

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

As Engrossed: H3/19/07

A Bill

HOUSE BILL 2698

5 By: Representative Saunders
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For An Act To Be Entitled

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

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".
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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 written communication to the Arkansas
14 Department of Environmental Quality by a person or an entity subject to the
15 compliance requirements of state environmental laws or regulations that
16 conveys information concerning a potential environmental violation;

17 (2) "Environmental audit" means the same as defined in § 8-
18 1302(3);

19 (3) "Environmental management system" means a voluntarily
20 adopted documented system of procedures or practices through which a person
21 or an entity monitors its environmental performance, including preventing,
22 detecting, and correcting violations, that is not otherwise required by
23 established environmental laws or regulations; and

24 (4) "Penalty" means a monetary assessment for an environmental
25 violation authorized by any law administered by the department except any
26 penalty assessed under § 15-57-201 et seq., The Arkansas Open Cut Land
27 Reclamation Act, § 15-57-301 et seq., the Arkansas Quarry Operation,
28 Reclamation and Safe Closure Act, § 15-57-401 et seq., and the Arkansas
29 Surface Coal Mining and Reclamation Act of 1975, § 15-58-101 et seq., and any
30 regulations promulgated thereunder.

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32 8-1-404. Incentives for self-disclosure.

33 (a) Except in the case of habitual noncompliance or as provided
34 otherwise in this subchapter, the Arkansas Department of Environmental
35 Quality shall mitigate a penalty in an administrative enforcement action or a
36 civil enforcement action against a person or an entity for an alleged

1 violation that is either discovered by the person or entity through an
2 environmental audit or under the person or entity's environmental management
3 system if the person or entity voluntarily and timely:

4 (1) Disclosed the violation to the department within twenty-one
5 (21) calendar days of discovery of the violation;

6 (2) Upon discovery of the violation takes immediate and
7 reasonable action to correct the violation; and

8 (3) Within ninety (90) calendar days from the date of discovery
9 of the violation, submits documentation acceptable to the department showing
10 correction of the violation and measures taken to prevent future
11 noncompliance.

12 (b) Penalty mitigation under this section shall not be allowed if:

13 (1) The violation creates an imminent and substantial
14 endangerment to human health or the environment;

15 (2) The violation creates harm to human health or the
16 environment;

17 (3) The same type or similar type of violation has occurred
18 within the last three (3) years;

19 (4) The violation was discovered after the department learns of
20 it or is likely to learn of it imminently;

21 (5) The violation was deliberate or intentional;

22 (6) The violation is not corrected within ninety (90) calendar
23 days from the date of discovery, unless a longer period of time is requested
24 and granted by the department within ninety (90) calendar days from the date
25 of discovery;

26 (7) The violation is prohibited by a judicial order or an
27 administrative order;

28 (8) The violation is required to be reported by state law,
29 regulation, or permit condition;

30 (9) The violation does not indicate a lack or reasonable
31 question of the basic good faith attempt to understand and comply with
32 applicable state environmental laws or regulations through environmental
33 management systems appropriate to the size and nature of the activities of
34 the regulated community;

35 (10) The regulated entity has not realized and will not realize
36 a demonstrable and significant economic or competitive advantage as a result

1 of noncompliance; and

2 (11) The regulated entity fails to cooperate with the department
3 as the department performs its duties and provides such information as the
4 department reasonably requests to confirm the entity's compliance with these
5 conditions.

6 (c) Notwithstanding the failure of a regulated entity to meet all of
7 the conditions in subsection (b) of this section, the department will
8 consider the nature and extent of such actions of the regulated entity in
9 mitigation of any administrative penalty or a civil penalty otherwise
10 appropriate. If the regulated entity meets all conditions in subsection (b)
11 of this section except item ten (10) relating to significant economic or
12 competitive advantage, the department may seek an administrative penalty or
13 a civil penalty only to the extent of the economic or competitive advantage
14 gained.

15 (d) In the event of any conflict, the elimination or mitigation of
16 penalties under subsections (a) and (c) of this section is subject to
17 agreements between the department and the United States Environmental
18 Protection Agency relating to regulatory program delegation or authorization
19 from the United States Environmental Protection Agency to the department.

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21 /s/ Saunders
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