

STORAGE NAME: h3717s1.go
DATE: March 23, 1998

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
GOVERNMENTAL OPERATIONS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 3717

RELATING TO: Clean Air

SPONSOR(S): Committee on Environmental Protection, Representative Edwards and others

COMPANION BILL(S): CS/SB 812(s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) ENVIRONMENTAL PROTECTION YEAS 9 NAYS 0
 - (2) GOVERNMENTAL OPERATIONS
 - (3) FINANCE AND TAXATION
 - (4) TRANSPORTATION & ECONOMIC DEVELOPMENT APPROPRIATIONS
 - (5)
-

I. SUMMARY:

This bill establishes an Accidental Release Prevention and Risk Management Planning Program enabling Florida to seek delegation from the United States Environmental Protection Agency (EPA) for the administration of the program which is established in Section 112(r) of the federal Clean Air Act. The Department of Community Affairs (department) is authorized to seek delegation from the EPA of the Accidental Release Prevention Program. The bill further provides the department with rule making authority, and the authority to establish an outreach program. Other affected local and state agencies must enter into a Memorandum of Understanding with the department. Provides that the department must establish certain fees. Provides for enforcement authority and penalties for violations. A start-up loan from the hazardous materials account in the department's Operating Trust Fund can be obtained and requires that the loan be repaid by 2006.

The bill provides that the act shall take effect upon becoming law.

Comments by the Committee on Governmental Operations:

CS/HB 3717 creates s. 252.946, F.S., regarding public records. A literal reading of that section appears to permit certain governmental entities the option of allowing, or disallowing, inspection and/or copying of public records pursuant to a public records request. Current law requires an agency to allow inspection and/or copying unless there is a specific public records exemption in the Florida Statutes. Upon discussion with the persons involved with drafting this bill, it appears that such was not the intent. The affected governmental entities were essentially offering assistance to others in electronically accessing certain federal government records stored in the U.S. Environmental Protection Agency centralized database. Concerned parties are working on an amendment to this section. As is, this section violates the constitutional provisions in Art. I, s. 24, of the State Constitution.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

On November 15, 1990, the Clean Air Act Amendments of 1990 (the Act) were signed into law by the President. These amendments represented significant changes designed to achieve enhanced air quality goals and cover a wide range of air pollution issues, including specific provisions regarding the accidental release of hazardous chemicals.

Title III of the Act addresses toxic air pollutants which are hazardous to human health or the environment but were not specifically covered elsewhere in the Act. The 1990 amendments includes a list of 189 toxic air pollutants of which emissions must be reduced. The EPA was required to publish a list of source categories that emit certain levels of these pollutants. The EPA was then required to issue "Maximum Achievable Control Technology" (MACT) standards for each listed source category according to a prescribed schedule. Eight years after a MACT is installed on a source, the EPA must examine the risk levels remaining at the regulated facilities and determine whether additional controls are necessary to reduce unacceptable residual risk.

Section 112(r) of the Act establishes the Accidental Release Prevention Program (program), intended to prevent accidental releases of listed toxic, flammable, and explosive substances and to minimize the consequences of such releases. The program, codified in 42 USCS s. 7412, sets out a general duty for owners and operators of stationary sources who produce, process, handle, or store listed substances or any other extremely hazardous substances to initiate specific activities to prevent and mitigate accidental releases. The owners and operators of stationary sources must develop Risk Management Plans for listed substances if on the premises.

Under Section 112(r), the EPA was required to identify an initial list of at least 100 substances which, in the case of accidental release, are known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health or the environment. The list was promulgated on January 31, 1994, and on June 20, 1996, EPA adopted guidelines and regulations for the response, prevention, and detection of accidental releases associated with the regulated substances. Facilities subject to the requirements must prepare risk management plans that include a hazard assessment, accident prevention program and emergency response program by June 21, 1999.

The federal program may be delegated to a state upon a showing that the state has in place a program which meets federal requirements.

On June 8, 1994, Governor Chiles issued an executive order to continue the existence of the State Emergency Response Commission (SERC) for hazardous materials which was originally created in 1987. The SERC was charged with, among other things, the following responsibilities:

- Establishing procedures for processing requests from the public for information about emergency response plans, chemical notification forms, the EPA's list of extremely hazardous substances, and toxic chemical release forms.

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- Analyzing the need for resources and legislation to appropriately implement the federal Emergency Planning and Community Right-to-Know Act in Florida; and
- Pursuing initiatives with private industry, the Legislature, and government agencies to obtain necessary resources to implement the Community Right-to-Know Act.

At its July 1996 meeting, the SERC established a work group to study state implementation issues regarding the program requirements of Section 112(r) of the Act. The work group was charged with making a recommendation to the SERC regarding whether Florida should seek Section 112(r) delegation from EPA and which state agency, or combination of agencies, should serve as the state's implementing agency. The work group recommended seeking delegation and further recommended that the Department of Community Affairs (department) be the implementing agency.

