

2A:35A-1 et seq.

LEGISLATIVE HISTORY CHECKLIST

NJSA 2A:35A-1 et seq. ("Environmental Rights Act")

LAWS 1974 CHAPTER 169

Bill No. A1245

Sponsor(s) Hynes

Date Introduced Feb. 15, 1974

Committee: Assembly Agriculture & Environment

Senate Energy, Agriculture & Environment

Amended during passage Yes ~~xxx~~ Amendments during passage denoted by asterisks

Date of Passage: Assembly April 29, 1974

Senate Nov. 21, 1974

Date of approval Dec. 9, 1974

Following statements are attached if available:

Sponsor statement Yes ~~xxx~~

Committee Statement: Assembly Yesx ~~xxx~~ No

Senate Yesx ~~xxx~~ No

Fiscal Note Yesx ~~xxx~~ No

Veto Message Yesx ~~xxx~~ No

Message on signing Yes ~~xxx~~

Following were printed:

Reports Yes ~~xxx~~ (see attached)

Hearings Yesx ~~xxx~~ No

NJ State Bar Association (attached)

Report on Assembly Bill

No. 1245 April 11, 1974

For Background see: 974.90 NJ. Legislature. Senate. Judiciary Committee.
P777 Meeting to consider A.569 (1972-73)
1973d held March 30, 1973.

6/22/81

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ASSEMBLY, No. 1245

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 15, 1974

By Assemblymen HYNES, KLEIN, LEFANTE, HAMILTON, BARBOUR, WOODSON, BAER, FLORIO, SCHUCK, Assemblywoman CROCE, Assemblymen BURSTEIN, CONTILLO, GLADSTONE, MARTIN, GALLAGHER, YATES, SWEENEY, PERSKIE, WORTHINGTON, KOZLOSKI, SALKIND, FITZPATRICK, VAN WAGNER, FLYNN, BORNHEIMER, FROUDE, RUANE and OTLOWSKI

Referred to Committee on Agriculture and Environment

AN Act concerning the commencement of actions for the protection of the environment and the public interest therein.

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

1 1. This act shall be known and may be cited as the "Environ-
2 mental Rights Act."

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

1 3. For the purposes of this act, the following words and phrases
2 shall have the following meanings:

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

8 b. "Pollution, impairment or destruction of the environment"
9 means any ****actual**** pollution, impairment or destruction ****[**
10 actual or probable, ****]** to any of the natural resources of the State
11 or parts thereof. It shall include, but not be limited to, air pollu-
12 tion, water pollution, improper sewage disposal, pesticide pollution,
13 excessive noise, improper disposal of refuse, impairment and eutro-

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

14 plication of rivers, streams, flood plains, lakes, ponds or other
 15 water resources, destruction of seashores, dunes, wetlands, open
 16 spaces, natural areas, parks or historic areas*[, but shall not
 17 include any insignificant destruction, damage or impairment to such
 18 natural resources]*.

1 4. a. Any person may maintain an action in a court of competent
 2 jurisdiction against any other person to enforce, or to restrain,
 3 the violation of, any statute, regulation or ordinance which is
 4 designed to prevent or minimize pollution, impairment or destruc-
 5 tion of the environment.

6 b. Except in those instances where the *[damage caused, or about
 7 to be caused,]* **conduct complained of** constitutes a violation of a
 8 statute, regulation or ordinance which establishes a more specific
 9 standard for the control of pollution, impairment or destruction of
 10 the environment, any person may maintain an action in any court
 11 of competent jurisdiction for declaratory and equitable relief
 12 against any other person for the protection of the environment, or
 13 the interest of the public therein, from pollution, impairment or
 13A destruction.

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

1 5. **[a.]** In any action brought pursuant to section 4 hereof,
 2 when the plaintiff in the action has made a prima facie showing that
 3 the conduct of the defendant has, or is ***[likely to pollute, impair
 4 or destroy]*** ***polluting, impairing or destroying*** the environ-
 5 ment or the interest of the public therein, the defendant may rebut
 6 such showing by the submission of competent evidence to the con-
 7 trary, ***[which may include evidence of compliance by the
 8 defendant in good faith with any pollution abatement schedule
 9 entered into by the defendant with the Department of Environ-
 9A mental Protection, the purpose of which is alleviation of the
 10 damage to the environment complained of. The defendant may
 11 also show, by way of an affirmative defense, that there is no
 12 feasible and prudent alternative to the defendant's conduct and
 13 that such conduct is consistent with the promotion of the public
 14 health, safety and welfare in light of the State's paramount con-
 15 cern for the protection of the environment from pollution, impair-
 16 ment or destruction]*** ***and defendant may show as an affirmative
 16A defense that his conduct does not violate any statute, regulation or
 16B ordinance designed to minimize pollution or impairment of the
 16C environment and is in compliance in good faith with any pollution*

16D abatement schedule if applicable the purpose of which is alleviation
16E of the damage to the environment complained of.** The rules con-
17 cerning burden of proof and weight of evidence generally applicable
18 in civil actions in the Superior Court shall apply to actions brought
19 under this act.

