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FISCAL IMPACT REPORT

SPONSOR <u>Sen. Wirth and Gonzales/Rep. Ortez</u>	LAST UPDATED <u>2/8/2025</u>
	ORIGINAL DATE <u>1/27/2025</u>
SHORT TITLE <u>Water Quality and Pollution</u>	BILL NUMBER <u>Senate Bill 22/ec/aSCONC</u>
	ANALYST <u>Davidson</u>

APPROPRIATION* (dollars in thousands)

FY25	FY26	Recurring or Nonrecurring	Fund Affected
	\$50,000.0	Nonrecurring	General Fund

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

REVENUE* (dollars in thousands)

Type	FY25	FY26	FY27	FY28	FY29	Recurring or Nonrecurring	Fund Affected
Permit and Fees		\$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	No fiscal impact	\$7,313.0	\$7,313.0	Recurring	General Fund

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

Relates to Senate Bill 21

Sources of Information

LFC Files

Agency Analysis Received From

Administrative Office of the Courts (AOC)
New Mexico Attorney General (NMAG)
New Mexico Institute of Mining and Technology (NMIMT)
New Mexico Department of Agriculture (NMDA)
New Mexico Environment Department (NMED)

Agency Declined to Respond

Energy, Minerals, and Natural Resources Department (EMNRD)

SUMMARY

Synopsis of SCONC Amendment for Senate Bill 22

The Senate Conservation Committee (SCONC) amendments to Senate Bill 22 add language on page 19 in Subsection S specifying what wastewater can be reused. The amendments change the bill's exemptions for farming and ranching activities, adding silviculture to the list of exemptions, and provide definitions of farming and ranching practices.

The amendments add Subsection U, which states;

The exemptions provided in Subsection T of this section shall not apply if the discharge of dredged or fill material resulting from the activities contains any toxic pollutant as set forth in rule by the commission or if a new activity brings a surface water of the state into farm production where the area of the surface water has not previously been used for farming.

Synopsis of Original Senate Bill 22

Senate Bill 22 (SB22) proposes to make significant changes to the Water Quality Act, adding multiple new provisions that will amend regulation of water reuse, surface water permits and permit enforcement, increases 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. SB22 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 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 appropriates \$50 million into the neglected and contaminated sites fund and 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. SB22 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

The appropriation of \$50 million contained in this bill is a nonrecurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY26 shall not revert to the general fund. LFC has concerns with including continuing appropriation language in the statutory provisions for newly created funds because it reduces the ability of the Legislature to establish spending priorities.

LFC staff created an initial estimate for possible fee and permit revenue from SB22 and promulgated rules from WQCC on a fee and permit structure. 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. However, SB22 allows 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 \$7.1 million in recurring funding to implement SB22’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.

The creation of the neglected and contaminated sites fund, coupled with SB22’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. SB22’s \$50 million appropriation to the neglected and contaminated sites fund will support these costs.

Further analysis from the New Mexico Department of Agriculture (NMDA) noted SB22’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

Analysis from NMDA notes that the federal Clean Water Act has multiple permitting exemptions for agriculture that SB22 will complicate, such as:

- Discharges composed entirely of return flows from irrigated agriculture from point source discharge;
- Normal farming, silviculture, and ranching activities;
- Construction or maintenance of farm or stock ponds, acequias or irrigation ditches, or the maintenance of drainage ditches; and
- Construction or maintenance of farm roads in accordance with best management practices.

However, SB22 does note that WQCC, “shall not require a permit respecting the use of water in irrigated agriculture,” and provides further clarification of exceptions for farming and ranching activities.

The proposed amendments to SB22 could impede on the exemptions by adding law which says the 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 SB22’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 SB22 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.

SB22 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.

SB22 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.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Senate Bill 22 is related to Senate Bill 21, both bills amending and enhancing the Water Quality Act and expanding the regulatory authority of the WQCC and NMED. SB21 also creates the pollutant discharge elimination system act which expands surface and ground water protection and SB21 like SB22 creates new enforcement penalties. Both bills encourage use of the water quality management fund, and the new fee revenue deposited in it to be used for implementation of new water quality regulations and rules.