SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: March 16, 1998 Revised: _____ _____ _____ _____

Subject: Clean Air

	Analyst	Staff Director	Reference	Action
1.	Branning	Voigt	NR	Favorable/CS
2.	Schmith	Yeatman	CA	Favorable
3.			WM	
4.				
5.				

I. Summary:

The Committee Substitute (CS) for Senate Bill 812 establishes an Accidental Release Prevention and Risk Management Planning Program that will enable Florida to seek partial delegation from the U.S. Environmental Protection Agency (EPA) for the administration of this program which is established in Section 112(r) of the federal Clean Air Act; authorizes the Department of Community Affairs to seek delegation from the EPA of the Accidental Release Prevention Program for Program 3 sources and public sources; provides the department with rulemaking authority; authorizes the department to establish an outreach program; provides that 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; provides for a start-up loan from the hazardous materials account in the department's Operating Trust Fund and requires that the loan be repaid by 2006; and, provides procedures and fees for disclosing and releasing certain nonconfidential information.

This CS 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, 252.943, 252.944, 252.945, and 252.946, Florida Statutes.

II. Present Situation:

On November 15, 1990, the Clean Air Act Amendments of 1990 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 Clean Air Act. The 1990 amendments include a list of 189 toxic air pollutants of which emissions must be reduced. The U.S. Environmental Protection Agency (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 federal Clean Air Act establishes the Accidental Release Prevention 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 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 an 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. This list was promulgated on January 31, 1994, and on June 20, 1996, EPA adopted guidance 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 after 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;

- 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 Accidental Release Prevention Program requirements of Section 112(r) of the federal Clean Air 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 be the implementing agency because the 112(r) program is a logical extension of the existing Hazardous Materials Planning Program housed at the department.

Section 112(r) also creates an independent safety board, the Chemical Safety and Hazard Investigation Board. Among other duties, the board investigates (or causes to be investigated) 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.

III. Effect of Proposed Changes:

This CS 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 federal Clean Air Act.

This CS creates Part IV of ch. 252, F.S., consisting of ss. 252.934, 252.935, 252.936, 252.937, 252.938, 252.939, 252.940, 252.941, 252.942, 252.944, and 252.945, F.S.

Part IV of ch. 252, F.S., may be cited 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 the requirements of the Accidental Release Prevention Program of Section 112(r)(7) of the federal Clean Air Act and federal implementing regulations for specified sources. It is the intent of the Legislature for the state to seek delegation of the Section 112(r)(7) Accidental Release Prevention Program from the EPA for specified sources.

The following terms are defined: "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)(7)," "stationary source," and "trust fund."

The Department of Community Affairs has the power and duty to:

- Seek delegation from the EPA to implement the Accidental Release Prevention Program under Section 112(r)(7) of the federal Clean Air Act and the federal implementing regulations for Program 3 sources and public sources and ensure the timely submission of Risk

Management Plans and any subsequent revisions of Risk Management Plans. Implementation for all other sources subject to Section 112(r)(7) will be performed by the EPA.

- 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 for Program 3 sources and public sources.

- Make and execute contracts and other agreements necessary or convenient to the implementation of Part IV of ch. 252, F.S.

- Coordinate its activities under Part IV of ch. 252, F.S., with its other emergency management responsibilities under ch. 252, F.S., and with the related activities of other state and local agencies, keeping separate accounts for all activities conducted under Part IV which are supported or partially supported from the Operating Trust Fund.

- Establish, with the advice and consent of the SERC, a technical assistance and outreach program on or before January 31, 1999, to assist owners and operators of Program 3 and public stationary sources subject to Section 112(r)(7) in complying with the reporting and fee requirements of Part IV. This program is designed to facilitate and ensure timely submission of proper certifications or compliance schedules and timely submission and registration of Risk Management Plans and the revision of such plans when required.

To ensure that this program is self-supporting, the department shall provide administrative support to implement Part IV for stationary sources subject to s. 252.939, F.S., and shall provide necessary funding to local emergency planning committees and county emergency management agencies for work performed to implement Part IV. Each state agency with regulatory, inspection, or technical assistance programs for stationary sources subject to Part IV shall enter into a Memorandum of Understanding with the department regarding the use of each agency's staff, facilities, materials, and services. State agencies affected include the Department of Environmental Protection's Division of Air Resources Management and Division of Water Facilities; and the Department of Labor and Employment Security's Division of Safety.

To prevent the duplication of investigative efforts and resources, the department shall 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 only agency which may seek delegation from the EPA for this program is the Florida Department of Community Affairs. Further, the department may not delegate this program to any local environmental agency.

The Accidental Release Prevention Program is intended to be self-sustaining. All fees and penalties collected from Program 3 and public sources subject to this program must be deposited in a separate account in the Operating Trust Fund for appropriation to fund this program.

Any owner or operator of a Program 3 or public stationary source which must submit a Risk Management Plan to the EPA under Section 112(r)(7) shall 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. The department must provide prior written notice of such fees. The department shall establish a fee schedule, by rule, upon the advice and consent of the SERC. The annual registration fee must be based on a stationary source's highest program level and, for Program 3 sources, may not exceed $1,000; for publicly-owned Program 1 and 2 sources, the fee may not exceed $150 and $200, respectively.

Annual registration fees are not required until after the department receives final delegation approval from the EPA for the Accidental Release Prevention Program. The department shall establish late fees, by rule, not to exceed 100 percent of the annual registration fee owned, for failure to timely submit an annual registration fee. A late fee may not be assessed against a stationary source during the initial registration and submission year if 90 days prior written notice was not provided. The CS provides the criteria for determining if the annual registration fee is timely submitted.

