



HB-50 PRIVATE RIGHT OF ACTION MYTHBUSTERS

HB-50 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 a private individual who has been harmed by a company’s violation of one of these laws to bring a lawsuit in state court to enforce the requirements of these already existing environmental laws, regulations, or permits.

MYTH	FACT
<p>This legislation puts New Mexico businesses and industries, like the extractive industries, manufacturing and agriculture in the crosshairs for lawsuits filed by anyone alleging harm at any time.</p>	<p>Persons who bring suit must be injured or imminently threatened with injury, economically or otherwise in order to bring a lawsuit against industry. It is not the case that anyone, anywhere can bring suit against New Mexico businesses and industries for any harm at any time. <i>See also - statute of limitations</i>, below. Should any business or industry be concerned, the simplest solution is to not violate the law in the first instance.</p> <p>The rules NM businesses must follow are clearly set forth in NM statutes and rules. Following those rules creates a certain structure. This legislation only allows for lawsuits brought by private individuals when New Mexico businesses and industries are violating the already existing law.</p>
<p>This bill will encourage frivolous lawsuits.</p>	<p>Any person who brings suit under this provision will not get any money by suing a company - the only motivation would be to stop a violation of an already existing environmental law. Personal damages are not provided for under the bill, so no lawsuit would be brought by an individual seeking monetary damages. Reasonable legal fees and costs can</p>

	<p>only be awarded if the case is won, so frivolous lawsuits are unlikely.</p> <p>Note that the provision of the New Mexico Mining Act creating a private right of action, 69-36-14 NMSA 1978, uses language very similar to that in HB50. Since the passage of this provision in 1993, only 2 suits have been brought against mining companies – one by an individual and one by the Picuris Pueblo.</p> <p>Additionally, in jurisdictions where similar laws have been enacted, suits have been filed not only by individuals and environmental groups, but also by local governments.</p>
<p>This legislation will create significant uncertainty for businesses and would be a detractor for new businesses coming to our state.</p>	<p>This bill does not change the regulatory framework under which businesses are operating--it simply provides a new enforcement tool whereby private individuals, organizations, and other government agencies can enforce already existing environmental laws. The substance of any suit would be virtually the same as any enforcement and compliance action brought against a company by a state regulatory agency.</p> <p>There is no reason why any law-abiding new businesses would not come to New Mexico due to this law. In fact, it may attract law-abiding new businesses because it protects the health and safety of the people over industry polluters.</p>
<p>There is no statute of limitations. Imagine the free-for-all issue that would be created, clogging our court systems.</p>	<p>The three-year statute of limitations period found in 37-1-8 NMSA 1978 for injuries to the person applies to this bill. The bill will be amended to make this explicit.</p>
<p>This will cost the state money, either because the State agency would have to pay a party's litigation costs or attorney's fees, or because it creates new regulatory requirements or burdens.</p>	<p>This bill will actually save the state money. No state appropriations or expenditures are required. Civil penalties (penalties assessed against a company found to be violating the law) will be paid to state funds.</p>

<p>Agencies are required to intervene in any lawsuit - something agencies do not have the resources to do.</p>	<p>The bill explicitly states that agencies may intervene – they are not required to do so. Prior to bringing a lawsuit against any company, a person must give notice to the appropriate regulatory agency.</p>
<p>There would be no need for the private right of action if state agencies were adequately funded.</p>	<p>The reality is that regulatory agencies in New Mexico are drastically underfunded and New Mexico state agencies have been some of the worst funded agencies for decades.</p> <p>While state agencies should be fully funded, fully funding the agencies is not a substitute for a private right of action. Even a fully funded state agency cannot address every violation of the law. For example, there are tens of thousands of individual oil and gas well operators in the state, far too many for even a fully funded EMNRD or NMED to monitor adequately. A private right of action simply lets individuals who live near these operators enforce the law – that the operator is already subject to-- when it is violated.</p>
<p>We don't need a private right of action under state law because one already exists under federal pollution laws.</p>	<p>While federal pollution laws do allow for private suits against persons in violation of the law, any penalties assessed in those suits go to the federal treasury. This bill would allow for penalty amounts to go into state funds, generating more money for New Mexico.</p> <p>Further, federal and state laws are not congruent. For example, the New Mexico Water Quality Act addresses discharges of pollutants to groundwater, through a permitting program. The federal Clean Water Act addresses only discharges of pollutants to surface water; it does not address groundwater pollution. A private action could not be brought under the federal Clean Water Act to address violations of a groundwater discharge permit in New Mexico.</p>