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FISCAL IMPACT REPORT

SPONSOR <u>Ortez/McQueen/Cates</u>	LAST UPDATED <u>3/16/2025</u>
	ORIGINAL DATE <u>2/13/2025</u>
SHORT TITLE <u>Water Law Violation Penalty</u>	BILL NUMBER <u>House Bill 348/ aHAAWC/aHJC</u>
	ANALYST <u>Davidson</u>

REVENUE* (dollars in thousands)

Type	FY25	FY26	FY27	FY28	FY29	Recurring or Nonrecurring	Fund Affected
Penalty		\$80.0 to \$100.0	\$80.0 to \$100.0	\$80.0 to \$100.0	\$80.0 to \$100.0	Recurring	General Fund

Parentheses () indicate revenue decreases.

*Amounts reflect most recent analysis of this legislation.

Duplicates Senate Bill 210

Sources of Information

LFC Files

Agency Analysis Received From
Office of the State Engineer (OSE)

SUMMARY

Synopsis of HJC Amendment to House Bill 348

The House Judiciary Committee amendment to House Bill 348 adds language specifying that, if service of mail for notice a hearing related to water law violations is not possible, the state engineer can serve the compliance order by process server or by effective means. The amendment clarifies the state engineer will not pursue a monetary penalty for over diversion and will instead pursue repayment of water.

Synopsis of HAAWC Amendment to House Bill 348

The House Acequias, Agriculture and Water committee amendment to House Bill 348 adds an additional option for the Office of the State Engineer (OSE) to issue a civil penalty of up to \$2,000 per day or \$25 dollar per barrel of water sold, whichever is greater.

Synopsis of House Bill 348

House Bill 348 (HB348) amends several sections within Chapter 72 NMSA 1978, increasing the penalties for certain water law violations to \$2,000 per day, allowing OSE to increase the maximum penalty to account for inflation in future years, and amending statute to state repayment in water, not in fines, would be preferred.

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

OSE did not provide an estimate as to how increasing penalties from \$100 per day to \$2,000 per day would increase revenue. However, OSE did note that increasing the penalty may deter violations. OSE processes roughly 40 to 50 enforcement actions a year. Using these numbers, LFC analysis estimates revenue has the potential to increase from \$4 to \$5 thousand in civil penalties a year to \$80 to \$100 thousand a year. However, this is dependent on a violation lasting a day. OSE analysis notes some violations can last weeks, months, and possibly longer. LFC analysis does not account for this variability. Additionally, the HAAWC amendment's new penalty option has the ability increase the penalty revenue for the agency. Due to the variability of the penalties, LFC's does not increase or decrease its estimate.

SIGNIFICANT ISSUES

OSE notes the maximum penalty for a water law violation was set in 1907 at \$100 per day and has not been changed since. OSE also notes moving the date of accrual to the date of notice of violation is issued, in conjunction with increasing the penalty to \$2,000 a day, could make violations cost prohibitive to would be violators.

Analysis from OSE notes in most enforcement cases the agency seeks payback of water rather than money. This is typically done through compelling the enforced-on party to reduce future diversions by the quantity of water which was previously over-or illegally taken or diverted. OSE has found this practice is a successful deterrent against future diversions or breakings of water law. The HJC amendment clarifies that OSE may not pursue monetary penalties and may only pursue repayment of water for over diversion of water rights.

OSE notes:

Not all violations of the Water Code can be remedied through the payback of water. Some violations are not over diversions at all; instead, they may be violations of metering or reporting requirements, or failure to comply with all regulations in the drilling of a well. Additionally, some violators of the Water Code may not have valid rights to satisfy a payback requirement. Therefore, monetary penalties are necessary to remedy these types of violations.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

House Bill 348 duplicates Senate Bill 210.

AD/rl/SR/sgs