In the event the Legislature directs the department to seek delegation for implementation and enforcement of Section 112(r)(7) for additional stationary sources, the department shall, with the advice and consent of the SERC, review and suggest revisions, if necessary and appropriate, to the fees specified in the CS.

The CS provides for enforcement authority and remedies for violations of Part IV of ch. 252, F.S. The CS also provides 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 Accidental Release Prevention Program.

Any duly authorized representative of the department may at any reasonable time enter to inspect and audit, in order to ascertain compliance with Part IV, any stationary source subject to the requirements of Section 112(r)(7), except a building that is used exclusively for a private residence. Any duly authorized representative of the department may at any reasonable time have access to any stationary source subject to Section 112(r)(7) for inspection and copying any supporting documentation required under Part IV.

An inspection or audit may be conducted only after:

- Consent for the inspection is received from the owner, operator, or person in charge; or
- The appropriate inspection warrant as provided in this CS is obtained. The conditions under which a warrant may be obtained are specified.

The department shall periodically audit Risk Management Plans submitted by owners or operators of stationary sources subject to Section 112(r)(7) and require revisions of such plans when

necessary to ensure compliance with Part IV. The audit and revision requirements must substantially comply with federal regulations implementing Section 112(r)(7). The department shall develop, with the advice and consent of the SERC, an annual audit work plan which identifies stationary sources or audits based on the program resources available.

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 Part IV and rules adopted to implement this part. 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 shall 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.

Procedures are provided for the release and disclosure of nonconfidential information and provides fees to cover the costs of providing such information.

The department is authorized to 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 Part IV. This loan must be repaid in equal annual installments by 2006, beginning October 1, 2001.

The CS provides an effective date upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Inasmuch as this bill requires the state and local governments (including cities and counties) to incur expenses, i.e., pay annual registration fees (see Government Sector Impact), the bill falls within the purview of subsection (a) of Article VII, Section 18, Florida Constitution, which provides that cities and counties are not bound by general laws requiring them to spend funds or to take an action which requires the expenditure of funds unless certain specified exemptions or exceptions are met. However, the bill is exempt from the two-thirds vote requirement because the total amount of fees to be paid, assuming the maximum allowable is charged, constitute an insignificant fiscal impact.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

This CS provides that all fees and penalties collected under Part IV of ch. 252, F.S., which is created by this CS, must be deposited in a separate account in the Operating Trust Fund established in the Department of Community Affairs' Division of Emergency Management, for appropriation to fund the state's Accidental Release Prevention Program under Part IV. As required by s. 19(f), Art, III, of the State Constitution, trust funds must be created by a separate bill and must pass by a three-fifths vote of each house of the Legislature. This provision has been interpreted to mean that the creation of separate accounts in existing trust funds for new programs to be funded from new sources of revenue constitute the creation of new trust funds.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

This CS provides that any owner or operator of a stationary source which must submit a Risk Management Plan to the EPA must pay an annual registration fee. The Department of Community Affairs is required to establish a fee schedule for these registration fees and must establish late fees. The fees may be no more than $1,000 for Program 3 facilities, and $150 and $200 for Program 1 and 2 facilities, respectively. While the same maximum will apply to fees charged by the EPA if delegation were not sought by the State of Florida, it is unknown whether the EPA would set a lower fee than the department.

The CS also authorizes the Department of Community to charge for copies of public records and nonconfidential information furnished pertaining to this program.

B. Private Sector Impact:

Under the federal Clean Air Act Amendments of 1990, certain facilities which store and use hazardous materials must register and file risk management plans with the EPA or the state if the state has received delegation of the program from the EPA. The hazardous materials include chlorine, propane, ammonia, sulfur dioxide, hydrochloric acid, hydrogen fluoride, nitric acid, hydrogen chloride, butane, and hydrogen. In Florida, approximately 2,000 facilities that use or store these chemicals in the threshold quantities would be affected. Those facilities include the following, whether publicly or privately owned: manufacturers, refrigeration facilities, wastewater treatment plants, drinking water plants, chemical wholesalers, propane retailers, utilities, mining facilities, correctional institutions, agricultural retailers, swimming pool complexes, educational institutions, aerospace facilities, medical facilities military installations and certain warehouses. The fees these facilities would be

subject to vary according to the risk involved. The facilities are categorized as either Program 1 (lowest risk), Program 2, or Program 3 (highest). The CS caps the fees as follows:

Program 1	$ 150
Program 2	$ 200
Program 3	$1,000

This CS, however, would apply only to Program 3 sources and public sources. These would still be the largest facilities but would not include the propane industry and certain agriculture interests. The number of facilities that would be affected would be about 1,500. Because not all facilities would be covered by Florida's program, the department could only seek a partial delegation of the Section 112(r) program. Those facilities not covered by Florida's program would continue to be regulated directly by the EPA through its regional office in Atlanta.

C. Government Sector Impact:

The Department of Community Affairs is the agency designed to seek partial delegation of the Section 112(r) program from the EPA. According to the department, the following is an estimate of the program budget.

Staffing (3.5 FTEs)	$242,500
Enhanced Expense Needs	
(Outreach, compliance, staff training)	35,000
Local Emergency Planning Committee Support	25,000
TOTAL	$302,500

Local governments owning and operating utilities, wastewater treatment plants, and drinking water plants must comply with the provisions of Section 112(r) and therefore would be subject to the fees provided for in this CS.

Since the Department of Environmental Protection permits wastewater and drinking water facilities, the department anticipates working closely with the staff of the Department of Community Affairs to successfully implement this program.

VI. Technical Deficiencies:

The section in the CS that authorizes the $400,000 loan from the hazardous materials account will need appropriation spending authority in the General Appropriations Act or an appropriations clause needs to be added to this CS to make the loan effective.

VII. Related Issues:

None.

VIII. Amendments:

None.