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# HOUSE COMMITTEE REPORT

(7)

Date Referred: March 29, 1990

FURTHER REFERRALS:

Date of Committee Action: 4-18-90

The JUDICIARY Committee considered:

HB 558

HOUSE BILL NO. 558

SUITS TO ENFORCE ENVIRONMENTAL LAWS

"An Act authorizing suits to enforce environmental laws; and having the effect of amending Rules 24 and 82 of the Alaska Rules of Civil Procedure."

### RECOMMENDATIONS:

- be replaced with CS HB 558 (Jud)  the same title  
 a new title  
 have attached amendment(s)  
 do pass  
 do not pass  
 no recommendation  
 individual recommendations  
 additional referral to the Rules Committee

ADOPTS: \_\_\_\_\_ letter of intent

ATTACHES NEW FISCAL NOTE(S):  
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

- fiscal impact \_\_\_\_\_  
 zero fiscal note \_\_\_\_\_  
 zero with analysis \_\_\_\_\_

- fiscal note(s) \_\_\_\_\_  
 zero fiscal note(s) see agenda 3/29/90  
 zero fn/analysis \_\_\_\_\_

SIGNING DO PASS:

SIGNING:

(Check approp. column)

Do Not  
Pass  
No Rec  
Amend

\_\_\_\_\_  
Montgomery  
Mike Davis  
Cliff Davis  
Ed Ellis  
John Farn  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SIGNING:	Do Not Pass	No Rec	Amend
<u>Mike Miller</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Montgomery  
Chairman's Signature

# HOUSE COMMITTEE REPORT

(9)

Date Referred: February 12, 1990

FURTHER REFERRALS:

JUDICIARY

Date of Committee Action: 3/26/90

The RESOURCES Committee considered:

HB 558

HOUSE BILL NO. 558

SUITS TO ENFORCE ENVIRONMENTAL LAWS

"An Act authorizing suits to enforce environmental laws; and having the effect of amending Rules 24 and 82 of the Alaska Rules of Civil Procedure."

**RECOMMENDATIONS:**

- [ ] be replaced with \_\_\_\_\_ [ ] the same title
- [ ] have attached amendment(s) [ ] a new title
- [ ] do pass
- [ ] do not pass
- [ ] no recommendation
- [X] individual recommendations
- [ ] additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of intent

ATTACHES NEW FISCAL NOTE(s):  
(Dept)

APPROVES PREVIOUS: (Date/Dept)

[ ] fiscal impact \_\_\_\_\_

[ ] fiscal note(s) \_\_\_\_\_

[X] zero fiscal note H. RES.

[ ] zero fiscal note(s) \_\_\_\_\_

[ ] zero with analysis \_\_\_\_\_

[ ] zero fn/analysis \_\_\_\_\_

**SIGNING DO PASS:**

\_\_\_\_\_  
*Mike D...*  
 \_\_\_\_\_  
*Grant ...*  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**SIGNING:**  
(Check approp. column)

	Do Not Pass	No Rec	Amend
<i>Cliff Davidson</i>	✓		
<i>Mike ...</i>		✓	
<i>Best ...</i>	✓		
<i>Bill ...</i>	✓		

*Cliff Davidson*  
 \_\_\_\_\_  
 Chairman's Signature

## FISCAL NOTE

**REQUEST:**

Revision Date: \_\_\_\_\_  
 Title: Suits To Enforce Environmental  
Laws  
 Sponsor: Rep. Koponen  
 Requestor: House Resources Committee

Agency Affected: All Agencies  
 BRU: \_\_\_\_\_  
 Components: \_\_\_\_\_

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
<b>TOTAL OPERATING</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>CAPITAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>REVENUE</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

**FUNDING: (Thousands of Dollars)**

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

**POSITIONS:**

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

**ANALYSIS : (Attach a separate page if necessary)**

Prepared by: House Resources Committee Phone: 465-4944  
 Division: Representative Curt Menard Date: 3/26/90

Approved by Commissioner: \_\_\_\_\_ Date: \_\_\_\_\_  
 Agency: \_\_\_\_\_

Distribution (by preparer):  
 Legislative Finance  
 Legislative Sponsor  
 Requestor  
 Office of Management and Budget  
 Impacted Agency(ies)

Alaska State Legislature  
Representative Niilo Koponen

Pouch V  
Juneau, Alaska 99811  
(907) 465-4992

House District 21

119 N. Cushman, Suite 207  
Fairbanks, Alaska 99701  
(907) 456-8172

\* Position Paper \*  
HB 558

House Bill 558 is intended to give citizens the right to bring polluters to justice when the state lacks either the resources or the will to do so. This measure is patterned after federal law, which has been in effect since the early 70's and has proven both judicially acceptable and practical.

