

Senate #

1981-1982

Assembly #

(No. 113-82)

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TITLE: AN ACT to amend the environmental conservation law, in relation to providing a right of action to any person to enforce articles seventeen, nineteen and twenty-seven of the environmental conservation law and regulations and requirements pursuant thereto

DESCRIPTION: This bill amends the Environmental Conservation Law to add a new Title 6 to Article 71 to provide for citizen initiated enforcement of certain State environmental protection and conservation laws. Currently, a New York citizen cannot invoke the powers of the State courts to enforce environmental laws except indirectly through cumbersome and expensive common law actions. This new title would allow citizens to seek orders of the State Supreme Court to enjoin pollution or other activity which is not in compliance with certain articles of the Environmental Conservation Law (ECL), or with the regulations, permits or orders issued pursuant to those articles. The plaintiff may bring an action to enjoin acts of pollution and otherwise compel compliance with such requirements of the ECL. The bill ensures State agency coordination and oversight by requiring that plaintiff serve a "notice of intent to sue" 60 days before commencing the lawsuit, on the alleged violator, the Commissioner of Environmental Conservation, and the Attorney General. Each citizen or group would have to include supporting data and information in such notice in accordance with regulations prescribed by the Commissioner. These regulations would require information regarding the identity and location of the alleged violator, a brief description of the alleged violation, and the provision of law alleged to be violated. The 60 day notice requirement is not applicable when plaintiff can show that the matter in controversy involves substantial, imminent and irreversible damage or loss to the interests of the plaintiff.

The private cause of action would not be available where the Commissioner or Attorney General has commenced and is diligently prosecuting a court action or formal administrative proceeding which seeks an order or injunction to compel compliance. This provision would allow State agencies to seek to correct the pollution problem prior to court action and/or to lend its expertise to the court, through intervention, if an action is commenced. If the Commissioner or Attorney General had not initiated abatement proceedings following notice, or if the citizen believes efforts initiated by the agency to be inadequate, the citizen may elect to commence the action himself. In such case, the courts would be expected to consider the petition against the background of the agency or Law Department action and could determine that such action would be adequate to justify suspension, dismissal, or consolidation of the citizen petition. On the other hand, if the court viewed the agency or Law Department action as inadequate, it could consider the citizen action notwithstanding any pending agency action.

The court would be empowered where appropriate to award costs to the plaintiff, including reasonable attorneys' fees and expert witness fees.

The bill contains a "savings clause" to ensure that this new private right of action will not restrict or limit any existing court or administrative causes of action available to citizens or to the State to enforce the Environmental Conservation Law.

EFFECTIVE DATE: Sixtieth day after enactment.

PURPOSE: This bill will encourage and enable citizens to enforce the environmental laws and requirements of the State, and thereby ensure greater compliance throughout the State. The attorneys and expert witness fee provisions are intended to ensure adequate access to the

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.