

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 86th General Assembly
3 Regular Session, 2007
4

A Bill

HOUSE BILL 2698

5 By: Representative Saunders
6
7

For An Act To Be Entitled

8 AN ACT TO PROVIDE INCENTIVES FOR ENVIRONMENTAL
9 SELF-DISCLOSURE; AND FOR OTHER PURPOSES.
10

Subtitle

11 THE ENVIRONMENTAL SELF-DISCLOSURE
12 INCENTIVE ACT.
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16 BBY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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18 SECTION 1. Arkansas Code Title 8, Chapter 1, is amended to add an
19 additional subchapter to read as follows:

20 8-1-401. Title.

21 This act shall be known and cited as "The Environmental Self-Disclosure
22 Incentive Act".
23

24 8-1-402. Legislative intent.

25 (a) The General Assembly finds that voluntary compliance with
26 environmental laws, rules, and regulations is one of the principal means of
27 effectively protecting the environment of the state and that voluntary
28 compliance is most effectively achieved through the implementation of
29 regular, systematic, and objective self-evaluative activities such as
30 environmental audits or an environmental management system designed to
31 monitor and maintain compliance with all applicable laws, rules, and
32 regulations.

33 (b) Arkansas is one of a minority of states that does not have a self-
34 disclosure mitigation law or policy, and the lack of a self-disclosure
35 mitigation law or policy poses a significant hurdle to economic development
36 and improved environmental compliance.



1 (c) The intent of this subchapter is to:

2 (1) Allow substantial mitigation of enforcement sanctions
3 following voluntary self-evaluation and self-disclosure of potential
4 environmental violations;

5 (2) Encourage candid self-assessment, disclosure, and correction
6 of environmental compliance issues; and

7 (3) Provide consistency with the federal Small Business
8 Regulatory Enforcement Fairness Act (P.L. 104-121), as it exists on January
9 1, 2007, and other federal and state laws and policies.

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11 8-1-403. Definitions.

12 (a) As used in this subchapter:

13 (1) "Disclosure" means any communication by a person or an
14 entity, oral or written, with the Arkansas Department of Environmental
15 Quality that conveys information concerning a potential environmental
16 violation;

17 (2) "Environmental audit" means the same as defined in § 8-1-
18 302(3);

19 (3) "Environmental management system" means a voluntarily
20 adopted system of procedures or practices through which a person or entity
21 monitors its environmental performance, including compliance with applicable
22 regulatory requirements, that is not otherwise required by established
23 environmental laws or regulations;

24 (4) "Penalty" means a monetary assessment for an environmental
25 violation authorized by any law assigned to the regulatory jurisdiction of
26 the department or the Arkansas Pollution Control and Ecology Commission.

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28 8-1-404. Incentives for self-disclosure.

29 (a) The Arkansas Department of Environmental Quality shall not assess
30 a penalty in an administrative or civil enforcement action against a person
31 or an entity for an alleged violation that is either discovered by the person
32 or entity through an environmental audit or under the person or entity's
33 environmental management system if the person or entity voluntarily and
34 timely:

35 (1) Disclosed the violation to the department following a
36 reasonable period of investigation by the person or entity; and

1 (2) Corrected the violation.

2 (b) The department shall reduce any penalty assessed in an
3 administrative or civil enforcement action by seventy-five percent (75%) if
4 the person or entity voluntarily and timely discloses and corrects the
5 alleged environmental violation, but does not otherwise satisfy subsection
6 (a) of this section.

7 (c) A penalty waiver or mitigation under this subsection shall not
8 apply to any economic benefit realized by the person or entity as a result of
9 a proven violation of environmental requirements.

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11 8-1-405. Enforcement procedures.

12 (a)(1) The Arkansas Department of Environmental Quality shall defer
13 for at least ninety (90) days any enforcement action against a person or an
14 entity based on an environmental violation of an environmental requirement if
15 the person or entity voluntarily discloses the environmental violation to the
16 department under § 8-1-404.

17 (2) During the ninety-day period, the person or entity must take
18 reasonable measures to remedy the violation, including without limitation,
19 submitting applicable permit applications or remediation reports.

20 (b) The Arkansas Pollution Control & Ecology Commission shall
21 promulgate rules to implement this subchapter.

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