

LFC Requester:

Helen Gaussoin

**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original X **Amendment** _____
Correction _____ **Substitute** _____

Date Prepared: 1/19/2024

Bill No: SB 101

Sponsor: Antoinette Sedillo Lopez

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

Short Title: WATER LAW
VIOLATION PENALTIES

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY24	FY25	FY26	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:

Senate Bill (“SB”) 101 would enact a new section of NMSA Chapter 72 (State Engineer), requiring owners and lessees of water rights to allow the state engineer, water masters, and their assistants to inspect or copy records relating to uses of water and to furnish copies of such records or documents upon request.

SB 101 would amend NMSA 1978, §72-2-18 to increase the maximum penalty for violations of Chapter 72 or associated regulations, codes, orders of the State Engineer or a court, or of a permit or license, from \$100 per day to \$2000 per day, and requires the State Engineer to adjust the penalty amount annually beginning in 2025 in proportion to the annual increase in the consumer price index. It also provides that the penalty may be assessed upon issuance of a notice of violation, rather than after a compliance order is final, as currently provided. However, the penalty would not be enforceable until the compliance order is final.

SB 101 would also amend NMSA 1978, § 72-5A-12 to similarly increase the maximum penalty from \$100 per day to \$2000 per day for violation of the Ground Water Storage and Recovery Act or permit or rules under the Act, and require annual increases based on the consumer price index.

SB 101 would also increase the maximum penalty under NMSA 1978, § 72-12-14 for violation of the conditions of a bond maintained as a prerequisite for a groundwater permit from \$1000 to \$10,000, and require annual adjustment proportional to increases in the consumer price index.

Finally, the bill makes non-substantive changes to modernize the language of the statutory sections affected.

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

The requirement in Section 1 of the bill that water rights holders furnish records upon the request of a government official without a warrant or probable cause may give rise to claims that it violates the prohibition of unreasonable search and seizures under the Fourth Amendment to the U.S. Constitution. Generally, businesses in a highly regulated industry have a diminished expectation of privacy but warrantless inspections must still be reasonable. *See, e.g., New York v. Burger*, 482 U.S. 691, 702, 601 (1987) (noting that a closely regulated industry has a reduced expectation of privacy, lessening the requirement for warrant and probable cause requirements to be reasonable).

This potential constitutional issue could be addressed by providing time or manner limitations on inspections that would “advise the owner of the commercial premises that the search is being made pursuant to the law and has a properly defined scope, and it must limit the discretion of the inspecting officers.” *Id.* at 703 (discussing how a warrantless inspection would be reasonable if the statute performs the basic functions of a warrant.) Other New Mexico regulatory statutes provide similar restrictions. *See, e.g.* Air Quality Control Act, NMSA 1978, § 74-2-13 (providing that an authorized representative of the Environment Department, upon presentation of credentials: “A. shall have a right of entry to, upon or through any premises on which an emission source is located or *on which any records required to be maintained by regulations*” . . . and “B. *may at reasonable times*: (1) have access to and copy any *records required to be established and maintained by regulations*” (emphasis added).

PERFORMANCE IMPLICATIONS

None for this office.

ADMINISTRATIVE IMPLICATIONS

None for this office.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None found.

TECHNICAL ISSUES

N/A

OTHER SUBSTANTIVE ISSUES

Section 1 of the bill would create a new statutory section requiring water right holders to provide access or copies of “records or documents relating to authorized or unauthorized uses of water.” However, the bill does not require the generation or retention of any particular documents, and the scope of documents “relating to” use of water is not defined in the bill language. Nor do the bill’s requirements appear to be tethered to any record-keeping requirements elsewhere in the statute, as the proposed language would be in a stand-alone section of Chapter 72 and does not cross-reference any other sections.

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo

AMENDMENTS

N/A