

An Act

ENROLLED SENATE
BILL NO. 1875

By: Rader of the Senate

and

O'Donnell, Davis and
McBride of the House

An Act relating to oil and gas; creating the Oil and Gas Produced Water and Waste Recycling and Reuse Act; defining terms; declaring legislative findings on oil and gas produced water and waste; establishing ownership of subterranean water and constituent elements; construing clause; declaring ownership, rights and responsibilities of certain persons for oil and gas produced water and waste; establishing responsibility for certain actions with oil and gas produced water and waste; providing that certain persons are not liable in tort for certain actions regarding use of recycled water or treated constituents; authorizing disposal of produced water and waste with certain permitting; establishing applicability of Oklahoma Brine Development Act to certain oil and gas produced water and waste; providing for codification; and providing an effective date.

SUBJECT: Oil and gas produced water

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 86.6 of Title 52, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Oil and Gas Produced Water and Waste Recycling and Reuse Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 86.7 of Title 52, unless there is created a duplication in numbering, reads as follows:

A. As used in this act:

1. "Commission" means the Oklahoma Corporation Commission;

2. "Constituent elements" means salts, metals, elements and other mineralized substances that are naturally occurring and dissolved, entrained or suspended in subterranean water in situ and after extraction from the ground, suspended in the oil and gas produced water and waste or as part of the brine, as defined in paragraph 4 of Section 502 of Title 17 of the Oklahoma Statutes;

3. "Nonoperator" means persons, other than the operator, contributing to the cost and expense of drilling and completing or operating a well for the intended development and production of oil, gas or other hydrocarbons, regardless of whether the well is completed or produces any oil or gas;

4. "Oil and gas produced water and waste" means the fluid containing salt or other mineralized substances, hydraulic fracturing fluid, flowback water, formation water, injection water and any chemicals added downhole, associated with the drilling completion or production of an oil or gas well, incidental to or extracted from hydrocarbon-bearing strata during the drilling. Except as provided in Section 3 of this act, oil and gas produced water and waste, including its constituent elements, shall not be considered brine for purposes of the Oklahoma Brine Development Act;

5. "Operator" means the person authorized by the Corporation Commission to drill, complete and operate a well for the intended development and production of oil, gas or other hydrocarbons, regardless of whether the well is completed or produces any;

6. "Person" means any individual, partnership, corporation, limited liability company or any type of association;

7. "Recycled water" means oil and gas produced water and waste that has been reconditioned or treated by mechanical or chemical processes into a reusable form; and

8. "Treated constituents" means any chemical, compound or other byproduct naturally occurring in the subterranean water that is removed from oil and gas produced water and waste through reconditioning or treating of the fluid by mechanical or chemical processes.

B. The Legislature finds that oil and gas produced water and waste has minimal or no intrinsic value without substantial expenditures to process, treat or recycle the oil and gas produced water and waste and declares it desirable, necessary and in the public interest to designate the parties who shall own and be responsible for the handling, transfer and disposition of the oil and gas produced water and waste. The Legislature recognizes that it has imposed upon the operator of an oil and gas lease a duty to safely dispose of oil and gas produced water and waste, as defined in this act. It is further found to be in the public interest to foster, encourage and promote the development of methods and means to economically process, treat and recycle oil and gas produced water and waste for beneficial uses, including the commercial extraction of constituent elements from the oil and gas produced water and waste and to ensure appropriate disposal in accordance with Corporation Commission rules.

C. Prior to its extraction from the ground, subterranean water, including its constituent elements, is the property of the owner of the surface estate, as defined in paragraph 9 of Section 802 of Title 52 of the Oklahoma Statutes and shall be subject to the right of the mineral owner or the oil and gas lessee of the mineral owner, or both, to extract the subterranean water as part of the oil and gas produced water and waste as is reasonably necessary for, or incident to, the exploration, exploitation or extraction of hydrocarbons. Nothing contained in this act shall be construed to:

1. Prevent the owner of the surface estate from being considered the brine owner, as defined by paragraph 5 of Section 502 of Title 17 of the Oklahoma Statutes, for purposes of Section 3 of this act or the Oklahoma Brine Development Act; or

2. Limit the ability of the owner or owners of the surface estate to enter into any legally binding contract with persons for the payment of money or other valuable consideration for the extraction of subterranean water, including the constituent elements contained therein, or brine, as defined in paragraph 4 of Section 502 of Title 17 of the Oklahoma Statutes, from the property of the owner or owners. However, if said extraction of subterranean water or brine is to be done as part of oil and gas operations, the contract shall be entered into prior to the filing of the drilling permit of the oil and/or gas well. If the contract is entered into after the filing of the drilling permit of the oil and/or gas well, the contract shall be with the operator, or with the consent of the operator, any other person or persons. The operator shall not withhold consent unreasonably. Any such contract and the use or disposal of oil and gas produced water and waste, shall be subject to the requirements and limitations set forth in Section 3 of this act and subject to any and all applicable governmental laws, rules and regulations and subordinate to any preexisting, legally binding, arms-length contracts relating to the use or disposal of oil and gas produced water and waste. Provided, however, that the contracts shall not result in additional costs or delays to the rights of the operator to extract subterranean water reasonably necessary for, or incident to, the exploration, exploitation or extraction of hydrocarbons. Evidence, in the form of an affidavit, of any contract entered into under the terms of this act may be filed in the office of the county clerk for the county in which the lands described in the contract are located. The affidavit shall set out the names and address of each party to the contract, the legal description of the lands covered by the contract and the effective date of the contract. Once filed, the affidavit shall serve as constructive notice of the contract under this act.

