FISCAL IMPACT REPORT

SPONSOR Senate Judiciary Committee **LAST UPDATED** 3/13/2025
ORIGINAL DATE 1/27/2025

SHORT TITLE Pollutant Discharge Elimination System Act **BILL NUMBER** CS/Senate Bill 21/ec/SJCS/aSFl#1/aSFl#2/aSFl#3/aSFl#4

ANALYST Davidson

REVENUE*
(dollars in thousands)

Type	FY25	FY26	FY27	FY28	FY29	Recurring or Nonrecurring	Fund Affected
NPDES Permit and Fees	$0	$3,400.0 to $37,600.0	$3,400.0 to $37,600.0	$3,400.0 to $37,600.0	$3,400.0 to $37,600.0	Recurring	Water Quality Management Fund
Groundwater Discharge Permit Fees	**$0**	$200.0 to $7,100.0	$200.0 to $7,100.0	$200.0 to $7,100.0	$200.0 to $7,100.0	Recurring	Water Quality Management Fund

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

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*
(dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
NMED	No fiscal impact	Up to $11,313.0	Up to $11,313.0	Up to $22,626.0	Recurring	General Fund

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

Relates to an appropriation in the General Appropriation Act
Relates to Senate Bill 22

Sources of Information
LFC Files

Agency Analysis Received From
Administrative Office of the Courts (AOC)
New Mexico Institute of Mining and Technology (NMIMT)
New Mexico Department of Agriculture (NMDA)
New Mexico Attorney General (NMAG)
New Mexico Environment Department (NMED)
Office of the State Engineer (OSE)

SUMMARY

Synopsis of SFl#1-4 Amendments to SJC Substitute for Senate Bill 21

The Senate Floor amendments to the Senate Judiciary Committee substitute for Senate Bill 21

(SB21) amend multiple sections of the bill. The amendments strike the distribution of certain penalties from the title, add definitions such as abatement costs, aquatics resources, dredged material, fill material, point source, and surface water discharge, amend and add language regarding ability of the Water Quality Control Commission to create rules on discharges from point sources, amend and clarify the exceptions for surface water discharge permits, expand the ability of constituent agencies to respond and investigate water pollution and contamination, add further information to liability defenses for responsible parties, require rulings on applications for permits are made only if the opportunity for a public hearing is made, and clarify that civil enforcement penalties are distributed into the general fund

Synopsis of SJC Substitute for Senate Bill 21

The Senate Judiciary Committee Substitute for Senate Bills 21 and 22 (SB21) makes significant changes to the Water Quality Act, adding multiple new provisions that will amend regulation of water reuse, modify surface and ground water permitting and permit enforcement, increase the regulatory expectation of the Water Quality Control Commission (WQCC) on water quality impact, increase groundwater protections, and clarify rules related to potable water reuse. SB21 also shifts responsibility for regulation of surface water discharges from the Energy, Minerals and Natural Resources Department's Oil Conservation Division to the New Mexico Environment Department (NMED).

The committee substitute for SB21 combines the original SB21 with Senate Bill 22 while also adding language regarding public notice of groundwater discharge permits, clarifying exceptions for the expanded surface water permit rules, and defining scope of liability pertaining to actual or threatened releases of water contaminants.

The bill requires the Water Quality Control Commission (WQCC) to adopt new surface and ground water discharge regulations, creates new enforcement penalties, and provides the New Mexico Environment Department (NMED) with authority to propose new rules and issue and enforce permits. SB21 also enables delegation of federal Clean Water Act authority from the U.S. Environmental Protection Agency (EPA) to the state to issue National Pollutant Discharge Elimination System (NPDES) Permits.

The bill also creates a new fund within the state treasury, the neglected and contaminated sites fund, and amends the existing water quality management fund. The bill directs all fees and penalties related to surface water quality be deposited into the water quality management fund and that fees and penalties be used for administering the new water permit rules enumerated in the bill. SB21 also proposes that penalties related to groundwater pollution be deposited into the neglected and contaminated sites fund.

