

BILL ANALYSIS

Senate Research Center

C.S.S.B. 1585
By: Brown
Natural Resources
4-17-97
Committee Report (Substituted)

DIGEST

Currently, the Texas Environmental Health and Safety Audit Privilege Act encourages companies to conduct voluntary audits of their compliance with environmental and health and safety requirements by providing two types of incentives: a limited privilege for voluntarily compiled information, and a penalty immunity for certain violations that are self-disclosed. Since its implementation in 1995, approximately 450 entities have given notice of intent to conduct a voluntary audit, and about 65 self-disclosures have been made to the Texas Natural Resource Conservation Commission. The Environmental Protection Agency (EPA) has expressed a reluctance to grant delegation of federal environmental programs to Texas, in part based on opposition to the state's Audit Privilege Act. However, the EPA concedes that the audit law will not conflict with delegation of federal programs if several changes are made to the law. C.S.S.B. 1585 enacts the changes requested by the EPA in order to obtain delegation of federal environmental programs.

PURPOSE

As proposed, C.S.S.B. 1585 provides for environmental and health safety audits.

RULEMAKING AUTHORITY

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 5(b), Article 4447cc, V.T.C.S. (Texas Environmental, Health, and Safety Audit Privilege Act), to establish that except as provided in Sections 6, 7, and 8 of this Act, rather than in Sections 6-9, any part of an audit report is privileged and is not admissible as evidence or subject to discovery in a civil action or administrative proceeding, rather than in those proceedings or a criminal proceeding.

SECTION 2. Amends Section 6, Article 4447cc, V.T.C.S., by amending Subsection (b), and adding Subsection (e), to delete the provision establishing that disclosure of an audit report or certain audit-related information does not waive the privilege established by Section 5 of this Act if the disclosure is made under the terms of a confidentiality agreement between certain persons and a federal agency. Provides that nothing in this section shall be construed to circumvent the protections provided by federal or state law for individuals that disclose information to law enforcement authorities.

SECTION 3. Amends Section 7(a), Article 4447cc, V.T.C.S., to make a conforming change.

SECTION 4. Amends Section 9, Article 4447cc, V.T.C.S., as follows:

Sec. 9. New heading: REVIEW OF PRIVILEGED DOCUMENTS BY GOVERNMENTAL AUTHORITY. Provides that where an audit report is obtained, reviewed, or used in a criminal proceeding, the administrative or civil evidentiary privilege created by this Act is not waived or eliminated for any other purpose. Sets forth the terms by which a regulatory agency is authorized to review information that is required to be available under a specific state or federal law. Requires a governmental authority, if information is required to be available to the public, to notify the person claiming the privilege of the potential for public disclosure prior to obtaining such information. Provides that a person having received information under Subsection (b) or (c) has the burden of

proving that the evidence offered did not arise and was not derived from the review of privileged information. Deletes existing text regarding court review and disclosure. Makes conforming changes.

SECTION 5. Amends Sections 10(a), (b), (d), (f), and (h), Article 4447cc, V.T.C.S., to provide that a disclosure is voluntary only if the violation did not result in injury or imminent and substantial risk of serious injury to one or more persons at the site or off-site substantial actual harm or imminent and substantial risk of harm to persons, property, or the environment. Establishes that the immunity established by Subsection (a) does not apply and certain penalties may be imposed if the violation has resulted in a substantial economic benefit which gives the violator a clear advantage over its business competitors. Provides that the immunity under this section does not apply if a court or administrative law judge finds that the person claiming the immunity has, after the effective date of this Act, continuously committed significant, rather than serious, violations and has not attempted to bring the facility into compliance. Makes conforming changes.

SECTION 6. Effective date: September 1, 1997.
Makes application of this Act prospective.

SECTION 7. Emergency clause.

SUMMARY OF COMMITTEE CHANGES

Amends the relating clause to replace the term "health and safety audits" with "health safety audits."

Deletes former SECTION 1, regarding material and information contained in the audit report to which a privilege does not apply.

SECTION 2.

Amends Section 6, Article 4447cc, V.T.C.S., to alter the terms by which disclosure of an audit report or audit-related information does not waive the privilege established by Section 5. Provides that nothing in this section shall be construed to circumvent the protections for individuals who disclose information to law enforcement authorities.

SECTION 4.

Amends Section 9, Article 4447cc, V.T.C.S., to delete the provisions regarding court review and disclosure, and add provisions related to review of privileged documents by a governmental authority.

SECTION 5.

Amends Section 10, Article 4447cc, V.T.C.S., to provide that a disclosure is voluntary only if the violation did not result in certain injury, harm, or risk of harm or injury to persons, property, or the environment. Amends the terms under which immunity does not apply. Deletes existing text regarding assessment of a penalty for a violation that has been voluntarily disclosed.