D. 1. Subject to the requirements and limitations set forth in subsection C of this section and Section 3 of this act and unless otherwise provided by Corporation Commission order, an oil or gas lease, brine lease, recycling agreement, surface use agreement, contract, bill of sale or another legally binding document:

- a. the operator or operators, and the nonoperator or nonoperators, of an oil and/or gas well shall be the owner or owners of the oil and gas produced water and

waste extracted from the ground through the borehole of the oil or gas well, and

- b. the operator or operators, and the nonoperator or nonoperators, shall have the right to use, possess, handle, dispose of, transfer, sell, convey, transport, process, recycle, reuse or treat the produced water and waste and shall also have the exclusive right to obtain proceeds for any of the uses of the oil and gas produced water and waste or some portion thereof, including recycled water and treated constituents.

2. Subject to the requirements and limitations set forth in subsection C of this section and Section 3 of this act and unless otherwise provided by Corporation Commission order, oil or gas lease, brine lease, recycling agreement, surface use agreement, contract, bill of sale or another legally binding document, until there is a transfer to another person, the operator or operators, and the nonoperator or nonoperators, shall be responsible for the use, disposition, transfer, sale, conveyance, transport, recycling, reuse, treatment or disposal of the transferred oil and gas produced water and waste, recycled water and treated constituents or any other byproducts.

3. Subject to the requirements and limitations set forth in subsection C of this section and Section 3 of this act and unless otherwise provided by Corporation Commission order, an oil or gas lease, brine lease, recycling agreement, surface use agreement, contract, bill of sale or another legally binding document:

- a. when oil and gas produced water and waste is transferred to a person for the purpose of processing or treating for subsequent beneficial use, disposal or both, the transferred material, recycled water and treated constituents shall be the property of that person until such time that the person disposes of the produced water and waste in accordance with Commission rules or there is a transfer of the material to a subsequent person, and
- b. transferred oil and gas produced water and waste shall be the property of such transferee and the transferees

shall have control of and responsibility for the substance, including the right to use, possess, handle, dispose of, transfer, sell, convey, transport, process, recycle, reuse or treat the produced water and waste and to obtain proceeds for any uses of the substance or any portion thereof, including recycled water and treated constituents.

E. Except as provided in paragraph 1 of subsection D of this section, a person is not liable in tort for consequences of subsequent use of recycled water or treated constituents if that person:

1. Processes oil and gas produced water and waste in order to produce recycled water or treated constituents that are generally considered in the oil and gas industry to be suitable for use in connection with drilling, completion or production operations of oil and gas or both; or

2. Transfers the recycled water or treated constituents, or both, to another person for use in connection with oil and gas drilling, completion or production operations.

This subsection shall not be construed to affect the liability of a person in possession of oil and gas produced water and waste, recycled water or treated constituents, or both, in an action brought by a person for damages for personal injury, death or property damage arising from a release of or exposure to any of these substances.

F. A person who acquires possession of oil and gas produced water and waste for the purpose of recycling it for subsequent beneficial use may dispose of the oil and gas produced water and waste, including recycled water, treated constituents or other byproducts of the recycling process, in his or her permitted disposal well or wells, regardless of the source or prior ownership of the oil and gas produced water and waste. The disposal shall not require a commercial disposal well permit from the Corporation Commission but shall otherwise be subject to any other permit restrictions applicable to disposal wells.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 86.8 of Title 52, unless there is created a duplication in numbering, reads as follows:

Notwithstanding any other provision in this act, if oil and gas produced water and waste is utilized for the purpose of processing the produced water and waste by mechanical or chemical processes for the extraction of constituent elements for commercial purposes, the oil and gas produced water and waste shall be considered brine under the Oklahoma Brine Development Act. The operating activity and the ownership of the oil and gas produced water, including the constituent elements contained therein, including the entitlement to and sharing of proceeds from the extraction and sale of the constituent elements or effluent, shall be subject to the Oklahoma Brine Development Act and the operator or other person extracting or utilizing the oil and gas produced water and waste shall comply with the provisions of the act. The Oklahoma Brine Development Act shall not apply to oil and gas produced water and waste that is reused or recycled solely for the purpose of use in oil and gas operations.

SECTION 4. This act shall become effective November 1, 2020.

Passed the Senate the 13th day of May, 2020.

Presiding Officer of the Senate

Passed the House of Representatives the 11th day of May, 2020.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____