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## FISCAL IMPACT REPORT

<b>SPONSOR</b> <u>Brown</u>	<b>LAST UPDATED</b> <u>2/20/2025</u>
	<b>ORIGINAL DATE</b> <u>2/14/2025</u>
<b>SHORT TITLE</b> <u>Protests for Replacement Wells</u>	<b>BILL NUMBER</b> <u>House Bill 356/aHAAWC</u>
	<b>ANALYST</b> <u>Davidson</u>

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT\*

(dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
OSE	No fiscal impact	\$50.0	\$50.0	\$100.0	Recurring	General Fund

Parentheses ( ) indicate expenditure decreases.  
 \*Amounts reflect most recent analysis of this legislation.

### Sources of Information

LFC Files

Agency Analysis Received From  
 Office of the State Engineer (OSE)

Agency Analysis was Solicited but Not Received From  
 New Mexico Attorney General (NMAG)

Agency Declined to Respond  
 New Mexico Environment Department (NMED)  
 Energy, Minerals and Natural Resources Department (EMNRD)

## SUMMARY

### Synopsis of House Acequias, Agriculture and Water Committee amendment to House Bill 356

The House Acequias, Agriculture, and Water Committee amendment to House Bill 356 restores existing language regarding location of where the well is drilled.

### Synopsis of House Bill 356

House Bill 356 (HB356) amends Section 72-12-22 NMSA 1978 by removing the ability to protest an application for a replacement groundwater well within 100 feet of the original well. The bill makes further stylistic changes to the state's current statute regarding replacement wells.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns if enacted, or June 20, 2025.

## FISCAL IMPLICATIONS

Analysis from the Office of the State Engineer (OSE) notes that, due to the rarity of protests of replacement wells and how small a portion of the agency’s workload well protests comprise, it is unlikely implementation of the bill will increase agency workload or require additional funding. In the event there is an increase in replacement groundwater well protests, LFC analysis estimates the agency may potentially need additional funds for contract work to accommodate the workload.

## SIGNIFICANT ISSUES

The state’s current statute regarding replacement wells provides, if in an emergency, the owner of a groundwater right may drill a replacement well and begin using water from the new well even before the owner applies to OSE for the replacement well. The statute stipulates this is only allowed if the well is within 100 feet of the original well and is drilled into the same, and only the same, underground aquifer. Current statute allows individuals who believe they are harmed by the drilling and use of these replacement wells cannot prohibit the drilling or the use of these new wells. The only recourse is file an administrative protests to recover any possible damages.

HAAWC’s amendment addresses issues noted in OSE’s previous analysis, particularly the original bill’s removal of “and only the same.” The previous iteration of the bill would have potentially allowed applicants to argue that emergency replacement wells could tap multiple aquifers, including aquifers the original well did not tap, if the replacement well also tapped into the same aquifer the original well tapped. Through the interpretation of the original bill’s language, an emergency replacement well could impact neighboring wells. By restoring the original language of “and only the same” into the bill, the amendment resolves this ambiguity.

Previous OSE emphasizes the rarity of a replacement well being located close enough to the original well to have any significant hydrological effects beyond the original well. While there are some cases where a replacement well may be drilled closer to a neighboring property than to an existing well, leading to impairment, the more likely issue is whether the statutory requirements for a replacement well are met.

Analysis from OSE notes that the amended bill will ensure emergency replacement wells will continue to be limited to the same and only the same aquifers that are tapped by the wells they are replacing.

AD/rl/SR