



2015-2016 General Assembly

# HOUSE BILL 765: Regulatory Reform Act of 2015, Sec. 4.1: Environmental Self-Audit Privilege and Limited Immunity

**Committee:**

**Introduced by:**

**Analysis of:** Sec. 4.1 of S.L. 2015-286

**Date:**

**Prepared by:** Jennifer McGinnis  
Staff Attorney

**SUMMARY:** *Sec. 4.1 of S.L. 2015-286 establishes a disclosure privilege for environmental audit reports that would generally prevent the use of the reports as evidence in civil or administrative proceedings. The provision also prohibits persons who conducted or participated in an audit or who significantly reviewed an audit report from being compelled to testify regarding the audit report or a privileged part of the audit, except in certain circumstances. In addition, the provision generally establishes immunity for owners and operators of facilities from imposition of civil and administrative penalties for a violation of environmental laws discovered through the conduct of an environmental audit and voluntarily disclosed to an enforcement agency in conformance with requirements established by the provision. The provision specifically provides, however, that waiver of penalties and fines must not be granted until the applicable enforcement agency has certified that the violation was corrected within a reasonable period of time (i.e., the enforcement agency retains discretion to assess penalties and fines for the violation until it is corrected). An owner or operator of a facility who makes a voluntary disclosure of a violation of environmental laws discovered through an audit is limited to exercising the privilege or immunity only once in a 2-year period, not more than twice in a 5-year period, and not more than three times in a 10-year period.*

*The provision does not apply to activities regulated under the Coal Ash Management Act of 2015.*

*The section requires the Department of Environmental Quality (formerly the Department of Environment and Natural Resources) to: (i) submit these environmental self-audit privilege and immunity provisions to the United States Environmental Protection Agency (USEPA) and request the USEPA's approval to implement the provisions in concert with the State's legal authority to continue administering delegated, approved, or authorized federal environmental programs within the State; and (ii) report to the Environmental Review Commission no later than December 1, 2015, and monthly thereafter, until approval to implement these provisions is received from USEPA.*

*This section would become effective upon the date such approval is received from USEPA.*

Karen Cochrane-  
Brown  
Director



Research Division  
(919) 733-2578