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FISCAL IMPACT REPORT

SPONSOR <u>Sedillo Lopez</u>	LAST UPDATED <u>2/27/23</u> ORIGINAL DATE <u>2/16/23</u>
SHORT TITLE <u>Inspection Of Water Permits & Penalties</u>	BILL NUMBER <u>Senate Bill 380/aSCONC</u>
ANALYST <u>Sanchez</u>	

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	No fiscal impact	No fiscal impact	No fiscal impact			

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

Sources of Information

LFC Files

Responses Received From

Office of the State Engineer (OSE)
 Office of the Attorney General (NMAG)

SUMMARY

Synopsis of SCONC Amendment

The Senate Conservation Committee amendment to Senate Bill 380 adds the words “after opportunity for a” to the amended portion of Section 72-12-14, NMSA 1978. The section would now read: “A. Upon notice and *after opportunity for a* hearing, the state engineer may...” (Emphasis added). Which would have the effect of replacing some of the language struck in the revisions proposed in the original bill, however, the amended section would still permit the Office of the State Engineer to suspend or revoke a license for a violation of the conditions laid out in that same section.

Synopsis of Original Bill

Senate Bill 380 proposes to amend Section 72-2, NMSA1978, and insert a new section that would authorize the Office of the State Engineer (OSE) to inspect records of permit and license holders and increase penalties for violations of water law, specifically overuse. The bill requires water right holders to allow the OSE to inspect records relating to authorized and unauthorized uses of water, and to provide such records upon request.

Senate Bill 380 also amends Section 72-2-18, NMSA 1978, to allow OSE to assess civil penalties of up to \$2,000 a day for each day the violation continues upon issuing a written notice

of violation. The penalty is not enforceable until a compliance order is finalized, pursuant to Section 72-2-18 NMSA. The bill would allow OSE to increase penalties in relation to the consumer price index, but not to exceed 150 percent of the current penalty amount. OSE is required to publicize any proposed increases in penalties for the following year by June 1 of the year preceding the increase.

Senate Bill 380 amends Section 72-5A-12, NMSA 1978, to change the violation amount to \$2,000 from \$100 per day of violation and allows for increases in penalties indexed to inflation, similar to the changes mentioned above.

Finally, Senate Bill 380 amends Section 72-12-14, NMSA 1978, to allow suspension or revocation of a license to use water issued under Section 72-12-12 to -17 NMSA 1978 for violations of any condition of use. Appeals may be filed to the district court. This Section is also similarly amended to allow for increases in penalties commensurate with inflation and allows OSE to seek a penalty in civil court of up to \$10 thousand.

This bill does not contain an effective date and, as a result, would go into effect June 16, 2023 (90 days after the Legislature adjourns) if signed into law.

FISCAL IMPLICATIONS

None of the agencies providing analysis for this bill indicated that there would be any fiscal impact.

SIGNIFICANT ISSUES

Current statute does not permit the Office of the State Engineer to inspect or copy records related to water rights. In contrast to the Environment Department's authority to inspect the records of the entities it regulates, OSE is unable to gather additional information when pumping and meter records are incomplete or insufficient to determine whether a violation of water rights usage has occurred. Senate Bill 380 would address these gaps in enforcement while also providing for increases in penalties commensurate with the maximum penalties available to the Environment Department for violations of the statutes it administers. The provisions allowing for increases in penalties indexed to inflation would also prevent the need for future legislative action for pro forma increases.

Analysis from OSE noted that in most cases, it does not seek monetary penalties, preferring to obtain "payback" of water through enforcing reductions in future use. However, in some cases this remedy is not available, and some violations may not be conducive to redress through payback. In these cases a monetary penalty may be the only avenue available to enforce violations of water rights, and indexing these penalties to inflation would ensure they have force regardless of future market adjustments.

ADMINISTRATIVE IMPLICATIONS

Analysis from the Office of the State Engineer stated:

This bill would enable the State Engineer to more effectively enforce the Water Code. It should make enforcement actions more streamlined, because violators will have more incentive to resolve violations in a timely manner, and because the State Engineer will be able to obtain documents relevant to compliance issues in a more timely manner.

OTHER SUBSTANTIVE ISSUES

Analysis from the Office of the Attorney General stated:

Section 4 of SB380, amending Section 72-12-14, keeps the language “upon notice and hearing,” which read literally would require a hearing even if the licensee did not request a hearing. It would be clearer if read “upon notice and after opportunity for a hearing.

SS/rl/ne