

BY: Judicial Proceedings Committee

AMENDMENTS TO SENATE BILL NO. 682

(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 6, after "Department" insert "of the Environment"; strike beginning with "under" in line 8 down through "immunity" in line 10 and substitute "as a result of an environmental audit and complies with certain provisions of this Act"; in line 10, after "verify" insert "to"; in line 11, strike "concerning certain immunity" and substitute "that certain conditions have been met"; in the same line, after the semicolon, insert "specifying when immunity attaches;"; in the same line, strike "when" and substitute "under which"; in line 12, strike "be granted" and substitute "apply"; in line 17, after "fees" insert "and penalties"; and in line 19, after the semicolon, insert "requiring the Department to submit a certain report to the Governor and the General Assembly;".

AMENDMENT NO. 2

On page 2, in line 4, strike "SECTION" and substitute "SUBTITLE"; in line 7, after "CONDUCTED" insert "UNDER THE CONDITIONS SET FORTH IN § 1-702 OF THIS SUBTITLE"; in lines 9 and 11, in each instance, after "FACILITY" insert "OR OPERATIONS ACTIVITY"; in line 15, strike ", OR ANY DRAFT THEREOF," and substitute "THAT MEETS THE REQUIREMENTS OF § 1-703 OF THIS SUBTITLE AND IS"; in line 24, strike "WHO" and substitute "THAT"; and in line 27, after "LAW" insert "OR ANY OTHER APPLICABLE LAW".

AMENDMENT NO. 3

On page 3, in line 2, strike "MUST" and substitute "SHALL"; in line 7, after "OBJECTIVES" insert ", THE FREQUENCY WITH WHICH AUDITS SHALL BE CONDUCTED, AND THE RESOURCES DEDICATED TO ENVIRONMENTAL AUDITING"; in line 9, strike the second "FROM" and substitute "WITH"; in line 18, strike "ENCOURAGE" and substitute "ENSURE"; in lines 21 and 22, strike "ENCOURAGE A COMMITMENT" and substitute "REQUIRE A FACILITY OR OPERATION"; in line 29, strike the second "AND" and substitute a comma; in the same line, after "IDENTIFY" insert "THE"; and in line 30, strike "WITH" and substitute ", AND DESCRIBE THEIR ROLE IN".

(Over)

AMENDMENT NO. 4

On page 3, in line 32, strike “AND” and substitute “OR”; in line 36, after “(B)” insert “WITHIN A REASONABLE TIME AFTER DISCOVERY OF THE VIOLATION,”; and on pages 3 and 4, strike beginning with “, WITHIN” in line 37 on page 3 through “DISCOVERY,” in line 1 on page 4.

On page 4, in line 9, strike the first “OF” and substitute “AFTER”; strike in their entirety lines 27 through 29, inclusive, and substitute:

“(2)(I) THE PROCESSING FEE IS BASED ON THE NUMBER OF PEOPLE EMPLOYED IN MARYLAND BY THE REGULATED ENTITY, NOT INCLUDING EMPLOYEES OF ANY PARENT, SUBSIDIARY, OR AFFILIATE THAT IS NOT THE SUBJECT OF THE AUDIT.

(II) THE FEE IS:

1. \$100 FOR 50 EMPLOYEES OR LESS;

2. \$500 FOR MORE THAN 50 AND LESS THAN 250 EMPLOYEES;

3. \$1,500 FOR MORE THAN 250 AND LESS THAN 500 EMPLOYEES; AND

4. \$2,500 FOR 500 OR MORE EMPLOYEES.”;

and in line 30, strike “MUST” and substitute “SHALL”.

AMENDMENT NO. 5

On page 4, in lines 35 and 36, strike “AND IMMUNITY HAS BEEN GRANTED”; after line 37, insert:

“(C) NOTWITHSTANDING THE DEPARTMENT’S FAILURE TO VERIFY THE REGULATED ENTITY’S COMPLIANCE WITH § 1-704 OF THIS SUBTITLE, THE REGULATED ENTITY, UPON SUBMISSION OF THE ENVIRONMENTAL AUDIT REPORT

TO THE DEPARTMENT, SHALL BE ENTITLED TO IMMUNITY ABSENT A FINDING OF NONCOMPLIANCE WITH § 1-704 OF THIS SUBTITLE BY A CIRCUIT COURT OR AN ADMINISTRATIVE LAW JUDGE.”;

and in line 39, strike “SECTION” and substitute “SUBTITLE”.

