

CHAPTER 283

**HEALTH AND ENVIRONMENT**

**HOUSE BILL 00-1481**

BY REPRESENTATIVES George, Alexander, Fairbank, Hefley, Johnson, Lawrence, May, McElhany, McKay, Mitchell, Morrison, Paschall, Stengel, and Taylor;  
also SENATORS Powers, Congrove, Hillman, Lacy, Lamborn, Musgrave, Reeves, and Weddig.

**AN ACT**

CONCERNING ENACTMENT OF A PILOT PROJECT THAT ENCOURAGES REPORTING UNDER THE COLORADO ENVIRONMENTAL SELF-AUDIT LAW.

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** Part 1 of article 1 of title 25, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

**25-1-114.6. Implementation of environmental self-audit law - pilot project - legislative declaration.** (1) (a) THE GENERAL ASSEMBLY HEREBY FINDS AND DETERMINES THAT, IN ORDER TO ENCOURAGE THE REGULATED COMMUNITY TO UTILIZE THE ENVIRONMENTAL SELF-AUDIT PROVISIONS CONTAINED IN THIS SECTION AND SECTIONS 25-1-114.5, 13-25-126.5, AND 13-90-107 (1) (j), C.R.S., A PILOT PROJECT IS ESTABLISHED. THE GENERAL ASSEMBLY HEREBY DECLARES THAT THE PURPOSE OF THE ENVIRONMENTAL SELF-AUDIT PROVISIONS CONTAINED IN THIS SECTION AND SECTIONS 25-1-114.5, 13-25-126.5, AND 13-90-107 (1) (j), C.R.S., IS TO ENCOURAGE THE REGULATED COMMUNITY TO VOLUNTARILY IDENTIFY ENVIRONMENTAL CONCERNS AND TO ADDRESS THEM EXPEDITIOUSLY WITHOUT FEAR OF ENFORCEMENT ACTION BY REGULATORY AGENCIES. THE GENERAL ASSEMBLY RECOGNIZES THAT, DUE TO CONCERNS WITH THE ENVIRONMENTAL SELF-AUDIT PROVISIONS, THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY HAS, IN THE PAST, TAKEN DIRECT ACTION AGAINST ENTITIES IN THE REGULATED COMMUNITY THAT HAVE MADE DISCLOSURES UNDER THE ENVIRONMENTAL SELF-AUDIT PROVISIONS. THE GENERAL ASSEMBLY FURTHER DECLARES THAT THE PILOT PROJECT ENACTED BY THIS SECTION IS INTENDED TO ALLOW ENTITIES TO PROCEED UNDER THE ENVIRONMENTAL SELF-AUDIT PROVISIONS WITH ASSURANCE THAT, IF ANY SUCH ENTITY COMPLIES WITH SUCH ENVIRONMENTAL SELF-AUDIT PROVISIONS, THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY WILL FOREGO ANY ENFORCEMENT ACTION

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*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

BASED ON THE DISCLOSURES MADE AND ADDRESSED UNDER THE ENVIRONMENTAL SELF-AUDIT PILOT PROJECT.

(b) THE GENERAL ASSEMBLY FURTHER RECOGNIZES THAT, UNDER THE PILOT PROJECT ENACTED BY THIS SECTION, THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT WILL HAVE DISCRETION TO CONSIDER CERTAIN FACTORS IN ASSESSING A REGULATED ENTITY'S ELIGIBILITY FOR PENALTY IMMUNITY UNDER THE ENVIRONMENTAL LAWS. THE GENERAL ASSEMBLY INTENDS THAT THIS ADDITIONAL FLEXIBILITY TO ASSESS AN ENTITY'S ELIGIBILITY, ALONG WITH THE PROTECTION FROM FEDERAL OVERFILING THAT THE PILOT PROJECT PROVIDES, WILL ENCOURAGE ENTITIES TO PARTICIPATE IN THE PROJECT AND ALLOW THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT TO ASSESS THE EFFECTIVENESS OF THE ENVIRONMENTAL SELF-AUDIT PROVISIONS.

(c) THE PROVISIONS OF THIS SECTION SHALL ONLY APPLY TO DISCLOSURES MADE UNDER THIS SECTION AND SECTIONS 25-1-114.5, 13-25-126.5, AND 13-90-107 (1) (j), C.R.S., AFTER THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT AND THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY HAVE ENTERED INTO A MEMORANDUM OF AGREEMENT BINDING COLORADO AND THE FEDERAL GOVERNMENT TO ENFORCE ENVIRONMENTAL LAWS IN A MANNER CONSISTENT WITH THE PROVISIONS OF THIS SECTION.

