

1 ENGROSSED HOUSE AMENDMENT
TO
2 ENGROSSED SENATE BILL NO. 285 By: Schulz of the Senate
3 and
4 McCall of the House
5
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7 [Corporation Commission - Legislative findings -
8 Oklahoma Brine and Produced Water Development Act -
9 certain utilization plans to become effective -
10 specifying certain owners as brine owners of record -
11 emergency]

12 AMENDMENT NO. 1. Page 1, line 11, strike the enacting clause
13 Passed the House of Representatives the 26th day of April, 2017.
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16 _____
17 Presiding Officer of the House of
Representatives

18 Passed the Senate the ____ day of _____, 2017.
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21 _____
22 Presiding Officer of the Senate
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1 ENGROSSED SENATE
2 BILL NO. 285

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6 [Corporation Commission - Legislative findings -
7 Oklahoma Brine and Produced Water Development Act -
8 certain utilization plans to become effective -
9 specifying certain owners as brine owners of record -
10 ~~emergency~~]

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

12 SECTION 1. AMENDATORY 17 O.S. 2011, Section 500, is
13 amended to read as follows:

14 Section 500. This act shall be known and may be cited as the
15 "Oklahoma Brine and Produced Water Development Act".

16 SECTION 2. AMENDATORY 17 O.S. 2011, Section 501, is
17 amended to read as follows:

18 Section 501. The Legislature finds that it is desirable and
19 necessary to authorize and provide for unitized management,
20 operation, and further development of brine and associated solution
21 gas, to the end that a greater ultimate recovery of brine and
22 solution gas may be had, waste prevented, and the correlative rights
23 of owners therein be protected. The Legislature also finds that it
24 is a desirable public policy and necessity to reduce disposal of

1 brine water, also referred to as "produced water", from oil and gas
2 operations and encourage reuse, recycling and reclaiming of the
3 water and its constituent salts, metals and other elements dissolved
4 therein. It is further found to be in the public interest to
5 foster, encourage and promote the development and production in the
6 State of Oklahoma of brine and solution gas and to authorize and
7 provide for the operation and development of unitized brine and
8 solution gas properties, and to authorize the Commission to regulate
9 brine and solution gas production.

10 SECTION 3. AMENDATORY 17 O.S. 2011, Section 502, is
11 amended to read as follows:

12 Section 502. As used in this act:

13 1. "Commission" ~~shall mean~~ means the Corporation Commission of
14 Oklahoma;

15 2. "Person" ~~shall include~~ means any individual, partnership,
16 corporation or association of whatever character;

17 3. "Common source of supply" ~~shall include that~~ means the area
18 ~~which that~~ that is underlain, or which from geological or other
19 scientific data, or from drilling operations, or other evidence,
20 appears to be underlain by a common accumulation of brine; ~~provided,~~
21 ~~that, if.~~ If any ~~such~~ area is underlain or appears from geologic or
22 other scientific data, or from drilling operations, or from other
23 evidence to be underlain by more than one common accumulation of
24 brine separated from each other by a strata of earth and not

1 connected with each other, then ~~such~~ the area, as to each said
2 common accumulation of brine, shall be deemed a separate common
3 source of supply. When brine is produced as an incident to the
4 production of oil or gas and is saved or sold for the purpose of
5 removing chemical substances from the brine, the common source of
6 supply shall be considered the same as that of the associated oil or
7 gas;

8 4. "Brine" ~~shall mean~~ means subterranean saltwater and all of
9 its constituent parts and chemical substances therein contained,
10 including, but not limited to bromine, magnesium, potassium,
11 lithium, boron, chlorine, iodine, calcium, strontium, sodium,
12 sulphur, barium or other chemical substances produced with or
13 separated from ~~such~~ the saltwater. Brine produced as an incident to
14 the production of oil or gas from an oil or gas well, unless ~~such~~
15 the brine is saved or sold for the purposes of removing chemical
16 substances therefrom, shall not be considered brine for the purposes
17 of ~~this act~~ the Oklahoma Brine and Produced Water Development Act.
18 Gas or other hydrocarbons, whether found in solution or otherwise,
19 shall not be included within the meaning of the term "brine";

20 5. "Brine well" means a well drilled or operated for the
21 primary purpose of extracting brine and shall not include a well
22 drilled or operated for the primary purpose of producing oil or gas;

23 6. "Brine owner" ~~shall mean~~ means any person entitled to share
24 in the proceeds from the sale of brine production;

