

House Bill 1156

By: Representative Mabra of the 63rd

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 12 of the Official Code of Georgia Annotated, relating to conservation and
2 natural resources, so as to provide for environmental citizen suit enforcement actions; to
3 provide for a short title; to provide definitions; to provide for procedures and limitations; to
4 provide for related matters; to repeal conflicting laws; and for other purposes.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

6 **SECTION 1.**

7 Title 12 of the Official Code of Georgia Annotated, relating to conservation and natural
8 resources, is amended by adding a new chapter to read as follows:

9 "CHAPTER 17

10 12-17-1.

11 This act is entitled the 'State of Georgia Environmental Law Citizen Suit Act.'

12 12-17-2.

13 (1) 'Administrator' means and refers to the administrator of the United States
14 Environmental Protection Agency.

15 (2) 'Civil penalty' means a financial penalty imposed as restitution and paid to the State
16 of Georgia, for violation of environmental law. Civil penalty is not a criminal
17 punishment but rather is sought in order to compensate the State of Georgia for harm
18 done to the environment.

19 (3) 'Civil penalty factors' means consideration of the violation(s) duration(s), the
20 potential for harm to human health and environment posed by the violation(s), the extent
21 the violation(s) deviate from legal requirement(s), the economic benefit gained from
22 noncompliance, Defendant's history of noncompliance, Defendant's good faith effort to
23 comply, Defendant's degree of willfulness and or negligence, Defendant's ability to pay,

24 Defendant's cooperation during inspection, litigation, case development and this citizen
 25 suit enforcement action, and the risk and cost of litigation to the parties.

26 (4) 'Conduct' means and refers to act(s) and or omission(s).

27 (5) 'Director' means and refers to the director of the Environmental Protection Division
 28 of the State of Georgia Department of Natural Resources.

29 (6) 'Environmental law' means and refers to the statutes contained in 'Title
 30 12-Conservation and Natural Resources' of the Official Code of Georgia Annotated, as
 31 well as the regulations, local laws and ordinances (if any) promulgated, adopted and or
 32 enacted pursuant to and or in furtherance of those statutes, as well as any administrative
 33 orders, consent orders and other orders issued pursuant to those statutes, regulations, local
 34 laws or ordinances.

35 (7) 'Person' means any individual, partnership, corporation, company, association,
 36 municipal corporation, county, public or private or hybrid entity, and shall include the
 37 administrator, the United States, the director, the State of Georgia, the State of Georgia's
 38 political or corporate or hybrid subdivisions, and all the State of Georgia's departments,
 39 boards, bureaus, commissions, authorities, agencies, or other entities.

40 (8) 'Plaintiff' means, in addition to its usual and ordinary meaning, private person(s)
 41 acting as private attorneys general by commencing private suits to obtain compliance
 42 with State of Georgia environmental law.

43 (9) 'Property damage or personal injury' means and shall include, without limitation, in
 44 addition to the usual and ordinary meanings, the diversion of an entity's resources, the
 45 frustration of its purpose or mission, and or the impairment of its role, because of its
 46 efforts to investigate, assess, prove and or remedy the environmental law violation(s)
 47 alleged.

48 12-17-3.

49 (a) Except as provided in subsection (d) of this section, any person who claims to have an
 50 affected interest or to have suffered property damage or personal injury, or believes they
 51 are about to have their interest affected or to suffer property damage or personal injury,
 52 because of practice(s), operation(s), or other conduct in violation of environmental law,
 53 may file a verified complaint regarding the violation(s) in the superior court of a county
 54 where the violation(s) have occurred or are about to occur (or in such other jurisdiction as
 55 is appropriate).

56 (b) If Plaintiff(s) prove the violation(s) to a preponderance of the evidence, then
 57 Plaintiff(s) shall thereby be entitled to Injunctive Relief without the necessity of showing
 58 lack of an adequate remedy at law. The injunctive relief shall include an order requiring
 59 abatement of the unlawful practice(s), operation(s), act, omission and or other conduct
 60 causing and or contributing to the environmental law violation(s).

61 (c) If Plaintiff(s) prove the violation(s) to the clear and convincing evidentiary standard,
 62 then Plaintiff(s) shall thereby be entitled to, in addition to the remedy in (b) above, Citizen
 63 Suit civil penalty(ies) in amount(s) determined by the trier of fact. Citizen suit civil
 64 penalty(ies) are not to exceed ten thousand dollars (\$10,000.00) per day per violation per
 65 Defendant, and shall be available against each liable nongovernmental Defendant(s). Each
 66 day a violation exists shall be a separate violation. All civil penalties recovered shall be
 67 paid into the State of Georgia treasury, general fund.

68 (d) No citizen suit action may be commenced:

69 (1) Prior to sixty (60) days after the plaintiff has sent notice in writing of the violation(s)
 70 to the alleged violator(s) named as Defendant(s), to the director, to the administrator, and
 71 to the attorney general for the United States and the state; or

72 (2) If the director has commenced and is diligently prosecuting a civil or criminal action
 73 in superior court or federal court to require compliance with the environmental law;
 74 except that

75 (3) The action may be brought immediately after such notice if the violation(s)
 76 complained of constitute an imminent threat to human health, safety, or the environment,
 77 or if the applicable limitations statute or repose statute would run out during the pendency
 78 of the sixty day notice period.

79 (e) The trier of fact shall decide the amount of civil penalties awarded (if any), upon
 80 consideration of the Civil Penalty Factors. The Court shall give the resulting Citizen Suit
 81 Civil Penalty amount such weight as it deems appropriate (if any), when deciding the scope
 82 of injunctive relief awarded.

83 (f) The State of Georgia, for itself, all Georgia counties, cities, and other political,
 84 corporate, and hybrid subdivisions, hereby waives sovereign immunity to the
 85 environmental law citizen suit cause of action above in sections (a) through (f) of this
 86 article.

87 (g) Use of this citizen suit provision shall not preclude or impair plaintiff's ability to at any
 88 time pursue and recover money damages (if any) and or any other relief available to
 89 plaintiff (if any), pursuant to other statute(s), regulation(s), ordinance(s), permit(s),
 90 contract(s), common law precedent, and or any other authority."

91 **SECTION 2.**

92 All laws and parts of laws in conflict with this Act are repealed.