(2) NOTWITHSTANDING THE PROVISIONS OF SECTIONS 25-1-114.5 (4) AND (5), 13-25-126.5, AND 13-90-107 (1) (j), C.R.S., ON AND AFTER THE EFFECTIVE DATE OF THIS SECTION, THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT MAY ASSESS PENALTIES FOR CRIMINAL NEGLIGENCE WHEN AVAILABLE UNDER FEDERAL ENVIRONMENTAL LAW.

(3) (a) IN ADDITION TO THE PROVISIONS OF SUBSECTION (2) OF THIS SECTION, NOTWITHSTANDING THE PROVISIONS OF SECTIONS 25-1-114.5 (4) AND (5), 13-25-126.5, AND 13-90-107 (1) (j), C.R.S., ON AND AFTER THE EFFECTIVE DATE OF THIS SECTION, IN DETERMINING WHETHER AN ENTITY IS ENTITLED TO PENALTY IMMUNITY UNDER THE PROVISIONS OF SECTION 25-1-114.5, THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT MAY CONSIDER:

(I) WHETHER THE ACTIVITIES DISCLOSED MAY CREATE IMMINENT AND SUBSTANTIAL ENDANGERMENT OF, OR RESULT IN SERIOUS HARM TO, PUBLIC HEALTH AND THE ENVIRONMENT; AND

(II) WHETHER THE ACTIVITIES DISCLOSED CONFERRED AN UNFAIR OR EXCESSIVE ECONOMIC BENEFIT ON THE DISCLOSING ENTITY.

(b) NOTWITHSTANDING ANY PROVISION OF SECTIONS 25-1-114.5 (4) AND (5), 13-25-126.5, AND 13-90-107 (1) (j), C.R.S., THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT HAS DISCRETION TO DETERMINE WHETHER AND TO WHAT DEGREE THE FACTORS IN PARAGRAPH (a) OF THIS SUBSECTION (3) APPLY GIVEN THE PARTICULAR CIRCUMSTANCES OF EACH SITUATION.

(4) THE PILOT PROJECT CREATED BY THIS SECTION APPLIES TO VOLUNTARY DISCLOSURES MADE UNDER THIS SECTION AND SECTIONS 25-1-114.5, 13-25-126.5, AND 13-90-107 (1) (j), C.R.S., ON AND AFTER THE EFFECTIVE DATES OF BOTH THIS

SECTION AND THE MEMORANDUM OF AGREEMENT ENTERED INTO UNDER PARAGRAPH (c) OF SUBSECTION (1) OF THIS SECTION.

(5) PURSUANT TO THE PROCEDURES SET FORTH IN SECTION 13-25-126.5, C.R.S., THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT MAY OBTAIN ACCESS TO AN ENVIRONMENTAL SELF-AUDIT REPORT WHERE THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT HAS INDEPENDENT EVIDENCE OF ANY CRIMINAL VIOLATION OF AN ENVIRONMENTAL LAW. EVIDENCE OF A CRIMINAL VIOLATION CONSTITUTES "COMPELLING CIRCUMSTANCES" FOR PURPOSES OF SECTION 13-25-126.5 (3) (c), C.R.S., WHERE THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT SEEKS ACCESS TO AN ENVIRONMENTAL SELF-AUDIT REPORT. WHEN A SELF-AUDIT REPORT IS OBTAINED, REVIEWED, OR USED IN A CRIMINAL PROCEEDING UNDER THIS SUBSECTION (5), THE PRIVILEGE PROVIDED IN SECTION 13-25-126.5, C.R.S., APPLICABLE TO CIVIL OR ADMINISTRATIVE PROCEEDINGS IS NOT WAIVED OR ELIMINATED.

(6) NOT LATER THAN JULY 1, 2003, THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT SHALL REPORT TO THE GENERAL ASSEMBLY ANY RECOMMENDATIONS AS TO WHETHER THE PILOT PROGRAM CREATED BY THIS SECTION SHOULD CONTINUE, AS WELL AS ANY RECOMMENDATIONS FOR MODIFICATION.

**SECTION 2. Effective date - applicability.** This act shall take effect upon passage and shall apply to voluntary disclosures made under sections 25-1-114.5, 25-1-114.6, 13-25-126.5, and 13-90-107 (1) (j), Colorado Revised Statutes, on or after the effective dates of both this act and the memorandum of agreement entered into under section 25-1-114.6 (1) (c), Colorado Revised Statutes.

**SECTION 3. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 30, 2000