



Riverkeeper's 2021 Legislative Memorandum

Support - S5394/A2261 (Parker/Simon) - Support

AN ACT to amend the environmental conservation law, in relation to granting private citizens the right to initiate civil enforcement actions for violations of such law

Riverkeeper strongly supports the passage of S5394/A2261 creating a private right of action for citizens to commence judicial actions under certain titles of the Environmental Conservation Law.

Since 2008, the New York Department of Conservation (DEC) has lost nearly 800 staff positions or 22% of its workforce. The DEC Division of Water has experienced the steepest decline over a 10-year period, with a loss of 59 positions, or 21% of total staff. The Division of Fish, Wildlife and Marine Resources has seen a decline of 58 staff positions since 2008, a 13% drop in staff resources. Environmental Conservation Police Officers have experienced a loss of 44 positions as of October 2018 from a 2008 high of 333, also a 13% drop in staff resources. These funding and staff cuts have lessened the ability of the agency to carry out its responsibilities, including the responsibility to conduct inspections and commence enforcement actions against polluters.

On the federal level, citizen suit provisions are included in almost all of the major environmental laws including the Clean Water Act, Endangered Species Act, Toxic Substances Control Act, Clean Air Act, and Safe Water Drinking Act. On the state level, many states, including Massachusetts and Florida have enacted broad citizen suit statutes that create a private right of action to restrain imminent environmental damage.¹

In addition, multiple states have specific citizen suit provisions more like the federal citizen suit provision creating private rights of action for specific environmental statutes. Louisiana has a citizen suit provision in its Environmental Quality Act.² Pennsylvania has a citizen suit provision in its Hazardous Sites Cleanup Act.³ Massachusetts has a citizen suit provision in its Oil and Hazardous Release Prevention and Response Act.⁴

This bill would grant citizens and organizations of New York standing to bring actions to remedy environmental harms pursuant to certain sections of the ECL including the protection of waters and water supply, water pollution control, air pollution control, mineral resources, freshwater wetlands, tidal wetlands, pesticides, hazardous substances listing and hazardous substances bulk storage, and solid, infectious and hazardous waste. This would enable the citizens of New York to supplement DEC's

¹ Fla. Stat. Ann. § 403.412(2)(a); Mass. Gen. Law. Ann. § 214 7A

² LA. Rev. Stat. § 30:2026;

³ PA. ST. 35 P.S. § 6020.1115

⁴ M.G.L.A. 21E § 11A

Contact Jeremy Cherson, Legislative Advocacy Manager, jcherson@riverkeeper.org, 770-630-6790



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limited enforcement capacity at no cost to the State while assisting in protecting the environment and public health.

Recommendations

To strengthen the bill, Riverkeeper recommends removing the prohibition on settlements in excess of "costs, disbursements and reasonable expert witness and attorney fees." This clause unduly limits the settlement terms of potential citizen suits. Riverkeeper recommends expanding these settlement terms by allowing settlements to include funding of projects to remedy prior environmental harm, called "environmental benefit projects" (EBPs) or "supplemental environmental projects."⁵

EBPs are projects voluntarily undertaken by defendants as part of a settlement of an enforcement matter that restore, improve, protect, or reduce risks to public health or the environment.

Examples of EBPs that are acceptable to the Department are projects that:

- “conserve, improve, and/or protect the State's natural resources and environment;
- prevent, control or reduce water, land and air pollution;
- enhance the health, safety and welfare of the people of the State of New York;
- enhance the overall economic and social wellbeing of the people of the State of New York;
- achieve significantly early compliance with environmental laws and regulations or go significantly beyond minimum compliance in performance commitments; or
- promote compliance with environmental requirements by providing practical and effective education to the public, regulated persons, stakeholders, and others as to the improvement, restoration, protection, or reduction of risks to public health, the environment, or natural resources.”⁶

⁵ <https://www.dec.ny.gov/regulations/64596.html>

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