

SENATE BILL 380

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

INTRODUCED BY

Antoinette Sedillo Lopez

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO WATER; AUTHORIZING THE OFFICE OF THE STATE ENGINEER TO INSPECT PERMIT AND LICENSE HOLDER RECORDS; INCREASING THE MAXIMUM PENALTY FOR A VIOLATION OF WATER LAW; PROVIDING FOR AN ANNUAL INCREASE IN PENALTIES FOR A VIOLATION OF WATER LAW TO ACCOUNT FOR INFLATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new section of Chapter 72, Article 2 NMSA

.223984.3SAAIC February 21, 2023 (2:06pm)

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1978 is enacted to read:

"[NEW MATERIAL] INSPECTION OF PERMIT OR LICENSE HOLDER RECORDS.--Owners and lessees of adjudicated, declared, permitted or licensed water rights shall allow the state engineer, the water masters and their authorized assistants and agents to inspect or copy records or documents relating to authorized or unauthorized uses of water and shall furnish copies of such records or documents upon request."

SECTION 2. Section 72-2-18 NMSA 1978 (being Laws 2001, Chapter 143, Section 1, as amended) is amended to read:

"72-2-18. STATE ENGINEER--ENFORCEMENT--COMPLIANCE ORDERS--PENALTY.--

A. When a person, pursuant to a finding of fact, violates a requirement or prohibition of Chapter 72 NMSA 1978, a regulation, code, order or special order adopted by the state engineer pursuant to Section 72-2-8 NMSA 1978, a condition of a permit or license issued by the state engineer pursuant to law or an order entered by a court adjudicating a water right, the state engineer may, in addition to any other remedies available under law, issue a compliance order stating with reasonable specificity the nature of the violation and requiring compliance within a specified time period. A compliance order shall not be effective against ~~any~~ a party other than the person against whom the compliance order is issued.

B. This section shall not be construed to affect or

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interfere with any jurisdiction of an irrigation district, conservancy district, a state court, a federal court or an Indian nation, tribe or pueblo to enforce its orders and decrees pertaining to water rights.

C. A compliance order may include an order to cease the violation of a requirement or prohibition of Chapter 72 NMSA 1978, a directive issued in accordance with the provisions of Section 72-2-8 NMSA 1978, a condition of a permit or license issued by the state engineer or an order entered by a court adjudicating a water right.

D. The state engineer shall provide an opportunity for the person named in the compliance order to have a hearing on the alleged violation pursuant to Section 72-2-16 NMSA 1978. A hearing shall be held if a written request is made to the state engineer within thirty days after receipt of the notice of the compliance order [~~sent by certified mail~~]. A compliance order issued pursuant to this section shall become final unless the person named in the order submits a written request for a hearing to the state engineer within thirty days of receipt of the order. A compliance order shall be enforceable only upon becoming final. Nothing in this section shall prohibit the person named in the order from pursuing an informal resolution of the matter after a timely request for hearing has been made.

E. A compliance order may require repayment of water that was overdiverted or illegally diverted. Repayment

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of water may be up to double the amount of the overdiversion or illegal diversion. In determining the repayment of water beyond the amount overdiverted or illegally diverted, the state engineer shall take into consideration the seriousness of the violation, any good faith efforts to comply with the applicable requirements and any other relevant factors. Any requirement to repay water shall not be enforceable until the compliance order becomes final. Installation of a measuring device may be required prior to any future diversion of water.

F. Any appeal to district court shall be conducted pursuant to Chapter 72, Article 7 NMSA 1978 and shall not stay enforcement of the compliance order unless ordered by the district court.

G. After [~~a compliance order becomes final~~] issuing a written notice of violation, the state engineer may assess a civil penalty of up to [~~one hundred dollars (\$100)~~] two thousand dollars (\$2,000) per day for [~~violation of the compliance order. Any civil penalty assessed shall accrue from the date of assessment of the penalty~~] each day during any portion of which the violation continues. A compliance order may require that the person pay the assessed civil penalty. The penalty is not enforceable until the compliance order becomes final.

H. If a person does not comply with a compliance order, the state engineer may file a civil action to enforce

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the compliance order and receive any of the remedies provided in this section, including injunctive relief.

