

2A:35A-10

LEGISLATIVE HISTORY CHECKLIST

NJSA: 2A:35A-10 ("Environmental Rights Act"--expert witnesses--eliminate ceiling on fees)

LAWS OF: 1985

CHAPTER 531

BILL NO: S2876

Sponsor(s): Russo and Dalton

Date Introduced: May 2, 1985

Committee: Assembly: Judiciary

Senate: Energy and Environment

Amended during passage: Yes according to Governor's recommendations Amendments denoted by asterisks

Date of Passage: Assembly: January 6, 1986 Re-enacted 1-13-86

Senate: June 27, 1985 Re-enacted 1-13-86

Date of Approval: January 21, 1986

Following statements are attached if available:

Sponsor statement: Yes

Committee statement: Assembly Yes

Senate Yes

Fiscal Note: No

Veto Message: Yes

Message on Signing: No

Following were printed:

Reports: No

Hearings: No

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1-21-86

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**SENATE, No. 2876****STATE OF NEW JERSEY**

INTRODUCED MAY 2, 1985

By Senators RUSSO and DALTON

Referred to Committee on Energy and Environment

AN ACT to amend the "Environmental Rights Act," approved  
December 9, 1974 (P. L. 1974, c. 169).

1 BE IT ENACTED *by the Senate and General Assembly of the State*  
2 *of New Jersey:*

1 1. Section 10 of P. L. 1974, c. 169 (C. 2A:35A-10) is amended to  
2 read as follows:

3 10. a. In any action under this act the court may in appropriate  
4 cases award to the prevailing party reasonable counsel and expert  
5 witness fees **[, but not exceeding a total of \$5,000.00]** \*, *but not*  
5A *exceeding a total of \$10,000.00\**.

6 b. The doctrines of collateral estoppel and res judicata may be  
7 applied by the court to prevent multiplicity of suits.

8 c. An action commenced pursuant to the provisions of this act  
9 may not be dismissed without the express consent of the court in  
10 which the action was filed.

1 2. This act shall take effect immediately.

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill  
is not enacted and is intended to be omitted in the law.**

**Matter printed in italics thus is new matter.**

**Matter enclosed in asterisks or stars has been adopted as follows:**

\*—Senate amendment adopted in accordance with Governor's recommenda-  
tions January 13, 1986.

SENATE, No. 2876

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STATE OF NEW JERSEY

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STATEMENT

This bill would amend section 10 of the "Environmental Rights Act," P. L. 1974, c. 169 (C. 2A:35A-10) to delete the monetary limit to the amount the court may provide for expert witness and attorney fees. The elimination of the current \$5,000.00 ceiling, which is unrealistically low, would authorize the court to determine a reasonable figure on a case-by-case basis.

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.**

SENATE ENERGY AND ENVIRONMENT COMMITTEE

STATEMENT TO

**SENATE, No. 2876**

**STATE OF NEW JERSEY**

DATED: JUNE 20, 1985

Senate Bill No. 2876 would amend the "Environmental Rights Act," P. L. 1974, c. 169 (C. 2A:35A-10) to delete the monetary limit to the amount the court may provide for expert witness and attorney fees. The elimination of the current \$5,000.00 ceiling, which is unrealistically low, would authorize the court to determine a reasonable figure on a case-by-case basis.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

**SENATE, No. 2876**

**STATE OF NEW JERSEY**

DATED: AUGUST 12, 1985

This bill would amend section 10 of the "Environmental Rights Act," P. L. 1974, c. 169 (C. 2A:35A-10) to delete the monetary limit to the amount the court may provide for expert witness and attorney fees. The elimination of the current \$5,000.00 ceiling would authorize the court to determine a reasonable figure on a case-by-case basis.

STATE OF NEW JERSEY  
EXECUTIVE DEPARTMENT

January 13, 1986

SENATE BILL NO. 2876

To the Senate:

Pursuant to Article V, Section 1, Paragraph 14 of the Constitution, I herewith return Senate Bill No. 2876 with my recommendations for reconsideration.

This bill would amend the New Jersey "Environmental Rights Act" (Act) to delete that Act's \$5,000.00 monetary "ceiling" on the amount a court may award the prevailing party for counsel and expert witness fees. Briefly, the Act authorizes private citizens to file civil suits to end or prevent activities which are polluting, impairing or destroying the environment. The 1974 enactment of this Act, which is commonly known as the "citizen's right to sue" law, provided the public with a much-needed avenue of relief for sanctioning those environmentally threatening activities which do not actually constitute violations of State laws or regulations, or local ordinances.

I support the intent of this bill in that the present \$5,000.00 ceiling, which was established in 1981, is unrealistically low when compared to reasonable litigation fees that are currently being charged by counsel and expert witness. Further, the present ceiling arguably creates a disincentive to citizens exercising their important rights under the Act, regardless of the potential strong merits of their concerns.

My conceptual support notwithstanding, however, I am concerned that the total "elimination" of any ceiling on counsel and expert witness fees may potentially "open the floodgates" and result in the filing of unwarranted, but nonetheless extremely costly, lawsuits for alleged environmentally hazardous activities. Rather, I believe that the good faith intentions of this bill would be more prudently, yet as effectively, accomplished through the establishment of a new ceiling which is consistent with the average, reasonable litigation fees which are currently being charged by counsel and expert witnesses. Accordingly, after consultation with the Department of Environmental Protection and the Attorney General's Office, I recommend that a new ceiling should be established at \$10,000.00. The establishment of this more realistic ceiling will hopefully encourage the citizenry's good faith exercise of the rights provided for in the

STATE OF NEW JERSEY  
EXECUTIVE DEPARTMENT

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act, while not also establishing an unnecessary precedent which might abrogate the intent of the "citizen's right to sue" law.

Accordingly, I herewith return Senate Bill No. 2876 for reconsideration and recommend that it be amended as follows:

Page 1, Section 1, Line 5: after "fees" INSERT ", but not exceeding a total of \$10,000.00"

Respectfully,

/s/ Thomas H. Kean

GOVERNOR

Attest:

Amy R. Piro

Deputy Chief Counsel