

2015 Regular Session

HOUSE BILL NO. 597

BY REPRESENTATIVE STUART BISHOP

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

ENVIRONMENT: Provides relative to privilege for findings of voluntary environmental audits

1 AN ACT

2 To enact R.S. 30:4.3, 2044, and 2381, relative to environmental audits; to provide for a
3 privilege from disclosure of certain information contained in voluntary
4 environmental audit reports in civil or administrative proceedings under the auspices
5 of the commissioner of conservation, the Department of Environmental Quality, and
6 the Department of Public Safety and Corrections; to provide for definitions; to
7 prohibit administrative or civil penalties for a violation disclosed as part of a
8 voluntary environmental audit; to provide for a voluntary environment audit
9 procedure; and to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 30:4.3, 2044, and 2381 are hereby enacted to read as follows:

12 §4.3. Environmental audit privilege

13 The provisions of R.S. 30:2044 shall apply to and govern voluntary
14 environmental audits conducted under the provisions of this Chapter.

15 * * *

16 §2044. Environmental audit privilege

17 A. For purposes of this Section, the following terms shall have the following
18 meanings:

19 (1) "Exhibits and appendices" means supporting information that is collected
20 or developed for the primary purpose of or in the course of a voluntary
21 environmental audit, such as the following items:

1 (a) Interviews with current or former employees.

2 (b) Field notes and records of observations.

3 (c) Findings, opinions, suggestions, conclusions, guidance, notes, drafts and
4 memoranda, legal analyses, drawings, photographs, laboratory analyses, and
5 analytical data.

6 (d) Computer generated or electronically recorded information.

7 (e) Maps, charts, graphs, and surveys.

8 (f) Communications associated with an environmental audit.

9 (2) "Owner or operator" with respect to a facility means any one or more of
10 the following persons:

11 (a) A person having an ownership interest in land under the audited facility.

12 (b) A person with a contract to operate the audited facility.

13 (c) A person operating the audited facility.

14 (d) A person to whom a permit related to facility operations was granted by
15 the department.

16 (e) A person with an agreement to purchase or potentially purchase the
17 audited facility.

18 (3) "Voluntary environmental audit" means an audit of a facility's
19 compliance with the requirements of this Subtitle or Chapter 1 of Subtitle I of this
20 Title, the rules issued pursuant to those laws, and conditions of permits issued
21 pursuant to those laws when such audit is conducted not at the direction of a state
22 entity but by, or at the request of, an owner or operator of the facility. A voluntary
23 environmental audit shall also meet all the following conditions:

24 (a) The voluntary environmental audit follows the audit procedure
25 requirements of Subsection D of this Section.

26 (b) Any finding of violation, at the time of the audit, is not required to be
27 collected, developed, maintained, or reported by this Subtitle or Chapter 1 of Subtitle
28 I of this Title, the rules issued pursuant to those laws, or conditions of permits issued
29 under those laws.

1 (c) The privilege granted by this Section is not waived by the owner or
2 operator with respect to a violation found.

3 (d) The violation found has not been independently detected by the
4 appropriate department or state entity before the disclosure of the violation to the
5 appropriate department or state entity and the environmental audit was not initiated
6 in response to an investigation at the facility by the appropriate department or state
7 entity.

8 (4) "Voluntary environmental audit report" means a report that includes all
9 documents, including exhibits and appendices, generated from a voluntary
10 environmental audit. Information that is required to be collected, developed,
11 maintained, or reported, or information obtained by observation, sampling, or
12 monitoring by the appropriate department or other state entity pursuant to this
13 Subtitle or Chapter 1 of Subtitle I of this Title, the rules issued pursuant to such laws,
14 or the conditions of permits issued pursuant to such laws shall not be included in the
15 definition of "voluntary environmental audit report". A voluntary environmental
16 audit report may include:

17 (a) A report prepared by an auditor, monitor, or similar person, which may
18 include the following:

19 (i) A description of the scope of the audit.

20 (ii) The information gained in the audit and findings, conclusions and
21 recommendations thereof.

22 (iii) Exhibits and appendices associated with the audit.

23 (b) An implementation plan or tracking system to correct past violations,
24 improve current compliance, or prevent future violations.

25 B. General Rule. In a civil or administrative proceeding, the owner or
26 operator of a facility has a privilege to refuse to disclose, and to prevent another
27 person from disclosing or referencing, any information contained in a voluntary
28 environmental audit report.

1 (1) Neither a subpoena nor a court order may be issued to an owner or
2 operator of a facility or to a person who conducted any part of a voluntary
3 environmental audit, a person who received a voluntary environmental audit report,
4 or a custodian of any results of a voluntary environmental audit report to appear or
5 testify in any civil or administrative investigation or proceeding where the purpose
6 of the subpoena or order is to seek testimony about, or a document that is part of, a
7 voluntary environmental audit report and its exhibits and appendices.

8 (2) To facilitate identification, each voluntary environmental audit report
9 may be labeled "Environmental Audit Report: Privileged Document" or words of
10 similar import. Failure to so label a document shall neither constitute a waiver of the
11 privilege under this Section nor create a presumption that the privilege does not
12 apply.

13 (3) A state agency may not request, review, or otherwise use any information
14 contained in a voluntary environmental audit report during any civil or
15 administrative action with respect to a facility covered by the audit, such as an
16 inspection, permitting, or enforcement of the facility or facility operations.

17 C. No Penalty. The appropriate department or state entity shall not impose
18 an administrative or civil penalty for a violation disclosed as part of a voluntary
19 environmental audit.

