

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 22

Original x Correction
Amendment Substitute

Sponsor: Peter Wirth and Kristina Ortez

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

Person Writing

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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 22 would amend the Water Quality Control Act to, among other things:

- Add new definitions for barrier, commission, compensatory mitigation, facility, general permit, general permit coverage, pathogen, responsible party, and alphabetizes all new and existing definitions.
- Amend NMSA 74-6-4 (E), regarding rules promulgated by the WQQC, to provide that “The rules governing the prevention or abatement of water pollution shall include provisions for the responsible party and defenses of the responsible party that are equivalent to and no less stringent than federal regulations adopted pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980,” and amend subsection Q of that section to provide that subsection (E) be considered when the Commission makes rules.
- Replace “regulations” with “rules” throughout and makes other stylistic edits.
- Add a subsection 74-6-4 (R), requiring rules related to water pollution and contamination in soil and soil vapor.
- Add a subsection 74-6-4 (S), requiring rules governing the transfer of and use of treated wastewater for potable reuse. This section employs the newly defined terms of “pathogen” and “barrier.”
- Amend 74-6-5 NMSA, regarding permits, to allow for the use of general permits in the commission permitting rules, revise notice requirements including by requiring notice to Indian nations, tribes and pueblos, require consideration of the language spoken by notice recipients, extend the maximum term of surface water permits to 10 years, clarify the implementation costs that may be covered by the schedule of fees developed by the commission, and provide certain agricultural and construction exemptions from permit requirements.
- Amend 74-6-5.2 NMSA to make the water quality management fund non-reverting.
- Amend 74-6-12 NMSA, limitations, to remove surface water discharges from the activities exempted from the Act where governed by Oil Conservation Commission.
- Adds a new section to the Act creating a nonreverting neglected and contaminated sites fund to be administered by NMED and used “for state-led response, investigation and remediation of water pollution and contamination in soil and soil vapor,” and appropriating \$50 million to the fund

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 22 would amend NMSA 74-6-4 (E), to provide that “The rules governing the prevention or abatement of water pollution shall include provisions for the responsible party and defenses of the responsible party that are equivalent to and no less stringent than federal regulations adopted pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 [CERCLA].”

CERCLA is remedial statute, designed to provide clean-up of previously contaminated sites, to provide for recovery from responsible parties when possible, and to provide clean-up funding where no solvent responsible party exists. Unlike the Water Quality Control Act, it is not a regulatory statute, establishing prospective permit conditions for releases of pollutants into the environment. Moreover, 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.

PERFORMANCE IMPLICATIONS

None for NMDOJ.

ADMINISTRATIVE IMPLICATIONS

None for NMDOJ

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relation to SB 21 (both require WQCC to adopt new standards but do not appear to conflict)

TECHNICAL ISSUES

None noted.

OTHER SUBSTANTIVE ISSUES

None noted

ALTERNATIVES

NA

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo

AMENDMENTS

NA