

LFC Requester:

Austin Davidson

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: 1/22/2025

Check all that apply:

Bill Number: SB 21

Original x Correction
Amendment Substitute

Sponsor: Peter Wirth, Kristina Ortiz

Agency Name and Code Number: 305 – New Mexico Department of Justice

Short Title: POLLUTANT DISCHARGE ELIMINATION SYSTEM ACT

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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 revenue 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

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

Synopsis: SB 21 would enact a Pollutant Discharge Elimination System Act, charge the WQCC with adopting implementing regulations, and provide NMED with authority to propose rules and issue and enforce permits, among other things. This would enable delegation of federal Clean Water Act authority from the U.S. EPA to the state to issue National Pollutant Discharge Elimination System (NPDES) Permits. Presently, New Mexico is one of only 3 states (along with Massachusetts and New Hampshire) that have not been delegated such authority, and where EPA administers the NPDES program directly.

The bill language does not replicate all of the substantive requirements for program delegation as provided in the Clean Water Act at 33 USC 1342, but does provide key definitions and categorical authorities, and requires the WQCC to adopt rules to implement and enforce the program as necessary and appropriate to obtain and sustain authorization from EPA.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

SIGNIFICANT ISSUES

SB 21 would enact a Pollution Discharge Elimination Act as a new article separate and apart from the Water Quality Control Act, and would provide authorizations and impose duties on the Water Quality Control Commission that are not integrated with the duties and powers of the commission provided by the WQCA at NMSA 74-6-4. Spreading the Commissions powers and duties across distinct act may create the possibility of conflicting or ambiguous authorities. For example, NMSA 74-6-4 (C) provides that the commission “shall not adopt or promulgate a standard or regulation that exceeds a grant of rulemaking authority listed in the statutory section of the Water Quality Act authorizing the standard or regulation.” This arguably conflicts with the grant of authority to adopt regulations under the PDES Act, although canons of statutory construction, such as that more specific statute should control over the more general, and that

statutes should be read in harmony, would probably provide resolution. Nonetheless bifurcating the Commission's authority in this manner could create ambiguities.

Section 5.A of the bill provides: "For the discharge of a pollutant to waters of the United States, *notwithstanding the provisions of Section 70-2-12 NMSA 1978*, the [Environment] department shall administer and enforce rules adopted by the commission pursuant to the Pollutant Discharge Elimination System Act." (emphasis added). 70-2-12 NMSA empowers the Oil Conservation Division with various authorities to regulate oil and gas production. It is not clear on the face of things what conflict the "notwithstanding" clause of section 5.A is meant to resolve as the respective authorities do not appear to be in tension.

PERFORMANCE IMPLICATIONS

None for NMDOJ.

ADMINISTRATIVE IMPLICATIONS

Pursuant to 33 USC 1342(b), a statement from the AG that the laws of the state provide adequate authority to implement the NPDES program will be required at the time the Governor requests EPA approval of the program.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relation to SB 22 (both require WQCC to adopt new standards but do not appear to conflict)

TECHNICAL ISSUES

None noted

OTHER SUBSTANTIVE ISSUES

The definition of "pollutant" provided in the bill is more expansive than provided in the Clean Water Act in that it includes at Section 2.L (2) "drilling fluids, produced waters, and other non-domestic wastes associated with the exploration, development or production, transportation, storage of, treatment of or refinement of crude oil, natural gas, carbon dioxide gas or geothermal energy discharged into water." Opponents of the bill may argue that this exceeds the authority provided to states under Clean Water Act Section 402, 33 U.S.C. 1342. However, such arguments would probably fail, as Section 510 of the Act, 33 USC 1370, expressly provides that nothing in the Act precludes states from adopting standards or limitations with respect to discharges, so long as such standards are not less stringent than federally required. Moreover, the definition of pollutant exempts produced water disposed in a well to facility production or for disposal, consistent with the Clean Water Act's definition.

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

NPDES permits in New Mexico will continue to issued and enforced by US EPA Region 6,

subject to the fluctuating values and priorities of changing presidential administrations.

AMENDMENTS