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## DIGEST

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HB 510 Original

2019 Regular Session

Bishop

**Abstract:** Authorizes certain voluntary health, safety, and environmental audits by facilities subject to regulation by the Department of Environmental Quality

Proposed law authorizes facilities subject to regulation by the Dept. of Environmental Quality (DEQ) to conduct voluntary health, safety, and environmental audits (voluntary audit). Excludes from these audits the following items:

- (1) Violations that may pose imminent or substantial threat or cause serious injury.
- (2) Criminal activity.
- (3) Reports or inspections required by law, regulation, or permit conditions.
- (4) State or federal investigations.

Proposed law provides a procedure for a voluntary audit as follows:

- (1) Initiation of a voluntary audit by written notice to DEQ describing the facility or portion of a facility to be audited, the start and end dates for the audit, and the general scope of the audit.
- (2) Unless approved by DEQ, the audit is to conclude within six months of the start date. Provides that if the facility transfers ownership or operator during the audit the audit is to conclude prior to transfer of the facility unless the purchaser or new operator requests continuation.
- (3) Requires disclosure of the audit report and findings of violations to DEQ within six months after the completion of the audit.
- (4) Requires submission of a proposed compliance plan to DEQ and agreement on a schedule for compliance. In the absence of agreement and the possibility of imminent substantial harm to persons, property, or the environment, allows DEQ to issue a compliance order to ensure timely compliance.
- (5) Requires the owner or operator to cooperate with DEQ in order to achieve compliance; submit periodic reports of progress to compliance, and authorizes DEQ to issue a compliance

order if the owner or operator fails to correct the violation in accordance with the compliance plan.

Proposed law provides that when an agreement to purchase or potentially purchase a facility requires the initiation of a voluntary audit prior to transfer of ownership, the purchaser may, within 45 days of the acquisition closing date, request that an ongoing voluntary audit be continued after the acquisition closing date. The purchaser is required to submit the following information to DEQ:

- (1) The facility or portion thereof being audited.
- (2) The date the audit began.
- (3) The general scope of the audit.
- (4) The termination date of the audit that cannot be more than six months after the acquisition closing date.

Proposed law also requires the new owner to certify that prior to the acquisition closing date the following was true:

- (1) The new owner was not responsible for the scope of the voluntary audit.
- (2) The new owner did not have the largest ownership share of the seller.
- (3) The seller did not have the largest ownership share of the new owner.
- (4) The new owner and the seller did not have a common corporate parent or common majority interest owner.

Proposed law provides that in a civil or administrative proceeding, the owner or operator is not compelled to disclose or reference, and may prevent another person from disclosing or referencing, any information contained in a voluntary audit. Provides that the privilege granted does not extend to criminal investigations nor is it to be construed to circumvent protections provided by federal or state law for people who disclose information to law enforcement authorities. The privilege also does not extend to the following:

- (1) Any violations that may pose imminent or substantial threat or cause serious injury.
- (2) Criminal activity.
- (3) Reports or inspections required under the provisions of this Subtitle, the rules pursuant to this Subtitle, and the conditions of permits issued pursuant to this Subtitle.
- (4) State or federal investigations.

- (5) Information that is required by law, regulation, or permit conditions to be collected, developed, maintained, or reported.
- (6) Information obtained by observation, sampling, or monitoring by DEQ.
- (7) Information obtained from a source that was not involved in the audit.

Proposed law provides that neither a subpoena nor court order to appear or testify in any civil or administrative investigation or proceeding seeking information or testimony about a voluntary audit can be issued to the owner or operator or the facility audited, a person who conducted any part of a voluntary audit, a person who received a voluntary audit, or the custodian of any results of a voluntary audit. Further prohibits DEQ from requesting or using any information resulting from a voluntary audit during a civil or administrative proceeding with regard to a penalty for violations disclosed in a voluntary audit. Authorizes DEQ to request copies of information related to the voluntary audit but requires that the report be held confidential and prohibits DEQ from disclosing and information contained in a voluntary audit report.

Proposed law specifies that the owner or operator of a facility subject to a voluntary audit unless court or an administrative law judge finds that person to have been engaged in a pattern of disregard of law or regulation that has resulted in repeated or continuing violations at the facility over the prior three years. Provides that the person claiming the privilege has the burden of establishing the applicability of the privilege.

Proposed law authorizes the owner or operator to waive privilege at any time. Provides that privilege cannot be waived by the disclosure of the audit report or any part of the report by anyone other than the owner or operator who prepared the audit or a new owner of a facility subject to a voluntary audit. Specifies that disclosure of any of the following does not waive privilege:

- (1) Disclosure reasonably made in furtherance of correcting a violation or conducting an audit.
- (2) Disclosure made for the sale of the facility.
- (3) Disclosure under a confidentiality agreement.
- (4) Disclosure to a court or governmental agency.
- (5) Disclosure related to a law requiring disclosure.

Proposed law provides for immunity from a civil or administrative penalty for a person who discloses a violation except in the following instances:

- (1) The violation resulted in substantial injury to a person, property, or the environment.
- (2) The person disclosing intentionally committed the disclosure violation or the violation was committed through criminal negligence.

- (3) The person disclosing was criminally negligent.
- (4) The violation was committed intentionally by a member of the person's management team or agent of the person.
- (5) The violation economically benefitted the violator as an advantage over its competitors.

Proposed law provides that the privilege granted shall not affect other privileges granted under law.

Proposed law authorizes DEQ to adopt rules but prohibits the rules from circumventing the privilege granted.

Proposed law provides the following definitions:

- (1) "Acquisition closing date" means the date on which ownership of a facility is acquired.
- (2) "Exhibits and appendices" means supporting information collected for a voluntary audit.
- (3) "Owner or operator" means a person having ownership interest in land on which a facility is located; a person contracted to operate the facility; a person operating a facility; a person to whom a permit for operations was issued; or a person with an agreement to purchase a facility.
- (4) "Voluntary health, safety, and environmental audit" means a voluntary investigation of a facility's compliance with laws, rules, and permit conditions conducted by or at the request of the owner or operator of a facility under the procedures outlined in law.
- (5) "Voluntary environmental audit report" means a report that includes all information generated from a voluntary audit.

Proposed law specifically provides that protections afforded to employees under other laws are not affected by proposed law. In addition proposed law does not affect DEQ's ability to issue compliance orders under the law, regulations, and permit conditions applicable to a facility.

Proposed law applies to voluntary audits initiated after July 1, 2019.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Adds R.S. 30:2044)