

COMMITTEE AMENDMENT
HOUSE OF REPRESENTATIVES
State of Oklahoma

SPEAKER:

CHAIR:

I move to amend SB743 _____
Of the printed Bill
Page _____ Section _____ Lines _____
Of the Engrossed Bill

By striking the Title, the Enacting Clause, the entire bill, and by
inserting in lieu thereof the following language:

AMEND TITLE TO CONFORM TO AMENDMENTS

Amendment submitted by: Weldon Watson

Adopted: _____

Reading Clerk

STATE OF OKLAHOMA

1st Session of the 56th Legislature (2017)

PROPOSED
COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 743

By: Schulz of the Senate
and
McCall of the House

PROPOSED COMMITTEE SUBSTITUTE

An act relating to oil and gas; creating the Oil and Gas Produced Water Recycling and Reuse Act; providing legislative findings; defining terms; stating when certain transfer of legal title occurs; establishing liability for just compensation between parties; establishing standards and process for determining just compensation under specific scenarios; providing scenario where no just compensation is due; identifying standard for payment of certain royalties; requiring transfer of title for certain products under certain conditions; providing exceptions; providing that under certain scenarios operators are not liable for certain consequences; declaring that certain provisions shall not affect the liability of certain operators; providing for codification; and declaring an emergency.

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 155 of Title 52, unless there is created a duplication in numbering, reads as follows:

1 Sections 1 through 6 of this this act shall be known and may be
2 cited as the "Oil and Gas Produced Water Recycling and Reuse Act".

3 SECTION 2. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 156 of Title 52, unless there is
5 created a duplication in numbering, reads as follows:

6 The Legislature finds that reduction of produced water injection
7 from oil and gas operations into disposal wells and the reclamation
8 and reuse of produced water for other purposes to be desired public
9 policy of this State to improve the health, safety and welfare of
10 its citizens. The Legislature further finds that the statutory
11 transfer of title of the produced water, and the constituent salts,
12 metals and other elements dissolved therein, from the surface estate
13 to the producer a necessary taking for a public purpose and public
14 use to implement this public policy pursuant to the Oklahoma
15 Constitution, Article 2, Section 24.

16 SECTION 3. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 157 of Title 52, unless there is
18 created a duplication in numbering, reads as follows:

19 As used in this act, the following words shall mean:

20 1. "Constituent elements" means salts, metals, elements and
21 other mineralized substances that are dissolved, entrained or
22 suspended in the produced water, but does not include skim oil or
23 hydraulic fracturing fluid;
24

1 2. "Hydraulic fracturing fluid" means fluids and hydraulic
2 fracturing additives injected into a wellbore by the operator during
3 the hydraulic fracturing, completion, recompletion or reworking
4 process;

5 3. "Hydraulic fracturing additives" means sand, chemicals and
6 other substances;

7 4. "Minerals" means the same as defined in Section 802 of Title
8 52 of the Oklahoma Statutes;

9 5. "Mineral estate" means the same as defined in Section 802 of
10 Title 52 of the Oklahoma Statutes;

11 6. "Mineral owner" means the same as defined in Section 802 of
12 Title 52 of the Oklahoma Statutes;

13 7. "Operator" means the same as defined in Section 802 of Title
14 52 of the Oklahoma Statutes;

15 8. "Produced water" means brine water or liquid waste water
16 which may contain constituent elements and hydraulic fracturing
17 fluid, that arises out of or is incidental to the drilling,
18 completion or production of oil or gas, but does not include skim
19 oil;

20 9. "Skim oil" means hydrocarbons, either in a gaseous or liquid
21 phase, that may be entrained or dissolved in, or produced with,
22 along with the produced water, which was not separated and saved at
23 the producing-well location;

1 10. "Surface estate" means the same as defined in Section 802
2 of Title 52 of the Oklahoma Statutes; and

3 11. "Surface owner" means a person owning the surface estate,
4 or portion of the surface estate which includes the ownership of the
5 produced water or constituent elements.

6 SECTION 4. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 158 of Title 52, unless there is
8 created a duplication in numbering, reads as follows:

9 Transfer of the legal title to the produced water shall occur at
10 the instant the operator reduces the produced water to possession
11 and separates it from the produced oil and gas, with the operator
12 being liable to the surface owner for just compensation for the
13 value of the property taken pursuant to Oklahoma Constitution,
14 Article 2, Section 24 and as determined by Section 5 of this act.

15 SECTION 5. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 159 of Title 52, unless there is
17 created a duplication in numbering, reads as follows:

18 The determination of just compensation for the value of the
19 property taken pursuant to Section 4 of this Act shall be determined
20 as follows:

21 1. The benefits to the surface owner and mineral owner is
22 deemed to exceed the value of the produced water and skim oil taken,
23 resulting in just compensation for the value of the property taken
24

1 to be zero dollars, and no further proceeding is necessary, and no
2 compensation to the surface owner or mineral owner is required when:

3 a. no skim oil is extracted and sold for commercial
4 purposes either by the operator or any other person,
5 and

6 b. no constituent elements dissolved within the produced
7 water are extracted and sold or used for commercial
8 purposes either by the operator or any other person,
9 and

10 c. the produced water:

11 (1) is not reclaimed for reuse by the operator or any
12 other person, but rather disposed of by the
13 operator or any other person as a waste product
14 to the production process, or

15 (2) is reclaimed for reuse by the operator or any
16 other person and the sales proceeds or fair
17 market value of the reclaimed produced water for
18 reuse does not exceed the cost of reclamation of
19 the produced water reduced by the cost of
20 disposal being avoided;

21 2. If skim oil is recovered, saved and sold for commercial
22 purposes at a produced water disposal facility, produced water
23 recycling facility or oil recovery reclaiming facility, either by
24 the operator or any other person, the facility operator shall