1 ~~6.~~ 7. "Solution gas" ~~shall mean~~ means all gas produced from
2 brine wells from the brine common source of supply within the unit
3 area;

4 ~~7.~~ 8. "Solution gas owner" ~~shall mean~~ means any person entitled
5 to share in the proceeds from the sale of solution gas;

6 ~~8.~~ 9. "Owner" or "owners" means, unless a more specific term is
7 used, ~~shall mean~~ any person or entity who qualifies as either a
8 brine owner or a solution gas owner;

9 ~~9.~~ 10. "Operator" ~~shall mean~~ means a person who:

10 a. has the right to drill into and produce from any brine
11 common source of supply and to appropriate that
12 production, either for ~~himself~~ the operator, or for
13 ~~himself~~ the operator and others, and is authorized by
14 the Commission to drill, or

15 b. is an operator of an oil or gas well that produces
16 brine, which is saved or sold for the purpose of
17 recycling or reusing the water or removing chemical
18 substances from the brine;

19 ~~10.~~ 11. "Effluent" ~~shall mean~~ means the liquid remaining,
20 including recycled or distilled water, after extraction of the
21 chemical substances from brine;

22 ~~11.~~ 12. "Brine production unit" or "unit" ~~shall mean~~ means
23 either:

1 SECTION 4. AMENDATORY 17 O.S. 2011, Section 503, is
2 amended to read as follows:

3 Section 503. A. The Corporation Commission is hereby vested
4 with jurisdiction over the following:

5 1. The drilling for ~~and~~ or production of brine for commercial
6 purposes;

7 2. Class V injection wells used for the injection or disposal
8 of mineral brines as defined in the federal Safe Drinking Water Act
9 and 40 CFR Part 146; and

10 3. Class V wells used to inject spent brine into the same
11 formation from which it was withdrawn after extraction of halogens
12 or their salts as defined in 40 CFR Part 146.

13 B. The Commission may promulgate ~~such~~ rules that:

14 1. ~~As are~~ Are reasonably necessary to effectuate the purposes
15 of this act, including rules governing the drilling of production,
16 injection or disposal wells and the injection of effluent into
17 underground formations; and

18 2. ~~To ensure~~ Ensure that the drilling, casing and plugging of
19 wells is done in such a manner as to prevent the escape of brine and
20 effluent from one formation to another and to prevent the pollution
21 of fresh water supplies throughout the state.

22 C. The enforcement and adherence to the Oklahoma Brine and
23 Produced Water Development Act shall not apply to nor shall the
24 Corporation Commission have jurisdiction over Class I, III, IV or V

1 wells regulated by the Department of Environmental Quality pursuant
2 to the federal Safe Drinking Water Act and 40 CFR Parts 144 through
3 148, inclusive, and the Oklahoma Environmental Quality Act.

4 SECTION 5. AMENDATORY 17 O.S. 2011, Section 504, is
5 amended to read as follows:

6 Section 504. A. A party desiring to unitize brine rights shall
7 file with the Corporation Commission an application setting forth a
8 description of the proposed unit area with a map or plat thereof
9 attached. The application shall allege the existence of the facts
10 required to be found by the Commission as provided in Section ~~7~~ 506
11 of this ~~act~~ title. The application shall set forth the name and
12 address of each brine owner within the area affected by the
13 application. Each such person shall be a respondent to the
14 application. In an application to enlarge the unit area, brine
15 owners within the existing unit and brine owners in the area to be
16 added to the unit shall be respondents to the application.

17 B. In the event the brine sought to be unitized is found in
18 association with solution gas, the application shall set forth the
19 name and address of each solution gas owner within the area affected
20 by the application. Each such person shall be a respondent to the
21 application. In an application to enlarge the unit area, solution
22 gas owners within the existing unit and solution gas owners in the
23 area to be added to the unit shall be respondents to the
24 application.

1 C. Every application to establish a brine unit shall have
2 attached thereto a recommended plan of unitization applicable to the
3 proposed unit area.

