

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
90th General Assembly
Regular Session, 2015

As Engrossed: S1/21/15
A Bill

SENATE BILL 47

By: Senator B. Pierce
By: Representatives Shepherd, Baine

For An Act To Be Entitled

AN ACT TO AMEND THE LAW REGARDING BRINE PRODUCTION;
TO AUTHORIZE THE ARKANSAS OIL AND GAS COMMISSION TO
FORM BRINE EXPANSION UNITS CONTAINING ONE (1) OR MORE
PRODUCTION WELLS OR BRINE INJECTION WELLS; TO PROTECT
THE CORRELATIVE RIGHTS OF BRINE PRODUCTION OWNERS IN
BRINE EXPANSION UNITS; TO CLARIFY THAT THE FORMULA TO
MAKE THE ANNUAL ADJUSTMENT TO THE IN-LIEU ROYALTY
PAYMENT FOR THE PRODUCTION OF BRINE SHALL BE BASED ON
THE PRODUCER PRICE INDEX FOR PROCESSED GOODS FOR
INTERMEDIATE DEMAND AS PUBLISHED BY THE UNITED STATES
DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTICS; TO
DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.

Subtitle

TO AUTHORIZE THE ARKANSAS OIL AND GAS
COMMISSION TO FORM BRINE EXPANSION UNITS
CONTAINING ONE OR MORE BRINE PRODUCTION
WELLS OR BRINE INJECTION WELLS AND TO
CLARIFY THE ANNUAL ADJUSTMENT OF IN-LIEU
ROYALTY PAYMENTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 15-76-302 is amended to read as follows:
As used in this subchapter, ~~unless the context otherwise requires:~~

(1) "Aquifer" means any subsurface geological interval in which



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brine may lie or from which brine is being produced and saved or sold for the primary purpose of extracting chemical substances contained ~~therein~~ in the subsurface geological interval;

(2)(A) "Brine" means salt water, whether contained in or removed from an aquifer, and all other chemical substances produced with or extracted from such salt water except for commercial production of oil and gas.

(B) "Brine" does not include brine produced as an incident to the production of oil and gas, unless the brine is saved or sold for the purpose of extracting the chemical substances ~~therein~~ in the brine, ~~shall not be considered brine for purposes of this subchapter~~;

(3) "Brine expansion unit" means each separate composite area of land so designated by order of the Oil and Gas Commission as an expansion area adjacent to an existing brine production unit for the production of brine or the injection of effluent;

~~(3)(4)~~ (4) "Brine production unit" ~~or "unit"~~ means each separate composite area of land so designated by order of the commission for the production of brine and the injection of effluent;

~~(4)(5)~~ (5) "Commission" means the Oil and Gas Commission;

~~(5)(6)~~ (6) "Director" means the Director of Production and Conservation of the commission;

~~(6)(7)~~ (7) "Effluent" means the liquid remaining after extraction of any chemical substances from brine and any other material or chemicals in solution therein or associated therewith;

~~(7)(8)~~ (8) "Injection well" means a well utilized for injecting effluent or other substances into an aquifer for disposal purposes;

~~(8)(9)~~ (9) "Just and equitable share of brine" of an owner in:

(A) ~~a developed unit~~ A brine production unit or brine expansion unit containing one (1) or more production wells is that part of the actual production of brine from the unit which is in the same proportion to the total production of brine from the unit as the interest of the owner in the brine of the unit expressed in surface acres is to the total surface acreage of the unit; and

(B) A brine expansion unit containing only one (1) or more injection wells is that part of the average production of brine from all production wells in the adjacent brine production unit that is in the same proportion to the average production as the interest of the owner in the

brine of the brine expansion unit expressed in surface acres is to the total surface acreage of the brine expansion unit;

~~(9)~~(10) "Owner" means the person who has the right to drill into and to produce brine from an aquifer and to appropriate the production either for himself or for himself and another or others;

~~(10)~~(11) "Person" means any natural person, corporation, association, partnership, receiver, trustee, guardian, executor, administrator, fiduciary, or representative of any kind;

~~(11)~~(12) "Producer" means the owner of an existing well or wells capable of producing brine, as well as any owner or owners who are capable and willing to incur the capital investment required for purposes of drilling, completing, and equipping the proposed well or wells within any *existing or proposed brine production unit; and*

(13) "Unit" means a brine production unit or a brine expansion unit; and

~~(12)~~(14) "Waste" in addition to its ordinary meaning shall include:

