

Legislative Analysis



REVISE REQUIREMENTS FOR BRINGING A CITIZEN SUIT UNDER PART 201

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House Bill 5819

Sponsor: Rep. Mark Meadows

Committee: Judiciary

Complete to 3-17-10

A REVISED SUMMARY OF HOUSE BILL 5819 AS INTRODUCED 2-16-10

In certain situations, a private party or a local unit of government (on behalf of its citizens) may bring a civil action to enforce Part 201 (Environmental Remediation) of the Natural Resources and Environmental Protection Act to obtain an injunction or to compel compliance with Part 201 (or a rule or order issued under Part 201). This type of action is sometimes called a citizen suit.

Unless the following requirements are met, a citizen suit may not be brought:

- The plaintiff must give no fewer than 60 days' notice in writing of the plaintiff's intent to sue, the basis for the suit, and the requested relief to the DNRE, the Attorney General, and the proposed defendants. (MCL 324.20135(3)(a))
- The state has not commenced and is not diligently prosecuting "an action" under Part 201 or under other appropriate legal authority to obtain injunctive relief concerning the facility or to require compliance with Part 201 or a rule or an order issued under Part 201. (MCL 324.20135(3)(b))

In other words, a private cause of action is barred if the plaintiff has not given the required notice or if the state has commenced and is diligently prosecuting "an action." Under House Bill 5819, the second condition would be revised to read that the state "has not commenced *or* is not diligently prosecuting **a judicial or administrative action** under this part or under other appropriate legal authority...." [Emphasis added.] This change would appear to bar a citizen suit if the state had commenced (and was diligently prosecuting) either a court action or an administrative action.

BACKGROUND INFORMATION:

In *Cairns v. City of East Lansing*, 275 Mich. App. 102 (Ct App 2007), the Michigan Court of Appeals, reversing the trial court, allowed a citizen suit to proceed against the City of East Lansing in its capacity of owner or operator of a landfill that later became Burcham Park. Although the city had argued that the suit was barred because it was voluntarily cooperating with the Department of Environmental Quality in complying with Part 201 at this site, the court found that the voluntary compliance activities did not qualify as an "action" that would bar the citizen suit. Analyzing the word "action" in

context, the court held that only judicial proceedings bar private civil causes of action under this provision. The court found it questionable whether the Legislature, if it had considered the issue, would have intended this result, indicating that the Legislature would "not have wished to encourage violators to insist that the state commence a formal judicial action to operate as a bar to third-party civil actions, thereby discouraging voluntary compliance efforts. Therefore, we encourage the Legislature to fully examine the language of MCL 324.20135(3)(b) and the policy considerations of the statute as it is currently written."

In its 41st Annual Report (2008), the Michigan Law Revision Commission reviewed this court decision and recommended that the Legislature amend MCL 324.20135(3)(b), characterizing voluntary efforts as "a cost-effective and less time consuming alternative to formal court action." See:

http://council.legislature.mi.gov/files/mlrc/2008-09/mlrc_41annual_2008.pdf

FISCAL IMPACT:

House Bill 5819 would have no significant fiscal impact on the Department of Natural Resources and Environment.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.