4 SECTION 6. AMENDATORY 17 O.S. 2011, Section 506, is
5 amended to read as follows:

6 Section 506. A. If, after proper application and notice, the
7 Commission in its hearing shall find by substantial evidence that:

8 1. There exists a common source of supply or prospective common
9 source of supply for brine or that substantial quantities of brine
10 are being produced as an incident to the production of oil and gas
11 from oil or gas wells within the proposed brine development unit;

12 2. Unitized management, operation and further development of
13 the common source of supply for brine or the brine produced from oil
14 or gas wells is reasonably necessary in order to effectively develop
15 the brine common source of supply;

16 3. Unitized operation as applied to such common source of
17 supply is feasible and will prevent waste and, with reasonable
18 probability, will result in greater ultimate recovery of brine and
19 its constituent parts;

20 4. Such unitization is for the common good and will result in
21 the general advantage of the owners of the brine rights within the
22 proposed brine development unit and will protect the correlative
23 rights of the owners within the common source of supply; and
24

1 5. The creation of a unit will accomplish one or more of the
2 following:

- 3 a. avoid the drilling of unnecessary wells,
- 4 b. prevent waste,
- 5 c. protect correlative rights, or
- 6 d. increase the ultimate recovery of brine from the
7 common source of supply and unit covered by the
8 application,

9 the Commission shall make a finding to that effect and enter an
10 order creating the unit, and requiring unitized operation of the
11 prospective common source of supply or portion thereof described in
12 the order.

13 B. If the Commission in its hearing shall find by substantial
14 evidence that:

15 1. The proposed unit is not for the primary purpose of
16 producing brine together with associated oil and gas production from
17 oil or gas wells;

18 2. Solution gas exists within the common source of supply or
19 prospective common source of supply;

20 ~~2.~~ 3. The production of brine is impossible or impractical
21 without also producing the solution gas; and

22 ~~3.~~ 4. The unitization of the brine common source of supply is
23 impractical or impossible without also unitizing the associated
24 solution gas,

1 the Commission shall make a finding to that effect and shall further
2 provide in its order for the unitization of the solution gas within
3 the unit area.

4 C. Orders of the Commission entered pursuant to Section 87.1 of
5 Title 52 of the Oklahoma Statutes establishing drilling and spacing
6 units for the production of oil, gas or oil and gas shall not be
7 applicable to the drilling of brine wells and production of solution
8 gas from a unit established by an order issued pursuant to ~~this act~~
9 Section 500 et seq. of this title, but shall remain applicable to
10 oil or gas wells and associated oil and gas productions.

11 SECTION 7. AMENDATORY 17 O.S. 2011, Section 507, is
12 amended to read as follows:

13 Section 507. A. The order of the Commission shall define the
14 area of the common source of supply or portion ~~thereof~~ of the common
15 source of supply to be included within the unit area. ~~Each~~ Except
16 as otherwise provided for in this subsection, each unit and unit
17 area shall be limited to all or a portion of a single common source
18 of supply. The Commission may authorize the unit area to be of the
19 same size and shape as the unit authorized by the Commission for the
20 associated oil and gas production.

21 B. Brine owners within the unit shall share in the production
22 of brine in the proportion that their acreage bears to total acreage
23 within the unit, unless the Commission, after notice and hearing,
24 shall provide for another method in the unit plan. Solution gas

1 owners within the unit shall share in production of solution gas in
2 the proportion that their acreage bears to total acreage in the
3 unit, unless the Commission, after notice and hearing, shall provide
4 for another method in the unit plan.

5 SECTION 8. AMENDATORY 17 O.S. 2011, Section 508, is
6 amended to read as follows:

7 Section 508. A. The plan of unitization for each such unit and
8 unit area shall be one suited to the needs and requirements of the
9 particular unit dependent upon the facts and conditions found to
10 exist with respect thereto. In addition to such other terms,
11 provisions, conditions and requirements found by the Commission to
12 be reasonably necessary or proper to effectuate or accomplish the
13 purpose of this act, and subject to the further requirements hereof,
14 each such plan of unitization shall contain fair, reasonable and
15 equitable provisions for:

16 1. The efficient unitized management or control of further
17 development and operation of the unit area. Under ~~such~~ the plan the
18 actual operations of the unit shall be carried on by one of the
19 owners of the right to drill for and produce brine within the unit
20 area as unit operator or in the case of brine produced with
21 associated oil and gas production, by the operator of the unit
22 approved by the Commission for the drilling and operation of the oil
23 or gas well. The designation of unit operator shall be by majority
24 vote of the owners of the right to drill for and produce brine in

1 the unit in accordance with their acreage ownership in the unit or
2 as designated by the Commission in the case of brine being produced
3 with associated oil and gas production;

4 2. The method and circumstances under which brine or effluent
5 from the unit, or from any other source, may be injected into the
6 common source of supply under the unit area or into other
7 formations;

8 3. The fair, just and reasonable compensation to be awarded to
9 any owner within the brine development unit who does not wish to
10 participate in development of the unit by paying such owner's share
11 of unit costs;