1 6. A court of competent jurisdiction may grant temporary and
2 permanent equitable relief, including the imposition of such con-
3 ditions as may be necessary to protect the environment, or the
4 interest of the public therein, from pollution, impairment or
5 destruction.

1 7. a. In an action brought pursuant to section 4 b. hereof any
2 alleged pollution, impairment or destruction of the environment,
3 or the interest of the public therein, shall be determined, and no
4 conduct shall be authorized or approved which does, or is likely to,
5 have such effect so long as there is a feasible and prudent alterna-
6 tive consistent with the reasonable requirements of the public
7 health, safety and welfare.

8 b. Upon completion of such proceedings in any action brought
9 pursuant to section 4 b. hereof, the court shall adjudicate the impact
10 of the defendant's conduct on the environment and on the interest
11 of the public therein in accordance with this act. In such adjudica-
12 tion the court may order that additional evidence be taken to the
13 extent necessary to protect the rights recognized in this act.

1 8. If administrative or other proceedings are required or avail-
2 able to determine the legality of the defendant's conduct, the court
3 ~~*[may]~~* **shall** remit the parties to such proceedings, except
4 where immediate and irreparable damage will probably result,
5 which proceedings shall be conducted in accordance with and subject
6 to the applicable provision of law providing for such proceedings
7 and the provisions of the "Administrative Procedure Act," P. L.
8 1968, c. 410 (C. 52:14B-1 et seq.). In so remitting the court may
9 grant temporary equitable relief where necessary for the protec-
10 tion of the environment or the interest of the public therein from
11 pollution, impairment or destruction. In so remitting the court
12 shall retain jurisdiction of the action pending completion thereof
13 for the purpose of determining whether ~~**[adequate protection~~
14 from such pollution, impairment or destruction has been
15 afforded]** ***the administrative findings made in such proceed-*
16 *ings are supported by substantial evidence and the agency action is*
17 *in conformance with the law**.*

1 9. In any action in which a temporary restraining order or an
2 interlocutory injunction is sought the court may, as a condition of

3 granting such relief, require reasonable security, not exceeding
4 \$10,000.00 or cash not exceeding \$500.00.

1 10. a. In any action under this act the court may in appropriate
2 cases award to the prevailing party reasonable counsel and expert
3 witness fees, but not exceeding a total of *~~[\$500.00]~~ *\$2,500.00*.

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

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

1 11. No action may be commenced pursuant to this act unless the
2 person seeking to commence such suit shall, at least 30 days prior
3 to the commencement thereof, direct a written notice of such in-
4 tention by certified mail, to the Attorney General, the Department
5 of Environmental Protection, the governing body of the municipi-
6 pality in which the alleged conduct has, or is likely to occur, and
7 to the intended defendant; provided, however, that if the plaintiff
8 in an action brought in accordance with the "N. J. Court Rules,
9 1969," can show that immediate and irreparable damage will
10 probably result, the court may waive the foregoing requirement
11 of notice. The provisions of this section shall not apply to actions
12 brought by the State, any political subdivision of the State and
13 any agency or instrumentality of the State or of any political sub-
14 division of the State.

1 12. This act shall be *~~[supplementary]~~* *in addition** to existing
2 administrative and regulatory procedures provided by law. No
3 existing civil or criminal remedy now or hereafter available to any
4 person or governmental entity shall be superseded by this act.

1 13. This act and any rules, regulations and orders adopted here-
2 under shall be liberally construed to effectuate the purpose and
3 intent thereof.

1 14. If the provisions of any section or clause of this act or any
2 rule, regulation or order adopted hereunder or the application
3 thereof to any person shall be judged invalid by a court of competent
4 jurisdiction, such order or judgment shall be confined in its opera-
5 tion to the controversy in which it was rendered, and shall not affect
6 or invalidate the remainder of any provision of any section or
7 clause of this act or any rule, regulation or order adopted hereunder
8 or the application of any part thereof to any other person or cir-
9 cumstance and to this end, the provisions of each section and clause
10 of this act and rule, regulation or order are hereby declared to be
11 severable.

1 15. This act shall take effect immediately.

1 11. No action may be commenced pursuant to this act unless the
 2 person seeking to commence such suit shall, at least 30 days prior
 3 to the commencement thereof, direct a written notice of such in-
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 10 of this act and rule, regulation or order are hereby declared to be
 11 severable.

1 15. This act shall take effect immediately.

