

BILL ANALYSIS

Senate Research Center
83R7569 JRR-D

S.B. 1300
By: Eltife; Hegar
Natural Resources
3/22/2013
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Texas Environmental, Health, and Safety Audit Privilege Act (Act) provides certain benefits, such as immunity from civil and administrative penalties and the creation of a confidentiality privilege for audit reports, for the purpose of encouraging voluntary compliance with environmental and occupational health and safety laws. Facility owners or operators must meet certain requirements to be eligible for the immunity from civil and administrative penalties that the Act affords. Prior notice to appropriate regulatory agencies of the audit and prompt, voluntary disclosure of violations discovered during the audit are two of these requirements.

Prospective buyers in transactions involving facilities subject to environmental, health, and safety regulation often perform due diligence reviews of those facilities. These reviews are systematic compliance evaluations of a facility and its operations, comparable to a compliance audit, and often reveal issues of non-compliance. If the transaction closes and the prospective buyer becomes the owner of the facility, the new owner inherits these compliance issues. However, despite the new owner's efforts to evaluate compliance at the facility during due diligence and expeditiously correct issues identified following the closing on the transaction, the new owner is not eligible for the benefits afforded under the Act. Further, the Act as currently written creates an incentive for prospective buyers to delay in-depth compliance evaluations until they take over ownership of the facility, and become eligible to give the required notice and conduct an audit pursuant to the Act. This can delay discovery and correction of compliance issues.

In contrast, the United States Environmental Protection Agency (EPA) currently has a new owner audit policy. This policy recognizes the unique situations of a prospective purchaser and a new owner and encourages prospective purchasers and new owners to evaluate compliance at subject facilities, with the goal of improving compliance, correcting violations, and upgrading deficient compliance management practices. S.B. 1300 creates an opportunity for voluntary disclosure of violations discovered during due diligence for new owners under the Act similar to that which now only exists under the EPA policy.

As proposed, S.B. 1300 amends current law relating to environmental or health and safety audits under the Texas Environmental, Health, and Safety Audit Privilege Act.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 3(a), Texas Environmental, Health, and Safety Audit Privilege Act (Article 4447cc, V.T.C.S.), to define "acquisition closing date" in this Act, to redefine "environmental or health and safety audit" in this Act, and to make nonsubstantive changes.

SECTION 2. Amends Section 4, Texas Environmental, Health, and Safety Audit Privilege Act (Article 4447cc, V.T.C.S.), by amending Subsection (e) and adding Subsection (f), as follows:

(e) Requires an audit, as defined by Section 3(a)(4)(A) of this Act, once initiated, to be completed within a reasonable time not to exceed six months unless an extension is approved by the governmental entity with regulatory authority over the regulated facility or operation based on reasonable grounds. Makes a nonsubstantive change.

(f) Provides that if a prospective purchaser becomes an owner of a regulated facility or operation or an activity at a regulated facility or operation and continues an ongoing audit, as defined by Section 3(a)(4)(B) of this Act, after the acquisition closing date, the audit must be completed within a reasonable time not to exceed six months after the acquisition closing date unless an extension is approved by the governmental entity with regulatory authority over the regulated facility or operation based on reasonable grounds.

SECTION 3. Amends Section 6(b), Texas Environmental, Health, and Safety Audit Privilege Act (Article 4447cc, V.T.C.S.), as follows:

(b) Provides that disclosure of an audit report or any information generated by an environmental or health and safety audit does not waive the privilege established by Section 5 of this Act if the disclosure:

(1) is made to address or correct a matter raised by the environmental or health and safety audit and is made only to:

(A)-(D) Makes no changes to these paragraphs;

(E) a person who acquires the regulated facility or operation or the activity at a regulated facility or operation after beginning an audit as defined by Section 3(a)(4)(B) of this Act; or

(F) an employee, temporary employee, contract employee, legal representative, officer, director, partner, or independent contractor or a person described by Paragraph (E) of this subdivision;

(2) is made under the terms of a confidentiality agreement between the person for whom the audit report was prepared or the owner or operator of the audited facility or operation and:

(A)-(E) Makes no changes to these paragraphs; or

(F) a person described by Subdivision (1)(E) of this subsection.

SECTION 4. Amends Section 10, Texas Environmental, Health, and Safety Audit Privilege Act (Article 4447cc, V.T.C.S.), by adding Subsection (b-1) and amending Subsection (g), as follows:

(b-1) Provides that a person who has owned a regulated facility or operation for a period of not more than six months after the acquisition closing date is immune from an administrative or civil penalty for a violation voluntarily disclosed as provided by Subsections (a) and (b) of this section only if:

(1) for a violation the person discovered after the acquisition closing date, the environmental or health and safety audit out of which the disclosure arises was an audit as defined by Section 3(a)(4)(B) of this Act and, not later than the 45th day after the acquisition closing date, the person notifies the governmental entity with regulatory authority over the regulated facility or operation that the audit is being conducted;

(2) for a violation the person discovered before the acquisition closing date, the disclosure is made not later than the 45th day after the acquisition closing date; and

(3) for a violation described by Subdivision (1) or (2) of this subsection, before the acquisition closing date the person was not responsible for compliance at the regulated facility or operation with the environmental, health, or safety law violated, the person was not the person with the largest ownership share of the seller, the seller was not the person with the largest ownership share of the person, and the person and the seller did not have a common corporate parent or a common majority interest owner.

(g) Provides that this subsection (relating to requiring a facility conducting an environmental or health and safety audit under this Act to give notice to an appropriate regulatory agency) does not apply to an audit defined by Section 3(a)(4)(B) of this Act.

SECTION 5. Makes application of this Act prospective.

SECTION 6. Effective date: September 1, 2013.