

# SENATE BILL No. 240

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 13-28-4.

**Synopsis:** Environmental audit privilege. Specifies that: (1) the voluntary environmental audit privilege does not apply to criminal investigations or proceedings; and (2) an environmental audit report is admissible as evidence in a criminal proceeding. Makes conforming amendments. Provides that a party that submits an environmental audit report to the department of environmental management waives any privilege to which the party would otherwise be entitled under the voluntary environmental audit privilege law. Provides that any part of an environmental audit report that the department of environmental management determines is excepted from the law concerning access to public records may not be disclosed by a public agency unless access  
(Continued next page)

**Effective:** Upon passage.

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January 6, 1999, read first time and referred to Committee on Environmental Affairs.

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Digest Continued

to the report is required by a state or federal statute or is ordered by a court under the rules of discovery. Provides that the voluntary environmental audit privilege does not apply to: (1) documents, communications, data, reports, or other information that must be collected, developed, maintained, reported, or otherwise made available to a regulatory agency or any other person under Indiana environmental laws, permits, or orders or any other federal, state, or local law, permit, or order; and (2) information developed before the environmental audit is initiated.

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Introduced

First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

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## SENATE BILL No. 240



A BILL FOR AN ACT to amend the Indiana Code concerning environmental law.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 13-28-4-1 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. Except as  
3 provided in ~~sections section 2 and 3~~ of this chapter, an environmental  
4 audit report:

- 5 (1) is privileged; and
- 6 (2) is not admissible as evidence in a civil ~~a criminal~~, or an  
7 administrative legal action, including enforcement actions under  
8 IC 13-30-3.

9 **The privilege created in this section does not apply to criminal**  
10 **investigations or proceedings. An environmental audit report is**  
11 **admissible as evidence in a criminal proceeding.**

12 SECTION 2. IC 13-28-4-4 IS AMENDED TO READ AS  
13 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) A party  
14 asserting the privilege described in section 1 of this chapter has the  
15 burden of proving that the party may exercise the privilege.



1 (b) A party asserting the privilege described in section 1 of this  
 2 chapter has the burden of establishing evidence that the person made  
 3 appropriate efforts to achieve compliance as described in ~~sections~~  
 4 **section 2(b) and 3(b)** of this chapter if the evidence indicates that the  
 5 person was in noncompliance as described in section 2(a)(2)(C) ~~or~~  
 6 ~~3(a)(2)(C)~~ of this chapter.

7 (c) A party seeking disclosure of material in an environmental audit  
 8 report under section 2(a)(2)(A) ~~or 3(a)(2)(A)~~ of this chapter has the  
 9 burden of proving that the privilege is being asserted for a fraudulent  
 10 purpose.

11 (d) ~~A prosecuting attorney seeking disclosure under section~~  
 12 ~~3(a)(2)(D) of this chapter has the burden of proving the conditions for~~  
 13 ~~disclosure described in section 3(a)(2)(D) of this chapter.~~

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

19 SECTION 4. IC 13-28-4-7 IS AMENDED TO READ AS  
 20 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. (a) Subject to  
 21 subsection (b), the privilege described in section 1 of this chapter does  
 22 not apply to the extent that the privilege is waived:

- 23 (1) expressly; or  
 24 (2) by implication;

25 by the owner or operator who prepared the environmental report or  
 26 caused the report to be prepared.

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

37 SECTION 5. IC 13-28-4-9 IS AMENDED TO READ AS  
 38 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 9. (a) The privilege  
 39 described in section 1 of this chapter does not apply to the following:

- 40 (1) Documents, communications, data, reports, or other  
 41 information that must be collected, developed, maintained,  
 42 reported, or otherwise made available to a regulatory agency **or**



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1           **any other person** under:

2           (A) this title;

3           (B) a rule or standard adopted under this title;

4           (C) a determination, a permit, or an order made or issued by

5           the commissioner under this title; or

6           (D) any other federal, state, or local law, permit, or order.

7           (2) Information obtained by observation, sampling, or monitoring

8           by any regulatory agency.

9           (3) Information obtained from a source independent of the

10          environmental audit.

11          **(4) Information developed before the environmental audit is**

12          **initiated.**

13          (b) This section does not allow the regulatory agency to adopt a rule

14          or a permit condition for the purpose of circumventing the privilege

15          established in this chapter by requiring disclosure of a report of a

16          voluntarily conducted audit.

17          SECTION 6. THE FOLLOWING ARE REPEALED [EFFECTIVE

18          UPON PASSAGE]: IC 13-28-4-3; IC 13-28-4-5.

19          SECTION 7. **An emergency is declared for this act.**

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