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FISCAL IMPACT REPORT

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| SPONSOR <u>Rep. Herrera/Sen. Muñoz</u> | LAST UPDATED _____ |
| | ORIGINAL DATE <u>1/26/25</u> |
| SHORT TITLE <u>Strategic Water Supply Act</u> | BILL NUMBER <u>House Bill 137</u> |
| | ANALYST <u>Davidson/Graeser/ Torres</u> |

APPROPRIATION* (dollars in thousands)

| FY25 | FY26 | Recurring or Nonrecurring | Fund Affected |
|------|------------|---------------------------|---------------|
| | \$75,000.0 | Nonrecurring | General Fund |
| | \$28,750.0 | Nonrecurring | General Fund |
| | \$4,000.0 | Nonrecurring | General Fund |

*Amounts reflect most recent analysis of this legislation.

REVENUE* (dollars in thousands)

| Type | FY25 | FY26 | FY27 | FY28 | FY29 | Recurring or Nonrecurring | Fund Affected |
|--------------------|------|--------------------------|--------------------------|--------------------------|--------------------------|---------------------------|-----------------------------|
| Produced Water Tax | | \$34,000.0 to \$80,490.0 | \$68,000.0 to \$79,900.0 | \$68,000.0 to \$78,230.0 | \$68,000.0 to \$74,670.0 | Recurring | Strategic Water Supply Fund |

*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 |
|----------------|------------------|---------------|---------------|-------------------|---------------------------|-------------------------------------|
| EMNRD | No fiscal impact | Up to \$153.0 | Up to \$153.0 | Up to \$306.0 | Recurring | Strategic Water Supply Program Fund |
| NMED | No fiscal impact | Up to \$420.0 | Up to \$420.0 | Up to \$840.0 | Recurring | Strategic Water Supply Program Fund |

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Relates to Senate Bill 178

Sources of Information

LFC Files

Agency Analysis Received From
 State Treasurer Office (STO)
 Office of the State Engineer (OSE)
 New Mexico Environment Department (NMED)

Energy, Minerals and Natural Resources Department (EMNRD)

Agency Analysis was Solicited but Not Received From
Tax and Revenue Department (TRD)
Department of Finance Administration (DFA)

SUMMARY

Synopsis of House Bill 137

House Bill 137 (HB137) proposes to enact the Strategic Water Supply Act, authorize the Office of the State Engineer (OSE), New Mexico Environment Department (NMED), and Energy, Minerals and Natural Resources Department (EMNRD) to award grants and projects from the newly created strategic water supply fund (SWSF), impose a new 5-cent-per-barrel tax on produced water resulting from oil and gas production, and impose new regulation on drilling notices. The bill directs the revenue from the proposed 5-cent-per-barrel of produced water tax be deposited in the SWSF. The bill creates carve outs for when the new fee will apply and when it does not, stating the fee will not apply if the produced water is:

- (1) Used for enhanced or secondary oil;
- (2) Recycled or reused at a well or facility that is permitted by the Oil Conservation Division of the Energy, Minerals and Natural Resources Department; or
- (3) Used in a way regulated by the Water Quality Control Commission pursuant to the Water Quality Act and for which a permit from the Department of Environment is required.

HB137 also increases the reporting requirements of the Oil Conservation Division (OCD), requiring the division to track which barrels of produced water are subject to the proposed produced water barrel fee.

HB137 also appropriates \$75 million from the general fund to the strategic water supply program fund for the purpose of funding water projects, \$28.8 million to the board of regents of the New Mexico Institute of Mining and Technology to use for aquifer mapping and groundwater characterization, and appropriates \$4 million from the general fund to the board of regents of New Mexico State University for the purpose of researching potential projects for the strategic water supply program.

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

Estimates for revenue generation are derived from the state's Oil and Natural Gas Administration and Revenue Database (ONGARD), the consensus revenue estimating group (CREG) forecast for oil production, Oil Conservation Division data on volumes, and data on production by well. The data were used to determine the amount of water produced per barrel of oil produced and forecast future ratios of water to oil based on current trends. The resulting ratio starts at 3.34 barrels of produced water per barrel of oil in FY25 to 3.14 barrels of water per barrel of oil in FY29.

