

1 ENGROSSED HOUSE AMENDMENT  
TO  
2 ENGROSSED SENATE BILL NO. 743 By: Schulz of the Senate  
3 and  
4 McCall of the House  
5

6 [ oil and gas - Oil and Gas Produced Water Recycling  
7 and Reuse Act - codification - effective date ]  
8

9 AMENDMENT NO. 1. Replace the stricken title, enacting clause and  
10 entire bill and insert

11 "[ oil and gas - Oil and Gas Produced Water Recycling  
12 and Reuse Act - codification -  
13 emergency ]  
14  
15

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

17 SECTION 1. NEW LAW A new section of law to be codified  
18 in the Oklahoma Statutes as Section 155 of Title 52, unless there is  
19 created a duplication in numbering, reads as follows:

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

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

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

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

14       As used in the Oil and Gas Produced Water Recycling and Reuse  
15 Act, the following words shall mean:

16       1. "Constituent elements" means salts, metals, elements and  
17 other mineralized substances that are dissolved, entrained or  
18 suspended in the produced water, but does not include skim oil or  
19 hydraulic fracturing fluid;

20       2. "Hydraulic fracturing fluid" means fluids and hydraulic  
21 fracturing additives injected into a wellbore by the operator during  
22 the hydraulic fracturing, completion, recompletion or reworking  
23 process;

24

- 1        3. "Hydraulic fracturing additives" means sand, chemicals and  
2 other substances;
- 3        4. "Minerals" means the same as defined in Section 802 of Title  
4 52 of the Oklahoma Statutes;
- 5        5. "Mineral estate" means the same as defined in Section 802 of  
6 Title 52 of the Oklahoma Statutes;
- 7        6. "Mineral owner" means the same as defined in Section 802 of  
8 Title 52 of the Oklahoma Statutes;
- 9        7. "Operator" means the same as defined in Section 802 of Title  
10 52 of the Oklahoma Statutes;
- 11       8. "Produced water" means brine water or liquid waste water  
12 which may contain constituent elements and hydraulic fracturing  
13 fluid, that arises out of or is incidental to the drilling,  
14 completion or production of oil or gas, but does not include skim  
15 oil;
- 16       9. "Skim oil" means hydrocarbons, either in a gaseous or liquid  
17 phase, that may be entrained or dissolved in, or produced with,  
18 along with the produced water, which was not separated and saved at  
19 the producing-well location;
- 20       10. "Surface estate" means the same as defined in Section 802  
21 of Title 52 of the Oklahoma Statutes; and
- 22       11. "Surface owner" means a person owning the surface estate,  
23 or portion of the surface estate which includes the ownership of the  
24 produced water or constituent elements.

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

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

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

14 The determination of just compensation for the value of the  
15 property taken pursuant to Section 4 of this act shall be determined  
16 as follows:

17 1. The benefits to the surface owner and mineral owner are  
18 deemed to exceed the value of the produced water and skim oil taken,  
19 resulting in just compensation for the value of the property taken  
20 to be zero dollars, and no further proceeding is necessary, and no  
21 compensation to the surface owner or mineral owner is required when:

22 a. no skim oil is extracted and sold for commercial  
23 purposes either by the operator or any other person,  
24

1           b. no constituent elements dissolved within the produced  
2           water are extracted and sold or used for commercial  
3           purposes either by the operator or any other person,  
4           and

5           c. the produced water:

6           (1) is not reclaimed for reuse by the operator or any  
7           other person, but rather disposed of by the  
8           operator or any other person as a waste product  
9           to the production process, or

10          (2) is reclaimed for reuse by the operator or any  
11          other person and the sales proceeds or fair  
12          market value of the reclaimed produced water for  
13          reuse does not exceed the cost of reclamation of  
14          the produced water reduced by the cost of  
15          disposal being avoided;

16          2. If skim oil is recovered, saved and sold for commercial  
17 purposes at a produced water disposal facility, produced water  
18 recycling facility or oil recovery reclaiming facility, either by  
19 the operator or any other person, the facility operator shall  
20 allocate the oil recovered, saved and sold therefrom to each source  
21 thereof, based upon the barrels of produced water and oil received  
22 from a particular source for the month, divided by the total barrels  
23 of produced water and oil received by the facility for the month.  
24 Utilizing this allocation, the facility operator shall file a report

1 with the Tax Commission, and pay the appropriate production taxes  
2 thereon, reflecting the volume of oil recovered, saved and sold, and  
3 the gross proceeds from sale thereof, allocated to each of the  
4 sources, and shall provide a copy of said report to each operator of  
5 the well or wells to which the oil was deemed by this subsection to  
6 have been produced. The production and proceeds allocated to each  
7 well pursuant to this subsection shall be considered production and  
8 proceeds from the well or wells, subject to the Production Revenue  
9 Standards Act;

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

15 a. the gross proceeds received by the operator or any  
16 other person for the sale of the constituent element  
17 or elements, or

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

21 4. If produced water is reclaimed for reuse or sale by the  
22 operator or any other person, and the fair market value of the  
23 reclaimed produced water exceeds the cost of reclamation of the  
24 produced water reduced by the cost of disposal being avoided, just

1 compensation for the value of the reclaimed produced water shall be  
2 accomplished by paying a royalty to the surface owner or owners on:

3 a. the proceeds received by the operator or any other  
4 person, for the sale of the reclaimed produced water,  
5 less the cost of reclamation of the produced water  
6 reduced by the cost of disposal being avoided, or

