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## FISCAL IMPACT REPORT

<b>SPONSOR</b> <u>Pope</u>	<b>LAST UPDATED</b> <u>2/20/2025</u>	<b>ORIGINAL DATE</b> <u>2/12/2025</u>
<b>SHORT TITLE</b> <u>Produced Water &amp; Abandoned Wells Fund</u>	<b>BILL NUMBER</b> <u>Senate Bill 178/aSCONC</u>	<b>ANALYST</b> <u>Davidson/Torres</u>

### REVENUE\* (dollars in thousands)

Type	FY25	FY26	FY27	FY28	FY29	Recurring or Nonrecurring	Fund Affected
EMNRD	\$0	\$34,000.0 to \$80,490.0	\$68,000.0 to \$79,900.0	\$68,000.0 to \$78,230.0	\$68,000.0 to \$74,670.0	Recurring	Oil and Gas reclamation fund

Parentheses ( ) indicate revenue decreases.  
\*Amounts reflect most recent analysis of this legislation.

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT\* (dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
EMNRD	No fiscal impact	\$210.0	\$210.0	\$420.0	Recurring	General Fund

Parentheses ( ) indicate expenditure decreases.  
\*Amounts reflect most recent analysis of this legislation.

Relates to House Bill 137

### Sources of Information

LFC Files

#### Agency Analysis Received From

New Mexico Attorney General (NMAG)  
Energy, Minerals and Natural Resources Department (EMNRD)  
New Mexico Environment Department (NMED)

#### Agency Analysis was Solicited but Not Received From

Department of Finance Administration (DFA)  
Tax and Revenue Department (TRD)

#### Agency Declined to Respond

Office of the State Engineer (OSE)

## SUMMARY

### Synopsis of SCONC Amendment for Senate Bill 178

The Senate Conservation Committee's amendment for Senate Bill 178 (SB178) removes the creation of the plugging and remediation abandoned wells fund and instead directs the proceeds

of the bills produced water tax to the state's oil and gas reclamation fund.

The SCONC amendment also removes in Section 3 language regarding exemptions the Water Quality Control Commission's currently affords to irrigated agriculture water use. Specifically, the amendment removes the mention of the environment and use of produced water from the statute.

### **Synopsis of Senate Bill 178**

Senate Bill 178 (SB178) amends the Produced Water Act, the Water Quality Act, and the Tax Administration Act to impose a new fee on produced water from oil and gas wells and restrict the use of produced water outside the oilfield. The bill establishes a 5 cent per barrel fee on produced water, with exemptions for water used in enhanced oil recovery, recycled or reused at a permitted facility, or regulated under the Water Quality Act. Revenue collected from this fee will be deposited into the newly created plugging and remediating abandoned wells fund, which will be administered by the Oil Conservation Division (OCD) of the Energy, Minerals and Natural Resources Department to address abandoned well plugging and site remediation.

The bill also limits the use of produced water off the oilfield to research purposes only and explicitly prohibits its use for agriculture, irrigation, potable water supplies, aquifer recharge, industrial processes, environmental restoration, road maintenance, or construction activities. The Taxation and Revenue Department will be responsible for collecting the produced water fee and enforcing compliance, with the Tax Administration Act applying to its administration.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns if enacted, or June 20, 2025.

### **FISCAL IMPLICATIONS**

Due to the Senate Conservation Committee amendment changing the destination of the revenues from the proposed produced water tax to the oil and gas reclamation fund, it creates the possibility for any increased operating budget expenses to EMNRD and OCD being supplemented by increased usage of the expanded oil and gas reclamation fund.

Estimates for revenue generation are derived from the state's Oil and Natural Gas Administration and Revenue Database (ONGARD), the consensus revenue estimating group (CREG) forecast for oil production, Oil Conservation Division data on volumes, and data on production by well. The data were used to determine the amount of water produced per barrel of oil produced and forecast future ratios of water to oil based on current trends. The resulting ratio starts at 3.34 barrels of produced water per barrel of oil in FY25 to 3.14 barrels of water per barrel of oil in FY29.

Analysis then estimates exemption of water from fees due to use for enhanced or secondary oil recovery, recycled or reused water, and permitted use. Based on 2023 data showing 2.3 billion barrels of produced water, and about 27.1 percent of produced water reinjected or reused, about 72.9 percent of produced water could have a fee imposed. Finally, the program is expected to increase treatment of water over time and is assumed to increase the fraction of treated and reused water from 10 percent to 20 percent.

The table below reflects the resulting estimate for revenue collections based on the CREG estimate for oil production, the estimated water produced to oil production ratio, the exempted water amount, and the 5-cents-per-barrel fee.

	Total Produced Water (million bbls)	Non-Exempted Produced Water (million bbls)	\$.05/bbl (rounded)
FY22	1,861.3		
FY23	2,245.5		
FY24	2,386.1		
FY25	2,490.5		
FY26	2,568.5	1,609.8	\$80,490.0
FY27	2,610.6	1,598.0	\$79,900.0
FY28	2,618.2	1,564.6	\$78,230.0
FY29	2,561.5	1,493.4	\$74,670.0

The revenues estimated above are the high-end estimate included on page 1 of this analysis. Agency estimates for revenues are based on 1.36 billion barrels of nonexempted water produced, with half of that amount in the first taxable year. These estimates represent the low end of the estimated revenues on page 1.

The Energy, Minerals and Natural Resources Department (EMNRD) notes implementation of Senate Bill 178 could require recurring budget increases for the agency’s OCD. EMNRD estimates it could need up to \$210 thousand for two additional personnel to administer the new fund the bill proposes to create.

