

LAWSUIT REFORM ALLIANCE OF NEW YORK

OPPOSE

BILL NUMBER: S.5394 (PARKER) / A.2261 (Simon)
SUBJECT: Private Environmental Law Enforcement
DATE: March 15, 2021
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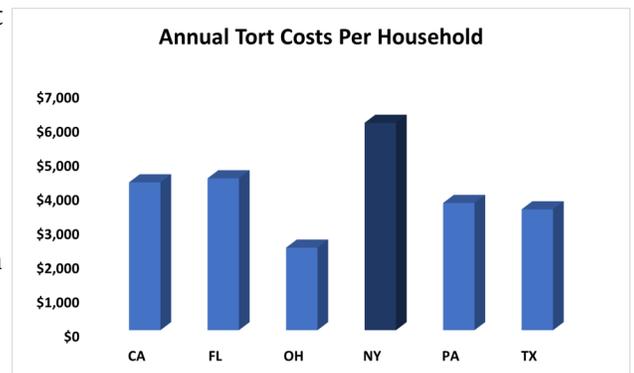
Summary:

This legislation grants private citizens broad authorization to commence civil judicial actions under certain titles of the environmental conservation law.

Why we strongly oppose this legislation:

Environmental Enforcement Should be Handled by Professionals

- This legislation would put early environmental enforcement in the courts, rather than under the purview of environmental professionals at the Department of Environmental Conservation (DEC). Enforcement decisions about complex scientific issues should be made by DEC scientists with the sworn duty to protect the environment, not courtrooms where attorneys can present junk science in order to coerce a settlement or the payment of legal fees. Under the bill, plaintiffs can be awarded legal fees even if there is no formal finding of violations.



Source: Institute for Legal Reform

Does Not Enhance Environmental Protection

- Federal citizen suits filed in New York show that most filings are brought to address issues that are already under review by regulators or have already been addressed by the Department of Environmental Conservation. These lawsuits would only serve to complete or slow the work that is already being undertaken by environmental regulators.

Would Lead to a Deluge of Fee-Seeking Lawsuits

- As we have seen with abuses around the Americans with Disabilities Act, the awarding of legal fees can lead to a cottage industry of fee-seeking lawsuits. Attorneys bring cut-and-paste lawsuits against all manner of business to coerce settlement offers to cover their inflated fees. New York is second in the nation in these lawsuits and the passage of this legislation could lead to another frontier of this form of legal abuse.¹

¹ Vu, Minh, "2019 Was Another Record-Breaking Year for Title III ADA Lawsuits," Sayfarth Shaw, February 2020

² "Cost and Compensation of the U.S. Tort System," Institute for Legal Reform, U.S. Chamber of Commerce, October 2018