Section 112(r) also creates an independent national safety board, the Chemical Safety and Hazard Investigation Board (the board). Among other duties, the board investigates and reports to the public the circumstances and causes of serious accidental releases. Because making public certain information regarding specific substances and their uses could reveal trade secrets, Section 112 exempts such information from being released, upon a determination by the board that to do so would cause substantial harm to a person's competitive position.

According to industry representatives and the department, there are several advantages to having such a program delegated to the state. The state penalties in such a program are less stringent compared to those of the EPA. Paying directly into the program with industry fees would enable the program to be self-sustaining. Fees being paid directly to EPA that were late would result in grant money being withheld from the department, and a possible requirement of funds from General Revenue. Another benefit under this program is the extensive education and outreach program that would not be implemented at the federal level.

B. EFFECT OF PROPOSED CHANGES:

This bill establishes an Accidental Release Prevention and Risk Management Planning Program that will enable Florida to seek delegation from the EPA for the administration of this program which is established in Section 112(r) of the Act.

This bill creates Part IV of Chapter 252, F.S., that will be known as the Florida Accidental Release Prevention and Risk Management Planning Act. The purpose of this part is to establish adequate state authorities to implement, fund, and enforce Section 112(r)(7) program requirements as well as federal implementing regulations. It is the intent of the Legislature for the state to seek delegation of the Section 112(r)(7) program from the EPA.

Under the program, the department will seek delegation to administer the program for Program 3 sources and public sources subject to section 112(r)(7).

Definitions are provided for: accidental release; Accidental Release Prevention Program; audit; Chemical Safety and Hazard Investigation Board; Clean Air Act; commission; committee; department; inspection; owner or operator; person; Program 3

source; public source; regulated substance; Risk Management Plan; Section 112(r); Section 112(r)(7); stationary source; and trust fund.

Under the provisions of the bill, the department is given the following powers and duties:

- Seek delegation from the EPA to implement the Accidental Release Prevention Program under Section 112(r)(7) and the federal implementing regulations and ensure the timely submission of Risk Management Plans and any subsequent revisions of Risk Management Plans.
- Adopt, modify, and repeal rules, with the advice and consent of the SERC, necessary to obtain delegation from the EPA and to administer the Section 112(r)(7) Accidental Release Prevention Program in Florida.
- Make and execute contracts and other agreements necessary or convenient to the implementation of the Florida Accidental Release Prevention and Risk Management Plan Act.
- Coordinate its activities under Part IV of Chapter 252, F.S., with its other emergency management responsibilities.
- Establish, with the advice and consent of the SERC, a technical assistance and outreach program to assist owners and operators of stationary sources.

The bill also provides that the department can seek authority to implement and enforce Section 112(r)(7) for additional stationary sources.

To ensure that this program is self-supporting, the department is to provide administrative support to implement Part IV for Program 3 and public sources, and provide necessary funding to local emergency planning committees and county emergency management agencies for work performed to implement Part IV. A Memorandum of Understanding will be entered into by each state agency with regulatory, inspection, or technical assistance programs for stationary sources, with the department regarding the use of each agency's staff, facilities, materials, and services.

To prevent the duplication of investigative efforts and resources, the department will coordinate with any federal agencies or agents thereof, including the federal Chemical Safety and Hazard Investigation Board, which are performing accidental release investigations. To promote efficient administration of this program for Program 3 and public sources, the department is the only agency that may seek delegation from the EPA, and the department does not have the authority to delegate this program to any local environmental agency.

The bill permits the DCA, the State Hazardous Materials Emergency Response Commission, and any local emergency planning committee to fulfill requests for public records under s. 119.07, F.S., for information electronically submitted under this program or furnished under the section 112(r)(7) Accidental Release Prevention Program to the EPA's centralized database, by referral to the database or other reasonable accessible data collection points. The DCA, commission, or the committees may charge to furnish copies of public records that are not available through electronic

data collection points upon request. They may charge a fee of up to \$1 per page, per person, per year for over 10 pages of materials copied.

Any owner or operator of a Program 3, or public source in Program 1 or Program 2, which must submit a Risk Management Plan to the EPA, will pay an annual registration fee for each stationary source to the department. The annual registration fee is due to the department upon initial submission of a stationary source's Risk Management Plan to the EPA and every April 1 thereafter. It is the responsibility of the department to provide prior written notice of such fees, and the department is required to establish a fee schedule. The annual registration fee must be based on a stationary source's highest program level and may not exceed the following:

Program 1 Stationary Source:	\$ 150
Program 2 Stationary Source:	\$ 200
Program 3 Stationary Source:	\$1,000

Annual registration fees are not required until after the department receives the final delegation approval from the EPA for the program. The department will also be required to establish late fees for failure to timely submit an annual registration fee. This late fee cannot exceed 100 percent of the annual registration fee owed. A late fee cannot be assessed against a stationary source during the initial registration and submission year if 90 days prior written notice was not provided. The bill provides the criteria for determining if the annual registration fee is timely submitted. The department is given the ability to consider factors in assessing late fees, including but not limited to: good-faith attempts to comply; history of noncompliance; ability to pay; threats to health and safety; and, the degree of culpability.