Additionally, EMNRD estimates the projected revenue from the new produced water barrel tax the bill creates could be between \$85 and \$90 million, based on OCD’s produced water reports. OCD notes in 2023 the state produced 2.3 billion barrels of produced water, injected 411 million barrels, and used 221 million barrels of produced water for completions, leaving roughly 1.7 million barrels of produced water that would fall under the new proposed produced water barrel tax.

The Environment Department (NMED) notes the bill would require NMED to issue permits for the use of produced water in research settings only but does not allow for NMED to use the proposed fund to support the additional permitting actions taken on by NMED. NMED further notes the bill would complicate current practice regarding discharge permits for produced water:

The current fee schedule in 20.6.2.3114 NMAC does not consider a fee for a discharge permit specifically for produced water, which is not of the same volume and character as would be found for domestic, mining, or industrial wastewater. This would require amending 20.6.2 NMAC or trying to justify alternate permit fees under the current fee schedule.

## SIGNIFICANT ISSUES

### Produced Water

Produced water is a byproduct of hydraulic fracking and is unique to the area it is drilled from, resulting in each barrel of produced water having a unique dissolved solids structure. Produced water, depending on the area it is created from, has been found to have varying levels of toxic and radioactive substances in it.<sup>1</sup> New Mexico produces roughly 2 billion barrels of produced water a year. Portions of this produced water are recycled and reused in oil production, with the industry getting to 60 percent of drilling use from reused water, in recent years.

Projects to clean produced water for industrial use, a standard varying dependent on use, have not been achieved at a large scale and would require infrastructure the state does not have. Cleaning produced water, removing the total dissolved solids (TDS) so that it can be used beyond the oil field requires the removal of radioactive and toxic dissolved solids, a level of water purification requiring substantial infrastructure. Currently, there are no plans to clean produced water to drinking water level, which would require produced water to be clean to the drinking water requirement of TDS level of less than 500 parts per million.

A [study](#) done by the U. S Environmental Protection Agency notes:<sup>2</sup>

Based on information provided in this study, this is primarily due to the availability of other wastewater management options that are lower cost, such as reuse within the oil and gas field or disposal in Class II UIC wells, as well as the cost associated with treating produced waters to a level suitable for discharge. Industry indicated that unless the produced water has total dissolved solids concentrations generally of less than a few thousand milligrams per liter, treatment using membranes (e.g., reverse osmosis) or distillation would be necessary to generate water that is suitable for agricultural uses or for discharge to surface waters. The cost of such treatment is not currently competitive where other wastewater management options are available.

[Research](#) from the New Mexico Produced Water Consortium out of New Mexico State University found a range of TDS in produced water from the Permian Basin between 100,800 to 201,500 TDS mg/L.<sup>3</sup>

### Agency Analysis

NMAG analysis notes the bill is unclear on how its “produced water fee” is to be interpreted regarding its context with 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.”

NMED expresses concerns the proposed changes to the Produced Water Act conflict with the current proposed regulation changes before the Water Quality Control Commission (WQCC). NMED notes, due to the possibility of passage of the bill before a ruling is issued by WQCC, passage of Senate Bill 178 could create conflict and possibly negate the rulemaking process

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<sup>1</sup> <https://www.epa.gov/radiation/tenorm-oil-and-gas-production-wastes>

<sup>2</sup> <https://www.env.nm.gov/opf/wp-content/uploads/sites/13/2024/05/108-110.pdf>

<sup>3</sup> <https://nmpwrc.nmsu.edu/resources/documents/2022-JHM-Characterization-of-PW-and-Pecos-River-quality.pdf>

currently done by WQCC.

NMED analysis notes implementation of the new proposed rules in the bill would be difficult because the bill does not differentiate treated and not treated produced water. The current bill does not distinguish if the rules regarding produced water reuse apply to treated and not treated produced water, only stating the rule applies to simply produced water. NMED analysis notes clarifying the application of the rule would aid in implementation.

NMED notes the bill's striking of the language "for activities unrelated to the exploration, drilling, production treatment or refinement of oil or gas," and thus requiring permits to be issued by NMED, would complicate the current delegation of authority between OCD and NMED. Further, NMED notes the bill's removal of "treated produced water" prevents any future reuse scenarios and further complicates the current rule making process before WQCC.

NMED expresses concern regarding Senate Bill 178's proposed language for "use of produced water permitted by the department." NMED notes:

This language is not clear on "permitted" as in allowing, or "permitted" as in issuance of a ground water discharge permit. This leads to the second issue in the section where it states "produced water shall be used for research purposes only, and permits for use shall not allow...discharge of produced water." This language is contrary to what regulations currently allow under 20.6.2 where a permit is issued for a potential discharge. This makes implementation an issue.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

Senate Bill 178 duplicates the produced water barrel tax proposed in House Bill 137 but conflicts in purpose, with SB178 restricting the use of produced water to the oil field and HB137 promoting the use of treated produced water as a way to reduce the state's reliance on fresh water. Senate Bill 178 creates a different fund than House Bill 137. Passage of both bills would complicate the use of the tax revenue.

## **TECHNICAL ISSUES**

NMED notes language within Senate Bill 178 is not consistent with current authority and practice regarding which entity will promulgate rules regarding regulations. The bill currently rests this authority with OCD, when currently the role falls to the Oil Conservation Commission.

NMED also notes the bill would complicate current authority held by OCD, noting the bill proposes new language which:

Adds restrictions on the "construction maintenance, roadway ice or dust control or other construction." This is in conflict with OCD's authority to permit such activities within the delegation granted by the WQCC. Language needs to be added back clarifying that the rules to be adopted and administered by the environment department are limited to those "activities unrelated to the exploration, drilling, production, treatment or refinement of oil and gas."