

Comparing New Mexico Proposals on Civil Rights – Public Right of Action – Environmental Rights (AKA Green Amendment Rights)

How would the Green Amendment and Civil Rights Act interact?

The proposed Green Amendment and the Civil Rights Act are fundamentally different but not mutually exclusive; if both were passed, they would complement one another in their implementation; each would have value if passed; but in terms of enhancing environmental protections the Green Amendment is essential.

The Green Amendment creates constitutionally enforceable rights to a “clean and healthy environment, including pure water, clean air, healthy ecosystems and a stable climate, and to the preservation of the natural, cultural, scenic and healthful qualities of the environment” and requires New Mexico government officials (legislators, regulators, governor, town council, etc.) to act as trustee of the state’s natural resources by putting in place substantive and procedural obligations that can be constitutionally enforced. As with other fundamental rights, if infringed upon, environmental rights must be restored by appropriate government action.¹ Restoration of the rights can involve an array of solutions. The amendment does not support payment of money damages or costs of litigation when violations have been identified/confirmed.

The New Mexico Civil Rights Act will not create new civils rights, such as environmental rights, but will increase the opportunity for enforcing against violations of rights guaranteed by the New Mexico Constitution. Amongst the enforcement opportunities when a plaintiff prevails are equitable and injunctive relief, compensatory damages and reasonable attorney fees.

Does passage of private rights of action to enforce existing New Mexico environmental laws negate the need for a Green Amendment?

No. The right for people to bring private enforcement actions for violations of existing environmental laws is important and valuable for securing enforcement of existing laws but it does not provide the same environmental protection values of an Environmental Rights Amendment.

Private rights of action added to the Oil & Gas Act, Air Quality Control Act, Hazardous Waste Act, Solid Waste Act and the Water Quality Act will increase enforcement of the standards and requirements provided in those laws for environmental protection, by providing the people of New Mexico an opportunity to enforce in those situations when agency officials are failing to do so; and likely encouraging government enforcement activity in order to avoid the political, publicity, and other ramifications of failing to undertake this responsibility directly.

A Constitutional Environmental Rights Amendment will, by contrast, strengthen environmental protection over and above existing law. Having constitutional environmental rights complimented by state trustee duties for natural resources will, among other things:

¹ As explained by the Supreme Court of New Mexico with regards to the inherent and inalienable rights recognized in New Mexico’s constitutional bill of rights: “When government is alleged to have threatened any of these rights it is the responsibility of the courts to interpret and apply the protections of the constitution.” *Griego v. Oliver*, 316 P.3d 865 (N.M. 2013).

- ⇒ strengthen the interpretation and implementation of existing laws so they meet their full potential for protecting environmental rights;
- ⇒ will ensure that when government is advancing legislation, regulations, permits and new actions that they are considering environment and justice impacts as part of their governmental and constitutional duty to avoid infringement on the constitutional right;
- ⇒ will constitutionally require that equitable protection of all communities and environmental justice protections are a priority goal in decision-making;
- ⇒ will require that all government actions are informed by existing conditions, cumulative impacts, generational affects, applicable science, human health and cultural affects for indigenous communities;
- ⇒ will provide a basis for securing protection of water, air, atmosphere, flora, fauna, lands and landscapes in those situations where there are not applicable laws, regulations or standards to provide needed protections;
- ⇒ will ensure that environmental rights are part of the balance when government is weighing decisions that will affect other fundamental rights such as property rights (property rights claims are no longer a trump card in decision-making);
- ⇒ provide communities the ability to challenge government actions, decisions and omissions that have serious environmental consequences in those instances when exact compliance with existing law fails to provide needed environmental and justice consequences;
- ⇒ will provide a strong foundation for government officials to advance more protective environmental protections when legislating, regulating, permitting, interpreting and applying existing law, etc. as the enhanced protections will be constitutionally grounded.

	SJR 3 Environmental Rights	HB 04 Civil Rights Act	HB 50 Private Right of Action
Who can sue?	NM citizens, residents and people whose environmental rights have been infringed upon directly or indirectly by government acts or omissions; government officials, including local government, who have been directed to take action that violates their constitutional duty to protect environmental rights or fulfill their natural resource trustee obligations.	NM citizens and residents who have experienced a violation of any of the rights identified in the NM constitution.	NM citizen and residents who have been injured, economically or otherwise, by a violation of the Oil & Gas Act, Air Quality Control Act, Hazardous Waste Act, Solid Waste Act and the Water Quality Act; who has given 60 days notice of an intent to bring an enforcement action; in those situations where the NM government is not diligently prosecuting the violation.
Who can be sued?	Any NM government entity including each branch, agency, and political subdivision, whose authority emanates from the state	State or local government, advisory board, commission, agency or entity created by the NM constitution, or any	Any person, which would include business entity, who has in the past or present violated the Oil & Gas Act, Air Quality Control Act, Hazardous Waste Act,

	and constitution (e.g., legislature, governor, local government, agencies, commissions, advisory board).	branch of government that receives public funding; or a person who is acting on behalf of, under color of or within the scope of authority of any such state or local government entity.	Solid Waste Act and the Water Quality Act and not been subject to diligent prosecution by the state.
What are the primary legal remedies provided for?	Equitable remedies that will protect or restore the constitutional right, and/or prevent implementation of the unconstitutional act or omission such as a law, regulation, permit, policy, program, failure to act in a way that causes or sustains a constitutional violation.	Damages, equitable or injunctive relief.	Penalties paid to the state treasury, restraining order, temporary or permanent injunction, other relief deemed appropriate by the court, reasonable costs of litigation (including expert costs and attorney's fees); items agreed upon and judicially approved in a consent decree or stipulated judgement.
Are money damages allowed?	No	Yes	No
Are attorneys' fees allowed?	No	If awarded by the court	Yes