



**House
Legislative
Analysis
Section**

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POLLUTION SUITS: UNIFORM LAW

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Senate Bill 10 (Substitute H-1)
First Analysis (11-10-88)

JAN 18 1989

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Sponsor: Senator John F. Kelly
Senate Committee: Natural Resources and
Environmental Affairs
House Committee: Judiciary

THE APPARENT PROBLEM:

The nature of pollution is such that it often crosses state lines and international borders, thus causing damage in a jurisdiction other than that in which the pollution originated. When someone whose property was damaged attempts to sue a polluter located in another jurisdiction, a number of complications may arise. Although, for instance, a Michigan resident may bring a successful suit against an out-of-state polluter, rules of law in that other state may block enforcement of the injunctive or other equitable relief so important in pollution actions, although money damages would be enforceable under the full faith and credit clause of the United States Constitution. If the defendant is Canadian, enforcement is even more difficult. The alternative, for a plaintiff to bring suit in the jurisdiction where the polluter resides or pollution arises, may be complicated by the same sorts of rules that complicate the recovery of equitable relief: local rules may demand that suit be brought in the jurisdiction where the damage occurred. Cross-boundary pollution suits are further complicated by issues of which jurisdiction's pollution laws should apply.

The conflicts and complexities presented by pollution suits prompted a joint committee of the Canadian Bar Association and the American Bar Association to urge the adoption of a bilateral treaty to change the "local action rule" that bars non-resident litigants from pursuing suits within a given jurisdiction. Because of "the difficulty of achieving such a treaty and the desirability of providing local rather than federal solutions," a joint committee of the National Conference of Commissioners on Uniform State Laws and the Canadian Uniform Law Conference instead developed a uniform act which could be adopted by individual states and provinces. That model act, with appropriate sovereign immunity language particular to each country, was adopted by both conferences. The uniform act was further recommended by the Michigan Law Revision Commission in its 1984 report. Many agree that Michigan should enact the uniform law on transboundary pollution suits.

THE CONTENT OF THE BILL:

The bill would create the Uniform Transboundary Pollution Reciprocal Access Act. It would take effect December 31, 1988, and would apply to suits brought because of damage that pollution originating in Michigan caused in a reciprocating jurisdiction. A reciprocating jurisdiction would be a state, the District of Columbia, a territory or possession of the United States, or a province or territory of Canada that had enacted a law identical to the bill or that provided access to its courts and administrative agencies that was substantially equivalent to the access provided by the bill.

Forum. An action or other proceeding for injury or threatened injury to property or person in a reciprocating jurisdiction caused by pollution originating, or that might originate, in Michigan could be brought in Michigan.

Right to relief. A person who suffered or was threatened with injury to his or her person or property in a reciprocating jurisdiction caused by Michigan pollution would have the same rights to relief with respect to that injury, and could enforce those rights in Michigan, as if the injury occurred in Michigan.

Applicable law. The law to be applied, including what constitutes pollution, would be Michigan law, excluding choice of law rules.

Equality of rights. The bill would not accord a person injured or threatened with injury in a jurisdiction outside Michigan any rights superior to those that the person would have if injured or threatened with injury within Michigan.

Other rights. Any right provided by the bill would be in addition to and not in derogation of any other rights.

Sovereign immunity. The defense of sovereign immunity would be applicable only to the extent that it would apply to a person injured or threatened with injury in Michigan.

Application and construction. The bill would be applied and construed to carry out its general purpose to make uniform the law with respect to transboundary pollution suits among the jurisdictions enacting it.

FISCAL IMPLICATIONS:

The House Fiscal Agency says that the bill would have no fiscal implications. (11-3-88)

ARGUMENTS:

For:

The bill is virtually identical to the uniform law proposed by the National Conference of Commissioners on Uniform State Laws and the Michigan Law Revision Commission. To the degree that the proposed law is enacted by the various states and provinces, it will equalize remedies among the jurisdictions. It will offer enforceable relief to parties injured by pollution, and will clarify the issues of jurisdiction, venue, and choice of law which often complicate litigation brought over pollution arising in one place that caused damage in another place. Michigan plaintiffs suffering property damage not only would retain existing ability to sue out-of-state polluters in Michigan: they would gain the ability to obtain and enforce judgements in Canada and to enforce the injunctive relief that is now difficult to maintain in other states.

OVER

S.B. 10 (11-10-88)

Against:

In requiring that the law of the forum be the law that applies, the bill would be deleterious to the interest of Michigan residents suing in jurisdictions with weak pollution laws, even while it afforded out-of-staters the benefits of Michigan's strong anti-pollution laws. That sort of inequity could put Michigan citizens and businesses at a disadvantage compared to their Canadian counterparts. Further, the arguments in favor of the uniform law generally focus on the problems in obtaining relief when pollution has damaged real property; the likelihood of claims for personal injury and personal property receives comparatively little attention, even though such suits can seek enormous sums of money. According to at least one critic of the proposed law, Michigan citizens can already gain access to Ontario courts for such suits, and so the bill is not really necessary.

POSITIONS:

The Department of Natural Resources supports the bill.
(10-31-88)

The Michigan Environmental Council supports the bill.
(10-31-88)

The Uniform Transboundary Pollution Reciprocal Access Act has been recommended by the National Conference of Commissioners on Uniform State Laws and the Michigan Law Revision Commission.

Detroit Edison opposes the bill. (10-3-88)