Analysis then estimates exemption of water from fees due to use for enhanced or secondary oil recovery, recycled or reused water, and permitted use. Based on 2023 data showing 2.3 billion barrels of produced water, and about 27.1 percent of produced water reinjected or reused, about 72.9 percent of produced water could have a fee imposed. Finally, the program is expected to increase treatment of water over time and is assumed to increase the fraction of treated and reused water from 10 percent to 20 percent.

The table below reflects the resulting estimate for revenue collections based on the CREG estimate for oil production, the estimated water produced to oil production ratio, the exempted water amount, and the 5-cents-per-barrel fee.

| | Total Produced Water (million bbls) | Non-Exempted Produced Water (million bbls) | \$.05/bbl (rounded) |
|------|-------------------------------------|--|---------------------|
| FY22 | 1,861.3 | | |
| FY23 | 2,245.5 | | |
| FY24 | 2,386.1 | | |
| FY25 | 2,490.5 | | |
| FY26 | 2,568.5 | 1,609.8 | \$80,490.0 |
| FY27 | 2,610.6 | 1,598.0 | \$79,900.0 |
| FY28 | 2,618.2 | 1,564.6 | \$78,230.0 |
| FY29 | 2,561.5 | 1,493.4 | \$74,670.0 |

The revenues estimated above are the high-end estimate included on table 1 of this analysis. Agency estimates for revenues are based on 1.36 billion barrels of nonexempted water produced, with half of that amount in the first taxable year. These estimates represent the low end of the estimated revenues on page 1.

The appropriation of \$32.8 million (\$28.8 to New Mexico Institute of Mining and Technology and \$4 million to New Mexico State University) contained in this bill is a nonrecurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY28 shall revert to the general fund. The \$75 million appropriated to the proposed strategic water supply program fund is nonreverting.

NMED analysis notes the department could need an additional three personnel to implement and support strategic water supply work. Due to the bill stipulating participating agencies that are implementing the SWS Program can use funds from the strategic water supply fund (SWSF) to cover costs associated with implementation, NMED projected no general fund impact for implementation. Analysis from EMNRD also estimates increased personnel for implementation would be covered by the SWSF. EMNRD estimates it would need an additional petroleum specialist and would have IT-related costs, estimating recurring use of the SWSF could be \$153 thousand. The Office of the State Engineer (OSE) did not project any implementation costs.

The ability for NMED, OSE, and EMNRD to draw down the proposed fund balance for administrative costs, in addition to issuing grants for treated brackish and produced water projects, could result in spending down fund balance to the point where agencies would need to

request increased recurring revenue to fund the personnel tied to the fund.

SIGNIFICANT ISSUES

Produced water is a byproduct of hydraulic fracking and is unique to the area it is drilled from, resulting in each barrel of produced water having a unique dissolved solids structure. Produced water, depending on the area it is created from, has been [found](#) to have varying levels of toxic and radioactive substances in it.¹ New Mexico produces roughly 2 billion barrels of produced water a year. Portions of this produced water are recycled and reused in oil production, with the industry getting to 60 percent reuse in recent years.

In addition to amendments to the Produced Water Act, HB137 proposes to create the strategic water supply fund to fund projects related to treating produced and brackish water. Current New Mexico statute allows for entities to attain a reuse permit of brackish water, depending on depth and total dissolved solids level. Portions of the proposed fund would be set aside for projects, related to produced water reuse, which is currently illegal. The state's Produced Water Act requires any use of produced water unrelated to oil and gas production would need to be brought before the Water Quality Control Commission (WQCC). Currently, no reuse permit has been issued. The WQCC in fall 2024 announced it would rule on the proposed amendments to the rules surrounding produced water in April 2025.

Projects to clean produced water for industrial use, a standard varying dependent on use, have not been achieved at a large scale and would require infrastructure the state does not have. Cleaning produced water, removing the total dissolved solids (TDS) so that it can be used beyond the oil field requires the removal of radioactive and toxic dissolved solids, a level of water purification requiring substantial infrastructure. Currently, there are no plans to clean produced water to drinking water level, which would require produced water to be clean to the drinking water requirement of TDS level of less than 500 parts per million.

