

By Representatives Smith, Burroughs, Kelly, Sanderson,  
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1                                   A bill to be entitled  
2           An act relating to environmental improvement;  
3           providing definitions; creating the  
4           Environmental Improvement Program; providing  
5           for environmental self-audits; providing a  
6           purpose; providing procedures for admission to  
7           the program; providing a limited exemption for  
8           certain information from discovery or  
9           introduction as evidence under certain  
10          circumstances; prohibiting the compelling of  
11          testimony under certain circumstances;  
12          prohibiting certain civil or administrative  
13          enforcement actions under certain  
14          circumstances; providing requirements for  
15          reports of violations of environmental laws;  
16          providing construction; providing for future  
17          repeal and review by the Legislature; providing  
18          criteria for review; providing procedures;  
19          protecting certain rights from the effect of  
20          repeal; providing for nonenforcement of certain  
21          provisions to the extent of conflict with  
22          federal law; providing an effective date.

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24           WHEREAS, it is the intent of the Legislature to  
25   encourage regulated entities to conduct voluntary self-audits  
26   to improve compliance with environmental laws and to protect  
27   the environment from harm which is preventable through early  
28   detection and timely cleanup, and

29           WHEREAS, to ensure appropriate review and evaluation of  
30   the effectiveness of this act, the Legislature hereby creates  
31   a limited, 5-year pilot project which affects the discovery

1 and disclosure of civil or administrative violations, but does  
2 not affect the laws or procedures relating to the prosecution  
3 of criminal violations, NOW, THEREFORE,

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5 Be It Enacted by the Legislature of the State of Florida:

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7 Section 1. Environmental Improvement Program.--

8 (1) Definition.--For purposes of this section:

9 (a) "Department" means the Department of Environmental  
10 Protection.

11 (b) "Environmental law" means any special or general  
12 law, rule, regulation, ordinance, code, certification, order,  
13 permit, or license designed to protect or preserve the  
14 environment or prevent pollution.

15 (c) "Environmental self-audit" means a systematic and  
16 documented review of one or more facilities or facility  
17 programs, operations, or practices which is used to determine  
18 compliance with one or more environmental laws or to identify  
19 opportunities to improve environmental protection.

20 (2) The Environmental Improvement Program is hereby  
21 created. The purpose of the program is to encourage persons to  
22 conduct voluntary environmental self-audits that result in  
23 improved compliance with state or local environmental laws.  
24 Any person who voluntarily conducts any environmental  
25 self-audit shall be eligible to participate in the program.

26 (3) A person must provide notice to the department of  
27 the person's intent to participate in the program for a  
28 12-month period. The department shall have 30 days after the  
29 date notice is received during which to deny a person  
30 admission into the program. A person shall be admitted and, if  
31 subsequent notice is refiled, shall be readmitted into the

1 program unless the person has been found guilty within the  
2 prior 5 years of any willful violation of s. 403.161, Florida  
3 Statutes. Any person whom the department fails to deny in  
4 writing within the 30-day period shall be admitted into the  
5 program.

6 (4) Information, documents, or records prepared as a  
7 result of an environmental self-audit conducted by a program  
8 participant shall not be subject to discovery or introduction  
9 into evidence in any civil or administrative action or to  
10 disclosure pursuant to s. 403.091, Florida Statutes, unless:

11 (a) The environmental self-audit:

12 1. Is conducted to avoid liability resulting from an  
13 agency enforcement action which is imminent or pending; or

14 2. Is specifically required to be performed pursuant  
15 to the terms of an order or settlement agreement;

16 (b) The information, documents, or records identify a  
17 violation and:

18 1. The participant does not initiate corrective  
19 measures and achieve compliance within the period specified by  
20 environmental law or, if no period is specified, within a  
21 reasonable period after the violation is discovered; or

22 2. The participant knew or was willfully blind to the  
23 violation at the time the environmental self-audit was  
24 initiated; or

25 (c) The information, documents, or records:

26 1. Are otherwise subject to public disclosure pursuant  
27 to chapter 119, Florida Statutes, or s. 24, Art. I of the  
28 State Constitution;

29 2. Are required to be collected, developed,  
30 maintained, reported, or otherwise made available to an agency  
31 pursuant to an environmental law;

1           3. Disclose a violation which is an imminent and  
2 substantial hazard to human health or the environment;

3           4. Existed prior to the commencement of the  
4 environmental self-audit;

5           5. Are obtained by observation, sampling, or  
6 monitoring by any agency; or

7           6. Are obtained from a source independent of the  
8 environmental self-audit.

9           (5) No person who has participated in an environmental  
10 self-audit may be compelled to testify in any civil or  
11 administrative proceeding regarding matters related to the  
12 environmental self-audit, except regarding any matter of which  
13 the person has actual knowledge independent of the  
14 environmental self-audit.

