenue; and

17 (5) the money shall be spent only on direct  
18 costs of remediating the Carlsbad brine well.

19 B. The loan shall not create an obligation, debt or  
20 liability of the state that imposes a pecuniary liability or  
21 charge upon the general faith and credit nor the general taxing  
22 power of the state or any of its political subdivisions.

23 C. The sinking fund required by Paragraph (3) of  
24 Subsection A of this section shall be used only for the  
25 purposes specified in this section and is pledged first to pay

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1 the debt service on the loans accepted pursuant to this  
2 section. Any law authorizing the distribution of taxes or  
3 other revenues to the sinking fund or authorizing expenditures  
4 from the sinking fund shall not be amended or repealed or  
5 otherwise modified so as to impair the repayment of the loans  
6 to which the fund is dedicated as provided in this section."

7 **SECTION 8. EMERGENCY.**--It is necessary for the public  
8 peace, health and safety that this act take effect immediately.

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