

HOUSE BILL No. 5807

March 1, 2006, Introduced by Reps. Lipsey, Alma Smith, Condino, Kolb, Accavitti, Brandenburg, Gaffney, Stewart, Vagnozzi, Kathleen Law, Gonzales, Tobocman, Plakas and Lemmons, III and referred to the Committee on Agriculture.

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
(MCL 324.101 to 324.90106) by adding section 8635.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 8635. (1) SUBJECT TO SUBSECTION (2), A PERSON WHO HAS AN
2 INTEREST THAT IS OR MAY BE ADVERSELY AFFECTED MAY COMMENCE A CIVIL
3 ACTION ON HIS OR HER OWN BEHALF AGAINST EITHER OF THE FOLLOWING:

4 (A) A CAFO, FOR A VIOLATION OF THIS PART, PART 31, OR A RULE
5 PROMULGATED OR PERMIT ISSUED UNDER THIS PART OR PART 31.

6 (B) THE DEPARTMENT OR THE DEPARTMENT OF AGRICULTURE, FOR A
7 FAILURE TO PERFORM ANY NONDISCRETIONARY ACT OR DUTY UNDER THIS
8 PART.

9 (2) AN ACTION SHALL NOT BE COMMENCED UNDER SUBSECTION (1)

1 UNDER EITHER OF THE FOLLOWING CIRCUMSTANCES:

2 (A) THE PLAINTIFF HAS FAILED TO PROVIDE NOTICE OF THE ALLEGED
3 VIOLATION TO THE DEPARTMENT, THE DEPARTMENT OF AGRICULTURE, AND THE
4 ALLEGED VIOLATOR AT LEAST 60 DAYS PRIOR TO COMMENCING THE ACTION.

5 (B) THE DEPARTMENT HAS COMMENCED AND IS DILIGENTLY PROSECUTING
6 A CIVIL OR CRIMINAL ACTION IN COURT FOR THE ALLEGED VIOLATION.

7 (3) THE CIRCUIT COURT, IN ISSUING A FINAL ORDER OR JUDGMENT IN
8 AN ACTION BROUGHT UNDER THIS SECTION, MAY AWARD COSTS OF LITIGATION
9 AND REASONABLE ATTORNEY AND EXPERT WITNESS FEES TO THE PREVAILING
10 OR SUBSTANTIALLY PREVAILING PARTY IF THE COURT DETERMINES SUCH AN
11 AWARD IS APPROPRIATE.

12 (4) THE REMEDIES UNDER THIS SECTION ARE CUMULATIVE AND DO NOT
13 RESTRICT ANY RIGHT TO BRING AN ACTION IN A COURT OF COMPETENT
14 JURISDICTION THAT A PERSON MAY HAVE AS OTHERWISE PROVIDED BY LAW.

15 Enacting section 1. This amendatory act does not take effect
16 unless all of the following bills of the 93rd Legislature are
17 enacted into law:

18 (a) Senate Bill No.____ or House Bill No. 5801(request no.
19 01066'05).

20 (b) Senate Bill No.____ or House Bill No. 5803(request no.
21 01074'05).

22 (c) Senate Bill No.____ or House Bill No. 5802(request no.
23 01075'05).

24 (d) Senate Bill No.____ or House Bill No. 5809(request no.
25 01081'05).

26 (e) Senate Bill No.____ or House Bill No. 5808(request no.
27 02009'05).

1 (f) Senate Bill No.____ or House Bill No. 5806(request no.
2 02010'05).

3 (g) Senate Bill No.____ or House Bill No. 5804(request no.
4 02011'05).

5 (h) Senate Bill No.____ or House Bill No. 5805(request no.
6 02032'05).