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HOUSE BILL 50

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

INTRODUCED BY

Georgene Louis

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 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 alleging a past or present violation of the Oil and Gas Act or a rule, permit or

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1 order issued pursuant to that act.

2 B. No action may be brought under this section:

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

6 (a) discharge of pollutants into ground
7 water or surface water;

8 (b) emission of pollutants into the air;

9 (c) generation, treatment, storage,
10 disposal or management of waste, including produced water;

11 (d) remediation;

12 (e) design, construction or management
13 of pits;

14 (f) plugging or abandonment of oil or
15 gas wells, including financial assurance therefor;

16 (g) storage, injection or disposal of
17 fluids for hydraulic fracturing, including the identification
18 of the chemical composition of such fluids; or

19 (h) associated monitoring and reporting;

20 (2) unless the plaintiff has given sixty days'
21 written notice of the alleged violation to the commission, the
22 division, the attorney general and any alleged violator.

23 However, when the alleged violation constitutes an immediate
24 threat to the health or safety of the plaintiff or would
25 immediately and irreversibly impair a legal interest of the

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1 plaintiff, an action under this section may be brought
2 immediately after notice is given to the proper parties; or

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

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

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

21 (2) the plaintiff has provided a copy of the
22 proposed consent decree or stipulated judgment to the
23 commission and the division, and the commission and the
24 division have had at least forty-five days after receipt of the
25 proposed consent decree or judgment but prior to entry of the

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1 decree or judgment to submit comments on the proposed decree or
2 judgment to the court.

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

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

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

18 G. An action brought under this section is not in
19 any way affected or limited by Section 70-2-29 NMSA 1978."

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

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

23 A. Except as provided in Subsections B and C of
24 this section, a person who is injured in fact, economically or
25 otherwise, or who is imminently threatened with such injury,

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1 may bring a civil action on the person's own behalf against any
2 other person alleging a past or present violation of the Air
3 Quality Control Act or any rule, permit or order issued under
4 that act.

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

14 C. No action may be brought under this section if
15 the department has commenced and is diligently prosecuting a
16 civil action in a court of this state to require compliance
17 with the Air Quality Control Act or rule, permit or order
18 issued under that act. In an action commenced by the
19 department, a person who has standing under Subsection A of
20 this section and who has provided notice under Subsection B of
21 this section prior to the initiation of the action may
22 intervene as a matter of right.

23 D. Whenever an action is brought under this
24 section, the plaintiff shall serve a copy of the complaint on
25 the department and the attorney general. The department and

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1 the attorney general may intervene as a matter of right. No
2 consent decree or stipulated judgment shall be entered in an
3 action brought under this section unless either:

4 (1) the department is a party; or

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

11 E. In any action brought under this section, the
12 court has jurisdiction to grant appropriate relief, including,
13 without limitation, a civil penalty in the amount set forth in
14 Subsection A of Section 74-2-12.1 NMSA 1978 for each violation,
15 issuance of a restraining order or a temporary or permanent
16 injunction, or a combination of the foregoing, and the court
17 may award reasonable costs of litigation, including expert
18 costs and attorney fees.

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

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

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

25 G. In any action brought under this section, if

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1 jurisdiction to enforce the Air Quality Control Act has been
2 assumed by a local authority and if the complaint arose within
3 the jurisdiction of the local authority, notwithstanding the
4 definitions in Section 74-2-2 NMSA 1978, the following
5 definitions shall apply:

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

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

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

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

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

16 A. Except as provided in Subsections B and C of
17 this section, a person who is injured in fact, economically or
18 otherwise, or who is imminently threatened with such injury,
19 may bring a civil action on the person's own behalf against any
20 other person alleging a past or present violation of the
21 Hazardous Waste Act or any rule, permit or order issued under
22 that act.

23 B. No action may be brought under this section
24 until sixty days after the plaintiff has given written notice
25 of the alleged violation to the department, the attorney

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1 general and any alleged violator. However, when the alleged
2 violation constitutes an immediate threat to the health or
3 safety of the plaintiff or would immediately and irreversibly
4 impair a legal interest of the plaintiff, an action under this
5 section may be brought immediately after notice is given to the
6 proper parties.

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

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

- 22 (1) the department is a party; or
23 (2) the plaintiff has provided a copy of the
24 proposed consent decree or stipulated judgment to the
25 department, and the department has had at least forty-five days

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1 after receipt but prior to entry of the decree or judgment to
2 submit comments on the proposed decree or judgment to the
3 court.

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

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

15 SECTION 4. A new section of the Solid Waste Act is
16 enacted to read:

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

18 A. Except as provided in Subsections B and C of
19 this section, a person who is injured in fact, economically or
20 otherwise, or who is imminently threatened with such injury,
21 may bring a civil action on the person's own behalf against any
22 other person alleging a past or present violation of the Solid
23 Waste Act or any rule, permit or order issued under that act.

24 B. No action may be brought under this section
25 until sixty days after the plaintiff has given written notice

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1 of the alleged violation to the department of environment, the
2 attorney general and any alleged violator. However, when the
3 alleged violation constitutes an immediate threat to the health
4 or safety of the plaintiff or would immediately and
5 irreversibly impair a legal interest of the plaintiff, an
6 action under this section may be brought immediately after
7 notice is given to the proper parties.

8 C. No action may be brought under this section if
9 the department of environment has commenced and is diligently
10 prosecuting a civil action in a court of this state to require
11 compliance with the Solid Waste Act or rule, permit or order
12 adopted under that act. In an action commenced by the
13 department of environment, a person who has standing under
14 Subsection A of this section and who has provided notice under
15 Subsection B of this section prior to the initiation of the
16 action may intervene as a matter of right.

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

24 (1) the department of environment is a party;
25 or

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

7 E. In any action brought under this section, the
8 court has jurisdiction to grant appropriate relief, including,
9 without limitation, assessment of a civil penalty in the amount
10 set forth in Section 74-9-38 NMSA 1978 for each violation,
11 issuance of a restraining order or a temporary or permanent
12 injunction, or a combination of the foregoing, and the court
13 may award reasonable costs of litigation, including expert
14 costs and attorney fees.

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

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

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

21 A. Except as provided in Subsections B and C of
22 this section, a person who is injured in fact, economically or
23 otherwise, or who is imminently threatened with such injury,
24 may bring a civil action on the person's own behalf against any
25 other person alleging a past or present violation of the Water

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1 Quality Act or a rule, permit or order issued under that act.

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

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

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

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1 either:

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

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

10 E. In any action brought under this section, the
11 court has jurisdiction to grant appropriate relief, including,
12 without limitation, assessment of a civil penalty in the
13 amounts set forth in Section 74-6-10.1 NMSA 1978, issuance of a
14 restraining order or a temporary or permanent injunction, or a
15 combination of the foregoing, and the court may award
16 reasonable costs of litigation, including expert costs and
17 attorney fees.

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

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

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