I. On July 1, 2024 and on July 1 of each successive year, the state engineer shall adjust the maximum penalty amount established in Subsection G of this section to account for inflation. The amount shall be increased by the percentage change in the consumer price index, not seasonally adjusted, for all urban consumers, United States city average for all items, or its successor index, as published by the United States department of labor for the preceding calendar year or years beginning January 1, 2023. The amount of the increase, if any, shall be rounded to the nearest dollar but shall not exceed one hundred fifty percent of the current penalty amount. By June 1, 2024 and by June 1 of each successive year, the state engineer shall post on the state engineer's website the maximum penalty amount for the next fiscal year."

SECTION 3. Section 72-5A-12 NMSA 1978 (being Laws 1999, Chapter 285, Section 12) is amended to read:

"72-5A-12. PENALTIES.--

A. A person who or governmental entity that is determined to be in violation of the Ground Water Storage and Recovery Act or a permit issued or rules adopted pursuant to the act may be assessed a civil penalty in an amount not exceeding:

(1) [~~one hundred dollars (\$100)~~] two thousand

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dollars (\$2,000) per day of violation not directly related to the illegal recovery or use of stored water; or

(2) ten thousand dollars (\$10,000) per day of violation directly related to the illegal recovery or use of stored water.

B. An action to recover penalties pursuant to this section shall be brought by the state engineer in the district court in which the violation occurred.

C. On July 1, 2024 and on July 1 of each successive year, the state engineer shall adjust the maximum penalty amount established in Subsection A of this section to account for inflation. The amount shall be increased by the percentage change in the consumer price index, not seasonally adjusted, for all urban consumers, United States city average for all items, or its successor index, as published by the United States department of labor for the preceding calendar year or years beginning January 1, 2023. The amount of the increase, if any, shall be rounded to the nearest dollar but shall not exceed one hundred fifty percent of the current penalty amount. By June 1, 2024 and by June 1 of each successive year, the state engineer shall post on the state engineer's website the maximum penalty amount for the next fiscal year."

SECTION 4. Section 72-12-14 NMSA 1978 (being Laws 1949, Chapter 178, Section 3) is amended to read:

"72-12-14. SUSPENSION OR REVOCATION OF LICENSE--APPEAL--

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DAMAGES.-- [~~Any license issued under the provisions of this act may be suspended or revoked by~~]

A. Upon notice and SCONC→after opportunity for  
a←SCONC hearing, the state engineer [~~upon notice and hearing,~~  
~~in the event that the license shall have violated any~~] may  
suspend or revoke a license issued under the provisions of  
Sections 72-12-12 through 72-12-17 NMSA 1978 for a violation of  
a condition of [the] a bond maintained [by him] as a  
prerequisite for [such] the license. Appeals from the decision  
of the state engineer may be taken to [~~the district courts of~~  
~~the state~~] a district court in the same manner [~~and with like~~  
~~effect~~] as [~~now~~] provided for other appeals from action of the  
state engineer. In the event of such breach, the state  
engineer, on behalf of the state [~~of New Mexico~~] and any other  
person injured [~~thereby~~] by the breach, is authorized to  
recover in a civil suit in the district court of the county  
where the well involved is located, judgment for [~~such~~] damages  
[~~as may have been~~] sustained by reason [~~thereof~~] of the breach.  
In addition, the state engineer is authorized to recover on  
behalf of the state [~~of New Mexico~~] a civil penalty in an  
amount to be determined by the district court [~~in which the~~  
~~action is tried~~] not to exceed [~~\$1,000.00~~] ten thousand dollars  
(\$10,000), and judgment for both damages and penalty shall be  
against the principal and sureties [~~upon said~~] on the bonds.

B. On July 1, 2024 and on July 1 of each successive

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year, the state engineer shall adjust the maximum penalty amount established in Subsection A of this section to account for inflation. The amount shall be increased by the percentage change in the consumer price index, not seasonally adjusted, for all urban consumers, United States city average for all items, or its successor index, as published by the United States department of labor for the preceding calendar year or years beginning January 1, 2023. The amount of the increase, if any, shall be rounded to the nearest dollar but shall not exceed one hundred fifty percent of the current penalty amount. By June 1, 2024 and by June 1 of each successive year, the state engineer shall post on the state engineer's website the maximum penalty amount for the next fiscal year."