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## FISCAL IMPACT REPORT

ORIGINAL DATE 03/10/21

SPONSOR HJC LAST UPDATED \_\_\_\_\_ HB 50/HJCS

SHORT TITLE Private Right of Action for Certain Statutes SB \_\_\_\_\_

ANALYST Hanika-Ortiz

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

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
NMED and EMNRD		\$581.0	\$581.0	\$1,162.0	Recurring	Various State
		\$248.4	\$248.4	\$496.8	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Environment Department (NMED)

Energy, Minerals and Natural Resources Department (EMNRD)

### SUMMARY

#### Synopsis of Bill

The House Judiciary Committee substitute for House Bill 50 proposes to create a private right of action for persons pursuing enforcement of the Oil and Gas Act, Air Quality Control Act, Hazardous Waste Act, Solid Waste Act, and the Water Quality Act (acts). Persons who are injured or imminently threatened with injury, economically or otherwise, would be able to commence a civil action on the person's own behalf against another person who is subject to or regulated by one of those acts, alleging a past or present violation pursuant to one of those acts.

The suits could not be filed until the plaintiff had given 90-days' written notice to the proper parties, unless the alleged violation is an immediate threat to the health, safety, or would irreversibly impair a legal interest of the plaintiff. The respective regulatory authorities and the NMAG would be able to intervene as a matter of right, stay the proceedings if an administrative enforcement action had already been filed, or take such other action as authorized by law.

HB50/HJCS further states that no decree or judgment may be entered unless the court has determined that the resolution is fair, reasonable, in the public interest, and furthers the goals of

the act/s, and unless the regulatory authority is a party, or the plaintiff has provided a copy of the proposed consent decree or judgment to the authority for response. The court may assess civil penalties, issue restraining orders, require remediation of contamination, and award legal fees.

Finally, HB50/HJCS repeals Section 70-2-29 NMSA 1978 (within the Oil and Gas Act) which currently allows for private civil actions for violations of the act.

The effective date of this bill is July 1, 2021.

## **FISCAL IMPLICATIONS**

The operating budget impact table above reflects feedback from NMED to respond to cases brought under the Air Quality Control Act, Hazardous Waste Act, Solid Waste Act, and Water Quality Act and EMNRD to respond to cases brought under the Oil and Gas Act. Both agencies commented they struggle to execute their statutory responsibilities under current funding levels.

HB50/HJCS states penalties collected will be deposited in the state treasury to be credited to the appropriate state fund; the general fund (Oil and Gas Act), hazardous waste emergency fund, solid waste facility grant fund, or water quality management fund. If the source is within the jurisdiction of a local authority, to be credited to the respective municipal or county general fund.

## **SIGNIFICANT ISSUES**

HB50/HJCS would allow a citizen affected by pollution the right to sue a person or company subject to and allegedly violating state environmental laws, regulations, or permits issued by a regulating authority. Persons bringing an action must give 90 days notice to the regulating authority along with a notice of their right to intervene in the proceeding, and allows the authority to file a notice of stay with the court if it is already pursuing an administrative action. It authorizes district courts to order the person or company to stop polluting and to assess civil penalties, which are paid to the state. It also authorizes the courts to award legal fees and expert witness costs to persons or groups that might not otherwise get reimbursed should they prevail.

EMNRD explained the Oil Conservation Division (OCD) currently exercises various tools, both formal and informal, to compel and maintain compliance from oil and gas operators, which includes new administrative enforcement procedures promulgated by the Legislature in 2019. The results so far have been quick settlements that have brought compliance and civil penalties.

HB50/HJCS would also repeal Section 70-2-29 NMSA 1978 and replace it with a new private right of action. EMNRD noted this section currently provides that rules, orders, or penalties imposed under the act cannot impair a private right of action brought for a violation of the act.

HB50/HJCS allows the respective regulatory authorities and NMAG to intervene as a matter of right in the civil actions. However, NMED noted it could find itself forced to participate in any action that arises under its jurisdictions to ensure relief complies with applicable environmental laws. EMNRD also noted that it is likely the litigants in the contemplated private civil actions would need to rely heavily on EMNRD data and personnel for legal and technical support.

**OTHER SUBSTANTIVE ISSUES**

Individuals may currently use citizen suit provisions in the federal Clean Air Act, Resource Conservation Act and Clean Water Act, although penalties collected go to the national treasury.

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

New Mexicans will continue to be reliant on state agencies to enforce environmental laws.

AHO/al/sb