The philosophy behind citizen suits is simple. Governments are not able to prosecute all violations of law, nor seek injunctive relief. People facing environmental pollution and its daily threat to human health and well-being nonetheless deserve the protection of the law. House Bill 558 would complement the Department's enforcement procedures and afford citizens the protection they currently do not have. In an era of limited or declining state revenues, the ability of citizens to have direct access to the courts is especially appropriate.

New Jersey  
2A:35A-1

CIVIL AND CRIMINAL JUSTICE

CHAPTER 35A. ENVIRONMENTAL RIGHTS

- Section  
2A:35A-1. Short title.  
2A:35A-2. Legislative findings and determinations.  
2A:35A-3. Definitions.  
2A:35A-4. Actions to enforce laws on pollution, impairment or destruction of environment, or to protect environment; dismissal of frivolous actions.  
2A:35A-5. Rebuttal to prima facie evidence or affirmative defense; rules of evidence.  
2A:35A-6. Temporary or permanent equitable relief.  
2A:35A-7. Determination and adjudication of impact of conduct on environment.  
2A:35A-8. Remittitur for administrative or other proceedings; retention of jurisdiction; temporary equitable relief.  
2A:35A-9. Security as condition for grant of injunction.  
2A:35A-10. Award of attorney's and expert witness fees; application of doctrines of collateral estoppel and res judicata; consent of originating court for dismissal.  
2A:35A-11. Notice of intention to commence action; persons to whom sent, waiver, exemptions.  
2A:35A-12. Act as additional remedy.  
2A:35A-13. Construction of act, rules, regulations and orders.  
2A:35A-14. Severability.

Law Review Commentaries

A thumbnail sketch of the Environmental Rights Act. Lewis Goldshore (Winter 1973) No. 70 N.J. State Bar J. 18.

Analysis of environmental legislation from 1970 to 1975 in New Jersey. Lewis Goldshore (Summer 1976) 1 Seton Hall Legis. J. 1.

Environmental protection: Perspective 1978. Lewis Goldshore (Fall 1978) No. 86 N.J. State Bar J. 44.

2A:35A-1. Short title

This act shall be known and may be cited as the "Environmental Rights Act."  
L. 1974, c. 169, § 1, eff. Dec. 9, 1974.

Title of Act:

An Act concerning the commencement of actions for the protection of the environment and the public interest therein. L. 1974, c. 169.

Administrative Code References

Environmental health standards of administrative procedure, see N.J.A.C. 7:11H-2.1 et seq.

Law Review Commentaries

1985 environmental protection case law (found in a series). Lewis Goldshore and Marsha Wolf, 117 N.J.L.J. 375 (1986).

1985 environmental protection legislation (first in a series). Lewis Goldshore and Marsha Wolf, 117 N.J.L.J. 335 (1986).

2A:35A-2. Legislative findings and determinations

The Legislature finds and determines that the integrity of the State's environment is continually threatened by pollution, impairment and destruction, that every person has a substantial interest in minimizing this condition, and that it is therefore in the public interest to enable ready access to the courts for the remedy of such abuses.

CIVIL AND CRIMINAL JUSTICE

2A:35A-4  
Note 1

Notes of Decisions

1. Construction and application

Policy of protecting state's environment from pollution, impairment and destruction is properly effectuated through the zoning power and may influence local zoning decisions. *Lusardi v Curtis Point Property Owners Ass'n*, 86 N.J. 217, 430 A.2d 881 (1981).

2A:35A-3. Definitions

For the purposes of this act, the following words and phrases shall have the following meanings:

a. "Person" includes corporations, companies, associations, societies, firms, partnerships and joint stock companies, individuals, the State, any political subdivision of the State and any agency or instrumentality of the State or of any political subdivision of the State.

b. "Pollution, impairment or destruction of the environment" means any actual pollution, impairment or destruction to any of the natural resources of the State or parts thereof. It shall include, but not be limited to, air pollution, water pollution, improper sewage disposal, pesticide pollution, excessive noise, improper disposal of refuse, impairment and eutrophication of rivers, streams, flood plains, lakes, ponds or other water resources, destruction of seashores, dunes, wetlands, open spaces, natural areas, parks or historic areas.

L. 1974, c. 169, § 3, eff. Dec. 9, 1974.

Law Review Commentaries

Environmental protection: Perspective 1978. Lewis Goldshore (Fall 1978) No. 86 N.J. State Bar J. 44.

Library References

Words and Phrases (Perm. Ed.)

