

LFC Requester:	
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**AGENCY BILL ANALYSIS
2025 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:

AgencyAnalysis.nmlegis.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}

Check all that apply:

Original **Amendment**
Correction **Substitute**

Date 1/30/2025
Bill No: SB 185-280

Sponsor: James G. Townsend, Candy
Spence Ezzell, Larry R. Scott
and David M. Gallegos
Short Title: Unlawful Use of Underground
Water

Agency Name and Code LOPD-280
Number: _____
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

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

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

SB 185 would criminalize the unlawful use or distribution of underground water. It would criminalize selling, trading, bartering, appropriating or using underground water without the required permit under Chapter 72, Article 12 NMSA 1978.

The penalty for unlawful use of underground water would be a fourth degree felony with a special fine of one thousand dollars (\$1,000) for each barrel amounting to 40-gallons of water sold/ traded/ bartered/ used/ or appropriated and would be sentenced according to NMSA 1978, Section 31-18-15, which sets a basic sentence of 18 months' imprisonment.

FISCAL IMPLICATIONS

Because this bill creates a new crime, no statistics exist to suggest how much the previously non-criminal behavior presently occurs and would continue and thus be prosecuted. However, Analyst assumes there would be few prosecutions for these offenses, so little impact on LOPD workload is envisioned. While the LOPD would likely be able to absorb some cases under the proposed law, any increase in the number of prosecutions brought about by the cumulative effect of this and all other proposed criminal legislation would bring a concomitant need for an increase in indigent defense funding to maintain compliance with constitutional mandates. Accurate prediction of the fiscal impact is impossible to speculate; assessment of the required resources would be necessary after the implementation of the proposed higher-penalty scheme.

It is important to remember that indigent criminal defense is a constitutionally mandated right, and that LOPD does not control the decision to charge or the number of resultant cases assigned to the agency. All that can be said at this time is that if more charges, case assignments and trials result, LOPD may need to hire more attorneys and staff.

SIGNIFICANT ISSUES

Because enactment of this law would declare to be criminal certain ordinary activities that have previously been non-criminal since the founding days of New Mexico, any such enactment should come with profound fanfare, advertising and education to prevent inadvertent criminal conduct.

Analyst believes this conduct is currently regulated by civil property and water rights law. Punishing this conduct as a felony carries not only criminal punishment, but a whole laundry list of collateral consequences from *felony* convictions that would not attach to a misdemeanor conviction. Felons lose a host of constitutional rights (including the rights to vote and bear arms). They also face sentencing enhancement in future felony cases of any nature. LOPD advises against punishing what are functionally *regulatory* offenses as felonies.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

There has been no research that has found that increasing penalties has a deterrent effect on the commission of crimes. Therefore, this change would, at most, lead to an increase in incarceration, which would increase costs and population in Department of Corrections.

Punishment has been one of the preferred methods to address damaging and unwanted behavior. However, decades of empirical work about the effects of punishment (including incarceration and capital punishment) on violent crime actually show that there is no conclusive evidence that stricter punishment deters criminal conduct. The research finds that the certainty of punishment is more important than its severity, and that punishment only deters if there is a threshold level of certainty of getting caught and punished. And it's not just violent crime. A large review of the empirical work comes to a similar conclusion for corporate misconduct: there is no conclusive evidence that punishment deters corporate crime. Also, most people and organizations do not have a proper understanding of how the law is enforced, and thus there is a large discrepancy between objective and subjective deterrence, meaning that how the law is enforced in reality is not how it is experienced and understood by norm addressees. These insights have three implications for enforcement practice and for compliance systems that use sanctions: focus more on detecting violations than on stronger sanctions, communicate about law enforcement and surveillance work, and keep in mind that relying on tougher punishment alone is destined to fail.

FROM: https://wp.nyu.edu/compliance_enforcement/2021/12/28/the-behavioral-code-four-behavioral-science-insights-for-compliance-and-enforcement/

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS