

## **BILL ANALYSIS**

S.B. 1300  
By: Eltife  
Environmental Regulation  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

The Texas Environmental, Health, and Safety Audit Privilege Act currently provides certain benefits, including immunity from civil and administrative penalties, for voluntary disclosure of a violation of an environmental or health and safety law. An owner or operator of a facility regulated under an environmental or health and safety law must meet certain requirements to be eligible for the immunity from civil and administrative penalties that the act affords. Interested parties contend that prospective buyers in transactions involving these facilities often perform due diligence reviews, similar to a compliance audit, and these reviews often reveal issues of noncompliance. The parties note that, if the transaction closes and the prospective buyer becomes the owner of the facility, the new owner inherits these compliance issues. However, despite the new owner's efforts to evaluate compliance at the facility during due diligence reviews and expeditiously correct issues identified following the closing on the transaction, the new owner is not eligible for the benefits afforded under the act. S.B. 1300 seeks to amend the applicable law in order to enhance the act's utility in a transactional setting.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

S.B. 1300 amends the Texas Environmental, Health, and Safety Audit Privilege Act to expand the definition of "environmental or health and safety audit" to include a systematic voluntary evaluation, review, or assessment of compliance with environmental or health and safety laws or with any permit issued under an environmental or health and safety law conducted by a person, including an employee or independent contractor of the person, that is considering the acquisition of a regulated facility or operation.

S.B. 1300 authorizes a person that begins an audit before becoming the owner of a regulated facility or operation to continue the audit after the acquisition closing date if the person gives the required notice to the appropriate regulatory agency. The bill requires the audit to be completed within a reasonable time not to exceed six months after the date the audit is initiated or the acquisition closing date, if the person continues the audit, unless an extension is approved by the governmental entity with regulatory authority over the regulated facility or operation based on reasonable grounds. The bill specifies that the requirement that the audit be completed within six months of the date the audit is initiated does not apply to an audit conducted before the acquisition closing date by a person that is considering the acquisition of the regulated facility or operation.

S.B. 1300 adds the following to the conditions under which disclosure of an audit report or any information generated by an environmental or health and safety audit does not waive the privilege established under the Texas Environmental, Health, and Safety Audit Privilege Act:

- the disclosure being made to address or correct a matter raised by the environmental or

health and safety audit and being made only to a person considering the acquisition of the regulated facility or operation that is the subject of the audit; and

- the disclosure being made to address or correct a matter raised by the environmental or health and safety audit and being made only to an employee, temporary employee, contract employee, legal representative, officer, director, partner, or independent contractor of a person considering the acquisition of the regulated facility or operation that is the subject of the audit.

S.B. 1300 specifies that a disclosure of a violation of an environmental or health and safety law made not more than the 45th day after the acquisition closing date, if the violation was discovered during an audit conducted before the acquisition closing date by a person considering acquisition of the regulated facility or operation, is voluntary for the purposes of immunity from an administrative or civil penalty for the disclosed violation and requires the person making such a disclosure to certify certain information in the disclosure. The bill includes the period of ownership of a regulated facility or operation among the factors which may mitigate an administrative or civil penalty for a violation of an environmental or health and safety law. The bill exempts an audit conducted before the acquisition closing date by a person considering the acquisition of a regulated facility or operation from statutory provisions relating to required notice to the appropriate regulatory agency of the fact that the facility is planning to conduct an audit for purposes of establishing immunity. The bill authorizes a person that begins an audit before becoming the owner of the regulated facility or operation to continue the audit after the acquisition closing date if, not more than the 45th day after the acquisition closing date, the person provides notice to an appropriate regulatory agency of the fact that the person intends to continue the audit and requires the person providing such notice to certify certain information in the notice.

#### **EFFECTIVE DATE**

September 1, 2013.