7 b. the fair market value of the reclaimed produced water  
8 not sold, but otherwise utilized for commercial  
9 purposes by the operator or any other person, less the  
10 cost of reclamation of produced water reduced by the  
11 cost of disposal being avoided;

12 5. No just compensation shall be due the surface owner for any  
13 hydraulic fracturing additives extracted from the produced water and  
14 sold or used for commercial purposes by the operator or any other  
15 person;

16 6. Unless otherwise provided for in a contract with the surface  
17 owner or by order of the Corporation Commission pursuant to Section  
18 508 of Title 17 of the Oklahoma Statutes, for the purpose of  
19 calculating and paying just compensation in the form of royalties  
20 pursuant to paragraphs 3 and 4 of this section:

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

23 b. the facility operator shall allocate the volumes and  
24 values of the constituent elements or reclaimed

1 produced water to each source of the produced water,  
2 based upon the barrels of produced water received from  
3 a particular source for the month, divided by the  
4 total barrels of produced water received by the  
5 facility for the month,

6 c. the unit shape and size for each source of the  
7 produced water pursuant to paragraphs 3 and 4 of this  
8 section shall be the same geographical area shape and  
9 size as the unit for oil and gas development from  
10 which the produced water was produced,

11 d. Surface owners within each unit shall share in the  
12 royalty proceeds allocated to the unit in the  
13 proportion that their acreage bears to total acreage  
14 within the unit; and

15 7. The payment of royalties required pursuant to this section  
16 shall be paid in accordance with, and subject to, the provisions of  
17 Section 517 of Title 17 of the Oklahoma Statutes.

18 SECTION 6. NEW LAW A new section of law to be codified  
19 in the Oklahoma Statutes as Section 160 of Title 52, unless there is  
20 created a duplication in numbering, reads as follows:

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

23 1. When produced water is transferred to a produced water  
24 disposal facility, produced water recycling facility or oil recovery



1 reclaiming facility, who takes possession thereof for the purpose of  
2 treating the produced water for a subsequent beneficial use, legal  
3 title to the produced water shall be transferred to the facility  
4 operator who received the produced water for the purpose of treating  
5 the waste for subsequent beneficial use;

6       2. When the operator of a produced water disposal facility,  
7 produced water recycling facility or oil recovery reclaiming  
8 facility who took possession of produced water for the purpose of  
9 treating the produced water for a subsequent beneficial use  
10 transfers possession of the reclaimed produced water or extracted  
11 constituent elements to another person for the purpose of subsequent  
12 disposal, beneficial use or sale, legal title to the reclaimed  
13 produced water or extracted constituent elements shall be  
14 transferred to the person to receiving the reclaimed produced water  
15 or extracted constituent elements;

16       3. An operator of a produced water disposal facility, produced  
17 water recycling facility or oil recovery reclaiming facility who  
18 takes possession of produced water and reclaims from that produced  
19 water a product generally considered in the oil and gas industry to  
20 be suitable for use in connection with the drilling for or  
21 production of oil or gas, and transfers the reclaimed produced water  
22 to another person with the contractual understanding that the  
23 reclaimed produced water will be used in connection with the  
24 drilling for or production of oil or gas, is not liable in tort for

1 a consequence of the subsequent use of that reclaimed produced water  
2 by the person to whom the reclaimed produced water is transferred or  
3 by any other person; and

4 4. Notwithstanding any other provision of this section, this  
5 section does not affect the liability of the well operator or the  
6 operator of a produced water disposal facility, produced water  
7 recycling facility or oil recovery reclaiming facility, in an action  
8 brought by a person for damages for personal injury, death or  
9 property damage arising from exposure to the produced water or  
10 extracted constituent elements.

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

15 Passed the House of Representatives the 26th day of April, 2017.

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18 \_\_\_\_\_  
19 Presiding Officer of the House of  
Representatives

20 Passed the Senate the \_\_\_\_ day of \_\_\_\_\_, 2017.

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23 \_\_\_\_\_  
Presiding Officer of the Senate

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1 ENGROSSED SENATE  
2 BILL NO. 743

By: Schulz of the Senate

3 and

4 McCall of the House

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6  
7 [ oil and gas - Oil and Gas Produced Water Recycling  
8 and Reuse Act - codification - effective date ]  
9

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

11 SECTION 8. NEW LAW A new section of law to be codified  
12 in the Oklahoma Statutes as Section 155 of Title 52, unless there is  
13 created a duplication in numbering, reads as follows:

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

16 SECTION 9. NEW LAW A new section of law to be codified  
17 in the Oklahoma Statutes as Section 156 of Title 52, unless there is  
18 created a duplication in numbering, reads as follows:

19 No later than one (1) year after the effective date of this act,  
20 the Corporation Commission shall:

21 1. Identify or list as hazardous waste any drilling fluids,  
22 produced waters or other wastes associated with the exploration,  
23 development or production of crude oil or natural gas; and  
24

1        2. Promulgate rules for the recycling and reuse of wastes  
2 identified and listed as hazardous waste.

3        SECTION 10. This act shall become effective November 1, 2017.  
4        Passed the Senate the 23rd day of March, 2017.

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\_\_\_\_\_  
Presiding Officer of the Senate

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8        Passed the House of Representatives the \_\_\_\_ day of \_\_\_\_\_,  
9 2017.

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Presiding Officer of the House  
of Representatives

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