

HB

558

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
- [] _____ [] a new title
- [] have attached amendment(s)
- [] 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 _____
- [] zero fiscal note _____
- [] zero with analysis _____

- [] fiscal note(s) _____
- [] zero fiscal note(s) _____
- [] zero fn/analysis _____

SIGNING DO PASS:

SIGNING:
(Check approp. column)

	Do Not Pass	No Rec	Amend
<i>Cliff Davidson</i>	✓		
<i>Mike Havens</i>		✓	
<i>Bert Johnson</i>	✓		
<i>Bill Hudson</i>	✓		

Cliff Davidson

 Chairman's Signature

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: Suits To Enforce Environmental
Laws
 Sponsor: Rep. Koperen
 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
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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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
TOTAL	0	0	0	0	0	0

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)

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* 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.

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 1975) 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. 7:1H-2.1 et seq.

Law Review Commentaries

1985 environmental protection case law (and 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.

L.1974, c. 169, § 2, eff. Dec. 9, 1974.

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. 85 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 153.
 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

Action plan applied as "a more specific standard" to interstate highway construction project

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.¹ 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

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