This bill contains an emergency clause and would become effective immediately on signature by the governor.

FISCAL IMPLICATIONS

Agency analysis from NMED for the original version of the bill notes SB21 would require NMED to significantly expand the agency's personnel and budget to accommodate an enhanced surface water permitting program. NMED estimates program costs could expand up to $7.1 million and 50 personnel, further noting it currently has 10 personnel at roughly $900 thousand

in recurring funds dedicated to regulating discharge to surface waters. NMED did note recurring costs could be supplemented using new permit fees the WQCC would create per the provisions of SB21. The fees would be deposited in the water quality management fund, which NMED could use for the implementation of SB21.

SB21 creates civil penalties for noncompliance with the expanded regulations of SB21, stipulating that the collections of new penalties shall be deposited in the "current school fund."

LFC staff developed a revenue estimate for revenue from possible fees related to NPDES permits, and for groundwater discharge fees. The permit fees do have overlap, but a key distinction is between point-source discharge and surface water discharges. The permits also are variable due to what and where is being discharged, and what is within the discharge.

Currently, the EPA administers NPDES permits and does not charge a fee for processing them. Most states who administer their own NPDES permits have moved to a fee-based system to supplement implementation costs. LFC analysis used Colorado's fee structure for permits related to NPDES compared to the current breakdown of NPDES permit holders in New Mexico as of October 30, 2023 (the most recent breakdown according to NMED files). From the October 30th snapshot, New Mexico had roughly 4,000 NPDES permit holders in the following categories:

- 89 permittees with individual permits, such as municipal wastewater treatment plants and industrial facilities, regulating over 200 outfalls;
- 512 permittees with stormwater coverage under the industrial multi-sector general permit;
- 21 permittees with stormwater coverage under the concentrated animal feeding operations general permit;
- 3,172 permittees with stormwater coverage under the construction general permit;
- 35 permittees with coverage under the municipal separate storm sewer system general permit; and
- 10 permittees with coverage under the pesticide general permit."

Colorado breaks out its fees based on type, with a transportation construction stormwater permit having an annual fee of $9,400, a minimal discharge of surface or ground water permit annual fee of $630, and then high complexity and low complexity permits at $2,000 and $840 respectively. LFC analysis applied fee levels to the current NPDES permits in New Mexico, resulting in annual fee revenue up to $8 million if all the permits are of the high complexity category, $3.4 million if all the permits are of the low complexity category, or as high as $37.6 million if all the permits are of the transportation construction stormwater permit category.

In addition to the estimate related to NPDES permit fees, LFC staff created an initial estimate for additional possible fee and permit revenue from SB21 and promulgated rules from WQCC on an updated fee and permit structure for groundwater discharge permits.

SB21 enables WQCC to "provide by rule a schedule of fees for permits and approvals of general permit coverage sufficient to pay the cost of developing and implementing the permitting rules authorized." NMED's analysis states the department could need up to 50 additional FTE and $7.3 million in recurring funding to implement SB21's new authority and regulations. WQCC could raise fees up to a level that would accommodate the $7.1 million or greater increase in recurring costs estimated by NMED.

Based on NMED reporting it currently manages 400 groundwater discharge permits, LFC analysis estimates that with application fees set at a minimum of $500 (based on the application fee for new source review permits issued by NMED's Air Quality Bureau), and with renewal of permits every 10 years, revenue from just application fees could be up to $200 thousand in FY26 if all 400 groundwater discharge permit entities applied or needed groundwater discharge permits. WQCC has the ability to increase its fee structure to accommodate the potential gap.