A [study](#) done by the U. S Environmental Protection Agency notes²:

Based on information provided in this study, this is primarily due to the availability of other wastewater management options that are lower cost, such as reuse within the oil and gas field or disposal in Class II UIC wells, as well as the cost associated with treating produced waters to a level suitable for discharge. Industry indicated that unless the produced water has total dissolved solids concentrations generally of less than a few thousand milligrams per liter, treatment using membranes (e.g., reverse osmosis) or distillation would be necessary to generate water that is suitable for agricultural uses or for discharge to surface waters. The cost of such treatment is not currently competitive where other wastewater management options are available.

[Research](#) from the New Mexico Produced Water Consortium out of New Mexico State University found a range of TDS in produced water from the Permian Basin between 100,800 to 201,500 TDS mg/L.³

¹ <https://www.epa.gov/radiation/tenorm-oil-and-gas-production-wastes>

² <https://www.env.nm.gov/opf/wp-content/uploads/sites/13/2024/05/108-110.pdf>

³ <https://nmpwrc.nmsu.edu/resources/documents/2022-JHM-Characterization-of-PW-and-Pecos-River-quality.pdf>

OSE noted HB137 has the potential to provide a new water source for the state that would not tap the state's fragile freshwater supply.

The New Mexico Environment Department (NMED) notes:

The ability to manage and dispose of produced water is one of the primary constraints on oil and gas production in Permian basin in Southeastern New Mexico.... . The bill proposes to authorize contracts (not grants) for produced water projects that will treat water for uses off the oilfield, as authorized by NMED. While it's unlikely that the fund itself can sponsor enough projects to make a significant dent in the produced water takeaway issue in the Permian, it has great value as a proof of concept that can kickstart a broader produced water treatment and deployment industry.

NMED analysis also points to the possible benefits the fee could induce on industry, with the fee possibly incentivizing industry to increase its recycled water use and possibly push the market to invest in water reuse infrastructure.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB137 relates to Senate Bill 178, which would on impose a fee of 5 cents per barrel but would restrict the use of produced water off the oilfield to research purposes only and creating an abandoned wells remediation fund.

TECHNICAL ISSUES

NMED notes Section 2, A, 2, of the bill defines brackish water as containing less than 1,000 mg/l total dissolved solids (TDS). Current WQCC statute states water less than 10,000 mg/L TDS is protectable water, falling under the jurisdiction of NMED and the Oil Conservation Division. OSE apportions the water resource for water less than 10,000 mg/L but excludes water greater than 2500 feet below the ground surface. NMED recommends Section 2, A, 2 be modified to say 10,000 mg/L, not 1,000.

NMED notes the definitions used in the bill to describe treated brackish and treated produced water are different, which could complicate implementation and regulation.

AMENDMENTS

EMNRD suggested edits to sections of the bill;

- On Page 21, line 14 – insert the word “recovery” after the word “oil” to correct an error.
- On Page 21, line 7 – change “working interest owners” to “operators” to clarify the regulated entity.
- On Page 21, line 6 – Before “until” insert “Commencing on January 1, 2026 and” This change was requested by TRD to give them the ability to develop the administrative processes necessary to assess and collect the fee.
- On Page 21, line 10-11, strike “by the oil conservation division of the energy minerals and natural resources department” This change is a conforming amendment with the following amendments to sections C and D.
- On page 21 starting at line 25 continuing to page 22, line 18 – strike subsections C

- and D and replace them with the following new sections C and D:
- “C. The operator of an oil or gas well shall report to the taxation and revenue department and oil conservation division the monthly production volume of produced water on or before the twenty fifth day of the second month following the month of the submission of the monthly volume report required by the Oil and Gas Act.
 - D. The produced water fee shall be remitted to the taxation and revenue department on or before the day of the submission of the monthly production volume of produced water required pursuant to Subsection C of this section.”
- This change is designed to have the collection process for the fee more closely mirror other revenues collected by TRD from oil and gas operators, and to avoid unnecessary duplication of efforts by EMNRD.

AD/LG/IT/hj/hg/sgs