Sponsor's

STATEMENT

This bill will enable citizens to have ready access to the courts to resolve environmental disputes. It will not prevent or remedy all environmental wrongs. However, when it is used in appropriate cases it should prove to be an effective environmental protection technique.

A1245 (1974)

The bill recognizes that the primary responsibility to prosecute polluters rests with government. In those instances where government is unable or unwilling to take the necessary action, any person should be assured of an alternative course of action. An important provision would allow a successful party to be awarded up to \$500.00 of his attorneys' or experts' fees.

The bill also contains several provisions or safeguards which will deter commencement of spurious lawsuits. These include a requirement to give 30 days prior notice to the responsible agency and alleged polluter, the posting of a security where appropriate and the express authorization to the court to dismiss, on its own motion, frivolous suits.

Several other states have adopted legislation authorizing citizens to bring environmental actions. To date, the experience in other jurisdictions has been favorable. It is appropriate, at this time, for New Jersey to adopt such a provision.

NEW JERSEY STATE BAR ASSOCIATION

172 West State Street

Trenton, New Jersey 08608

Dated: April 11, 1974

REPORT ON ASSEMBLY BILL NO. 1245

An Act concerning the commencement of actions for the protection of the environment and the public interest therein.

COMMITTEE ON STATE LEGISLATION

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Murray Weingartner
Leonard Zucker
John L. White, Ex-Officio

The Committee confines its analysis to the form and legal adequacy of legislation. It refrains from expressing opinions on matters of policy. This report has not been reviewed by the Association's Board of Trustees and it does not necessarily represent the position of the New Jersey State Bar Association.

THE NEW JERSEY STATE BAR ASSOCIATION
COMMITTEE ON STATE LEGISLATION

This report is based on the committee
analysis prepared by Thomas P. Cook

April 11, 1974

REPORT ON ASSEMBLY BILL 1245

Introduced by: Assemblymen Hynes and 27 others

Title: As Act concerning the commencement of actions for the protection
of the environment and the public interest therein.

THE COMMITTEE RECOMMENDS THAT THE BILL BE APPROVED AS TO FORM.

This bill, to take effect immediately upon passage, is a modified
version of Assembly Bill 569 of 1972, which would have authorized
citizens to maintain court actions for the protection of the environment.

The legislation now proposed would be known as the "Environmental
Rights Act," and would provide among other things that:

(a) Any citizen, organization or governmental
agency may maintain a court action against any other citizen,
organization or governmental agency to protect the environ-
ment from pollution, impairment or destruction.

(b) The action may be of two kinds: (1) to
enforce or restrain the violation of any statute,
regulation or ordinance on the subject; and (2) for
declaratory and equitable relief where no statute,
regulation or ordinance establishes a specific standard
for environmental controls.

(c) The trial of such an action is to be
governed by the general rules concerning burden of
proof and weight of the evidence, and also by the
following specific provisions:

This Committee confines its analysis to the form and legal adequacy of
legislation. It refrains from expressing opinions on matters of policy.
This report has not been reviewed by the Association's Board of Trustees
and it does not necessarily represent the position of the New Jersey
State Bar Association.

. . . "when the plaintiff in the action has made a prima facie showing that the conduct of the defendant has, or is likely to pollute, impair or destroy the environment or the interest of the public therein, the defendant may rebut such showing by the submission of competent evidence to the contrary, which may include evidence of compliance by the defendant in good faith with any pollution abatement schedule entered into by the defendant with the Department of Environmental Protection, the purpose of which is alleviation of the damage to the environment complained of. The defendant may also show, by way of an affirmative defense, that there is no feasible and prudent alternative to the defendant's conduct and that such conduct is consistent with the promotion of the public health, safety and welfare in light of the State's paramount concern for the protection of the environment from pollution, impairment or destruction."

(d) Section 7 provides generally that in actions not involving violation of a statute, regulation or ordinance, the court shall determine the existence of any alleged pollution or impairment of the environment, and that "no conduct shall be authorized or approved which does, or is likely to, have such effect so long as there is a feasible and prudent alternative consistent with the reasonable requirements of the public health, safety and welfare."

(e) If administrative or other proceedings are required or available to determine the legality of the defendant's conduct, the court may remit the parties to such proceedings, while retaining general jurisdiction and also granting such temporary equitable relief as may be necessary in the interim.

(f) The term "pollution, impairment or destruction of the environment" is broadly defined to 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".

The bill further provides that no action may be commenced pursuant to this Act unless at least 30 days prior written notice is given to the Attorney General, the Department of Environmental Protection, the governing body of the municipality and the intended defendant, except that the court may waive this notice requirement where immediate and irreparable damage will probably result, and further that the notice requirement shall not apply to actions brought by a governmental agency.

