

# ASSEMBLY, No. 542

## STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblywoman CRECCO and Assemblyman KAVANAUGH

1 AN ACT concerning environmental enforcement actions,  
2 supplementing Title 13 of the Revised Statutes, and amending  
3 N.J.S.2A:15-60.

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5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:

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8 1. (New section) a. The Department of Environmental Protection  
9 or a certified local health agency shall not bring an enforcement action  
10 for a violation of an environmental statute unless the department or the  
11 certified local health agency has good cause for bringing the action  
12 that is supportable by the facts and circumstances underlying the  
13 action.

14 b. Notwithstanding any provision of N.J.S.2A:15-60 or of any  
15 other statute or rule or regulation to the contrary, a person who  
16 successfully obtains dismissal of an enforcement action for a violation  
17 of an environmental statute brought against that person after the  
18 effective date of P.L. , c. (C. ) (pending in the Legislature  
19 as this bill), by the Department of Environmental Protection or by a  
20 certified local health agency may move before the trial judge for  
21 reasonable attorney fees and litigation costs, which shall include but  
22 not be limited to witness and filing fees, expert fees, transcript  
23 expenses, and costs of document production, depositions and other  
24 discovery. Reasonable attorney fees and litigation costs shall be  
25 awarded if the person shows by a preponderance of the evidence that  
26 the issuing officer in the enforcement action knew or should have  
27 known, by virtue of the officer's position as a law enforcement officer,  
28 that the action was frivolous. An action shall be found to be frivolous  
29 if it was brought without good cause that is supportable by the facts  
30 and circumstances underlying the action and it does not further the  
31 purpose of protecting the environment and the public health and  
32 safety.

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

Matter underlined thus is new matter.

1       c. As used in this section:

2       "Certified local health agency" means a certified local health agency  
3 as that term is defined in section 3 of P.L.1977, c.443 (C.26:3A2-23);  
4       "Environmental statute" means any of the following State laws:  
5 R.S.12:5-1 et seq.; P.L.1975, c.232 (C.13:1D-29 et al.); the "Solid  
6 Waste Management Act," P.L.1970, c.39 (C.13:1E-1 et seq.); section  
7 17 of P.L.1975, c.326 (C.13:1E-26); the "Comprehensive Regulated  
8 Medical Waste Management Act," P.L.1989, c.34 (C.13:1E-48.1 et  
9 al.); P.L.1989, c.151 (C.13:1E-99.21a et al.); the "New Jersey  
10 Statewide Mandatory Source Separation and Recycling Act,"  
11 P.L.1987, c.102 (C.13:1E-99.11 et al.); the "Pesticide Control Act of  
12 1971," P.L.1971, c.176 (C.13:1F-1 et seq.); the "Industrial Site  
13 Recovery Act," P.L.1983, c.330 (C.13:1K-6 et al.); the "Toxic  
14 Catastrophe Prevention Act," P.L.1985, c.403 (C.13:1K-19 et seq.);  
15 "The Wetlands Act of 1970," P.L.1970, c.272 (C.13:9A-1 et seq.); the  
16 "Freshwater Wetlands Protection Act," P.L.1987, c.156 (C.13:9B-1  
17 et al.); the "Coastal Area Facility Review Act," P.L.1973, c.185  
18 (C.13:19-1 et seq.); the "Air Pollution Control Act (1954)," P.L.1954,  
19 c.212 (C.26:2C-1 et seq.); the "Water Supply Management Act,"  
20 P.L.1981, c.262 (C.58:1A-1 et al.); P.L.1947, c.377 (C.58:4A-5 et  
21 seq.); the "Spill Compensation and Control Act," P.L.1976, c.141  
22 (C.58:10-23.11 et seq.); the "Water Pollution Control Act," P.L.1977,  
23 c.74 (C.58:10A-1 et seq.); P.L.1986, c.102 (C.58:10A-21 et seq.); the  
24 "Safe Drinking Water Act," P.L.1977, c.224 (C.58:12A-1 et al.); and  
25 the "Flood Hazard Area Control Act," P.L.1962, c.19 (C.58:16A-50  
26 et seq.); and

27       "Person" means an individual, corporation, company, association,  
28 society, firm, partnership, or joint stock company.

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30       2. N.J.S.2A:15-60 is amended to read as follows:

31       2A:15-60. In an action brought by the [state] State, or the  
32 governor, or any person for the use of the [state] State, the plaintiff  
33 shall recover costs as any other plaintiff; but the defendant in such an  
34 action, except as provided pursuant to section 1 of P.L. \_\_\_\_\_, c.  
35 (C. \_\_\_\_\_) (pending in the Legislature as this bill), shall not recover  
36 any costs against [such] that plaintiff, whether the action is dismissed,  
37 judgment [shall pass] is in favor of the defendant or any other  
38 proceeding is taken.

39       This section shall not apply to any popular action, nor to any action  
40 on a penal statute, prosecuted by any person on behalf of [himself]  
41 that person and the [state] State.

42 (cf: N.J.S.2A:15-60)

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44       3. This act shall take effect immediately.

## STATEMENT

This bill would prohibit the Department of Environmental Protection and county health agencies from bringing enforcement actions for violations of environmental statutes unless the department or the county agency has good cause for bringing the action that is supportable by the facts and circumstances underlying the action.

The bill would also permit a defendant who successfully obtains dismissal of an environmental enforcement action to move before the trial judge for reasonable attorney fees and litigation costs, which shall be awarded if the person shows by a preponderance of the evidence that the issuing officer in the enforcement action knew or should have known that the action was frivolous. A frivolous action is defined as one that was brought without good cause supportable by the facts and circumstances underlying the action and that does not further the purpose of protecting the environment and public health and safety.

17 The purpose of this bill is to deter the issuance of needless penalty  
18 actions that serve no legitimate environmental or public health  
19 purpose, and that are issued without good cause. This bill seeks to  
20 protect the regulated community against frivolous lawsuits that are  
21 instituted by the DEP and county health agencies, and to encourage  
22 these agencies to utilize their programs primarily for inspection and  
23 educational purposes to promote compliance. It will not eliminate  
24 penalty actions that are both reasonable and necessary for a safe  
25 environment.

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Provides for awarding of certain costs to defendants who prevail in  
DEP or county environmental enforcement actions.