



February 17, 1999

SENATE BILL No. 240

DIGEST OF SB 240 (Updated February 15, 1999 6:13 pm - DI 78)

Citations Affected: IC 13-28.

Synopsis: Environmental audit privilege. Specifies that: (1) the voluntary environmental audit privilege does not apply to criminal action. Makes conforming amendments. Provides that when the department of environmental management or a prosecuting attorney obtains or uses an environmental audit report in a criminal proceeding, the administrative or civil evidentiary privilege is not waived. Requires the department of environmental management to propose an enforcement policy that provides relief from civil penalties for a voluntary disclosure that results from an audit and provides certain criteria for the policy. Requires the department to report annually to the environmental quality service council on the use and effectiveness of the policy.

Effective: Upon passage.

Gard

January 6, 1999, read first time and referred to Committee on Environmental Affairs.
February 16, 1999, amended, reported favorably — Do Pass.

SB 240—LS 7121/DI 69+



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February 17, 1999

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

13 (b) A party asserting the privilege described in section 1 of this
14 chapter has the burden of establishing evidence that the person made
15 appropriate efforts to achieve compliance as described in ~~sections~~

SB 240—LS 7121/DI 69+



1 **section 2(b) and 3(b)** of this chapter if the evidence indicates that the
 2 person was in noncompliance as described in section 2(a)(2)(C) **or**
 3 ~~3(a)(2)(C)~~ of this chapter.

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

8 ~~(d) A prosecuting attorney seeking disclosure under section~~
 9 ~~3(a)(2)(D) of this chapter has the burden of proving the conditions for~~
 10 ~~disclosure described in section 3(a)(2)(D) of this chapter.~~

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

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

21 (1) expressly; or

22 (2) by implication;

23 by the owner or operator who prepared the environmental report or
 24 caused the report to be prepared.

25 (b) A party may submit an environmental audit report to the
 26 department as a confidential document under IC 5-14-3 without
 27 waiving a privilege to which the party would otherwise be entitled
 28 under this chapter.

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

33 SECTION 5. IC 13-28-4-11 IS ADDED TO THE INDIANA CODE
 34 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
 35 UPON PASSAGE]: Sec. 11. (a) **The department shall propose an**
 36 **enforcement policy that provides relief from civil penalties for a**
 37 **voluntary disclosure that results from an internal environmental**
 38 **audit. The penalty relief provided by the policy must be**
 39 **commensurate with the relief provided under similar policies**
 40 **implemented by:**

41 (1) **the United States Environmental Protection Agency; and**

42 (2) **states adjoining Indiana.**

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- 1 **(b) Not later than September 1, 1999, the department shall**
- 2 **present the policy to the environmental quality service council for**
- 3 **discussion.**
- 4 **(c) Not later than November 1, 1999, the department shall**
- 5 **publish the policy.**
- 6 **(d) The department shall report annually to the environmental**
- 7 **quality service council on the use and effectiveness of the policy.**
- 8 SECTION 6. THE FOLLOWING ARE REPEALED [EFFECTIVE
- 9 UPON PASSAGE]: IC 13-28-4-3; IC 13-28-4-5.
- 10 SECTION 7. **An emergency is declared for this act.**

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COMMITTEE REPORT

Mr. President: The Senate Committee on Environmental Affairs, to which was referred Senate Bill No. 240, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, delete lines 9 through 11.

Page 2, line 21, strike "subsection (b)," and insert "**subsections (b) and (c),**".

Page 2, line 27, reset in roman "may submit".

Page 2, line 27, delete "that submits".

Page 2, line 28, reset in roman "as a confidential document under IC 5-14-3 without".

Page 2, line 29, reset in roman "waiving a".

Page 2, line 29, delete "waives any".

Page 2, line 30, delete "If the department determines under".

Page 2, delete lines 31 through 42, begin a new paragraph and insert:

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

SECTION 5. IC 13-28-4-11 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 11. (a) The department shall propose an enforcement policy that provides relief from civil penalties for a voluntary disclosure that results from an internal environmental audit. The penalty relief provided by the policy must be commensurate with the relief provided under similar policies implemented by:**

- (1) the United States Environmental Protection Agency; and
- (2) states adjoining Indiana.

(b) Not later than September 1, 1999, the department shall present the policy to the environmental quality service council for discussion.

(c) Not later than November 1, 1999, the department shall publish the policy.

(d) The department shall report annually to the environmental quality service council on the use and effectiveness of the policy."



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Page 3, delete lines 1 through 16.
and when so amended that said bill do pass.
(Reference is to SB 240 as introduced.)

GARD, Chairperson

Committee Vote: Yeas 4, Nays 3.

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