

LFC Requester:

Austin Davidson

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO

[AgencyAnalysis.nmlegis.gov](https://www.legis.nm.gov/AgencyAnalysis) and email to billanalysis@dfa.nm.gov*(Analysis must be uploaded as a PDF)***SECTION I: GENERAL INFORMATION***{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

Date Prepared: 1/27/2025

Check all that apply:

Bill Number: HB 137

Original Correction Amendment Substitute

Sponsor: Rep. Susan K. Herrera

Agency Name
and Code

Office of the State Engineer

Number:

550

Person

Nat Chakeres

Short

Email Nathaniel.chakeres@ose

Title: Strategic Water Supply Act

Phone: 505-231-4459 : .nm.gov

SECTION II: FISCAL IMPACT**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
	\$107,750.0	Nonrecurring	General Fund

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
	\$34,000	\$68,000.0	Recurring	Strategic Water Supply Program Fund

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	N/A	N/A	N/A	N/A	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: None.

Duplicates/Relates to Appropriation in the General Appropriation Act N/A

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

House Bill 137 would create the Strategic Water Supply Program, which would provide funds for the state to safely and effectively develop treated brackish and treated produced water for some of the state's most critical water needs.

Section 1: This section of the bill contains the short title of the Strategic Water Supply Act.

Section 2: This section contains the definitions of the Strategic Water Supply Act. The definition of "brackish water" tracks with the definition of nonpotable deep aquifers under NMSA 1978, § 72-12-25. This is water that is sourced from an aquifer that is deeper than 2,500 feet and has no less than 1,000 parts per million total dissolved solids (TDS). This ensures that brackish water for the Strategic Water Supply Program will not come from existing water rights and will be a new source of water to augment New Mexico's water supply needs.

Section 3: This section clarifies that the Strategic Water Supply Program applies only to brackish water as defined in the statute and produced water under the jurisdiction of the water quality control commission.

Section 4: Creates the Strategic Water Supply Program, authorizing the Energy, Minerals and Natural Resources Department (EMNRD), the Office of the State Engineer (OSE), and the New Mexico Environment Department (NMED) to enter into grants or contracts for eligible projects involving treated brackish or treated produced water

Projects seeking either grant or contract funds must (1) comply with state, federal, tribal, and local standards and permit requirements to protect public and environmental health, and (2) demonstrate how they will provide economic development in accordance with the program goals of reducing freshwater reliance or expanding water reuse opportunities. When EMNRD, OSE, or NMED evaluates a project proposal, they must do so in accordance with the State-Tribal Consultation Act (where applicable), consult with the Economic Development Department, and evaluate how the proposals will limit greenhouse gas emissions.

Grants are only available to public entities (potentially in partnership with private entities) for treated brackish water projects and must receive OSE approval that the project will advance exploration, production, or treatment of brackish water in New Mexico.

Contracts are available more broadly and are bound by the Procurement Code with the exception that the contracts can extend for 20 years. Projects seeking contract funding must provide financial assurance to EMNRD's Oil Conservation Division and a specific, actionable and measurable community benefits plan, including a process for community engagement. All contracts must comply with New Mexico's Water Quality Act and Water Quality Control Commission regulations regarding reuse of treated produced water.

Section 5: Creates the Strategic Water Supply Program Fund. NMED is tasked with administering the fund, which is available to support Strategic Water Supply grants and contracts through EMNRD, OSE, and NMED. Agency heads from all three agencies must sign

off on all expenditures from the fund and must coordinate with the Economic Development Department regarding project selections.

Section 6: Amends Section 7-1-2 of the Tax Administration Act to specify that the produced water fee imposed under the Strategic Water Supply Program would be collected and administered by the Taxation and Revenue Department.

Section 7: Authorizes taxation and revenue department staff to disclose confidential return information to the energy, minerals and natural resources department for the purpose of identifying delinquent or noncompliant with the fee requirements of the Strategic Water Supply Act.

Section 8: This section amends the Oil Conservation Division's enumeration of powers to include requiring reporting of produced water and the assessment of a fee.

