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FISCAL IMPACT REPORT

LAST UPDATED _____

SPONSOR Sens. Wirth and Gonzales/Rep. Ortez **ORIGINAL DATE** 1/27/2025

BILL

SHORT TITLE Pollutant Discharge Elimination System Act **NUMBER** Senate Bill 21

ANALYST Davidson

REVENUE* (dollars in thousands)

Type	FY25	FY26	FY27	FY28	FY29	Recurring or Nonrecurring	Fund Affected
Permit and Fees	\$0	\$3,400 to \$37,600	\$3,400 to \$37,600	\$3,400 to \$37,600	\$3,400 to \$37,600	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	Up to \$7,100	Up to \$7,100	Up to \$14,200	Recurring	General Fund
Total	No fiscal impact	Up to \$7,100	Up to \$7,100	Up to \$14,200	Recurring	General Fund

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

Relates to Senate Bill 22

Sources of Information

LFC Files

Agency Analysis Received From

New Mexico Attorney General (NMAG)
New Mexico Environment Department (NMED)
Office of the State Engineer (OSE)

Agency Analysis was Solicited but Not Received From

Administrative Office of the Courts (AOC)

SUMMARY

Synopsis of Senate Bill 21

Senate Bill 21 (SB21) requires the Water Quality Control Commission (WQCC) to adopt new surface and ground water discharge regulations, creates new enforcement penalties, and provides the New Mexico Environment Department (NMED) with authority to propose new rules and

issue and enforce permits. SB21 also enables delegation of federal Clean Water Act authority from the U.S. Environmental Protection Agency (EPA) to the state to issue National Pollutant Discharge Elimination System (NPDES) Permits.

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

Agency analysis from NMED notes SB21, along with the related Senate Bill 22 (SB22), would require NMED to significantly expand the agency's personnel and budget to accommodate an enhanced surface water permitting program. NMED estimates program costs could expand up to \$7.1 million and 50 personnel, further noting it currently has 10 personnel at roughly \$900 thousand in recurring funds dedicated to regulating discharge to surface waters. NMED did note recurring costs could be supplemented using new permit fees the WQCC would create per the provisions of SB21 and SB22. The fees would be deposited in the water quality management fund, which NMED could use for the implementation of SB21.

SB21 creates civil penalties for noncompliance with the expanded regulations of SB21, stipulating that the collections of new penalties shall be deposited in the "current school fund."

LFC staff developed a revenue estimate for revenue from possible fees related to NPDES permits. Currently, the EPA administers NPDES permits and does not charge a fee for processing them. Most states who administer their own NPDES permits have moved to a fee-based system to supplement implementation costs. LFC analysis used Colorado's fee structure for permits related to NPDES compared to the current breakdown of NPDES permit holders in New Mexico as of October 30, 2023 (the most recent breakdown according to NMED files). From the October 30th snapshot, New Mexico had roughly 4,000 NPDES permit holders in the following categories:

- 89 permittees with individual permits, such as municipal wastewater treatment plants and industrial facilities, regulating over 200 outfalls;
- 512 permittees with stormwater coverage under the industrial multi-sector general permit;
- 21 permittees with stormwater coverage under the concentrated animal feeding operations general permit;
- 3,172 permittees with stormwater coverage under the construction general permit;
- 35 permittees with coverage under the municipal separate storm sewer system general permit; and
- 10 permittees with coverage under the pesticide general permit."

Colorado breaks out its fees based on type, with a transportation construction stormwater permit having an annual fee of \$9,400, a minimal discharge of surface or ground water permit annual fee of \$630, and then high complexity and low complexity permits at \$2,000 and \$840 respectively. LFC analysis applied fee levels to the current NPDES permits in New Mexico, resulting in annual fee revenue up to \$8 million if all the permits are of the high complexity category, \$3.4 million if all the permits are of the low complexity category, or as high as \$37.6 if all the permits are of the transportation construction stormwater permit category.

SIGNIFICANT ISSUES

New Mexico is one of only three states where the EPA administers the NPDES program directly. Passage of SB21 would allow this authority to be delegated from the EPA to NMED. NMED analysis notes an NPDES program would have to be authorized by the EPA, who would assess whether the state could administer and support an NPDES program.

The New Mexico Attorney General (NMAG) notes SB21 “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 Water Quality Control Act”, which, although unlikely, “may create the possibility of conflicting or ambiguous authorities.”

NMAG analysis further notes that SB21’s expansion of the definition of pollutant to beyond what is already enumerated within the federal Clean Water Act could open the state up to legal action, but that any legal challenges to SB21 would likely fail as, “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.”

SB21 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

SB21 is related to SB22 due to both bills amending the authority of the WGCC and expanding the role of NMED regarding water quality regulation. Both bills also propose to increase the regulation of surface water discharge in the state. Further, the newly proposed fees within SB21 would be deposited into the Water Quality Management Fund, amended in SB22, and would be available to NMED to be used to implement the new regulations from SB21 and SB22.

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