(A) Inefficient, excessive, or improper use or dissipation of energy or alteration of fluid levels contained within an aquifer; and the location, spacing, drilling, or operating of any producing or injection well or wells in a manner which results in a significant reduction in the economic recoverability of brine from an aquifer or the chemical substances contained therein;

(B) Abuse of the correlative rights and opportunities of each owner of brine in an aquifer due to nonuniform and disproportionate withdrawals causing undue drainage between units;

(C) Injecting effluent or other wastes in a manner as to cause unnecessary water channeling or undue forced migration of brine between units;

(D) The undue drowning with effluent of any stratum or part thereof of a stratum containing commercial quantities of oil or gas; or

(E) The employment of any practice with respect to brine in an aquifer which results or tends to result in a significant reduction in the economic recoverability of ~~such~~ the brine or the chemical substances contained ~~therein~~ in the brine.

SECTION 2. Arkansas Code § 15-76-306(c), concerning the authority of the Oil and Gas Commission to regulate brine production is amended to read as follows:

(c) The commission shall have the authority to make, after hearing and notice as provided in this section, such reasonable rules, regulations, and orders as may be necessary from time to time in the proper administration and enforcement of this subchapter, including rules, regulations, or orders for the following purposes:

- (1) To form brine production units and brine expansion units;
- (2) To require the drilling, casing, and plugging of wells to be done in such a manner as to prevent the escape of brine and effluent from one stratum to another, to prevent the pollution of fresh water supplies by brine and effluent, and to require reasonable financial assurance acceptable to the commission conditioned for the performance of the duty to plug each dry hole or abandoned well;
- (3) To require the making of reports showing the location of brine wells utilized for production and of injection wells used for disposal and the filing of logs and drilling records for those wells;
- (4) To require the return of the brine to the same formation from which it was produced unless the commission authorizes the disposal of effluent into one (1) or more other formations upon finding that neither underground damage nor waste results ~~therefrom~~ from the disposal;
- (5) To prevent the drowning by brine and effluent of any stratum or part ~~thereof~~ of a stratum capable of producing oil or gas in paying quantities;
- (6) To prevent “blowouts”, “caving”, and “seepage” in the sense that conditions indicated by these terms are generally understood;
- (7) To identify the ownership of all wells utilized for producing brine and of all injection wells and all pipelines, plants, ponds, structures, and storage facilities;
- (8) To regulate the “shooting”, perforating, and chemical treatment of wells;
- (9) To regulate the introduction or injection of effluent and other substances into an aquifer;
- (10)(A) To regulate the spacing of wells for the production of brine and injection wells for the introduction of effluent into an aquifer.

(B) However, the commission shall have no authority to allow wells or other installations on the surface of lands without the consent of the surface owner;

(11) To formulate rules and regulations for the proper transportation of brine from the producing wells to the plant and from the plant to the injection wells and for the maintenance and surveillance of the transportation facilities; and

(12) To prevent, so far as is practical, reasonably avoidable drainage between brine production units and brine expansion units.

SECTION 3. Arkansas Code § 15-76-308 is amended to read as follows:
15-76-308. Formation of brine production units.

(a)(1) All producers, as defined in § 15-76-302, may make application to the Oil and Gas Commission for the establishment of brine production units and brine expansion units.

(2) Each application shall be scheduled for public hearing by the commission to be held no later than the next regularly scheduled hearing of the commission that will afford proper notice to be given.

(b) A Unless a smaller area is requested by a petitioner and established by order of the commission, a brine production unit or a brine expansion unit established by order of the commission ~~hereunder~~ shall comprise no fewer than one thousand two hundred eighty (1,280) contiguous surface acres which are reasonably established to be underlain by a common aquifer.

(c)(1) A proposed brine production unit shall be approved by the commission if the existing or proposed plan of development is such as to drain efficiently the area of the unit and to protect the correlative rights of each owner therein.

(2) Each brine production unit as created by the commission ~~hereunder~~ under this subchapter shall constitute a brine production unit as long as a producing well is located therein which is capable of producing brine in paying quantities.

(d)(1) A proposed brine expansion unit shall be approved by the commission as a stand-alone brine expansion unit if the existing or proposed plan of development establishes that the operation of an existing brine production unit can be expanded, enhanced, or made more efficient by the

placement of one (1) or more production wells or brine injection wells in an expanded area immediately adjacent to the existing brine production unit, if the plan of development is such as to:

(A) Drain efficiently the area of the brine expansion unit; and

(B) Protect the correlative rights of each owner of the brine expansion unit.

