

LFC Requester:

Davidson

**AGENCY BILL ANALYSIS - 2025 REGULAR SESSION****WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO****[AgencyAnalysis.nmlegis.gov](https://www.legis.nm.gov/AgencyAnalysis) and email to [billanalysis@dfa.nm.gov](mailto:billanalysis@dfa.nm.gov)****(Analysis must be uploaded as a PDF)****SECTION I: GENERAL INFORMATION***{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}***Date Prepared:** 02/18/2025*Check all that apply:***Bill Number:** SB178Original ☐ Correction ☐Amendment ☒ Substitute ☐**Sponsor:** Pope**Agency Name****and Code**

New Mexico Environment

**Number:**

Department 667

**Person Writing**

Jonas Armstrong, WPD

**Short**

PRODUCED WATER &amp;

**Title:**

ABANDONED WELLS FUND

**Phone:**

505-670-9050

**Email:**[jonas.armstrong2@env.nm.gov](mailto:jonas.armstrong2@env.nm.gov)[m.gov](http://m.gov)**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
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: HB137

### **SECTION III: NARRATIVE**

#### **BILL SUMMARY**

Synopsis: (Similar in part to HB0137) A new section of the Produced Water Act imposes on the working interest owners of New Mexico oil and gas wells a fee of five cents per barrel of produced water. Produce water fees to be deposited into the Oil and Gas Reclamation Fund. Amends the Water Quality Act.

#### **FISCAL IMPLICATIONS**

SB 178 requires NMED to issue permits for the use of produced water in research settings only. The produced water fees collected are placed in a new fund controlled by Oil Conservation Division (OCD) without a mechanism for NMED to support the required permitting actions.

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**

The proposed revisions to the Produced Water Act will conflict with the proposed regulations currently in front of the WQCC. Enacting the revisions prior to a determination from the WQCC of the rule changes may result in a major conflict and may entirely negate the rulemaking process that is currently underway.

Proposed revisions to the WQA74-6-4(M) strike “or the environment or the use of produced water”. “or the environment” is original WQA language and striking it will degrade authorities to prevent agricultural discharges that are hazardous to the environment.

The proposed revisions to the WQA74-6-4(P) do not recognize the delegation to constituent agencies adopted by the WQCC. Striking “for activities unrelated to the exploration, drilling, production treatment or refinement of oil or gas” and requiring permits by NMED upsets the WQCC’s delegation of authority between OCD and NMED.

Striking of “treated produced water” from the WQA74-6-4(P) prevents any reuse scenarios for produced water and further confuses the WQCC’s delegation of authority between OCD and NMED.

Subpart 2 of WQA74-6-4(P) restricts various uses of produced water without addressing non-discharge uses of produced water. GWQB’s, WQCC’s and the Court of Appeals long standing interpretation of the WQA precludes NMED permitting non-discharging actions.

Without clarification of whether it is just produced water or treated produced water,

implementation of a rule would be problematic. As proposed, the language only prohibits “produced water” and does not clarify whether it is also applicable to “treated produced water”. Clarification should be made to include or exclude treated produced water.

## **PERFORMANCE IMPLICATIONS**

Proposed language states “use of produced water permitted by the department”. However, 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. Suggest language be clear so that it clarifies conditions in which entities have to submit a Notice of Intent for the proposed research. Suggested language in 74-6-4(P) to add clarity could be “shall adopt rules to be administered by the department of environment for the submittal of notices of intent for research using produced water. Produced water being used for research outside of oil conservation divisions authority shall not allow the...”

## **ADMINISTRATIVE IMPLICATIONS**

The bill presents several administrative challenges for NMED, primarily due to the lack of a direct funding mechanism to support the required permitting actions for produced water use in research settings. While NMED would be responsible for issuing these permits, the collected fees are directed to a fund controlled by the Oil Conservation Division (OCD), creating a financial gap that could hinder implementation. Additionally, the current fee schedule in 20.6.2.3114 NMAC does not include a specific category for produced water discharge permits, as its volume and composition differ from domestic, mining, or industrial wastewater. To address this, NMED would need to pursue regulatory amendments to 20.6.2 NMAC or attempt to justify applying an existing fee structure, both of which would require significant administrative effort and coordination.

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

The proposed “produced water fee” language is very similar to that in HB137 - Strategic Water Supply Act. SB178 and HB137 both tax produced water at \$0.05 and \$0.03, respectively, per barrel that is not used for enhanced or secondary oil or recycled or reused within oil and gas exploration activities and call it the “produced water fee”. If both bills pass, it is unclear if the fee will be deposited in the “oil and gas reclamation fund” (SB178) or the proposed “strategic water supply program fund” (HB137). The last bill that passes will likely govern.

The proposed language states that the Oil Conservation Division (OCD) will promulgate regulations, however, it is the Oil Conservation Commission that has the authority, not OCD.

The proposed language 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”.

#### **TECHNICAL ISSUES**

None identified.

#### **OTHER SUBSTANTIVE ISSUES**

None identified.

#### **ALTERNATIVES**

None identified.

#### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

None identified.

#### **AMENDMENTS**

None identified.