

HOUSE BILL 50

**55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

INTRODUCED BY

Georgene Louis

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 THE ENVIRONMENT; PROVIDING FOR A PRIVATE RIGHT OF ACTION TO ENFORCE CERTAIN STATUTES; ENACTING NEW SECTIONS OF THE OIL AND GAS ACT, THE AIR QUALITY CONTROL ACT, THE HAZARDOUS WASTE ACT, THE SOLID WASTE ACT AND THE WATER QUALITY ACT.

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

SECTION 1. A new section of the Oil and Gas Act is enacted to read:

"[NEW MATERIAL] PRIVATE RIGHT OF ACTION.--

A. Except as provided in Subsection B of this

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section, a person who is injured in fact, economically or otherwise, or who is imminently threatened with injury, economically or otherwise, may commence a civil action on the person's own behalf against any other person HENRC→who is subject to or regulated by the Oil and Gas Act or a rule, permit or order issued pursuant to that act←HENRC alleging a past or present violation of the Oil and Gas Act or a rule, permit or order issued pursuant to that act.

B. No action may be brought under this section:

(1) unless the alleged violation relates to a statute, rule, permit or order primarily related to environmental protection, concerned with:

- (a) discharge of pollutants into ground water or surface water;
- (b) emission of pollutants into the air;
- (c) generation, treatment, storage, disposal or management of waste, including produced water;
- (d) remediation;
- (e) design, construction or management of pits;
- (f) plugging or abandonment of oil or gas wells, including financial assurance therefor;
- (g) storage, injection or disposal of fluids for hydraulic fracturing, including the identification of the chemical composition of such fluids; or

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(h) associated monitoring and reporting;  
(2) unless the plaintiff has given sixty days' written notice of the alleged violation to the commission, the division, the attorney general and any alleged violator.

However, when the alleged violation constitutes an immediate threat to the health or safety of the plaintiff or would immediately and irreversibly impair a legal interest of the plaintiff, an action under this section may be brought immediately after notice is given to the proper parties; or

(3) if the commission or the division has commenced and is diligently prosecuting a civil action in a court of this state to require compliance with the Oil and Gas Act or rule, permit or order issued pursuant to that act. In an action commenced by the commission or division, a person who has standing pursuant to Subsection A of this section and who has provided notice pursuant to Paragraph (2) of this subsection prior to the initiation of the action may intervene as a matter of right.

C. Whenever an action is brought under this section, the plaintiff shall serve a copy of the complaint on the commission, the division and the attorney general. The commission, the division and the attorney general may intervene as a matter of right. No consent decree or stipulated judgment shall be entered in an action brought under this section unless either:

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(1) the commission or the division is a party;

or

(2) the plaintiff has provided a copy of the proposed consent decree or stipulated judgment to the commission and the division, and the commission and the division have had at least forty-five days after receipt of the proposed consent decree or judgment but prior to entry of the decree or judgment to submit comments on the proposed decree or judgment to the court.

D. In any action brought under this section, the court has jurisdiction to grant appropriate relief, including, without limitation, a penalty in the amounts set forth in Subsection D of Section 70-2-31 NMSA 1978, issuance of a restraining order or a temporary or permanent injunction, or a combination of the foregoing, and the court may award reasonable costs of litigation, including expert costs and attorney fees.

E. Any action brought under this section alleging a violation of the Oil and Gas Act or the rules thereunder shall be brought in a judicial district in which the division could have brought suit for the alleged violation.

F. Penalties collected under this section shall be deposited in the state treasury to be credited to the oil and gas reclamation fund.

G. An action brought under this section is not in

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any way affected or limited by Section 70-2-29 NMSA 1978."

SECTION 2. A new section of the Air Quality Control Act is enacted to read:

"[NEW MATERIAL] PRIVATE RIGHT OF ACTION.--

A. Except as provided in Subsections B and C of this section, a person who is injured in fact, economically or otherwise, or who is imminently threatened with such injury, may bring a civil action on the person's own behalf against any other person HENRC→who is subject to or regulated by the Air Quality Control Act or a rule, permit or order issued pursuant to that act←HENRC alleging a past or present violation of the Air Quality Control Act or any rule, permit or order issued under that act.

B. No action may be brought under this section until sixty days after the plaintiff has given written notice of the alleged violation to the department, the attorney general and any alleged violator. However, when the alleged violation constitutes an immediate threat to the health or safety of the plaintiff or of the public or would immediately and irreversibly impair a legal interest of the plaintiff, an action under this section may be brought immediately after notice is given to the proper parties.

