

PREVAILED	Roll Call No. _____
FAILED	Ayes _____
WITHDRAWN	Noes _____
RULED OUT OF ORDER	

HOUSE MOTION _____

MR. SPEAKER:

I move that Engrossed Senate Bill 397 be amended to read as follows:

- 1 Page 2, line 4, after "until" insert "**thirty (30) days after**".
- 2 Page 2, line 5, strike "copying" and insert "**comment**".
- 3 Page 2, line 6, delete "approved by" and insert "**presented to**".
- 4 Page 3, after line 28, begin a new paragraph and insert:
- 5 "SECTION 4. IC 13-28-4-1 IS AMENDED TO READ AS
- 6 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. Except as
- 7 provided in ~~sections~~ **section 2 and 3** of this chapter, an environmental
- 8 audit report:
- 9 (1) is privileged; and
- 10 (2) is not admissible as evidence in a civil ~~a criminal~~, or an
- 11 administrative legal action, including enforcement actions under
- 12 IC 13-30-3.
- 13 SECTION 5. IC 13-28-4-4 IS AMENDED TO READ AS
- 14 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) A party
- 15 asserting the privilege described in section 1 of this chapter has the
- 16 burden of proving that the party may exercise the privilege.
- 17 (b) A party asserting the privilege described in section 1 of this
- 18 chapter has the burden of establishing evidence that the person made
- 19 appropriate efforts to achieve compliance as described in ~~sections~~
- 20 **section 2(b) and 3(b)** of this chapter if the evidence indicates that the
- 21 person was in noncompliance as described in section 2(a)(2)(C) ~~or~~
- 22 ~~3(a)(2)(C)~~ of this chapter.
- 23 (c) A party seeking disclosure of material in an environmental audit
- 24 report under section 2(a)(2)(A) ~~or 3(a)(2)(A)~~ of this chapter has the

1 burden of proving that the privilege is being asserted for a fraudulent
2 purpose.

3 ~~(d) A prosecuting attorney seeking disclosure under section~~
4 ~~3(a)(2)(D) of this chapter has the burden of proving the conditions for~~
5 ~~disclosure described in section 3(a)(2)(D) of this chapter.~~

6 SECTION 6. IC 13-28-4-6 IS AMENDED TO READ AS
7 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. Upon making a
8 determination under section 2 ~~or~~ 3 of this chapter, the court may
9 compel the disclosure of only those parts of an environmental audit
10 report that are relevant to issues in dispute in the proceeding.

11 SECTION 7. IC 13-28-4-7 IS AMENDED TO READ AS
12 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. (a) Subject to
13 ~~subsection subsections~~ **(b) and (c)**, the privilege described in section
14 1 of this chapter does not apply to the extent that the privilege is
15 waived:

16 (1) expressly; or

17 (2) by implication;

18 by the owner or operator who prepared the environmental report or
19 caused the report to be prepared.

20 (b) ~~A party may submit an environmental audit report to the~~
21 ~~department as a confidential document under IC 5-14-3 without~~
22 ~~waiving a privilege to which the party would otherwise be entitled~~
23 ~~under this chapter. A party that submits an environmental audit~~
24 ~~report to the department waives any privilege to which the party~~
25 ~~would otherwise be entitled under this chapter. If the department~~
26 ~~determines under IC 5-14-3-4(a) that part of an environmental~~
27 ~~audit report is excepted from IC 5-14-3-3, then that part of the~~
28 ~~environmental audit report may not be disclosed by a public~~
29 ~~agency unless access to the report is required by a state or federal~~
30 ~~statute or is ordered by a court as provided under IC 5-14-3-4(a).~~

31 **(c) When the department or a prosecuting attorney obtains,**
32 **reviews, or uses an environmental audit report in a criminal**
33 **proceeding, the administrative or civil evidentiary privilege**
34 **created by this chapter is not waived or eliminated for any other**
35 **purpose.**

36 SECTION 8. IC 13-28-4-11 IS ADDED TO THE INDIANA CODE
37 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
38 UPON PASSAGE]: Sec. 11. (a) **The department shall maintain**
39 **statistics on the use of environmental audit reports in department**
40 **compliance and enforcement activities, including statistics on:**

41 **(1) the number of times the reports are disclosed to the**
42 **department;**

43 **(2) the number and types of violations disclosed to the**
44 **department through the reports;**

45 **(3) the civil penalties collected for the violations; and**

46 **(4) the time necessary for the violations to be corrected.**

- 1 **The department shall report annually to the environmental quality**
 2 **service council on the use of environmental audit reports.**
- 3 **(b) The department shall propose an enforcement policy,**
 4 **pursuant to IC 13-14-1-11.5, that provides relief from civil**
 5 **penalties for a voluntary disclosure that results from an internal**
 6 **environmental audit. In developing this enforcement policy, the**
 7 **department shall consider similar policies implemented by:**
- 8 **(1) the United States Environmental Protection Agency; and**
 9 **(2) states contiguous to Indiana.**
- 10 **(c) The department shall report annually to the environmental**
 11 **quality service council on the use and effectiveness of the**
 12 **enforcement policy.**
- 13 SECTION 9. THE FOLLOWING ARE REPEALED [EFFECTIVE
 14 UPON PASSAGE]: IC 13-28-4-3; IC 13-28-4-5.
- 15 SECTION 10. [EFFECTIVE UPON PASSAGE] **(a) Before**
 16 **September 1, 1999, the department of environmental management**
 17 **shall present the enforcement policy described in IC 13-28-4-11, as**
 18 **added by this act, to the environmental quality service council for**
 19 **discussion.**
- 20 **(b) Before November 1, 1999, the department of environmental**
 21 **management shall publish the enforcement policy consistent with**
 22 **IC 13-14-1-11.5, as amended by this act.**
- 23 **(c) This SECTION expires November 2, 1999.**
- 24 SECTION 11. **An emergency is declared for this act."**
 25 Renumber all SECTIONS consecutively.
 (Reference is to ESB 397 as printed March 26, 1999.)

Representative Kuzman