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## DIGEST

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HB 615 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).

Proposed law provides that in a civil or administrative proceeding, the owner or operator of a facility is not compelled to disclose or reference any information contained in a voluntary audit report. Provides that the evidentiary privilege is not available in criminal proceedings. In addition, prohibits privilege in the following circumstances:

- (1) Reports or inspections already required under the DEQ regulatory regimes.
- (2) Information already required under the DEQ regulatory regimes.
- (3) Information obtained by observation, sampling, or monitoring conducted by DEQ.
- (4) Information relative to repeated violations with no attempt to bring the facility or operation into compliance.

Proposed law provides that for any information for which privilege has been granted, neither a subpoena nor a court order may be issued where the purpose of the subpoena or order is to seek testimony about, or a document that is part of, a voluntary audit report and its exhibits and appendices.

Proposed law prohibits DEQ from requesting, reviewing, or otherwise using any information contained in a voluntary audit report in a civil or administrative proceeding unless that hearing pertains to the circumstances where privilege does not apply or any information for which a waiver has not been granted.

Proposed law provides that the privilege may be claimed by the owner or operator of a facility that is the subject of a voluntary audit unless in a civil or administrative proceeding a court or administrative law judge finds that the claim of privilege is unavailable to the extent the claim seeks protection from issues for which privilege cannot be granted or for any information for which there has been a waiver granted.

Proposed law provides that the owner or operator of a facility, or a person who was a potential purchaser of, or was otherwise pursuing a transaction involving the facility in question at the time of the voluntary audit can claim the privilege. In addition, provides that a person asserting the privilege has the burden of establishing the applicability of the privilege.

Proposed law provides that the owner or operator who prepared or caused the voluntary health, safety, and environmental audit report to be prepared may waive the privilege at any time by expressly acknowledging in writing that he waives the privilege as to a particular voluntary audit report or a particular portion thereof. Further provides, however, privilege is not waived as a result of the disclosure of a report or exhibits or appendices by anyone other than the owner or operator.

Proposed law further provides that disclosure of the report to a third party is not waiving privilege if it was for any of the following reasons:

- (a) Disclosure made to correct a violation, conduct an audit, or evaluate whether an audit is needed or desired.
- (b) Disclosure made in furtherance of the sale of the facility being audited.
- (c) Disclosure made under a confidentiality agreement or comparable claim of confidentiality.
- (d) Disclosure made to a court or governmental agency pursuant to a requirement or order of that court or agency or pursuant to a voluntary audit disclosure program including without limitation the immunity mechanism.

Proposed law provides immunity from any administrative or civil penalty for an owner or operator who discloses to the department a violation identified in a voluntary audit. Provides that qualification for immunity includes disclosure in writing to the department within six months of the conclusion of the voluntary audit describing the following:

- (1) The facility that has been audited, including the facility address relevant permit numbers.
- (2) The audit finding for which the owner or operator seeks immunity.
- (3) The corrective actions the owner or operator plans to implement to establish compliance.
- (4) A date no more than one hundred eighty days after the date of the disclosure for completing such corrective actions.

Provides that the following circumstances prohibit the granting of immunity:

- (1) The violation is found to present a major degree of risk or impact to human health and the environment pursuant to LAC 33:I:705.
- (2) The person who made the disclosure is found to have intentionally or knowingly committed

the disclosed violation or the violation is found to have been committed through criminal negligence, as defined in R.S. 14:12, by the person or a member of the person's management, and the person's policies or lack of prevention systems contributed materially to the occurrence of the violation.

- (3) The violation disclosed is found to have been independently detected by the department or a state or federal entity before the disclosure of the violation was submitted to the department or the environmental audit was initiated pursuant to an order or directive of the department or a state or federal entity.
- (4) The violation is found to have resulted in an economic benefit that gives the person disclosing such violation an economic advantage over business competitors, in which case, the department may assess a penalty not exceeding the amount of the economic benefit found to have been experienced by the owner or operator of the facility as a direct result of the disclosed violation.
- (5) The person claiming immunity is found to have failed to return to compliance with applicable requirements for that disclosed violation within a reasonable time.

Proposed law requires DEQ to maintain the confidentiality of any audit disclosure and associated materials until the statute of limitation on such disclosure shall have lapsed.

Proposed law prohibits the adoption of rules and regulations that circumvent the privilege or immunity granted. Further provides that costs associated with the DEQ's role in the implementation of the immunity provisions shall be paid by the owner or operator.

Proposed law provides the following definitions:

- (1) "Exhibits and appendices" means supporting information collected for a voluntary audit.
- (2) "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.
- (3) "Voluntary health, safety, and environmental audit" means a voluntary investigation of a facility's compliance with certain 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.
- (4) "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)