

**LEGISLATIVE SERVICES AGENCY  
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

301 State House  
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**FISCAL IMPACT STATEMENT**

**LS 7458**  
**BILL NUMBER: SB 397**

**DATE PREPARED:** Apr 6, 1999  
**BILL AMENDED:** Apr 5, 1999

**SUBJECT:** Rulemaking requirements and audit privilege.

**FISCAL ANALYST:** Kristin Breen  
**PHONE NUMBER:** 232-9567

**FUNDS AFFECTED:**  **GENERAL**  
 **DEDICATED**  
 **FEDERAL**

**IMPACT:** State

**Summary of Legislation:** (Amended) (A) This bill provides that a statement, policy, or guidance document of the Department of Environmental Management does not take effect until 30 days after statement, policy, or guidance document is presented to the Air Pollution Control Board, Water Pollution Control Board, or the Solid Waste Management Board.

(B) It specifies that the voluntary environmental audit privilege does not apply to criminal actions. It makes confirming amendments. It prohibits public disclosure of certain portions of certain voluntary environmental audit reports submitted to the Department. It provides that when the Department or a prosecuting attorney obtains or uses an environmental audit report in a criminal proceeding, the administrative or civil evidentiary privilege is not waived. It requires the Department to: (1) maintain certain statistics on the use of environmental audit reports; and (2) propose an enforcement policy that provides relief from civil penalties for a voluntary disclosure that results from an audit. It requires the Department to report annually to the Environmental Quality Service Council on: (1) the use of environmental audit reports; and (2) the use and effectiveness of the enforcement policy.

**Effective Date:** (Amended) Upon passage; July 1, 1999.

**Explanation of State Expenditures:** (Revised) (B) See State Revenues.

**Explanation of State Revenues:** (Revised) (B) This bill specifies that the voluntary environmental audit privilege does not apply to criminal actions. The U.S. Environmental Protection Agency (EPA) has threatened to withhold delegation of authority for environmental programs if the audit privilege statute is not amended to eliminate the application of the audit privilege to criminal investigations and proceedings. If the Indiana Department of Environmental Management (IDEM) loses authority for any program, it would lose associated federal grants. The loss of authority for any program would also decrease related expenditures.

This bill requires IDEM to propose an enforcement policy that provides relief from civil penalties for a voluntary disclosure that results from an audit. This may decrease civil penalty revenue. The amount of a penalty and where it is deposited is dependent upon the type of violation. Revenue from civil penalties is deposited in the following funds: the Environmental Management Special Fund, the Waste Tire Management Fund, the Underground Storage Tank Trust Fund, and the Asbestos Trust Fund.

**Explanation of Local Expenditures:**

**Explanation of Local Revenues:**

**State Agencies Affected:** Indiana Department of Environmental Management; General Assembly

**Local Agencies Affected:**

**Information Sources:** Erika Seydel Cheney, Indiana Department of Environmental Management, 232-8598.