

**SENATE CHAMBER**  
**STATE OF OKLAHOMA**

DISPOSITION

FLOOR AMENDMENT

No. \_\_\_\_\_

\_\_\_\_\_

COMMITTEE AMENDMENT

\_\_\_\_\_

(Date)

Mr./Madame President:

I move to amend Senate Bill No. 1875, by substituting the attached floor substitute for the title, enacting clause and entire body of the measure.

Submitted by:

\_\_\_\_\_  
Senator Rader

Rader-CB-FS-Req#4030  
3/11/2020 3:35 PM

(Floor Amendments Only) Date and Time Filed: \_\_\_\_\_

Untimely

Amendment Cycle Extended

Secondary Amendment

1 STATE OF OKLAHOMA

2 2nd Session of the 57th Legislature (2020)

3 FLOOR SUBSTITUTE  
4 FOR

5 SENATE BILL NO. 1875

By: Rader of the Senate

and

O'Donnell of the House

7  
8  
9 FLOOR SUBSTITUTE

10 [ Oil and Gas Produced Water Recycling and Reuse Act  
11 - water and waste - codification - effective date ]

12  
13 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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

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

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

22 A. As used in this act:

23 1. "Commission" means the Oklahoma Corporation Commission;

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

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

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

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

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

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

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

11       B. The Legislature finds that oil and gas produced water and  
12 waste has minimal or no intrinsic value without substantial  
13 expenditures to process, treat or recycle the produced water and  
14 waste and declares it desirable, necessary and in the public  
15 interest to designate the parties who shall own and be responsible  
16 for the handling, transfer and disposition of the oil and gas  
17 produced water and waste. The Legislature recognizes that it has  
18 imposed upon the operator of an oil and gas lease a duty to safely  
19 dispose of oil and gas produced water and waste, as defined in this  
20 act. It is further found to be in the public interest to foster,  
21 encourage and promote the development of methods and means to  
22 economically process, treat and recycle oil and gas produced water  
23 and waste for beneficial uses, including the commercial extraction  
24 of constituent elements from the produced water and waste and to

1 ensure appropriate disposal in accordance with Corporation  
2 Commission rules.

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

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

16 2. Limit the ability of the owner or owners of the surface  
17 estate to enter into any legally binding contract with persons for  
18 the payment of money or other valuable consideration for the  
19 extraction of subterranean water, including the constituent elements  
20 contained therein, or brine, as defined in paragraph 4 of Section  
21 502 of Title 17 of the Oklahoma Statutes, from the property of the  
22 owner or owners. However, if said extraction of subterranean water  
23 or brine is to be done as part of oil and gas operations, the  
24 contract shall be entered into prior to the filing of the drilling

1 permit of the oil and/or gas well. If the contract is entered into  
2 after the filing of the drilling permit of the oil and/or gas well,  
3 the contract shall be between the operator, or with the consent of  
4 the operator, and any other person or persons. The operator shall  
5 not withhold consent unreasonably. Any such contract and the use or  
6 disposal of oil and gas produced water and waste, shall be subject  
7 to the requirements and limitations set forth in Section 3 of this  
8 act and subject to any and all applicable governmental laws, rules  
9 and regulations and subordinate to any preexisting, legally binding,  
10 arms-length contracts relating to the use or disposal of oil and gas  
11 produced water and waste. Provided, however, that the contracts  
12 shall not result in additional costs or delays to the rights of the  
13 operator to extract subterranean water reasonably necessary for, or  
14 incident to, the exploration, exploitation or extraction of  
15 hydrocarbons. Evidence, in the form of an affidavit, of any  
16 contract entered into under the terms of this act shall be filed in  
17 the office of the county clerk for the county in which the lands  
18 described in the contract are located. The affidavit shall set out  
19 the names and address of each party to the contract, the legal  
20 description of the lands covered by the contract and the effective  
21 date of the contract. Once filed, the affidavit shall serve as  
22 constructive notice of the contract under this act.

23 D. 1. Subject to the requirements and limitations set forth in  
24 subsection C of this section and Section 3 of this act and unless

1 otherwise provided by Corporation Commission order, an oil or gas  
2 lease, brine lease, recycling agreement, surface use agreement,  
3 contract, bill of sale or another legally binding document is  
4 subject to the following conditions:

5 a. the operator or operators, and the nonoperator or  
6 nonoperators, of an oil and/or gas well shall be the  
7 owner or owners of the oil and gas produced water and  
8 waste extracted from the ground through the borehole  
9 of the oil or gas well, and

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

18 2. Subject to the requirements and limitations set forth in  
19 subsection C of this section and Section 3 of this act and unless  
20 otherwise provided by Corporation Commission order, in regards to an  
21 oil or gas lease, brine lease, recycling agreement, surface use  
22 agreement, contract, bill of sale or another legally binding  
23 document, until there is a transfer to another person, the operator  
24 or operators, and the nonoperator or nonoperators, shall be

1 responsible for the use, disposition, transfer, sale, conveyance,  
2 transport, recycling, reuse, treatment or disposal of the  
3 transferred oil and gas produced water and waste, recycled water and  
4 treated constituents or any other byproducts.

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

11 a. when oil and gas produced water and waste is  
12 transferred to a person for the purpose of processing  
13 or treating for subsequent beneficial use, disposal or  
14 both, the transferred material, recycled water and  
15 treated constituents shall be the property of that  
16 person until such time that the person disposes of the  
17 produced water and waste in accordance with Commission  
18 rules or there is a transfer of the material to a  
19 subsequent person, and

20 b. transferred oil and gas produced water and waste shall  
21 be the property of such transferee and the transferees  
22 shall have control of and responsibility for the  
23 substance, including the right to use, possess,  
24 handle, dispose of, transfer, sell, convey, transport,



1 process, recycle, reuse or treat the produced water  
2 and waste and to obtain proceeds for any uses of the  
3 substance or any portion thereof, including recycled  
4 water and treated constituents.

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

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

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

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

23 F. A person who acquires possession of oil and gas produced  
24 water and waste for the purpose of recycling it for subsequent

1 beneficial use may dispose of the oil and gas produced water and  
2 waste, including recycled water, treated constituents or other  
3 byproducts of the recycling process, in his or her permitted  
4 disposal well or wells, regardless of the source or prior ownership  
5 of the oil and gas produced water and waste. The disposal shall not  
6 require a commercial disposal well permit from the Corporation  
7 Commission but shall otherwise be subject to any other permit  
8 restrictions applicable to disposal wells.

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

12 Notwithstanding any other provision in this act, if oil and gas  
13 produced water and waste is utilized for the purpose of processing  
14 the produced water and waste by mechanical or chemical processes for  
15 the extraction of constituent elements for commercial purposes, the  
16 oil and gas produced water and waste shall be considered brine under  
17 the Oklahoma Brine Development Act. The operating activity and the  
18 ownership of the oil and gas produced water, including the  
19 constituent elements contained therein, including the entitlement to  
20 and sharing of proceeds from the extraction and sale of the  
21 constituent elements or effluent, shall be subject to the Oklahoma  
22 Brine Development Act and the operator or other person extracting or  
23 utilizing the oil and gas produced water and waste shall comply with  
24 the provisions of the act. The Oklahoma Brine Development Act shall

1 not apply to oil and gas produced water and waste that is reused or  
2 recycled solely for the purpose of use in oil and gas operations.

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

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