C. No action may be brought under this section if the department has commenced and is diligently prosecuting a civil action in a court of this state to require compliance

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with the Air Quality Control Act or rule, permit or order issued under that act. In an action commenced by the department, a person who has standing under Subsection A of this section and who has provided notice under Subsection B of this section prior to the initiation of the action may intervene as a matter of right.

D. Whenever an action is brought under this section, the plaintiff shall serve a copy of the complaint on the department and the attorney general. The department and the attorney general may intervene as a matter of right. No consent decree or stipulated judgment shall be entered in an action brought under this section unless either:

- (1) the department is a party; or
- (2) the plaintiff has provided a copy of the proposed consent decree or stipulated judgment to the department, and the department has had at least forty-five days after receipt of the proposed consent decree or judgment but prior to entry of the decree or judgment to submit comments on the proposed decree or judgment to the court.

E. In any action brought under this section, the court has jurisdiction to grant appropriate relief, including, without limitation, a civil penalty in the amount set forth in Subsection A of Section 74-2-12.1 NMSA 1978 for each violation, issuance of a restraining order or a temporary or permanent injunction, or a combination of the foregoing, and the court

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may award reasonable costs of litigation, including expert costs and attorney fees.

F. Penalties collected under this section shall be deposited in:

(1) the municipal or county general fund if the source is within the jurisdiction of a local authority; or

(2) the state treasury general fund for all other sources.

G. In any action brought under this section, if jurisdiction to enforce the Air Quality Control Act has been assumed by a local authority and if the complaint arose within the jurisdiction of the local authority, notwithstanding the definitions in Section 74-2-2 NMSA 1978, the following definitions shall apply:

(1) "board" means the local board created by the local authority;

(2) "department" means the administrative agency established by the local authority pursuant to Paragraph (2) of Subsection A of Section 74-2-4 NMSA 1978; and

(3) "secretary" means the director or administrative head of the local agency."

**SECTION 3.** A new section of the Hazardous Waste Act is enacted to read:

"[NEW MATERIAL] PRIVATE RIGHT OF ACTION.--

A. Except as provided in Subsections B and C of

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this section, a person who is injured in fact, economically or otherwise, or who is imminently threatened with such injury, may bring a civil action on the person's own behalf against any other person HENRC→who is subject to or regulated by the Hazardous Waste Act or a rule, permit or order issued pursuant to that act←HENRC alleging a past or present violation of the Hazardous Waste Act or any rule, permit or order issued under that act.

B. No action may be brought under this section until sixty days after the plaintiff has given written notice of the alleged violation to the department, the attorney general and any alleged violator. However, when the alleged violation constitutes an immediate threat to the health or safety of the plaintiff or would immediately and irreversibly impair a legal interest of the plaintiff, an action under this section may be brought immediately after notice is given to the proper parties.

C. No action may be brought under this section if the department has commenced and is diligently prosecuting a civil action in a court of this state to require compliance with the Hazardous Waste Act or rule, permit or order issued under that act. In an action commenced by the department, a person who has standing under Subsection A of this section and who has provided notice under Subsection B of this section prior to the initiation of the action may intervene as a matter



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of right.

D. Whenever an action is brought under this section, the plaintiff shall serve a copy of the complaint on the department and the attorney general. The department and the attorney general may intervene as a matter of right. No consent decree or stipulated judgment may be entered in an action brought under this section unless either:

(1) the department is a party; or

(2) the plaintiff has provided a copy of the proposed consent decree or stipulated judgment to the department, and the department has had at least forty-five days after receipt but prior to entry of the decree or judgment to submit comments on the proposed decree or judgment to the court.

E. In any action brought under this section, the court has jurisdiction to grant appropriate relief, including, without limitation, a civil penalty in the amount set forth in Section 74-4-12 NMSA 1978 for each violation, issuance of a restraining order or a temporary or permanent injunction, or a combination of the foregoing, and the court may award reasonable costs of litigation, including expert costs and attorney fees.

F. Penalties collected under this section shall be deposited in the state treasury to be credited to the hazardous waste emergency fund."

