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H.559

Senator Bray moves that the Senate propose to the House that the bill be amended in Sec. 12, 10 V.S.A. chapter 205, in section 8055, as follows:

First: By striking out subsection (c) in its entirety and inserting in lieu thereof a new subsection (c) to read as follows:

(c) Action prohibited. A person shall not commence an action under subsection (a) of this section under either of the following circumstances:

(1) if, after investigation of the alleged violation and development of the record of response, the Secretary of Agriculture, Food and Markets, the Secretary of Natural Resources, or the Attorney General determines that no violation occurred;

(2) if the Secretary of Agriculture, Food and Markets, the Secretary of Natural Resources, or the Attorney General has commenced and is diligently prosecuting a civil or criminal action to require compliance with a statute, permit, certification, rule, permit condition, prohibition, or order set forth, issued, or required under 6 V.S.A. chapter 215 or under chapter 37 or 47 of this title; or

(3) if the alleged violator is diligently proceeding with complying with an assurance of discontinuance, corrective action, cease and desist order, or emergency administrative order issued under 6 V.S.A. chapter 215 or under chapter 201 of this title.

1        Second: By striking out subsection (g) in its entirety and inserting in lieu  
2 thereof a new subsection (g) to read as follows:

3        (g) Attorney’s fees; costs.

4            (1) The Environmental Division of the Superior Court may award costs,  
5 including reasonable attorney’s fees and fees for expert witnesses, to a person  
6 bringing an action under subsection (a) of this section when the court  
7 determines that the award is appropriate.

8            (2) The Environmental Division of the Superior Court may award costs,  
9 including reasonable attorney’s fees and fees for expert witnesses, to the State  
10 or to a person subject to an action under this section if the court determines  
11 that:

12            (A) the action was frivolous, unreasonable, or without foundation;

13            (B) the Secretary of Agriculture, Food and Markets, the Secretary of  
14 Natural Resources, or the Attorney General has commenced and is diligently  
15 prosecuting a civil or criminal action to require compliance with a statute,  
16 permit, certification, rule, permit condition, prohibition, or order set forth,  
17 issued, or required under 6 V.S.A. chapter 215 or under chapter 37 or 47 of this  
18 title; or

19            (C) the person subject to the action is diligently proceeding with  
20 complying with an assurance of discontinuance, corrective action, cease and

- 1 desist order, or emergency administrative order issued under 6 V.S.A. chapter
- 2 215 or under chapter 201 of this title.