(2) Each brine expansion unit as created by the commission under this subchapter shall constitute a unit as long as a producing well is located within:

(A) The brine expansion unit; or

(B) The adjacent brine production unit that is capable of producing brine in paying quantities.

SECTION 4. Arkansas Code § 15-76-309, concerning the formation of brine units is amended to read as follows:

15-76-309. Petition for formation of a brine production unit or a brine expansion unit.

~~(a)~~ A petition for formation of a brine production unit or a brine expansion unit may be filed by a producer and shall contain the following:

(1) A description of the proposed brine production unit or brine expansion unit;

(2) A statement of the plan of development and operation ~~thereof~~ of the brine production unit or brine expansion unit;

(3) All geological and engineering data necessary for the Oil and Gas Commission to be fully advised of the feasibility of the proposed plan;

(4) A statement detailing all costs and expenses chargeable to the proposed brine production unit or a brine expansion unit and a statement of all credits due against costs and expenses;

(5) A plat of ~~such~~ each proposed brine production unit or brine expansion unit which indicates the tracts or parcels of land included ~~therein~~ in the plat and the location of ~~all wells~~ each well then located within the proposed unit for ~~both~~ the production of brine and the injection or disposal of effluent and the proposed location of each well that is proposed to be drilled for ~~both~~ production and injection or disposal purposes;

(6) A list of owners within the unit, including the brine, interest and last known address of each such owner; and

(7)(A) A statement that the petitioner has valid and subsisting leases or otherwise owns or controls the right to produce brine from not less than seventy-five percent (75%) of the entire area of the proposed brine production unit or brine expansion unit.

(B) The petitioner may not combine its leases or other rights to produce brine, relative to an ~~existing adjacent brine production unit or brine expansion~~ unit, with leases or other rights to produce brine necessary to achieve the seventy-five percent (75%) lease requirement to form a separate ~~unit adjacent to the existing~~ brine production unit or brine expansion unit.

SECTION 5. Arkansas Code § 15-76-311 is amended to read as follows:

15-76-311. Contents of order.

The order requiring the operation of an area as a brine production unit or a brine expansion unit shall include:

(1) A description of the area included within such a brine production unit or a brine expansion unit;

(2) The surface area of each tract in the proposed unit;

(3) A provision for any credits and charges to be made in the adjustment among the owners in the unit for their allocated costs of the total investment in ~~wells~~ each well within the unit, ~~both for production and injection or disposal purposes~~, pipelines, pumps, machinery, materials, and equipment required by ~~such~~ the brine operation;

(4) A statement of the tangible and intangible expenses of the development and operation of the unit, including capital investments required in the development and operation ~~thereof~~ of the brine production unit or the brine expansion unit, exclusive of the plant of the producer, to be charged to each ~~tract~~ owner in the unit in the same proportion ~~that the tract shares as the owner's net material interest in the~~ brine production from ~~such~~ the brine production unit or the brine expansion unit;

(5) The time and manner in which all owners in the unit who may desire to pay their share of the costs outlined in subdivision (4) of this section and participate in the operations of the unit may elect to do so;

(6)(A) The time at which the unit operation shall commence and

the approval by the Oil and Gas Commission of the plan of development and operation of the unit, including, but not limited to, the number and proposed location of ~~wells~~ each well to be drilled within such unit for ~~both~~ production and injection or disposal purposes and the approximate date upon which the proposed plan of development is to be commenced and completed.

(B) However, the commission shall have no authority to allow wells or other installations on the surface of lands without the consent of the surface owner;

(7) The name of the operator who shall drill, complete, or operate the well or wells within the unit; and

(8) Those additional provisions which are consistent with this subchapter and which the commission determines to be appropriate for the prevention of waste and the protection of correlative rights.

SECTION 6. Arkansas Code § 15-76-314 is amended to read as follows:
15-76-314. Participation by owners and royalties.

(a)(1) Upon the establishment of a unit, each owner of an unleased interest ~~therein~~ in the unit shall elect within sixty (60) days from the effective date of the order establishing ~~such~~ the unit either to participate affirmatively in the operation of the unit and the production of brine ~~therefrom~~ or to transfer his or her interest in the brine to the participating producers thereof upon such terms as are ~~hereinafter~~ set forth in this section.