The creation of the neglected and contaminated sites fund, coupled with SB21's enhancement of NMED's authority to "respond, investigate, and remediate water pollution and contamination in soil and soil vapor," also has the potential to increase NMED's workload. NMED asserts the agency would need an additional 7 FTE and up to $1 million to implement the department's new authority and further estimates that an additional $3.3 million could be required once remediation work begins. The $50 million appropriation contained in the General Appropriation Act to the neglected and contaminated sites fund, in addition to the ability of the WQCC to adopt a fee structure to supplement implementation costs, has the ability to support these costs.

Further analysis from the New Mexico Department of Agriculture (NMDA) for the original bill notes SB21's inclusion of a fee related to the issuance of Clean Water Act Section 404 permits, permits that entities must receive to discharge "dredge and fill" into waters of the United States and currently do not have an attached fee, could present substantial costs to regulated entities like agricultural businesses.

SIGNIFICANT ISSUES

New Mexico is one of only three states where the EPA administers the NDPES program directly. Passage of SB21 would allow this authority to be delegated from the EPA to NMED. NMED analysis notes an NPDES program would have to be authorized by the EPA, who would assess whether the state could administer and support an NPDES program.

The New Mexico Attorney General (NMAG) notes SB21 "would provide authorizations and impose duties on the Water Quality Control Commission that are not integrated with the duties and powers of the commission provided by the Water Quality Control Act", which, although unlikely, "may create the possibility of conflicting or ambiguous authorities."

NMAG analysis further notes that SB21's expansion of the definition of pollutant to beyond what is already enumerated within the federal Clean Water Act could open the state up to legal action, but that any legal challenges to SB21 would likely fail as, "nothing in the Act precludes states from adopting standards or limitations with respect to discharges, so long as such standards are not less stringent than federally required."

SB21 would significantly increase the scope of NMED's authority, increasing the agency's workload. This increased workload could affect the performance and administrative efficiency of NMED.

SB21 could impede certain agricultural activities by adding law which says current permitting exemptions for farming, ranching, construction or farm maintenance, or farm road maintenance would be removed if the discharge was found to have a toxic pollutant. If passed, the additional language could have substantial impact on farming and agriculture and possibly increase the WQCC's legal exposure.

Agency analysis from the New Mexico Attorney General (NMAG) notes that SB21's amending of NMSA 74-6-4, specifically setting rules for the "prevention and abatement of water levels equivalent to and no less stringent than federal regulations adopted pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA)," could create issues with WQCC compliance with SB22. NMAG warns:

> Unlike the Water Quality Control Act, [CERCLA] is not a regulatory statute, establishing prospective permit conditions for releases of pollutants into the environment. CERCLA regulations are voluminous, spanning many Parts and hundreds of pages of the Code of Federal Regulations, and provisions regarding responsible parties and defenses do not appear to be consolidated and readily ascertainable. In addition, many principles governing these facets of liability may be found in statute and case law, rather than regulations. For these reasons, it may prove difficult for the Commission to comply with this proposed requirement. A more targeted reference to specific CERCLA statutes or regulations may be beneficial.

Analysis from NMED notes that New Mexico has over 300 neglected and contaminated sites, with 97 projects currently in the State Cleanup Program. NMED adds that if SB21 is not passed, all 97 of the projects could potentially refuse to conduct further assessment and abatement of the contamination. NMED further notes that there are 400 active groundwater discharge permits it currently manages, and the bill could potentially help clarify if a permitted entity is required to treat groundwater to applicable water quality standards. NMED also states that, following the 2023 U.S. Supreme Court ruling in *Sackett v. EPA*, 95 percent of New Mexico's surface waters have lost federal protection under the federal Clean Water Act.

SB21 empowers NMED to deny a permit for surface water discharge if the discharge "would cause or contribute to water contaminant levels in excess of a downstream state or tribal water quality standards," a regulatory authority NMED currently does not have. This new regulatory authority has the potential to impact many different industries and entities within the state who regularly discharge into the state's surface and ground water, which could lead to litigation between NMED and entities whose permits have been denied.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB21 relates to Senate Bill 22, with the current iteration of SB21 a combination of the original version of SB21 and SB22.

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