2A:35A-4. Actions to enforce laws on pollution, impairment or destruction of environment, or to protect environment; dismissal of frivolous actions

a. Any person may maintain an action in a court of competent jurisdiction against any other person to enforce, or to restrain the violation of, any statute, regulation or ordinance which is designed to prevent or minimize pollution, impairment or destruction of the environment.

b. Except in those instances where the conduct complained of constitutes a violation of a statute, regulation or ordinance which establishes a more specific standard for the control of pollution, impairment or destruction of the environment, any person may maintain an action in any court of competent jurisdiction for declaratory and equitable relief against any other person for the protection of the environment, or the interest of the public therein, from pollution, impairment or destruction.

c. The court may, on the motion of any party, or on its own motion, dismiss any action brought pursuant to this act which on its face appears to be patently frivolous, harassing or wholly lacking in merit.

L. 1974, c. 169, § 4, eff. Dec. 9, 1974.

Library References

Health and Environment § 25.5  
Injunction § 114(1)  
C.J.S. Health and Environment §§ 61 to 66, 69, 71 to 73, 78 to 80, 82 to 86, 88 to 90, 94, 104, 110, 115 to 126, 128, 129, 132, 133, 135, 137 to 140, 142, 144 to 151  
C.J.S. Injunctions § 173 et seq.

Construction and application 1  
Damages 5  
Enforcement of laws and regulations 3.5  
Injunctions 2  
Review 4  
Standing 1.5

Notes of Decisions

1. Construction and application

A non-plan applied as "a more specific stan

# Trustees for ALASKA

A Non-Profit, Public Interest, Environmental Law Firm

Jan. 25, 1990

Kate Tesar  
Staff Assistant  
for Rep. Ulmer  
P.O. Box V  
Juneau, Ak. 99811  
(Mail Stop: 3100)

re: Citizen Suit Legislation

Dear Ms. Tesar:

Per your request, we have made a survey of other states to assess the prevalence of provisions for citizen enforcement of state environmental laws.<sup>1</sup> The states surveyed are: Arizona, California, Colorado, Idaho, Illinois, Florida, Massachusetts, Minnesota, Montana, New York, Oregon, Washington, and Wyoming.

Two of these thirteen states--Illinois and Wyoming--have broad based provisions allowing citizens to enforce state environmental laws. See Ill. Rev. Stat. 1/2 SS 1045(b); and Wy. Rev. Stat. 35-11-901. Idaho allows citizens to enforce that state's hazardous waste laws. I.C. 39-4416 Finally, California allows citizens to enforce that state's coastal protection statute. Cal. Health Code 30803 and 30804.

Prof. Smith is currently compiling a review of literature regarding the pros and cons of citizen enforcement suits. We will send you the results of Prof. Smith's work as soon as it is completed.

Please call me if you have any questions.

Sincerely,

*Mike Wenig*

Mike Wenig  
Staff Attorney

cc. Karen Wood, ACE

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<sup>1</sup> The survey was conducted for Trustees by Willamette College of Law Prof. Susan L. Smith.



**Koncor Forest Products Company**

3501 Denali Suite 200  
Anchorage, Alaska 99503  
(907) 562-3335 FAX (907) 562-0599

March 21, 1990

Representative Peter Goll  
P.O. Box V  
Juneau, AK 99811

RE: HB 558,

Dear Representative Goll:

I am writing regarding HB 558 as introduced by representatives Koponen and Ulmer on February 12, and referred to the resources and judiciary committees. The proposed legislation allows for citizen suits to enforce permit specifications, State management plans, and environmental laws.

Koncor Forest Products has established an excellent environmental record. Last year we received recognition of such from the United Fishermen of Alaska. In spite of our company's responsible environmental policy, we are deeply concerned regarding this proposed legislation.

For our company to start up a timber harvest operation in the State of Alaska, we must receive numerous permits from the State including permits for tidelands use, sewage disposal, solid waste disposal, and stream crossings. In addition we must continually notify the State of our operational plans at least 30 days in advanced. Professional foresters, environmental engineers, and fisheries biologists who are familiar with our ongoing operations administer and enforce the provisions of these permits and notifications.

This proposed legislation would allow any concerned citizen to delay our operations, with no real cost to them. The bill would encourage frivolous suits to be used as a delaying tactic by those who perceive our operations as objectionable, regardless of our environmental standards. The plaintiff in such suits would have nothing to lose by attempting to second guess the agencies whom are intrusted to administer and enforce environmental statutes and regulations. Plaintiffs with few assets could significantly reduce our cash flow, giving us no realistic means of recovering the costs of injunctions or suspensions of operations. In the past these actions have bankrupted legitimate companies that were eventually proven to be doing their operations in an environmentally sound manner.