Section 9: This section updates the title of the Produced Water Act to reflect its codification.

Section 10: This section creates a \$.05/barrel (bbl) fee on water produced from oil and gas operations, to be assessed on operators. A barrel equals 42 gallons. Volumes of water used that are recycled or reused in operations are not subject to the fee. The fee is certified by the Oil Conservation Division and collected by the Taxation and Revenue Department. The Oil Conservation Division is required to promulgate rules to clarify the new water reporting procedures.

Section 11: This section would amend the Water Code to make clear that, for applications to drill wells to appropriate water from nonpotable deep aquifers (which is defined as brackish water under the Strategic Water Supply Program) will be reviewed by the Office of the State Engineer to ensure that the use of water stated in the notice will not impair existing water rights, be contrary to the conservation of water within the state or be detrimental to the public welfare of the state. The Office of the State Engineer already conducts such a review for these applications, but this provision will ensure that that review and determination are enshrined in law.

Section 12: This section contains the appropriations for the Strategic Water Supply Program. It contains a \$75 million appropriation for the Strategic Water Supply Program Fund, a \$28.75 million appropriation for New Mexico Tech to perform aquifer monitoring and improved ground water characterization in FY26 through FY28, and a \$4 million appropriation for NMSU for innovation, research, monitoring, support and development of technology associated with potential projects for a Strategic Water Supply Program grant or contract in FY26 through FY28.

FISCAL IMPLICATIONS

None

SIGNIFICANT ISSUES

The OSE, NMISC, NMED, EMNRD, and NMDA are actively carrying out the administration's 50-Year Water Action Plan, which provides a roadmap for actions to ensure that New Mexico prepares a future with up to 25% less water given the realities of climate change.

At the same time, there are numerous economic development opportunities that need access to water. For example, renewable energy projects and cutting-edge manufacturing facilities need assurance that they will have reliable water supplies. In order to meet these opportunities, securing additional water supplies is critical. Treated brackish water and treated produced water could be additional sources of supply, protecting existing fresh water sources and ensuring that New Mexico's communities do not miss out on economic development opportunities even in the face of reduced water supplies.

The bill also contains an appropriation for aquifer characterization for New Mexico Tech. As set forth in Action B3 of the 50-Year Water Action Plan, fully characterizing our aquifers is an absolutely critical component to support the SWS program.

Finally, the bill contains an amendment to the Water Code to ensure that appropriations of brackish water from nonpotable deep aquifers do not impair existing water rights. This is consistent with the current practice of the OSE, but the bill would secure those protections in statute.

PERFORMANCE IMPLICATIONS

None.

ADMINISTRATIVE IMPLICATIONS

Once WQCC rules are in place authorizing NMED to permit certain uses of treated produced water outside the oil and gas industry, any such volumes of produced water that are reused pursuant to such rules would be excluded from the produced water fee established in HB137. At such time, NMED will need to establish a reporting process, in coordination with EMNRD Oil Conservation Division, to document such exclusions and report those volumes to the Taxation and Revenue Department.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None

TECHNICAL ISSUES

None

OTHER SUBSTANTIVE ISSUES

HB137 defines "brackish water" based on depth (2500 feet or more) and salinity (1000 mg/L of total dissolved solids (TDS) or more). The HB137 definition aligns with long-standing New Mexico water law, which provides that water at or greater than such depth and salinity are not subject to appropriation. The Water Quality Act provides that water less than 10,000 mg/L TDS is protectable water and falls under regulation of constituent agencies (i.e., NMED and OCD). HB137 would not change or limit the scope of the Water Quality Act and implementing regulations to protect water that meets the definition of "brackish water" under HB137 but is less than 10,000 mg/L TDS.

ALTERNATIVES

None

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

New Mexico will not have access to a fund to incentivize the treatment and reuse of brackish and produced water. Opportunities to advance treated brackish water and treated produced water to meet economic development demands without depleting freshwater resources will move more slowly and development of these new sources of water may not be targeted to state, tribal and local economic development priorities, including efforts to further the clean energy transition in New Mexico.

AMENDMENTS

None