1 allocate the oil recovered, saved and sold therefrom to each source
2 thereof, based upon the barrels of produced water and oil received
3 from a particular source for the month, divided by the total barrels
4 of produced water and oil received by the facility for the month.
5 Utilizing this allocation, the facility operator shall file a report
6 with the Tax Commission, and pay the appropriate production taxes
7 thereon, reflecting the volume of oil recovered, saved and sold, and
8 the gross proceeds from sale thereof, allocated to each of the
9 sources, and shall provide a copy of said report to each operator of
10 the well or wells to which the oil was deemed by this subsection to
11 have been produced. The production and proceeds allocated to each
12 well pursuant to this subsection shall be considered production and
13 proceeds from the well or wells, subject to the Production Revenue
14 Standards Act; or

15 3. If any constituent element dissolved within the produced
16 water is extracted and sold or used for commercial purposes, either
17 by the operator or any other person, just compensation for the value
18 of the constituent element or elements taken shall be accomplished
19 by paying a royalty to the surface owner or owners on:

- 20 a. the gross proceeds received by the operator or any
21 other person for the sale of the constituent element
22 or elements, or
23
24

1 b. the gross value of the constituent element or elements
2 not sold, but otherwise utilized for commercial
3 purposes by the operator or any other person;

4 4. If produced water is reclaimed for reuse or sale by the
5 operator or any other person, and the fair market value of the
6 reclaimed produced water exceeds the cost of reclamation of the
7 produced water reduced by the cost of disposal being avoided, just
8 compensation for the value of the reclaimed produced water shall be
9 accomplished by paying a royalty to the surface owner or owners on:

10 a. the proceeds received by the operator or any other
11 person, for the sale of the reclaimed produced water,
12 less the cost of reclamation of the produced water
13 reduced by the cost of disposal being avoided, or

14 b. the fair market value of the reclaimed produced water
15 not sold, but otherwise utilized for commercial
16 purposes by the operator or any other person, less the
17 cost of reclamation of produced water reduced by the
18 cost of disposal being avoided;

19 5. No just compensation shall be due the surface owner for any
20 hydraulic fracturing additives extracted from the produced water and
21 sold or used for commercial purposes by the operator or any other
22 person;

23 6. Unless otherwise provided for in a contract with the surface
24 owner or by order of the Corporation Commission pursuant to Section

1 508 of Title 17 of the Oklahoma Brine Development Act, for the
2 purpose of calculating and paying just compensation in the form of
3 royalties pursuant to subsection C and D of this Section:

4 a. the royalty percentage for the payment of royalties
5 shall be one-eighth (1/8th),

6 b. the facility operator shall allocate the volumes and
7 values of the constituent elements or reclaimed
8 produced water to each source of the produced water,
9 based upon the barrels of produced water received from
10 a particular source for the month, divided by the
11 total barrels of produced water received by the
12 facility for the month,

13 c. the unit shape and size for each source of the
14 produced water pursuant to subsections C and D of this
15 Section shall be the same geographical area shape and
16 size as the unit for oil and gas development from
17 which the produced water was produced,

18 d. Surface owners within each unit shall share in the
19 royalty proceeds allocated to the unit in the
20 proportion that their acreage bears to total acreage
21 within the unit; and

22 7. The payment of royalties required pursuant to this Section
23 shall be paid in accordance with, and subject to, the provisions of
24 Section 517 of Title 17 of the Oklahoma Brine Development Act.

1 SECTION 6. NEW LAW A new section of law to be codified

2 in the Oklahoma Statutes as Section 160 of Title 52, unless there is
3 created a duplication in numbering, reads as follows:

4 Unless otherwise expressly provided by a contract, bill of sale
5 or other legally binding document:

6 1. When produced water is transferred to a produced water
7 disposal facility, produced water recycling facility or oil recovery
8 reclaiming facility, who takes possession thereof for the purpose of
9 treating the produced water for a subsequent beneficial use, legal
10 title to the produced water shall be transferred to the facility
11 operator who received the produced water for the purpose of treating
12 the waste for subsequent beneficial use;

13 2. When the operator of a produced water disposal facility,
14 produced water recycling facility or oil recovery reclaiming
15 facility who took possession of produced water for the purpose of
16 treating the produced water for a subsequent beneficial use
17 transfers possession of the reclaimed produced water or extracted
18 constituent elements to another person for the purpose of subsequent
19 disposal, beneficial use or sale, legal title to the reclaimed
20 produced water or extracted constituent elements shall be
21 transferred to the person to receiving the reclaimed produce water
22 or extracted constituent elements.

23 3. An operator of a produced water disposal facility, produced
24 water recycling facility or oil recovery reclaiming facility who

1 takes possession of produced water and reclaims from that produced
2 water a product generally considered in the oil and gas industry to
3 be suitable for use in connection with the drilling for or
4 production of oil or gas, and transfers the reclaimed produced water
5 to another person with the contractual understanding that the
6 reclaimed produced water will be used in connection with the
7 drilling for or production of oil or gas, is not liable in tort for
8 a consequence of the subsequent use of that reclaimed produced water
9 by the person to whom the reclaimed produced water is transferred or
10 by any another person.

11 4. Notwithstanding any other provision of this section, this
12 section does not affect the liability of the well operator or the
13 operator of a produced water disposal facility, produced water
14 recycling facility or oil recovery reclaiming facility, in an action
15 brought by a person for damages for personal injury, death or
16 property damage arising from exposure to the produced water or
17 extracted constituent elements.

18 SECTION 7. It being immediately necessary for the preservation
19 of the public peace, health or safety, an emergency is hereby
20 declared to exist, by reason whereof this act shall take effect and
21 be in full force from and after its passage and approval.
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