

BILL ANALYSIS

Senate Research Center

H.B. 3459
By: Chisum (Brown)
Natural Resources
5-5-97
Engrossed

DIGEST

Currently, because of the implementation of the Texas Environmental Health and Safety Audit Privilege Act in 1995, several violations of the Act that would not have been detected in an ordinary inspection, have been self-disclosed. While this Act provides two types of incentives for self-disclosed violations, the Environmental Protection Agency (EPA) has expressed a reluctance to grant delegation of federal environmental programs to Texas because of its opposition to the state's Audit Privilege Act. This bill enacts changes to the Texas Environmental Health and Safety Audit Privilege Act requested by the EPA in order to obtain delegation of federal environmental programs.

PURPOSE

As proposed, H.B. 3459 enacts changes to the Texas Environmental Health and Safety Audit Privilege Act requested by the Environmental Protection Agency in order to obtain delegation of federal environmental programs.

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., to delete a provision providing that audit reports are privileged and inadmissible as evidence or subject to discovery in a criminal proceeding as provided in Section 9.

SECTION 2. Amends Section 6, Article 4447cc, V.T.C.S., to provide that disclosure of certain audit information does not waive the privilege established by Section 5 of this Act if certain conditions apply, among which include the disclosure being made under certain terms to a governmental official of a state, rather than an official or a state or federal agency. Provides that nothing in the 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 6(d), Article 4447cc, V.T.C.S., to provide that a public entity, public employee, or public official who discloses information in violation of this subsection is subject to any penalty provided in Chapter 552, Government Code. Deletes a provision providing that the disclosure of information by certain persons is a Class B misdemeanor offense.

SECTION 4. Amends Section 7(d), Article 4447cc, V.T.C.S., to provide that a person claiming the privilege is subject to sanctions as provided by Rule 215 of the Texas Rules of Civil Procedure or to a fine not to exceed \$10,000, if the court finds, consistent with fundamental due process, certain findings.

SECTION 5. Amends Section 7(a), Article 4447cc, V.T.C.S., to delete a provision authorizing a court or administrative official to hear disclosure of a portion of an audit report in a criminal proceeding, if certain conditions apply.

SECTION 6. 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. Deletes a provision authorizing the attorney representing the state to obtain an audit report for which a privilege is asserted under this Act under a search warrant, if certain conditions apply. Sets forth a provision authorizing a regulatory agency to review information that is required to be available under a specific state or federal law, notwithstanding the privilege established under this Act. Deletes a provision requiring the attorney representing the state to seal the report and prohibiting the attorney to review or disclose the contents of the report, on receipt of the audit report. Requires the governmental authority to notify the person claiming the privilege of the potential for public disclosure prior to obtaining such information under Subsection (a) or (b), if information is required to be available to the public by operation of a specific state or federal law. Deletes provisions setting forth authorization of the owner or operator to file certain reports with courts of competent jurisdiction. Deletes a provision providing that an owner who fails to file a petition under this subsection within the period specified by this subsection waives the privilege. Provides that if privileged information is disclosed under Subsection (b) or (c), on the motion of a party, a court or the appropriate administrative official shall suppress evidence offered in certain proceedings, if the review, disclosure, or use is not authorized under Section 8, rather than this section. Deletes existing Subsections (d)-(g). Provides that a party having received information under Subsection (b) or (c), rather than allegedly failing to comply with this section, has the burden of proving that evidence was not derived from the review of privileged information, rather than from unauthorized review, disclosure, or use. Deletes existing Subsections (i)-(k).

SECTION 7. Amends Sections 10(a), (b), (d), (f), and (h), Article 4447cc, V.T.C.S., to provide that disclosure is voluntary if certain conditions apply, among which include 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 or harm to persons, property, or the environment. Provides that immunity established by Subsection (a) does not apply, if certain conditions apply, among which include the violation has resulted in a substantial economic benefit which gives the violator a clear advantage over its business competitors.

SECTION 8. Effective date: September 1, 1997.
Makes application of this Act prospective.

SECTION 9. Emergency clause.