The department is granted the following enforcement authority:

- The authority to institute a civil action in a court of competent jurisdiction in order to seek injunctive relief to immediately restrain or enjoin any person from engaging in any activity in violation, and to seek injunctive relief to enforce compliance with statute, rule, regulation, program requirement, or order.
- The authority to institute a civil action in a court of competent jurisdiction to impose and to recover a civil penalty for each violation in an amount of not more than \$10,000 per offense.
- The authority to seek criminal remedies including fines for violations as specified in s. 252.941(2), F.S. This section states that any person who willfully commits a violation is guilty of a misdemeanor of the first degree, punishable by up to \$10,000 for each offense; each day such violations occur constitutes a separate offense.

This bill also specifies what constitutes a violation and a prohibited act. The prohibitions and violations do not take effect until the department has received final approval for delegation of the program.

Authorized representatives of the department have the authority to inspect and audit any stationary source at any reasonable time in order to ascertain compliance with this act. The authorized representatives also have the authority to have access at any

reasonable time to inspect and copy any supporting documentation required under this act.

Inspections and audits may only be conducted after:

- Consent for the inspection is received from the owner, operator, or person in charge; or
- The appropriate inspection warrant as provided in this bill is obtained. The conditions under which a warrant may be obtained: if it appears that the properties may be connected with or contain evidence of the violation; or the inspection is part of an integral scheme of systematic routine inspections.

The department also has the ability to periodically audit risk management plans submitted by owners or operators of stationary sources, and to require revisions of such plans when necessary to ensure compliance. The department is to develop an annual audit work plan which identifies stationary sources or audits based on the program resources available. The audit and revision requirements must substantially comply with federal regulations implementing Section 112(r)(7).

Stationary sources will be prioritized based on certain specified factors. Upon request, owners or operators shall receive an oral exit interview at the conclusion of an inspection or audit. Following an audit or inspection, the department shall issue the owner or operator a written preliminary determination of any necessary revisions to the stationary source Risk Management Plan to ensure that the plan meets the requirements of this act. The preliminary determination must include an explanation of the basis for the revisions, reflecting industry standards and guidelines to the extent that such standards and guidelines are applicable, and must include a timetable for their implementation.

The department is to provide reasonable notice of its intent to conduct an onsite inspection or audit of a stationary source; however, inspections or audits may be conducted without notice in response to an accidental release or to protect the public health, safety, and welfare.

The SERC and the local emergency planning committees are deemed state agencies, and the members of the SERC and the committees are officers, employees, or agents of the state for the purpose of s. 768.28, F.S., regarding waiver of sovereign immunity in tort actions.

The department may advance a start-up loan in the amount of \$400,000 from the hazardous materials account in the Operating Trust Fund to support initial implementation of this bill's provisions. This loan must be repaid in equal annual installments by 2006, beginning October 1, 2001.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

Provides the department with the authority to adopt, modify, and repeal rules necessary to obtain delegation from the EPA, and to administer the Section 112(r)(7) Accidental Release Prevention Program. It is granted the power to make and execute contracts and other agreements.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

The department is charged with seeking delegation from the EPA to implement the Accidental Release Prevention Program. The department will provide administrative support to implement Part IV of Chapter 252 F.S., created by this bill, and provide necessary funding to local emergency planning committees and county emergency management agencies for work performed pursuant to this bill. The department is also to establish a technical assistance outreach program.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

No.

- b. Does the bill require or authorize an increase in any fees?

Any owner or operator of a stationary source which must submit a Risk Management Plan to the EPA, will pay an annual registration fee for each stationary source to the department. The annual registration fee is due to the department upon initial submission of a stationary source's Risk Management Plan to the EPA and every April 1 thereafter. It is the responsibility of the department to provide prior written notice of such fees, and to establish a fee schedule. The annual registration fee must be based on a stationary source's highest program level and may not exceed the following:

Program 1 Stationary Source:	\$ 150
Program 2 Stationary Source:	\$ 200
Program 3 Stationary Source:	\$1,000

Annual registration fees are not required until after the department receives the final delegation approval from the EPA for the program. The department will also be required to establish late fees for failure to timely submit an annual registration fee. This late fee cannot exceed 100 percent of the annual registration fee owed. A late fee cannot be assessed against a stationary source during the initial registration and submission year if 90 days prior written notice was not provided. The bill provides the criteria for determining if the annual registration fee is timely submitted.

