

SFA

BILL ANALYSIS

Senate Fiscal Agency

Lansing, Michigan 48909

(517) 373-5383

Senate Bill 10 (as reported by the Committee of the Whole)**Sponsor:** Senator John F. Kelly**Committee:** Natural Resources and Environmental Affairs**Date Completed:** 2-22-88**RATIONALE**

Under current practice, if a Michigan resident or corporation brings suit against an out-of-state person or corporation for damages resulting from the out-of-stater's polluting the environment, the case is heard in Michigan. Under this system, the person bringing suit can win financial compensation for damages, but injunctive relief cannot be gained. If such a suit were under the jurisdiction of courts in the state in which the pollution originated, however, injunctive relief could be sought. Some people feel that a uniform Act, outlining the procedures and legal basis for such a system of jurisdiction, should be adopted by all the states in order to ensure reciprocal environmental responsibility.

CONTENT

The bill would create the "Uniform Transboundary Pollution Reciprocal Access Act" to provide that a legal action or other proceeding could be brought in this State for injury or threatened injury to a person or property in a "reciprocating jurisdiction" caused by pollution that originated or that could originate in this State. A reciprocating jurisdiction would be a state, the District of Columbia, Puerto Rico, or a territory or possession of the United States, that has enacted a law identical to this proposed Act or provides access to its courts and administrative agencies that is substantially equivalent to the access provided in the bill.

A person who suffered or was threatened with personal injury or property damage in a reciprocating jurisdiction caused by pollution that originated in this State would have the same rights to relief with respect to the injury or threatened injury, and could enforce those rights in this State, as if the injury or threatened injury had occurred in this State. The law to be applied in such an action or other proceeding, including what constitutes "pollution", would be the law of this State, excluding choice of law rules (that is, the rules governing which state's law is to apply when various states' laws are in conflict).

A person injured or threatened with injury in a jurisdiction outside of Michigan would not be accorded any rights superior to those that a person would have if injured or threatened with injury in this State. Any right provided in the proposed Act would be in addition to, not in derogation of, any other rights.

The defense of sovereign immunity would be applicable to any action brought in connection with the proposed Act only to the extent that it would apply to a person injured or threatened with injury in this State.

The bill would take effect on December 31, 1988.

FISCAL IMPACT

This bill would result in minimal expenditures to State and local governments.

ARGUMENTS**Supporting Argument**

The bill would equalize the ability to bring an action for equitable relief in all states that adopt the uniform Act or provide equal access to their courts and administrative agencies. In such an action, the law of the jurisdiction where the suit was filed would apply. Consequently, the party bringing the action could sue for injunctive relief rather than just for compensation for damages. That ability would provide an incentive to act responsibly toward the environment.

Legislative Analyst: P. Affholter

Fiscal Analyst: A. Rich

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.