AMENDMENT NO. 6

On page 5, strike in their entirety lines 8 through 11, inclusive, and substitute:

“(1) THE VIOLATION INVOLVES WILLFUL, GROSSLY NEGLIGENT, PURPOSEFUL, OR RECKLESS CONDUCT BY THE REGULATED ENTITY, OR A FAILURE OF THE REGULATED ENTITY TO PROVIDE REASONABLE CARE IN SUPERVISING THE ACTIVITY OF ITS EMPLOYEES;”;

in line 16, strike “PERSON” and substitute “REGULATED ENTITY”; in line 17, strike “IT EXERCISED REASONABLE CARE” and substitute “NONE OF THE CONDITIONS SPECIFIED IN SUBSECTION (A)(1) OF THIS SECTION EXIST”; and after line 17, insert:

“(C) THE IMMUNITY ESTABLISHED IN § 1-704 OF THIS SUBTITLE APPLIES ONLY TO A VIOLATION OF AN ENVIRONMENTAL LAW.”.

AMENDMENT NO. 7

On page 5, in line 20, after “DEPARTMENT” insert “OR A FINDING BY A CIRCUIT COURT OR AN ADMINISTRATIVE LAW JUDGE”; and after line 26, insert:

“(3) A PERSON INVOLVED IN THE PREPARATION OF THE ENVIRONMENTAL AUDIT REPORT, WHO IS IDENTIFIED IN ACCORDANCE WITH § 1-703(B) OF THIS SUBTITLE, MAY NOT BE EXAMINED AS A WITNESS OR SUBJECT TO DISCOVERY REGARDING THE FINDINGS, COMMUNICATIONS, OR OPINIONS CONTAINED IN THE ENVIRONMENTAL AUDIT REPORT WITHOUT THE EXPRESS CONSENT OF THE REGULATED ENTITY FOR WHICH THE ENVIRONMENTAL AUDIT REPORT WAS PREPARED.”.

AMENDMENT NO. 8

On page 5, in line 34, strike “OR”; and in line 35, after “PRIVILEGE” insert “;OR”

(4) REGULATED ENTITY FAILS TO MAINTAIN THE CONDITIONS SET FORTH IN § 1-704 OF THIS SUBTITLE”.

AMENDMENT NO. 9

On page 6, in line 2, strike “GRANTED” and substitute “ESTABLISHED”; and after line 6, insert:

“(E) AN ENVIRONMENTAL AUDIT REPORT OR TESTIMONY DESCRIBED IN § 1-708(A)(3) OF THIS SUBTITLE FROM ANY PERSON IDENTIFIED IN § 1-703(B) OF THIS SUBTITLE, OR ANY PART OF THE REPORT OR TESTIMONY, IS NOT PRIVILEGED, IS SUBJECT TO DISCOVERY, AND IS ADMISSIBLE IN AN ADMINISTRATIVE OR CIVIL PROCEEDING IF A JUDGE, DURING AN IN CAMERA REVIEW, DETERMINES THAT:

(1) THE PARTY SEEKING TO ADMIT THE ENVIRONMENTAL AUDIT REPORT, TESTIMONY, OR ANY PART OF THE REPORT OR TESTIMONY, HAS DEMONSTRATED THAT A COMPELLING NEED EXISTS BECAUSE THE INFORMATION, OR ANY PART OF THE INFORMATION, IS THE ONLY ADMISSIBLE EVIDENCE THAT COULD HAVE BEEN OR CAN BE OBTAINED BY THE PARTY; AND

(2) THE INFORMATION IS NECESSARY IN A LAWSUIT INVOLVING SERIOUS HARM TO HUMAN HEALTH, THE ENVIRONMENT, OR A PROPERTY INTEREST OF SIGNIFICANT ECONOMIC VALUE.”.

AMENDMENT NO. 10

On page 6, in line 8, strike “PERSON” and substitute “REGULATED ENTITY”; in line 10, after the first “TO” insert “DISCLOSE AND”; in the same line, after “VIOLATION” insert “IN ACCORDANCE WITH § 1-704(C) OF THIS SUBTITLE”; in line 13, strike “VIOLATION” and substitute “PENALTY”; in line 20, after “(2)” insert “IF THE DEPARTMENT ASSESSES A PENALTY UNDER PARAGRAPH (1) OF THIS SUBSECTION,”; in the same line, after “MAY” insert “ALSO”; in the same line, after “PENALTY” insert “UNDER THE PROVISIONS OF THIS”

ARTICLE"; and in line 26, strike "FUNDS" and substitute "ANY PENALTIES".

AMENDMENT NO. 11

On page 7, after line 3, insert:

"SECTION 2. AND BE IT FURTHER ENACTED, That the Department of the Environment, on or before December 1, 1998, shall report to the Governor and, subject to § 2-1312 of the State Government Article, to the General Assembly on the status of the Environmental Audit Program. The report shall include the number of environmental audits submitted to the Department that received immunity, the number and types of remedial activities completed under the Program, the reasonableness of the fees and the use of the Voluntary Disclosure and Environmental Audit Fund established by this Act."

and in line 4, strike "2." and substitute "3.".