15           (6) No civil or administrative enforcement action  
16 shall be maintained against a program participant for a  
17 violation of any environmental law which is detected by an  
18 environmental self-audit and reported to the department within  
19 30 days after completing the environmental self-audit, unless:

20           (a) The participant does not initiate corrective  
21 measures and achieve compliance within the period specified by  
22 environmental law or, if no period is specified, within a  
23 reasonable period after the violation is discovered;

24           (b) The environmental self-audit is conducted or the  
25 violation is reported to avoid liability resulting from an  
26 agency enforcement action which is imminent or pending;

27           (c) The violation is detected pursuant to an  
28 environmental self-audit that is required to be performed  
29 pursuant to the terms of an order or settlement agreement; or  
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1       (d) The participant knew or was willfully blind to the  
2 violation at the time the environmental self-audit was  
3 initiated.

4       (7) If a participant reports a violation pursuant to  
5 subsection (6), the report shall state the nature of the  
6 violation and briefly describe the action which is proposed to  
7 be taken or has been taken to correct the violation. If the  
8 estimated time required to correct a violation exceeds 90  
9 days, the report shall include a proposed schedule of  
10 activities for completing the corrective action. Any  
11 authorized representative of the department may at any  
12 reasonable time enter and inspect the property of a program  
13 participant for the purpose of ascertaining the state of  
14 activities required to correct any reported violation. Nothing  
15 in this subsection waives, a participant's rights under  
16 subsection (4) or subsection (5).

17       (8) Nothing in this section shall be construed to  
18 apply to any criminal action or criminal investigation or to  
19 prohibit a criminal enforcement action.

20       (9) Nothing in this section limits, waives, or  
21 abrogates the scope or nature of any statutory or common law  
22 privilege.

23       Section 2. (1) This act is repealed July 1, 2002, and  
24 shall be reviewed by the Legislature prior to that date. To  
25 assist the Legislature in its review, the Division of Economic  
26 and Demographic Research of the Joint Legislative Management  
27 Committee shall conduct a comprehensive review of the program  
28 which shall be presented to the Legislature by January 1,  
29 2002. The review shall include an examination of issues  
30 related to:

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1       (a) The economy, efficiency, or effectiveness of the  
2 program as a mechanism for environmental protection.

3       (b) The structure or design of the program to  
4 accomplish program goals and objectives.

5       (c) Barriers to small business participation in the  
6 program.

7       (d) The adequacy of the program to meet the objectives  
8 identified by the Legislature.

9       (2) To conduct the review and evaluate the identified  
10 issues, the division shall collect and classify information  
11 related to:

12       (a) The type of person participating in the program,  
13 except when such information would reveal the identity of a  
14 specific participant.

15       (b) The size of the business of each participant which  
16 is a business entity.

17       (c) The frequency and scope of self-audits annually  
18 conducted by a participant before and after the creation of  
19 the program.

20       (d) The duration of the participant's auditing  
21 program.

22       (e) The number and nature of violations discovered.

23       (f) The number and nature of findings which are not  
24 regulatory violations.

25       (g) The duration of discovered violations.

26       (h) The length of time required to complete the  
27 identified corrective action.

28       (i) The number and nature of violations reported under  
29 the program.

30       (3) The review shall compare information concerning  
31 self-audits conducted under the program to information

1 concerning agency inspections of the same facilities and shall  
2 include consideration of such issues as the relative  
3 frequency, scope, and outcome of agency inspections when  
4 compared to the frequency, scope, and outcome of voluntary  
5 self-audits and trends related to the number and nature of  
6 violations discovered and incidences or patterns of  
7 environmental impacts occurring within the state or within a  
8 particular industry classification.

9       (4) To prepare the review required by this section,  
10 the division may designate one or more representatives who may  
11 enter the property of any program participant to visually  
12 inspect documents or records prepared as a result of the  
13 participant's environmental self-audits. Such authorized  
14 representative may not copy the documents or records but may  
15 take notes regarding information contained in the document or  
16 records as may be necessary to complete the review. The  
17 representative shall not record any information which  
18 reasonably could disclose the identity of a specific program  
19 participant. To collect the data required to prepare the  
20 review, the division may obtain information from every program  
21 participant or may obtain information from a representative  
22 sample of program participants. Program participants shall  
23 make the necessary documents or records available to the  
24 division or authorized representative. Nothing in this section  
25 limits, waives, or abrogates the scope or nature of any right  
26 or benefit granted to a program participant by this act.

27       Section 3. The repeal of this act by the Legislature  
28 shall not affect the rights of persons acting in reliance on  
29 provisions of this act prior to the effective date of such  
30 repeal.

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1           Section 4. If any provision of this act or the  
2 application thereof to any person or circumstance violates the  
3 express terms of any federal law or agreement required to  
4 retain state responsibility for implementation of a  
5 federally-delegated environmental law, the provision shall not  
6 be enforced, but only to the extent that such provision  
7 conflicts with the terms of the law or agreement.

8           Section 5. No rules shall be required to implement the  
9 provisions of this act.

10          Section 6. This act shall take effect July 1, 1997.

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HOUSE SUMMARY

Provides for a 5-year pilot Environmental Improvement Program under which regulated entities may conduct environmental self-audits to improve compliance with environmental laws and protect the environment. See bill for details.