

LFC Requester:

Austin Davidson

**AGENCY BILL ANALYSIS - 2026 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO

[AgencyAnalysis.nmlegis.gov](https://www.legis.nm.gov/AgencyAnalysis) and email to [billanalysis@dfa.nm.gov](mailto:billanalysis@dfa.nm.gov)*(Analysis must be uploaded as a PDF)***SECTION I: GENERAL INFORMATION***{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*Date Prepared: 1/27/2026

Check all that apply:

Bill Number: HB 54Original  Correction Amendment  Substitute Sponsor: Rep. Cathrynn BrownAgency Name  
and CodeOffice of the State Engineer  
550

Number:

Person Writing

Nat Chakeres

Short

Protests for Replacement Wells

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Title:

Phone: 505-231-4459Email: @ose.nm.gov**SECTION II: FISCAL IMPACT****APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY26	FY27		
None	None	N/A	N/A

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY26	FY27	FY28		
None	None	None	N/A	N/A

(Parenthesis ( ) indicate revenue decreases)

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	FY26	FY27	FY28	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	None	None	None	N/A	N/A	N/A

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: N/A  
Duplicates/Relates to Appropriation in the General Appropriation Act: N/A

### **SECTION III: NARRATIVE**

#### **BILL SUMMARY**

##### Synopsis:

This bill proposes to amend Section 72-12-22 to remove the ability to protest an application for a replacement groundwater well within 100 feet of the original well, while also including language that makes clear that applicants themselves can still aggrieve decisions on replacement wells.

The bill also makes some stylistic changes to the current language of the statute. One of those changes would delete the phrase “and only the same” from the current statute that provides that replacement wells may only be drilled into “the same and only the same underground stream, channel, artesian basin, reservoir or lake as the original well.”

#### **FISCAL IMPLICATIONS**

No significant fiscal impacts on the OSE/ISC.

#### **SIGNIFICANT ISSUES**

The Replacement Well statute, 72-12-22, currently provides that if an emergency situation exists, an owner of a groundwater right can drill a replacement well and begin using water from the well even before submitting an application to the State Engineer for the replacement well, provided that the well is within 100 feet of the original well and it is drilled into the same and only the same underground aquifer. The statute provides that other persons who believe they are harmed by these wells may not enjoin the drilling or use of these wells but instead are limited to administrative protests of these wells and actions at law to recover damages.

Under current law, however, protests themselves do not prevent these new wells from being used during the pendency of the administrative hearing. Therefore, there is not much reason for another party to protest a replacement well. As a result, such protests are rare (although they do occur). The grounds for a protest are as follows: 1) that the underlying water right is not valid (i.e., it has been forfeited or abandoned); 2) that the new well does not meet the terms of the statute; 3) that the new well would impair an existing well; or 4) that the new well would be contrary to the conservation of water within the state or detrimental to the public welfare of the state.

Because these wells are replacing existing wells, there are not likely to be many meritorious claims of impairment, conservation, or public welfare. This is because it is rare that a replacement well so close to the original would have significant hydrological effects beyond the effects of the original well. In some cases, the replacement wells may be drilled closer to neighboring properties than existing wells, and that may lead to impairment. But by far the most likely type of meritorious protests would be focused on whether the underlying right has been forfeited/abandoned, or whether the elements of the statute were met. Parties may legitimately dispute whether a water right has been forfeited/abandoned, or whether a deepened well is in the same “underground stream, channel, artesian basin, reservoir or lake” as the original well.

Finally, given the age of the well, there may not be a well log on file for the original well, and so there may be legitimate questions about which underground water source the well was tapping. This bill would prevent protests seeking to challenge the validity of the underlying right or whether the well was drilled into the appropriate underground source.

### **PERFORMANCE IMPLICATIONS**

No significant implications. There may be a minor downtick in one of the OSE's explanatory performance measures, Number of Cases Docketed in the State Engineer's Hearing Unit, if these types of protests are disallowed. The number would likely only change by 2-5%, which is the approximate percentage of docketed hearings that relate to emergency replacement wells.

### **ADMINISTRATIVE IMPLICATIONS**

None.

### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

None.

### **TECHNICAL ISSUES**

The deletion of the phrase "and only the same" from 72-12-22(A)(1) may have been intended as a stylistic change. However, it could have substantive implications. It is possible for a single well to be completed to produce water from multiple aquifers simultaneously. If this phrase were deleted from the statute, an applicant could attempt to replace a well that was completed into one aquifer with a well that was completed into multiple aquifers, so long as one of the aquifers was the same as the aquifer that the old well was completed in. The purpose of the existing statute is to allow well owners who experience an emergency (typically a well failure) to redrill the well without going through a lengthy application process. However, if the well owner can expand what aquifers the well is drawing from, that new well should be subject to normal notice and application provisions.

### **OTHER SUBSTANTIVE ISSUES**

None.

### **ALTERNATIVES**

None.

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Protests will continue to be allowed on applications for replacement groundwater wells within 100 feet of the original well.

### **AMENDMENTS**

None suggested.