20 D. Voluntary environmental audit procedure.

21 (1) A voluntary environmental audit shall be initiated by written notice to the
22 appropriate department or the commissioner of conservation, whichever would be
23 the appropriate state entity. Such notice shall describe the facility or portion of a
24 facility to be audited, the audit start date and termination date that are no more than
25 six months apart, and the general scope of the audit.

26 (2) The voluntary environmental audit shall be completed on or before the
27 termination date, which may be extended with the approval of the appropriate
28 department or commissioner of conservation.

1 (3) Information regarding violations shall be generated by the voluntary
2 environmental audit.

3 (4) In the event of a transfer of ownership or operation of the facility, the
4 voluntary environmental audit shall be completed prior to the transfer of the facility.

5 (5) Any violations shall be disclosed in writing to the appropriate department
6 or commissioner of conservation within six months after completion of the voluntary
7 environmental audit or by such subsequent date that is reasonably acceptable to the
8 appropriate department or commissioner of conservation. However, if there is a new
9 owner or operator, such disclosure shall be made within six months after a new
10 owner or operator acquires the facility.

11 (6) An appropriate effort shall be followed with due diligence to achieve
12 compliance and correction of the violation within a reasonable time.

13 (7) The owner or operator shall cooperate with the appropriate department
14 or state entity in order to achieve compliance. The owner or operator shall submit
15 a written report of progress towards restoration of compliance to the appropriate
16 department or state entity at least every six months after disclosure or when
17 significant progress is made until compliance is achieved.

18 E. Who may claim the privilege.

19 (1) The privilege may be claimed by the owner or operator of a facility
20 covered by a voluntary environmental audit, unless a court or administrative law
21 judge finds that the person claiming the privilege has been engaged in a pattern of
22 disregard of the requirements of this Subtitle or Chapter 1 of Subtitle I of this Title,
23 the rules issued pursuant to those laws, or conditions of permits issued pursuant to
24 such laws over the prior three years that has resulted in repeated or continued
25 violation at the facility of any requirement of this Subtitle or Chapter 1 of Subtitle
26 I of this Title, the rules issued pursuant to those laws, or conditions of permits issued
27 pursuant to such laws.

28 (2) A person asserting the privilege under this Section has the burden of
29 establishing the applicability of the privilege.

1 F. Waiver.

2 (1) The owner or operator who prepared or caused the voluntary
3 environmental audit report to be prepared may expressly waive the privilege at any
4 time.

5 (2) Privilege shall not be waived by the disclosure of the voluntary
6 environmental audit report or part of the report or exhibits or appendices by anyone
7 other than the owner or operator who prepared or caused the voluntary
8 environmental audit report to be prepared.

9 (3) Disclosure of the voluntary environmental audit report or part of the
10 report for any of the following reasons does not waive the privilege:

11 (a) If the disclosure is reasonably made in furtherance of correcting a
12 violation, conducting a voluntary environmental audit, or evaluating whether a
13 voluntary environmental audit is needed or desired.

14 (b) If the disclosure is reasonably made in furtherance of a sale of the facility
15 being audited.

16 (c) If the disclosure is reasonably made under a confidentiality agreement.

17 (d) If the disclosure is reasonably made to a court or governmental agency.

18 (e) If the disclosure is reasonably related to a state or federal law requiring
19 the disclosure.

20 G. Circumvention Prohibited. No department or state entity may adopt a rule
21 or practice or impose a condition that circumvents the purposes of the privilege
22 under this Section.

23 H. Applicability. This Section applies to voluntary environmental audits
24 conducted after July 1, 2015.

25 I. Relationship to Other Privileges. This Section does not affect any other
26 privileges, such as those related to work product or the attorney-client relationship.

27 * * *

- 1 §2381. Environmental audit privilege
- 2 The provisions of R.S. 30:2044 shall apply to and govern voluntary
- 3 environmental audits under this Chapter.
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DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 597 Original

2015 Regular Session

Stuart Bishop

Abstract: Allows for a privilege for a voluntarily conducted environmental audit and information attached to that audit.

Proposed law provides that in civil or administrative proceedings, the owner or operator has a privilege to refuse to disclose information contained in a voluntary environmental audit report. Defines a voluntary environment audit as an audit of a facility's compliance with laws involving regulations by the office of conservation, the Dept. of Environmental Quality, or the Dept. of Public Safety and Corrections when the audit was conducted by or at the request of the owner or operator, not at the direction of a state entity, and any violation discovered by the audit was not independently detected by a state entity.

Proposed law prohibits subpoenas and court orders from being used to force disclosure of information contained in a voluntary environmental audit report and prohibits a state agency from requesting, reviewing, or otherwise using any information contained in such report. Provides that no penalty can be imposed by a state entity for violations discovered during a voluntary environmental audit.

Proposed law provides for a specific procedure to be followed for the voluntary environmental audit including initiation by written notice to the appropriate department or commissioner of conservation. The written notice is to contain a beginning and an ending date that are no more than six months apart or a date acceptable to the appropriate state entity. Authorizes the extension of the audit period with the approval of the appropriate state entity. Information regarding violations should be generated by the voluntary audit and any violations discovered are to be reported to the appropriate state entity. Due diligence shall be given to bringing all violations into compliance. If the facility being audited is to be sold or transferred, the audit must be completed prior to the transfer.

Proposed law provides that the privilege is granted to the owner or operator of a facility unless a court or administrative law judge finds that the person claiming the privilege has been engaged in a pattern of disregard of the requirements of law over the past three years. Provides that the burden of establishing applicability of the privilege is up to the person asserting the privilege. Provides that the owner or operator may waive privilege but that the release of any information contained in the report by any other person does not automatically waive privilege.

Applies to audits conducted after July 1, 2015.

(Adds R.S. 30:4.3, 2044, and 2381)