The purpose of the bill is to overturn the doctrine long established in our law that in order to have sufficient standing to sue for abatement or prevention of a public nuisance, a private person must show special damage peculiar to himself and distinct from that done to the public at large. Allen v. Board of Chosen Freeholders, 13 N.J. Eq. 68 (Ch. 1860); Morris and Essex R.R. v. Prudden, 20 N.J. Eq. 530 (E. & A. 1869); Humphreys v. Eastlack, 63 N.J. Eq. 136 (Ch. 1902). This bill would effectively grant to interested citizens the right to sue polluters without having to prove special injury to the plaintiffs. It would thus remedy what its supporters believe to be an unnecessary and obsolete impediment to enforcement of anti-pollution laws.

The proposed legislation does not provide, as did the 1973 bill, for intervention by citizens in administrative proceedings concerning abatement of pollution. Similarly, standing of private individuals or groups to initiate administrative proceedings is still to be

governed by existing statutes. The bill would not change the existing law which requires a litigant to exhaust his administrative remedies except where the interest of justice requires otherwise. See Rule 4:69-5 of the Court Rules.

Litigation will doubtless be necessary to determine precisely the meaning and application of certain language. For instance, several sections refer to pollution, impairment or destruction of the environment "or the interest of the public therein". The words "or the interest of the public therein" may be redundant, or their meaning may have to be clarified by the court. Adversary proceedings will also have to spell out what is meant in practice by the absence of a "feasible and prudent alternative to the defendant's conduct", which may constitute an affirmative defense to these suits. Judicial construction, however, is usually required for almost any new legislation of this type. Standards are inherently general, and it is the function of judicial or administrative bodies to apply them to particular cases.

There may also be a question as to whether the court may order abatement of pollution to a further degree or on a more accelerated timetable than what may have already been ordered by the Department of Environmental Protection in fixing a pollution abatement schedule. Section 5 of the bill allows the defendant to "rebut" a prima facie case by submitting evidence of compliance in good faith with such a pollution abatement schedule; however, such compliance is not

specifically designated as an affirmative defense, and section 7a broadly mandates that "no conduct shall be authorized or approved" which is likely to pollute the environment, so long as there is a feasible and prudent alternative available. Perhaps the extent of the court's power under these circumstances had best be left to the judicial process, which under the proposed legislation can well find whatever authority it needs to accomplish a just result in each particular case.

The bill affords protection against frivolous or meritless actions, providing among other things that the term "pollution" shall not include any insignificant destruction or impairment of natural resources; that as a condition of granting an injunction the court may require reasonable security not exceeding \$10,000 or cash not exceeding \$500; and that the Court may dismiss on its own motion any action which "on its face appears to be patently frivolous, harassing, or wholly lacking in merit." It should be noted that, read literally, this latter provision would authorize the Court to dismiss a meritorious action which it found to be "harassing," and it is doubtful that such a result is intended by the Legislature. Also, the necessity for affording this unusual privilege of dismissal on the Court's initiative is questionable in view of the comprehensive provisions contained in the Rules of Court for dismissal of meritless actions by motion.

The bill also provides that the Court may in appropriate cases award to the prevailing party reasonable counsel and expert witness fees not exceeding a total of \$500. Aside from the substantive question of the reasonableness of the \$500 limit on counsel and witness fees, there is a

question whether or not such a provision conflicts with the Constitutional authority of the Supreme Court to control the practice of law, which authority the Court has already expressly exercised by promulgating rules as to when counsel fees may be awarded. See, for example, Rule 4:42-9.

The Committee makes no recommendation on the basic question of policy posed by this bill, i.e. whether interested citizens and groups should have the right to supplement governmental enforcement programs by bringing Court actions in aid of such enforcement. However, if the Legislature desires to implement this basic policy, the Committee sees no reason why this bill should not be enacted into law in its present form.

FROM THE OFFICE OF THE GOVERNOR

DECEMBER 9, 1974

FOR FURTHER INFORMATION

FOR IMMEDIATE RELEASE

DICK CAMPBELL

Governor Brendan Byrne signed into law Monday a bill which gives private citizens the right to file suit against environmental polluters.

The bill, A-1245, sponsored by Assemblyman Edward H. Hynes, D-Bergen, permits citizens to file suit to enforce or restrain the violation of any law, regulation or ordinance designed to prevent pollution of the environment.

Byrne said the new law will help maintain New Jersey's position as a national leader in protection of the environment.

"This new law is one of the most significant environmental protection measures to be enacted during my term as Governor," he said. "Private citizens now will have an active role in the fight against pollution."

The Governor said every citizen has a substantial interest in the preservation of the environment, and the new law will provide a tool to protect that interest.

The measure provides that a court, in appropriate cases, may award reasonable counsel and expert witness fees to the prevailing party of up to \$2,500.

The new law also provides that a suspected polluter may show as a defense that he is operating under a state-approved abatement schedule.

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