(2) The election shall be made in writing to the operator as otherwise provided in the order establishing the unit, provided that, if no such written election is made within the sixty (60) days, the nonelecting owner shall be deemed to have transferred ~~his or her~~ the nonelecting owner's interest to the operator as provided ~~herein~~ in this section.

(b) If an owner of an unleased interest elects to participate, ~~he or she~~ the owner shall pay the owner's share of the costs set forth in § 15-76-311 and agree to pay the owner's share of the additional costs to be incurred in the drilling, equipping, and operating of each completed well within the unit.

(c) A participating owner in a brine production unit shall have the option, which shall be exercised at the time of the election to participate, either to:

(1) ~~Take his or her~~ the participating owner's just and equitable share of the brine produced from the unit in kind and, if required by the Oil and Gas Commission, return it, after ~~his or her~~ the participating owner's use, to disposal wells within the unit; or

(2) Receive the value of ~~his or her~~ the participating owner's just and equitable share of the brine produced from the unit.

(d) A participating owner in a brine expansion unit containing one (1) or more production wells shall have the option, which shall be exercised at the time of the election to participate, either to:

(1) Take the participating owner's just and equitable share of brine produced from the brine expansion unit in kind and, if required by the commission, return it, after the participating owner's use, to injection wells within the brine expansion unit or injection wells within the adjacent brine production unit; or

(2) Receive the value of the participating owner's just and equitable share of the brine produced from the participating owner's unit.

(e) A participating owner in a brine expansion unit containing only one (1) or more injection wells shall have the option, which shall be exercised at the time of the election to participate, either to:

(1)(A) Take in kind the participating owner's just and equitable share of brine produced from a production well of his or her choice in the adjacent brine production unit.

(B) However, the commission may require the participating owner to return the brine, after the participating owner's use, to injection wells within the adjacent brine production unit or injection wells within the brine expansion unit; or

(2) Receive the equivalent value of the participating owner's just and equitable share of brine based on the average production of brine from all production wells in the adjacent brine production unit.

~~(e)(f)(1)~~ If, at any time or for any reason, an owner who has elected to participate defaults in any payments due and owing to the operator or by written notice manifests his or her intention to withdraw from active participation, the owner shall be deemed to have transferred all of his or her interests and rights in the unit to the operator for a reasonable consideration and on a reasonable basis which, in the absence of agreement between the parties, shall be determined by the commission, ~~who~~ that, in

addition to the other consideration granted to the operator, shall assess a penalty against the owner.

(2) The transfer may be either a permanent transfer or may be for a limited period pending recoupment by the operator out of the share of production attributable to the interest so transferred of an amount equal to those costs that would have been borne by the transferring party had he or she continued to participate in the operations conducted pursuant to the plan of development plus an additional sum to be fixed by the commission.

~~(d)~~(g)(1) If an owner elects not to participate affirmatively in the development of the unit and the production of ~~the~~ brine, he or she shall be deemed to have transferred his or her right to produce brine to the operator for the period of time for which the unit is operative for a reasonable consideration and on a reasonable basis which, in the absence of agreement between the parties, shall be determined by the commission.

(2) Any transfer, the terms of which are established by the commission, shall be either a permanent transfer or a transfer for a limited period pending recoupment by the operator, from the nonparticipating owner's just and equitable share of ~~the brine produced from the unit~~ brine production, of an amount equal to those costs which the nonparticipating owner would have borne had he or she elected to participate affirmatively in the development of the unit and the production of brine ~~therefrom~~ plus an additional amount assessed as a risk factor by the commission.

~~(e)~~(h) Each owner of an unleased interest in a brine production unit shall be deemed to be the owner of a royalty interest equal to one-eighth (1/8) of the value of his or her just and equitable share of the brine produced from the unit, and the royalty interest shall not be chargeable with any of the costs of the development and operation of the unit.

(i) Each owner of an unleased interest in a brine expansion unit containing one (1) or more production wells shall be deemed to be the owner of a royalty interest equal to one eighth (1/8) of the value of the owner's just and equitable share of the brine produced from the brine expansion unit, and the royalty interest shall not be chargeable with any of the costs of the development and operation of the brine expansion unit.

(j) Each owner of an unleased interest in a brine expansion unit containing only one (1) or more injection wells shall be deemed to be the owner of a royalty interest equal to one eighth (1/8) of the value of the

owner's just and equitable share of brine based on the average production of brine from all production wells in the adjacent brine production unit, and the royalty interest shall not be chargeable with any of the costs of the development and operation of the brine expansion unit.

