

courts without fear of major financial burdens. Absent these cost provisions the citizen enforcement suit rarely would be used and its purpose of achieving greater compliance would be unfulfilled.

The bill will not result in a duplication of effort by citizens and the State agencies because citizen suits are prohibited where the State agencies are already taking appropriate enforcement action on their own. The 60 day notice will give State agencies an opportunity to begin enforcement action against a violator prior to the commencement of the citizen suit. The 60 day notice also will encourage settlement and resolution of the noncompliance problem prior to court action. This is intended to conserve judicial resources and the resources of the State agencies by making litigation a last resort.

Under this bill a citizen would not be required to prove any special interest in or injury from the noncompliance problem. This is to reflect the fact that all citizens have an interest in seeing that the laws of the State are enforced and that protection of the State's environmental resources is best achieved by making the citizen enforcement suit available without regard to traditional "standing" requirements. The secondary purpose is to conserve judicial resources by simplifying litigation under this title through elimination of time consuming motions regarding standing of the plaintiff.

LEGISLATIVE HISTORY: New bill, 1982.

FISCAL IMPACT: None.

STATEMENTS IN SUPPORT: State agencies often do not have adequate personnel and funding to pursue all violations of the State's environmental laws. This problem is becoming more acute as a result of budget cuts necessitated by elimination of federal program funding. State agencies increasingly are compelled to set enforcement priorities and to assign enforcement personnel only to the most severe environmental problems or those affecting the greatest number of people. This understandable allocation of resources often leaves smaller environmental pollution problems unaddressed even though they may have significant impact on individual families and communities. Such individuals need the protection of a private right of action to enforce environmental laws where the State agency does not have the resources to take action on their behalf.

In 1980 the New York State Legislature enacted a similar private right of action law for consumers (see General Business Law, §§ 349 and 350-d); and contrary to fears expressed by opponents of that legislation, there has not been a flood of litigation or "frivolous suits" against businesses. On the contrary, both opponents and proponents now concede that consumers have made modest use of their new right to sue for violations of consumer fraud statutes.

All federal environmental statutes have similar citizen suit provisions including attorney and expert witness fee provisions. These provisions, however, only give access to federal courts and may not be available in circumstances where implementation and enforcement of the federal law is delegated to State agencies. Thirty other states have enacted citizen suit legislation to ensure access to state courts to enforce environmental laws.