

HOUSE BILL 242

**56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

INTRODUCED BY

Matthew McQueen

AN ACT

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

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

SECTION 1. 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 who is regulated by the Air Quality Control Act, or by a rule, permit or order issued pursuant to that act,

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1 alleging a past or present violation of the Air Quality Control  
2 Act or of any rule, permit or order issued under that act.

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

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

22 D. Whenever an action is brought under this  
23 section, the plaintiff shall serve a copy of the complaint on  
24 the department and the attorney general. The department and  
25 the attorney general may intervene as a matter of right. No

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1 consent decree or stipulated judgment shall be entered in an  
2 action brought under this section unless:

3 (1) the department is a party to the consent  
4 decree; 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 assess a civil penalty in the amount  
13 set forth in Subsection A of Section 74-2-12.1 NMSA 1978 for  
14 each violation, issue a restraining order or a temporary or  
15 permanent injunction, or grant a combination of the foregoing  
16 relief, and the court may award reasonable costs of litigation,  
17 including expert costs and attorney fees.

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

20 (1) the municipal or county general fund if  
21 the source is subject to the jurisdiction of a local authority;  
22 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 department.

13 H. The limitations period in Section 37-1-8 NMSA  
14 1978 for injuries to the person shall apply to all actions  
15 brought under this section.

16 I. Nothing in this section shall restrict any right  
17 that any person or class of persons may have under any statute  
18 or common law to seek enforcement of any standard or  
19 requirement of the Air Quality Control Act or to seek any other  
20 relief."

21 SECTION 2. A new section of the Hazardous Waste Act is  
22 enacted to read:

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

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

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

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

25 D. Whenever an action is brought under this

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

6 (1) the department is a party to the consent  
7 decree; or

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

14 E. In any action brought under this section, the  
15 court has jurisdiction to assess a civil penalty in the amount  
16 set forth in Section 74-4-12 NMSA 1978 for each violation,  
17 issue a restraining order or a temporary or permanent  
18 injunction, or grant a combination of the foregoing relief, and  
19 the court may award reasonable costs of litigation, including  
20 expert costs and attorney fees.

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

24 G. The limitations period in Section 37-1-8 NMSA  
25 1978 for injuries to the person shall apply to all actions

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1 brought under this section.

2 H. Nothing in this section shall restrict any right  
3 that any person or class of persons may have under any statute  
4 or common law to seek enforcement of any standard or  
5 requirement of the Hazardous Waste Act or to seek any other  
6 relief."

7 SECTION 3. A new section of the Water Quality Act is  
8 enacted to read:

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

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

18 B. No action may be brought under this section  
19 until sixty days after the plaintiff has given written notice  
20 of the alleged violation to the constituent agency, the  
21 attorney general and the alleged violator. However, when the  
22 alleged violation constitutes an immediate threat to the health  
23 or safety of the plaintiff or would immediately and  
24 irreversibly impair a legal interest of the plaintiff, an  
25 action under this section may be brought immediately after

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1 notice is given to the constituent agency, the attorney general  
2 and the alleged violator.

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

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

18 (1) the appropriate constituent agency is a  
19 party to the consent decree; or

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

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1           E. In any action brought under this section, the  
2 court has jurisdiction to assess a civil penalty in the amounts  
3 set forth in Section 74-6-10.1 NMSA 1978, issue a restraining  
4 order or a temporary or permanent injunction, or grant a  
5 combination of the foregoing relief, and the court may award  
6 reasonable costs of litigation, including expert costs and  
7 attorney fees.

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

11           G. The limitations period in Section 37-1-8 NMSA  
12 1978 for injuries to the person shall apply to all actions  
13 brought under this section.

14           H. Nothing in this section shall restrict any right  
15 that any person or class of persons may have under any statute  
16 or common law to seek enforcement of any standard or  
17 requirement of the Water Quality Act or to seek any other  
18 relief."

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

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

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

1 other person who is regulated by the Solid Waste Act, or by a  
2 rule, permit or order issued pursuant to that act, alleging a  
3 past or present violation of the Solid Waste Act or of any  
4 rule, permit or order issued under 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 of environment, the  
8 attorney general and the alleged violator. However, when the  
9 alleged violation constitutes an immediate threat to the health  
10 or safety of the plaintiff or would immediately and  
11 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 department of environment, the attorney  
14 general and the alleged violator.

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

24 D. Whenever an action is brought under this  
25 section, the plaintiff shall serve a copy of the complaint on

1 the department of environment and the attorney general. The  
2 department of environment and the attorney general may  
3 intervene as a matter of right. No consent decree or  
4 stipulated judgment may be entered in an action brought under  
5 this section unless:

6 (1) the department of environment is a party  
7 to the consent decree; or

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

14 E. In any action brought under this section, the  
15 court has jurisdiction to assess a civil penalty in the amount  
16 set forth in Section 74-9-38 NMSA 1978 for each violation,  
17 issue a restraining order or a temporary or permanent  
18 injunction, or grant a combination of the foregoing relief, and  
19 the court may award reasonable costs of litigation, including  
20 expert costs and attorney fees.

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

24 G. The limitations period in Section 37-1-8 NMSA  
25 1978 for injuries to the person shall apply to all actions

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1 brought under this section.

2 H. Nothing in this section shall restrict any right  
3 that any person or class of persons may have under any statute  
4 or common law to seek enforcement of any standard or  
5 requirement of the Solid Waste Act or to seek any other  
6 relief."

7 SECTION 5. EFFECTIVE DATE.--The effective date of the  
8 provisions of this act is July 1, 2023.

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