~~(f)~~(k) The provisions of this section shall not alter, modify, or otherwise amend the terms of any lease or agreement with respect to payments of royalty or in lieu of royalty in force and effect as of July 20, 1979, or which may be executed after that date.

SECTION 7. Arkansas Code § 15-76-315(a)(3), concerning the valuation of brine, is amended to read as follows:

(3) However, no valuation of brine or any other alternate method of computing royalty or in lieu of royalty shall ever result in compensation which is less than thirty-two dollars (\$32.00) per acre per year, as increased or decreased annually based on changes in the Producer Price Index for ~~Intermediate Materials, Supplies and Components~~ Processed goods for intermediate demand published by the United States Department of Labor, Bureau of Labor Statistics, or its successor.

SECTION 8. Arkansas Code § 15-76-315(a)(4)(C), concerning the valuation of brine, is amended to read as follows:

(C) The formula to make the adjustment is as follows:
New in-lieu royalty payment = Base in-lieu royalty payment multiplied times A divided by B

Where:

(i) Base in-lieu royalty payment = \$32.00 per acre;
(ii)(a) A = Index for the month of December prior to the year the adjustment is made, as increased or decreased annually.

(b) The index is the Producer Price Index for ~~Intermediate Materials, Supplies and Components~~ Processed Goods for Intermediate Demand as published by the United States Department of Labor, Bureau of Labor Statistics, in Producer Price Indexes, Table 2 for ~~selected commodity groupings~~ intermediate demand by commodity type; and

(iii) B = The March, 1995, Producer Price Index for Intermediate Materials, Supplies and Components as published by the United States Department of Labor, Bureau of Labor Statistics, in Producer Price

Indexes, Table 2 for selected commodity groupings.

SECTION 9. Arkansas Code § 15-76-315(b)(2)(A), concerning the valuation of brine, is amended to read as follows:

(2)(A) If there are no sales or purchases of brine for two (2) or more consecutive years, the value of brine for each consecutive year after the first year in which there are no such sales shall be the value initially determined ~~above~~ in subdivision (b)(1) of this section, increased or decreased annually using the Producer Price Index for ~~Intermediate Materials, Supplies and Components~~ Processed goods for intermediate demand published by the United States Department of Labor, Bureau of Labor Statistics, in Producer Price Indexes, Table 2 for ~~selected commodity groupings~~ intermediate demand by commodity type.

SECTION 10. Arkansas Code § 15-76-315(b)(3), concerning the valuation of brine, is amended to read as follows:

(3) For purposes of calculating the value of the royalty interest under § ~~15-76-314(e)~~ 15-76-314(h), the value of brine as initially determined and as increased or decreased under this subsection shall not be less than the value of brine as initially determined under this subsection by utilizing an average annual lease compensation or payment in lieu of royalty equivalent to thirty-two dollars (\$32.00) per acre.

SECTION 11. Arkansas Code § 15-76-316 is amended to read as follows:

15-76-316. Production from tracts within unit.

The portion of ~~the~~ brine produced from ~~the~~ a unit created under this subchapter and allocated to any particular tract shall be deemed, for all purposes, to have been actually produced from that tract, and operations for the production of brine from any part of the unit conducted pursuant to the order of the Oil and Gas Commission shall be deemed for all purposes to be operations for the production of brine from each separate tract in the integrated area of the unit.

SECTION 12. Arkansas Code § 15-76-317 is amended to read as follows:

15-76-317. Liability for unit expenses.

(a) The liability of each owner in a unit for the payment of unit

expenses shall at all times be several and not joint or collective.

(b) In no event shall an owner in a unit be chargeable with, directly or indirectly, more than the amount charged to his or her interests in such unit pursuant to the order of the Oil and Gas Commission requiring the operation of the area as a brine production unit or brine expansion unit.

SECTION 13. Arkansas Code § 15-76-320 is amended to read as follows:
15-76-320. Antitrust.

The formation of a brine production unit or brine expansion unit as provided in this subchapter and the operation of the unit under order of the Oil and Gas Commission shall not be a violation of any statute of this state relating to trusts, monopolies, contracts, or combinations in restraint of trade.

SECTION 14. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that the brine production industry faces imminent financial constraints; that the creation of brine expansion units will mitigate the expected impact of those constraints; and that this act is immediately necessary because production of brine will suffer each day that brine expansion units are not available. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

(1) The date of its approval by the Governor;

(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.

/s/B. Pierce