

HOUSE BILL No. 5544

February 5, 1998, Introduced by Reps. Willard, Scott, Wallace, Bogardus, Freeman, Hale, Anthony, Gubow and Gire and referred to the Committee on Conservation, Environment and Recreation.

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 1701 and 1704 (MCL 324.1701 and 324.1704).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1701. (1) The attorney general or any person may main-
2 tain an action in the circuit court having jurisdiction where the
3 alleged violation occurred or is likely to occur for declaratory
4 and equitable relief AND DAMAGES AS PROVIDED IN SECTION 1704
5 against any person for the protection of the air, water, and
6 other natural resources and the public trust in these resources
7 from pollution, impairment, or destruction.
8 (2) In granting relief provided by subsection (1), if there
9 is a standard for pollution or for an antipollution device or
10 procedure, fixed by rule or otherwise, by the state or an

1 instrumentality, agency, or political subdivision of the state,
2 the court may:

3 (a) Determine the validity, applicability, and reasonable-
4 ness of the standard.

5 (b) If a court finds a standard to be deficient, direct the
6 adoption of a standard approved and specified by the court.

7 Sec. 1704. (1) The court may ~~grant~~ DO 1 OR MORE OF THE
8 FOLLOWING THAT ARE REQUIRED TO PROTECT THE AIR, WATER, AND OTHER
9 NATURAL RESOURCES OR THE PUBLIC TRUST IN THESE RESOURCES FROM
10 POLLUTION, IMPAIRMENT, OR DESTRUCTION:

11 (A) GRANT temporary and permanent equitable relief. ~~or may~~
12 ~~impose~~

13 (B) ASSESS DAMAGES AS PROVIDED IN SUBSECTION (5).

14 (C) IMPOSE conditions on the defendant. ~~that are required~~
15 ~~to protect the air, water, and other natural resources or the~~
16 ~~public trust in these resources from pollution, impairment, or~~
17 ~~destruction.~~

18 (2) If administrative, licensing, or other proceedings are
19 required or available to determine the legality of the
20 defendant's conduct, the court may direct the parties to seek
21 relief in such proceedings. Proceedings described in this sub-
22 section shall be conducted in accordance with and subject to the
23 administrative procedures act of 1969, ~~Act No. 306 of the Public~~
24 ~~Acts of 1969, being sections 24.201 to 24.328 of the Michigan~~
25 ~~Compiled Laws~~ 1969 PA 306, MCL 24.201 TO 24.328. If the court
26 directs parties to seek relief as provided in this section, the
27 court may grant temporary equitable relief if necessary for the

1 protection of the air, water, and other natural resources or the
2 public trust in these resources from pollution, impairment, or
3 destruction. In addition, the court retains jurisdiction of the
4 action pending completion of the action to determine whether ade-
5 quate protection from pollution, impairment, or destruction is
6 afforded.

7 (3) Upon completion of proceedings described in this sec-
8 tion, the court shall adjudicate the impact of the defendant's
9 conduct on the air, water, or other natural resources, and on the
10 public trust in these resources, in accordance with this part.
11 In adjudicating an action, the court may order that additional
12 evidence be taken to the extent necessary to protect the rights
13 recognized in this part.

14 (4) If judicial review of an administrative, licensing, or
15 other proceeding is available, notwithstanding the contrary pro-
16 visions of ~~Act No. 306 of the Public Acts of 1969~~ THE ADMINIS-
17 TRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.201 TO
18 24.328, pertaining to judicial review, the court originally
19 taking jurisdiction shall maintain jurisdiction for purposes of
20 judicial review.

21 (5) IN ADDITION TO ANY OTHER RELIEF GRANTED UNDER THIS ACT,
22 THE COURT MAY AWARD A PREVAILING PLAINTIFF REASONABLE ATTORNEY
23 FEES AND IF THE COURT DETERMINES THAT THE DEFENDANT ACTED IN BAD
24 FAITH, THE COURT MAY ORDER THE DEFENDANT TO PAY EXEMPLARY DAMAGES
25 OR DAMAGES IN AN AMOUNT EQUAL TO 3 TIMES THE ACTUAL DAMAGES
26 INCURRED.