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FISCAL IMPACT REPORT

SPONSOR HENRC **ORIGINAL DATE** 02/06/19
LAST UPDATED _____ **HB** 220/HENRCS
SHORT TITLE Determination Of Discharge Effect On Water **SB** _____
ANALYST Hanika-Ortiz

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Minimal			Recurring	Various

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Environment Department (NMED)
 State Land Office (SLO) – analysis of original bill

SUMMARY

Synopsis of Bill

The House Energy, Environment and Natural Resources Committee Substitute for House Bill 220 amends the Water Quality Act (WQA) at Section 74-6-5(E)(3) to clarify that a discharge’s effect on ground water must be determined where the discharge enters ground water as opposed to “any place of withdrawal of water for present or reasonably foreseeable future use”. The bill applies state and federal ground water standards throughout the affected aquifer.

FISCAL IMPLICATIONS

To evaluate and revise regulations, which could include the Copper Mine Rule, 20.6.7 NMAC, and Ground and Surface Water Protection Regulations, 20.6.2 NMAC, and process site-specific variance requests, additional staff and administrative resources from NMED may be needed.

SIGNIFICANT ISSUE

The proposed substitute bill eliminates vague language subject to broad interpretation that has caused conflicts, and attempts to clarify the application of water quality standards.

NMED reports it reviews and processes permits for discharges at a variety of types of sites including industries, mines, dairies, and wastewater facilities. According to NMED, the bill provides clearer statutory direction to protect all ground water belonging to the public, rather than only ground water demonstrated to be of “present or reasonably foreseeable future use.” The definition and implementation of the vague and ambiguous “use” language in the current WQA generates conflict and litigation that would be reduced or eliminated by the bill. By using the words “where the discharge enters ground water,” the bill provides discretion to NMED to review technical factors of each discharge and to address discharge permit approval or conditions on site-specific circumstances.

In an analysis of the original bill, SLO noted that State Trust Lands throughout New Mexico have been affected by surface spills and ground water contamination from activities on private land, some of which have been permitted under the Water Quality Act. Examples are the Grants Uranium Mining District, potash mines in Eddy County, and some Ogallala and Capital Reef aquifers affected by oil and gas activities (including salt water disposal wells). SLO has expressed concern that the contamination limits future uses of State trust land, which in turn, reduces potential income to its beneficiaries.

ADMINISTRATIVE IMPLICATIONS

NMED commented that the bill may require some discharge permit holders to apply for variances allowing for consideration of site-specific situations, including some copper mines. Review and action on variance requests by the Water Quality Control Commission (WQCC), and NMED’s processing of the requests, may require additional agency resources, but will benefit the public by providing the opportunity for participation in the WQCC’s public hearing process.

In an analysis of the original bill, SLO reported the bill did not limit the NMED’s or Oil Conservation Division’s discretion to require monitoring networks down gradient of discharges and known ground water contamination. Monitoring down-gradient of legacy sites is critical to ensure contamination does not spread to affect nearby landowners, including State trust land.

OTHER SUBSTANTIVE ISSUES

The farther from a point of discharge NMED measures whether standards are being met, the less protective of the ground water resource, SLO reported in an early analysis of the original bill. Remediating ground water is extremely expensive, SLO further reported, and takes many years or decades, and rarely can contaminated ground water be returned to its original condition.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Because of the vague language subject to broad interpretation in the WQA, the State may continue to issue permits allowing discharges to enter an aquifer and travel distances to affect ground water beneath state trust and other public lands that adjoin or are near the discharge site.

AHO/sb