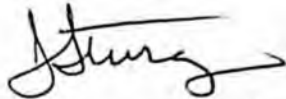
If there is a problem with the administration's ability to enforce environmental laws and regulations, then such problems should be remedied through adequate funding for these agencies, and proper administrative oversight. To enlist the public as a sort of vigilante resource protection advocate with the power incorporated by this bill, would be a set back for professional resource management and environmental protection.

If passage of this type of legislation is inevitable, then there must be protection for defendants of frivolous cases which are used simply to delay operations. One possible avenue would be a bonding requirement for plaintiffs, which provide defendants, public or private, a means by which they could recover both the costs of providing a defense, and the costs incurred by suspended operations.

The legislature must also consider the hidden costs in terms of State man hours committed to preparation and defense in such cases. The money would be far wiser committed to the existing regulatory programs.

Therefore I urge you not to support this proposed legislation.

Sincerely:



John L. Sturgeon, President  
Koncor Forest Products

# Trustees for ALASKA

A Non-Profit, Public Interest, Environmental Law Firm

Jan. 25, 1990

Kate Tesar  
Staff Assistant  
for Rep. Ulmer  
P.O. Box V  
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(Mail Stop: 3100)

re: Citizen Suit Legislation

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Please call me if you have any questions.

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Staff Attorney

cc. Karen Wood, ACE

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<sup>1</sup> The survey was conducted for Trustees by Willamette College of Law Prof. Susan L. Smith.

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2A:35A-2. Legislative findings and determinations

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CIVIL AND CRIMINAL JUSTICE

2A:35A-4  
Note 1

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Lewis Goldshore (Fall 1978) No. 85 N.J. State Bar J. 44.

Library References

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a. Any person may maintain an action in a court of competent jurisdiction against any other person to enforce, or to restrain the violation of, any statute, regulation or ordinance which is designed to prevent or minimize pollution, impairment or destruction of the environment.

b. Except in those instances where the conduct complained of constitutes a violation of a statute, regulation or ordinance which establishes a more specific standard for the control of pollution, impairment or destruction of the environment, any person may maintain an action in any court of competent jurisdiction for declaratory and equitable relief against any other person for the protection of the environment, or the interest of the public therein, from pollution, impairment or destruction.

c. The court may, on the motion of any party, or on its own motion, dismiss any action brought pursuant to this act which on its face appears to be patently frivolous, harassing or wholly lacking in merit.

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CJS Injunctions § 173 et seq.

Construction and application 1

Damages 5  
Enforcement of laws and regulations 3.5  
Injunctions 2  
Review 4  
Standing 1.5

Notes of Decisions

1. Construction and application

Action plan applied as "a more specific stan-

Original sponsor(s): REP. KOPONEN, Ulmer

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 558 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act authorizing suits to enforce environmental  
7 laws."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 \* Section 1. AS 46.03.870(b) is amended to read:

10 (b) Except as provided [SPECIFIED] in AS 46.03.822 - 46.03.828  
11 and except in an action under (d) of this section, a determination or  
12 order of the department does not create a presumption of law or find-  
13 ing of fact inuring to or for the benefit of persons other than the  
14 state.

15 \* Sec. 2. AS 46.03.870 is amended by adding new subsections to read:

16 (d) Except as provided in (e) of this section, a person may file  
17 a civil action against a person who is alleged to be in violation of a  
18 law, regulation, permit, plan, or order established under this chap-  
19 ter, AS 46.04, or AS 46.09. A person may not file a civil action  
20 under this subsection against the state, an agency of the state, a  
21 public corporation of the state, or the University of Alaska.

22 (e) A person may not file a civil action under (d) of this  
23 section

24 (1) until 60 days after the plaintiff has given notice of  
25 the violation to the commissioner and to the person alleged to be in  
26 violation of a law, regulation, permit, plan, or order; or

27 (2) if the commissioner has commenced and is diligently  
28 prosecuting a civil action or administrative penalty proceeding to  
29 require compliance with the law, regulation, permit, plan, or order.

1 (f) Notwithstanding (e)(1) of this section, a person may file a  
2 civil action under (d) of this section immediately after giving notice  
3 under (e)(1) of this section, in an action involving

4 (1) a hazardous waste as defined under AS 46.03.900;

5 (2) a hazardous substance as defined under AS 46.03.826 or  
6 AS 46.09.900; or

7 (3) a hazardous air pollutant as defined under 42 U.S.C.  
8 7412.

9 \* Sec. 3. AS 46.03.890 is repealed and reenacted to read:

10 Sec. 46.03.890. ENFORCEMENT AUTHORITY. A police officer of the  
11 state and a state employee authorized by the commissioner are author-  
12 ized to enforce this chapter. This section does not limit the right  
13 of a person under AS 46.03.870(d) - (f).

14 \* Sec. 4. AS 46.03.870(a) is repealed.  
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