

# SENATE BILL REPORT

## SHB 2377

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As of February 12, 1996

**Title:** An act relating to promoting compliance with environmental laws.

**Brief Description:** Promoting compliance with environmental laws.

**Sponsors:** House Committee on Agriculture & Ecology (originally sponsored by Representatives Chandler, Chappell, Koster, Schoesler, Johnson, McMorris and Thompson).

**Brief History:**

**Committee Activity:** Ecology & Parks: 2/15/96.

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### SENATE COMMITTEE ON ECOLOGY & PARKS

**Staff:** Gary Wilburn (786-7453)

**Background:** Many entities that are subject to environmental laws conduct self-audits to determine whether their operations are in compliance with those laws. This allows these regulated entities to identify problems and implement solutions. The extent of the noncompliance is frequently summarized in an audit report. Management may be hesitant to release the results of an environmental audit because of concerns over enforcement actions and third-party lawsuits. Some states have adopted environmental audit legislation that provides for an evidentiary privilege against admission of the audit and some immunity from litigation under certain circumstances.

**Summary of Bill:**

**I. Admissibility of Evidence**

All data and factual findings collected in the course of a voluntary compliance review or in implementing a compliance assurance program are admissible as evidence in a civil, criminal, or administrative proceeding. Any analysis, interpretation, or recommendations regarding violations discovered during the review or through such a program are not admissible in a civil or administrative proceeding. The analysis, interpretation, or recommendations may be admitted in a civil or administrative proceeding to prove misuse of the evidentiary exclusion, to prove an effort to obstruct a civil or criminal investigation, and to prove that reasonable and timely steps to remedy the violation were not taken.

The exclusion of information developed in the course of or as a result of a compliance assurance review program does not apply to information collected or prepared to comply with a legally mandated monitoring or sampling requirement, or information obtained by observation, sampling, or monitoring by an agency.

## **II. Immunity for Penalties**

If a regulated entity follows the conditions set forth in the bill for disclosing a violation of an environmental law, it may not be subjected to administrative or civil penalties for the violation which was disclosed.

An agency may not recommend that a criminal charge be brought against a regulated entity that complies with the disclosure provisions of this legislation unless the violation demonstrates or involves: a management policy or practice that concealed or condoned a violation of environmental law; or a high level official's or manager's conscious involvement in or willful indifference to the violation. An agency may recommend criminal prosecution with respect to the criminal acts of individual managers or employees regardless of whether it recommends charges be brought against the entity.

## **III. Requirements for Regulated Entities to Receive Protections**

A regulated entity must satisfy several conditions before it may receive the limited immunity protection provided by the bill. A regulated entity must disclose a violation in writing to the responsible agency within a reasonable time after its discovery. The disclosure must result from a voluntary compliance assurance review or the operation of a compliance assurance program. The disclosure cannot result from a legally mandated monitoring or sampling requirement.

The violation must be identified and disclosed before: the commencement of an agency inspection, investigation, or request for information that would identify the violation; notice of a citizen suit with respect to the violation; the filing of a complaint by a third party; and disclosure of the violation by a person other than a representative of the regulated entity.

The regulated entity must comply as soon as possible, but not more than 60 days after identifying the violation. If more than 60 days are needed to achieve compliance, the regulated entity and the agency must enter into an agreement including a schedule of compliance. The regulated entity must also describe the steps taken, or that will be taken, to prevent a recurrence of the violation. The regulated entity must also cooperate with the agency investigation of the issues identified in the disclosure.

The violation identified by the regulated entity cannot: result in serious actual harm to human health or the environment; present substantial endangerment to human health or the environment; violate the specific terms of a permit, settlement agreement, notice of correction, order, or decree; or be part of a pattern of violations at the facility or other facilities owned or operated by the regulated entity that show disregard for environmental laws.

## **IV. Other**

A regulated entity may qualify for additional incentives by implementing a compliance assurance program that meets the requirements of recognized standards and includes provisions for pollution prevention and reduction.

If a regulated entity has implemented a compliance assurance program and achieved some measurable pollution prevention or reduction, an agency may reduce monitoring or reporting requirements to which the regulated entity is otherwise subject.

Nothing limits, waives, or abrogates the scope or nature of a statutory or common law privilege, including the attorney-client privilege and the work product doctrine. Nothing alters the requirement to report and correct releases, violations, or other matters.

"Agency" is defined as the Department of Ecology, pollution control authorities, municipalities that grant wastewater discharge permits, and local health entities that issue bio-solid permits.

**Appropriation:** None.

**Fiscal Note:** Requested on January 25, 1996.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.