

SUPPORT HB-50

PRIVATE RIGHT OF ACTION

Allows an individual to sue a polluter
Sponsored by Rep. Georgene Louis (D-26)
2021 New Mexico Legislative Session

What problem does HB-50 address?

Current law does not permit individuals to sue companies that have broken environmental laws, leaving all of the burden of enforcement on the state.

How does HB-50 fix this problem?

- HB-50 will allow a private individual, an organization, a company, or a government entity to bring a lawsuit in state court **to enforce the requirements of existing environmental laws, regulations, or permits.**
- The bill **amends** the Air Quality Control Act, the Water Quality Act, the Hazardous Waste Act, the Solid Waste Act, and the Oil and Gas Act to allow private rights of action. The Mining Act already includes a private right of action provision.
- The bill is **modeled** on similar private right of action (or “citizen suit”) provisions in federal environmental laws, including the Clean Air Act and the Clean Water Act.
- The bill would also allow private parties to bring an action against a State agency for **failure** to carry out a “nondiscretionary” duty, meaning one that is mandatory under the law.

The Private Right of Action Bill will:

- ✓ Enable local citizens who are affected by pollution to sue a company that is violating State environmental laws and ask the court to order the company to stop polluting.
- ✓ Make it possible for local groups that might not have the resources to get reimbursed for litigation costs, including legal fees and expert fees, should the local group prevail.
- ✓ Require that any civil penalties ordered by the court must be paid to State funds.

The Private Right of Action Bill will not:

- ✗ Encourage frivolous suits since lawyers are not guaranteed compensation.
- ✗ Require any State agency to pay a party’s litigation costs or attorney’s fees.
- ✗ Affect businesses that comply with environmental laws.
- ✗ Add any new regulatory requirements or burdens.
- ✗ Authorize any legal action against a State agency to force the agency to bring an enforcement action.
- ✗ The bill will **not** require any appropriations or expenditures. Actually, because any penalties the court assesses in a private action would be paid to the State, it is **likely to have a positive effect on the State budget.**

How does HB-50 advance the cause of environmental justice?

HB-50 would help hold polluters more accountable and therefore better protect New Mexico’s air, water, and land.

Supporters of the bill include: Health Action NM, Tewa Women United, National Parks Conservation Association, 350 NM, New Mexico Social Justice and Equity Institute, Mountain View Neighborhood Association, Moms Clean Air Force, WildEarth Guardians, Interfaith Power & Light, Earthcare/YUCCA, Center for Social Sustainable Systems, South Valley Regional Association of Acequias