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SECTION 4. A new section of the Solid Waste Act is

enacted to read:

"[NEW MATERIAL] PRIVATE RIGHT OF ACTION.--

A. Except as provided in Subsections B and C of this section, a person who is injured in fact, economically or otherwise, or who is imminently threatened with such injury, may bring a civil action on the person's own behalf against any other person HENRC→who is subject to or regulated by the Solid Waste Act or a rule, permit or order issued pursuant to that act←HENRC alleging a past or present violation of the Solid Waste Act or any rule, permit or order issued under that act.

B. No action may be brought under this section until sixty days after the plaintiff has given written notice of the alleged violation to the department of environment, the attorney general and any alleged violator. However, when the alleged violation constitutes an immediate threat to the health or safety of the plaintiff or would immediately and irreversibly impair a legal interest of the plaintiff, an action under this section may be brought immediately after notice is given to the proper parties.

C. No action may be brought under this section if the department of environment has commenced and is diligently prosecuting a civil action in a court of this state to require compliance with the Solid Waste Act or rule, permit or order adopted under that act. In an action commenced by the

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department of environment, a person who has standing under Subsection A of this section and who has provided notice under Subsection B of this section prior to the initiation of the action may intervene as a matter of right.

D. Whenever an action is brought under this section, the plaintiff shall serve a copy of the complaint on the department of environment and the attorney general. The department of environment and the attorney general may intervene as a matter of right. No consent decree or stipulated judgment may be entered in an action brought under this section unless either:

(1) the department of environment is a party;

or

(2) the plaintiff has provided a copy of the proposed consent decree or stipulated judgment to the department of environment, and the department has had at least forty-five days after receipt but prior to entry of the decree or judgment to submit comments on the proposed decree or judgment to the court.

E. In any action brought under this section, the court has jurisdiction to grant appropriate relief, including, without limitation, assessment of a civil penalty in the amount set forth in Section 74-9-38 NMSA 1978 for each violation, issuance of a restraining order or a temporary or permanent injunction, or a combination of the foregoing, and the court

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may award reasonable costs of litigation, including expert costs and attorney fees.

F. Penalties collected under this section shall be deposited in the state treasury to be credited to the solid waste facility grant fund."

SECTION 5. A new section of the Water Quality Act is enacted to read:

"[NEW MATERIAL] PRIVATE RIGHT OF ACTION.--

A. Except as provided in Subsections B and C of this section, a person who is injured in fact, economically or otherwise, or who is imminently threatened with such injury, may bring a civil action on the person's own behalf against any other person HENRC→who is subject to or regulated by the Water Quality Act or a rule, permit or order issued pursuant to that act←HENRC alleging a past or present violation of the Water Quality Act or a rule, permit or order issued under that act.

B. No action may be brought under this section until sixty days after the plaintiff has given written notice of the alleged violation to the constituent agency, the attorney general and any alleged violator. However, when the alleged violation constitutes an immediate threat to the health or safety of the plaintiff or would immediately and irreversibly impair a legal interest of the plaintiff, an action under this section may be brought immediately after notice is given to the proper parties.

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C. No action may be brought under this section if the constituent agency has commenced and is diligently prosecuting a civil action in a court of this state to require compliance with the Water Quality Act or rule, permit or order issued under that act. In an action commenced by a constituent agency, a person who has standing under Subsection A of this section and who has provided notice under Subsection B of this section prior to the initiation of the action may intervene as a matter of right.

D. Whenever an action is brought under this section, the plaintiff shall serve a copy of the complaint on the appropriate constituent agency and the attorney general. The constituent agency and the attorney general may intervene as a matter of right. No consent decree or stipulated judgment may be entered in an action brought under this section unless either:

(1) the appropriate constituent agency is a party; or

(2) the plaintiff has provided a copy of the proposed consent decree or stipulated judgment to the appropriate constituent agency, and the constituent agency has had at least forty-five days after receipt but prior to entry of the decree or judgment to submit comments on the proposed decree or judgment to the court.

E. In any action brought under this section, the

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court has jurisdiction to grant appropriate relief, including, without limitation, assessment of a civil penalty in the amounts set forth in Section 74-6-10.1 NMSA 1978, issuance of a restraining order or a temporary or permanent injunction, or a combination of the foregoing, and the court may award reasonable costs of litigation, including expert costs and attorney fees.

F. Penalties collected under this section shall be deposited in the state treasury to be credited to the water quality management fund."

**SECTION 6. EFFECTIVE DATE.**--The effective date of the provisions of this act is July 1, 2021.