12 4. The fair, just and reasonable manner of participation for
13 any owner desiring to participate in the development of the brine
14 development unit by paying such owners share of unit costs;

15 5. The fair, just and reasonable allocation and distribution to
16 each owner and the value of such owner's share of the brine,
17 including the usable resources extracted from the brine, and
18 solution gas, if any, produced from the unit;

19 6. The procedure and basis upon which wells, equipment and
20 other properties of the owners within the brine development unit
21 area are to be taken over and used for unit operations, including
22 the method of arriving at the compensation therefor, or for
23 otherwise proportionately equalizing the investment of the several
24 owners in the unit;

1 7. The method of apportioning costs of development and
2 operation between owners of brine and owners of solution gas, if
3 solution gas has also been unitized;

4 8. The time when the plan of unitization shall become
5 effective; and

6 9. The time when and conditions under which the unit shall or
7 may be dissolved and all affairs concluded.

8 B. No order of the Commission creating a brine development unit
9 and prescribing the plan of unitization applicable ~~thereto~~ to the
10 unit shall become effective unless and until the plan of unitization
11 has been signed, or in an express writing other than a lease that is
12 ratified or approved by record owners of the right to drill or
13 produce brine of not less than ~~fifty-five percent (55%)~~ sixty-three
14 percent (63%) of the unit area affected thereby and by owners of
15 record of not less than ~~fifty-five percent (55%)~~ sixty-three percent
16 (63%) (exclusive of royalty interest owned by lessees or
17 subsidiaries of any lessee) of the royalty interest in and to the
18 unit area comprised of the brine owners, and if applicable,
19 separately to solution gas owners, who would be entitled to a
20 royalty interest if they elected not to participate in the
21 development of the unit by paying their share of the costs and the
22 Commission has made a finding either in the order creating the unit
23 or in a supplemental order that the plan of unitization has been so
24 signed, ratified or approved by ~~lessees and royalty~~ brine owners of

1 record owning the required percentage interest in and to the unit
2 area. Provided, however, in any instance where a ~~royalty~~ brine
3 owner has, through ~~lease or other~~ an express agreement other than a
4 lease, previously authorized pooling or unitization of a size equal
5 to or larger than the size specified in the Commission order, ~~said~~
6 ~~lease or other~~ the agreement shall be deemed to be ~~such royalty~~ the
7 brine owner's authorization to unitize, and no additional signature,
8 ratification or approval shall be necessary from such owner, unless
9 the lease or express writing provides for a different ~~production~~
10 ~~sharing~~ production-sharing formula than set out in the plan of
11 unitization. Further provided, however, in any instance where a
12 ~~royalty owner has~~ the brine owners of record have, through ~~lease or~~
13 ~~other~~ an express agreement other than a lease, previously consented
14 to have the unit boundaries and the allocation formula established
15 by the Commission, ~~said lease or other~~ the agreement shall be deemed
16 to be ~~such royalty~~ the brine owner's authorization to unitize, and
17 no additional signature, ratification or approval shall be necessary
18 from such owner. Where the plan of unitization has not been so
19 signed, ratified or approved by ~~lessees and royalty~~ the brine owners
20 of record owning the required percentage interest in and to the unit
21 area at the time the order creating the unit is made, the Commission
22 shall hold such additional and supplemental hearings as may be
23 requested or required to determine if and when the plan of
24 unitization has been so signed, ratified or approved by ~~lessees and~~

1 ~~royalty~~ the brine owners of record owning the required percentage
2 interest in and to the unit area and shall, in respect to such
3 hearings, make and enter a finding of its determination in such
4 regard. In the event ~~lessees or royalty~~ the brine owners of record,
5 ~~or either,~~ owning the required percentage interest in and to the
6 unit area have not so signed, ratified or approved the plan of
7 unitization within a period of six (6) months from and after the
8 date on which the order creating the unit is made, the order
9 creating the unit shall be deemed vacated and of no force and
10 effect.

11 C. A participating brine owner shall have a one-time election
12 to sell, and any brine owner in the unit with brine refining
13 equipment shall have the obligation to buy, the brine produced from
14 the unit at the value determined by the Commission; provided
15 however, nothing herein shall require the purchasing brine owner to
16 purchase brine when it is not producing brine from the unit for its
17 own account.

18 ~~SECTION 9. 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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1 Passed the Senate the 22nd day of March, 2017.

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3 _____
4 Presiding Officer of the Senate

5 Passed the House of Representatives the ____ day of _____,
6 2017.

7
8 _____
9 Presiding Officer of the House
10 of Representatives