

<b>LFC Requester:</b>	Jonas Armstrong
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**AGENCY BILL ANALYSIS  
2015 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:**

**[LFC@NMLEGIS.GOV](mailto:LFC@NMLEGIS.GOV)**

*and*

**[DFA@STATE.NM.US](mailto:DFA@STATE.NM.US)**

*{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}*

**SECTION I: GENERAL INFORMATION**

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

*Check all that apply:*

Original     Amendment      
Correction     Substitute   

Date February , 2015  
Bill No: SB 677

Sponsor: Sen. Cisco McSorley                      Agency Code: Attorney General's Office - 305  
Short        Private Right of Action                      Person Writing        Tannis L. Fox, AAG  
Title: \_\_\_\_\_    Phone: 827-6695                      Email tfox@nmag.gov

**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		

(Parenthesis ( ) Indicate Expenditure Decreases)

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

	<b>FY15</b>	<b>FY16</b>	<b>FY17</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:  
Duplicates/Relates to Appropriation in the General Appropriation Act:

**SECTION III: NARRATIVE**

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Letter. This is a staff analysis in response to an agency’s, committee’s, or legislator’s request.

**BILL SUMMARY**

Synopsis:

SB 677 amends the Oil and Gas Act’s provision establishing a private right of action under that act, and establishes a private right of action under the Environmental Improvement Act and Water Quality Act. An action under the Air Quality Act may be brought against a “local board.” Under the Oil and Gas Act, the violation must be “concerned with” (a) pits, closed-loop systems, below-grade tanks and sumps; (b) plugging and abandonment of wells; (c) remediation; (d) produced water; (e) waste disposal; or (f) surface waste management facilities.

A private action may not be brought if the applicable state agency is prosecuting a civil or administrative action, although a person with standing under SB 677 may intervene in any such action as a matter of right.

A person has a private right of action under these three acts, under SB 677, who is injured or threatened with injury (1) against any person, including the state of New Mexico, or any officer or agency of the state, but not including a political subdivision of the state, based violation of the applicable statute or rule or permit thereunder and (2) against the applicable state agency or board for failure “to perform any substantive and nondiscretionary act or duty” under the applicable act or rules thereunder.

The plaintiff must give 60 days’ notice of the suit to the Attorney General and alleged violator except if the violation constitutes an immediate health or safety threat or would immediately and irreversibly impair a legal interest of the plaintiff.

A plaintiff must serve the applicable agency with a complaint, and a stipulated judgment may not be entered if the applicable state agency is not a party, unless the judgment is entered at least forty-five days after the proposed stipulated judgment by the applicable state agency.

Reasonable costs, including attorney fees and expert costs, may be awarded to a prevailing plaintiff.

The Court has discretion to assess civil penalties up to \$25,000 be used in “beneficial mitigation projects” that are consistent with the applicable act, rule, permit or order violated.

**FISCAL IMPLICATIONS** The Office of the Attorney General would generally be required to defend any lawsuits brought under SB 677. This would require an underdetermined amount of staff resources, and could require the hiring of additional staff.

**SIGNIFICANT ISSUES** None identified.

**PERFORMANCE IMPLICATIONS** The Office of the Attorney General would generally be required to defend any lawsuits brought under SB 677. This would require an underdetermined amount of staff resources, and could interfere with other work of the office without additional resources.

**ADMINISTRATIVE IMPLICATIONS** The Office of the Attorney General would generally be required to defend any lawsuits brought under SB 677. This would require an underdetermined amount of staff resources, and could interfere with other work of the office without additional resources.

**CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP** None identified.

**TECHNICAL ISSUES** None identified.

**OTHER SUBSTANTIVE ISSUES**

1. SB 677 allows a private right of action if a person is “imminently threatened with injury.” What constitutes an “imminent” threat could be the subject of much litigation.

2. SB authorizes suit based on failure to perform “any substantive and nondiscretionary act or duty” of an agency or official. What constitutes a “substantive” act could be the subject of much litigation.

**ALTERNATIVES** None identified.

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL** The private right of action under the Oil and Gas Act will continue as currently constituted in the act, and there will continue to be no private right of action under the Environmental Improvement Act and Water Quality Act.

**AMENDMENTS** None offered.