The bill permits the DCA, the State Hazardous Materials Emergency Response Commission, and any local emergency planning committee to fulfill requests for public records under s. 119.07, F.S., for information electronically submitted under this program or furnished under the section 112(r)(7) Accidental Release Prevention Program to the EPA's centralized database, by referral to the database or other reasonable accessible data collection points. The DCA, commission, or the committees may charge to furnish copies of public records that are not available through electronic data collection points upon request. They may charge a fee of up to \$1 per page, per person, per year for over 10 pages of materials copied.

- c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Creates Part IV of chapter 252, consisting of sections 252.934, 252.935, 252.936, 252.937, 252.938, 252.939, 252.940, 252.941, 252.942, 252.944, 252.945, and 259.946, Florida Statutes. Amends Section 252.85, Florida Statutes.

E. SECTION-BY-SECTION RESEARCH:

Section 1: Creates Part IV of Chapter 252, F.S. Establishes the Florida Accidental Release Prevention and Risk Management Planning Act. This section provides: purposes; definitions; powers and duties of the department; funding; fees; enforcement authority; violations and prohibitions; inspections and audits; tort liability; and, a start-up loan program.

Section 2: Amends s. 252.85, F.S. Current law requires that any owner or operator of a facility that must submit a report pursuant to s. 313 of EPCRA pay an annual reporting fee. This section is amended to include "filings", and is amended to include late fees for untimely filing. A list of factors is also included for the department to consider when assessing late fees.

Section 3: Provides this act shall take effect upon becoming law.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

The Department of Community Affairs estimates the following annual budget needs in order to administer the program:

	<u>FY 98-99</u>
Estimated Salary and Benefits (3.5 FTE's)	\$192,500
Standard Expense Packages:	\$ 36,000
Standard OCO Packages:	\$ 14,000
Enhanced Expense Needs:	\$ 60,000
 Estimated Minimum Annual Program Budget:	 \$302,500

The department also expects to receive annual revenues based on 2,000 facilities that will be subject to the fees provided for in the program:

	<u>FY 98-99</u>
Program 1 facilities (25 facilities):	\$ 2,500 ¹
Program 2 facilities (1,875 facilities):	\$281,250
Program 3 facilities (100 facilities):	\$ 50,000
 Estimated Total Annual Revenues:	 \$333,750

All fees and penalties collected must be deposited in a separate account in the Operating Trust Fund for appropriation to fund the state's Accidental Release Prevention Program.

¹ Comment by the Committee on Governmental Operations: The maximum fee for a Program 1 Stationary Source is \$150; for a Program 2, \$200; for a Program 3, \$1,000. These maximum fees were not used to calculate the projected revenues. Fees of \$100, \$150, and \$500, respectively, were used. Why the department selected these particular amounts is uncertain.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

See recurring effects.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Any owner or operator of a stationary source which must submit a Risk Management Plan to the EPA, will pay an annual registration fee for each stationary source to the department. The annual registration fee must be based on a stationary source's highest program level and may not exceed the following:

Program 1 Stationary Source:	\$ 150
Program 2 Stationary Source:	\$ 200
Program 3 Stationary Source:	\$1,000

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

The outreach program outlined will benefit industry by providing education and assisting industry with compliance. The program will provide industry with a dedicated source of program expertise on the federal regulations.

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D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the revenue-raising authority of cities or counties.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the amount of sales tax shared with cities and counties.

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 17, 1998, the Committee on Environmental Protection heard HB 3717 and adopted one amendment to the bill. The amendment removed everything after the enacting clause and inserted new language. The differences between the strike amendment and the bill are as follows:

- Allows Florida to seek partial delegation. The program will now only relate to Program 3 public and private facilities, and all Program 1 and 2 public facilities. These provisions should not change the estimated fiscal impact according to industry representatives and the department.
- New definitions are provided for volunteer and stationary source.
- Changes in the Community-Right-to-Know Program have been incorporated.
- Allows the department to include additional facilities in the future, and allows for the fee provisions to be addressed if more facilities are added.
- Contains provisions relating to the disclosure of nonconfidential information, and establishes a fee for copying.
- The amount of the start up loan is reduced from \$500,000 to \$400,000 from the Operating Trust Fund.

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The Amendment was adopted and the bill was made a Committee Substitute by an 11-0 vote.

VII. SIGNATURES:

COMMITTEE ON ENVIRONMENTAL PROTECTION:

Prepared by:

Legislative Research Director:

Chris Flack

Wayne Kiger

AS REVISED BY THE COMMITTEE ON GOVERNMENTAL OPERATIONS:

Prepared by:

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Jimmy O. Helms