

<b>LFC Requester:</b>	<b>Helen Gaussoin</b>
-----------------------	-----------------------

**AGENCY BILL ANALYSIS  
2024 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:**

**Analysis.nmlegis.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}*

*Check all that apply:*

**Original**     **Amendment**      
**Correction**     **Substitute**   

**Date** 1/20/24  
**Bill No:** SB 101

**Sponsor:** Sen. Antoinette Sedillo Lopez    **Agency Name and Code** Office of the State Engineer  
**Short**    Water Law Violation    **Number:** 550  
**Title:**    Penalties    **Person Writing** Nat Chakeres  
**Phone:** 505-231-4459    **Email** Nat.chakeres@ose.nm.gov

**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		
N/A	N/A	N/A	N/A

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		
Indeterminate	Indeterminate	Indeterminate	N/A	N/A
N/A	N/A	N/A	N/A	N/A

(Parenthesis ( ) Indicate Expenditure Decreases)

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

	<b>FY24</b>	<b>FY25</b>	<b>FY26</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>	NFI	NFI	NFI	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:

Senate Bill 101 seeks to address gaps in the State Engineer’s enforcement authority to ensure that the State Engineer has the appropriate tools to ensure compliance with water laws. The enforcement tools that the State Engineer would receive under this bill would be commensurate with, and are patterned off of, enforcement tools that the New Mexico Environment Department already possesses.

The bill would address enforcement gaps in two main areas: records inspection and monetary penalties.

The State Engineer currently has the authority to enter property to perform his duties, but does not have the authority to inspect or copy records. This is important from a regulatory compliance perspective. NMED, by contrast, has the statutory authority to inspect the records of the entities it regulates. Providing the State Engineer with the authority commensurate to that possessed by NMED would enable the State Engineer to gather additional information regarding water use when pumping/meter records are not sufficient or are missing.

Second, the bill would amend Sections 72-2-18, 72-5A-12, and 72-12-14 to increase the maximum penalties for violations of these portions of the water code to amounts commensurate with the maximum penalties available to NMED for violations of the statutes it administers. The bill also would include automatic increases for these maximum penalties indexed to inflation.

In most enforcement cases, the OSE does not seek civil monetary penalties. Instead, it seeks the “payback” of water, which is typically effectuated by compelling water users to reduce future diversions by the quantity of water that was previously over- or illegally diverted. This remedy is fair and is usually a satisfactory deterrent against overdiversions.

However, not all violations of the Water Code can be remedied through the payback of water. Some violations are not overdiversions 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.

Section 72-2-18 contains a monetary penalty of \$100 per day, and does not become effective until after a compliance order becomes final. This penalty is too low, and too remote to be an effective deterrent. The bill would increase the maximum penalty to \$2,000 per day. By comparison, NMED can assess penalties of up to \$15,000 per day for violations of air quality permits.

In addition, while the penalty is not due to be paid until a hearing on a compliance order is complete, the bill would clarify that the per-day penalty accrues from the date a violator receives notice of a violation. This would incentivize violators to come into compliance in a timely manner.

The bill would also amend 72-2-18(D) to remove the requirement that notice of a compliance order be sent by certified mail. The reason for this amendment is that it is sometimes impossible to successfully serve documents by certified mail. If a recipient refuses to receive the certified mailing, the current statute makes it unclear how notice can be effected. The amendment would enable the State Engineer to effect service in whatever manner is reasonable and effective.

## **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**

Senate Bill 101 may lead to the decrease of violations New Mexico's water laws, regulations and orders, since it allows water regulators to inspect the records or documents of suspected violators upon request, increases the amount of civil penalties for violators, bases the assessment upon the issuance of a written notice of violation and the continuance of a violation, and requires the civil penalty to be adjusted for inflation.

## **PERFORMANCE IMPLICATIONS**

None

## **ADMINISTRATIVE IMPLICATIONS**

This bill would enable the State Engineer to more effectively enforce the Water Code. It should make enforcement actions more streamlined, because violators will have more incentive to resolve violations in a timely manner, and because the State Engineer will be able to obtain documents relevant to compliance issues in a more timely manner.

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

N/A

**TECHNICAL ISSUES**

None

**OTHER SUBSTANTIVE ISSUES**

None

**ALTERNATIVES**

None

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

The amount of current civil penalties may not be enough to deter people from violating New Mexico's laws. The State Engineer may not be able to obtain records regarding possible water rights violations when enforcement issues arise.

**AMENDMENTS**

None.