

By Senators Dyer, Latvala, Williams, Brown-Waite, Diaz-Balart and Forman

14-666-98

1 A bill to be entitled
 2 An act relating to clean air; creating ss.
 3 252.934, 252.935, 252.936, 252.937, 252.938,
 4 252.939, 252.940, 252.941, 252.942, 252.944,
 5 252.945, F.S.; providing for the Florida
 6 Accidental Release Prevention and Risk
 7 Management Planning Act; providing a short
 8 title and purpose; defining terms; directing
 9 the Department of Community Affairs to seek
 10 delegation from the U.S. Environmental
 11 Protection Agency to implement the Accidental
 12 Release Prevention Program under the federal
 13 Clean Air Act; providing for funding and fees;
 14 providing enforcement authority; providing
 15 penalties; authorizing the department to
 16 conduct inspections and audits; providing for
 17 tort liability; providing for a start-up loan;
 18 providing an effective date.

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 20 Be It Enacted by the Legislature of the State of Florida:

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 22 Section 1. Part IV of chapter 252, consisting of
 23 sections 252.934, 252.935, 252.936, 252.937, 252.938, 252.939,
 24 252.940, 252.941, 252.942, 252.944, and 252.945, Florida
 25 Statutes, is created to read:

26 252.934 Short title.--This part may be cited as the
 27 "Florida Accidental Release Prevention and Risk Management
 28 Planning Act."

29 252.935 Purpose.--The purpose of this part is to
 30 establish adequate state authorities to implement, fund, and
 31 enforce the requirements of the Accidental Release Prevention

1 Program of Section 112(r)(7) of the federal Clean Air Act and
2 federal implementing regulations. To ensure the efficient use
3 of resources, it is the intent of the Legislature for the
4 state to seek delegation of the Section 112(r)(7) Accidental
5 Release Prevention Program from the U.S. Environmental
6 Protection Agency and for duplication and redundancy to be
7 avoided to the maximum extent practicable.

8 252.936 Definitions.--As used in this part, the term:

9 (1) "Accidental release" means an unanticipated
10 emission of a regulated substance into the ambient air from a
11 stationary source.

12 (2) "Accidental Release Prevention Program" means the
13 program to implement the accidental release prevention,
14 detection, and response provisions of Section 112(r)(7) of the
15 Clean Air Act and federal implementing regulations.

16 (3) "Audit" means a review of information at a
17 stationary source subject to Section 112(r)(7), or submitted
18 by a stationary source subject to Section 112(r)(7), to
19 determine whether that stationary source is in compliance with
20 the requirements of this part and rules adopted to implement
21 this part. Audits must include a review of the adequacy of the
22 stationary source's Risk Management Plan, may consist of
23 reviews of information submitted to the department or the U.S.
24 Environmental Protection Agency to determine whether the plan
25 is complete or whether revisions to the plan are needed, and
26 the reviews may be conducted at the stationary source to
27 confirm that information onsite is consistent with reported
28 information.

29 (4) "Chemical Safety and Hazard Investigation Board"
30 means the federal Chemical Safety and Hazard Investigation
31 Board created under Section 112(r)(6) of the Clean Air Act.

1 (5) "Clean Air Act" means the federal Clean Air Act,
2 as amended, codified at 42 USC ss. 7401-7671q.

3 (6) "Commission" means the State Emergency Response
4 Commission for Hazardous Materials created by Executive Order
5 94-138.

6 (7) "Committee" means any local emergency planning
7 committee established in the state under s. 301 of the federal
8 Emergency Planning and Community Right To Know Act, 42 USC s.
9 11001, et seq.

10 (8) "Department" means the Department of Community
11 Affairs.

12 (9) "Inspection" means a review of information at a
13 stationary source subject to Section 112(r)(7), including
14 documentation and operating practices and access to the source
15 and to any area where an accidental release could occur, to
16 determine whether the stationary source is in compliance with
17 the requirements of this part or rules adopted to implement
18 this part.

19 (10) "Owner or operator" means any person who owns,
20 leases, operates, controls, or supervises any stationary
21 source subject to Section 112(r)(7) of the Clean Air Act.

22 (11) "Person" means an individual, corporation,
23 partnership, association, state or any agency or institution
24 thereof, municipality, political subdivision of the state, and
25 any agency, department, or instrumentality of the United
26 States, and any officer, agent, or employee thereof, and, for
27 the purposes of s. 252.941, any responsible corporate officer.

28 (12) "Regulated substance" means any regulated
29 substance defined or listed under Section 112(r)(3) of the
30 Clean Air Act and federal implementing regulations. Consistent
31 with Section 112(r)(7) federal implementing regulations,

1 ammonia used as an agricultural nutrient, when held by
2 farmers, is exempt from this part.

3 (13) "Risk Management Plan" means the Risk Management
4 Plan required under Section 112(r)(7) of the Clean Air Act and
5 federal implementing regulations.

6 (14) "Section 112(r)" means the provisions of Section
7 112(r) of the Clean Air Act.

8 (15) "Section 112(r)(7)" means the accidental release
9 prevention, detection, and response provisions in Section
10 112(r)(7) of the Clean Air Act.

11 (16) "Stationary source" means any buildings,
12 structures, equipment, installations, or regulated substance
13 emitting stationary activities which belong to the same
14 industrial group, which are located on one or more contiguous
15 properties, which are under the control of the same person (or
16 persons under common control), and from which an accidental
17 release may occur. A stationary source includes transportation
18 containers that are no longer under active shipping papers and
19 transportation containers that are connected to equipment at
20 the stationary source for the purposes of temporary storage,
21 loading, or unloading. The term stationary source does not
22 apply to transportation, including the storage incident to
23 transportation, of any regulated substance or any other
24 extremely hazardous substance under the provisions of this
25 part, if the transportation is regulated under 49 CFR parts
26 192, 193 or 195. Properties may not be considered contiguous
27 solely because of a railroad or gas pipeline right-of-way.

28 (17) "Trust fund" means the Operating Trust Fund
29 established in the department's Division of Emergency
30 Management.

31 252.937 Department powers and duties.--

- 1 (1) The department has the power and duty to:
2 (a) Seek delegation from the U.S. Environmental
3 Protection Agency to implement the Accidental Release
4 Prevention Program under Section 112(r)(7) of the Clean Air
5 Act and the federal implementing regulations and ensure the
6 timely submission of Risk Management Plans and any subsequent
7 revisions of Risk Management Plans.
8 (b) Adopt, modify, and repeal rules, with the advice
9 and consent of the commission, necessary to obtain delegation
10 from the U.S. Environmental Protection Agency and to
11 administer the Section 112(r)(7) Accidental Release Prevention
12 Program in this state.
13 (c) Make and execute contracts and other agreements
14 necessary or convenient to the implementation of this part.
15 (d) Coordinate its activities under this part with its
16 other emergency management responsibilities, including its
17 responsibilities and activities under parts I, II, and III of
18 this chapter and with the related activities of other state
19 and local agencies, keeping separate accounts for all
20 activities conducted under this part which are supported or
21 partially supported from the Trust Fund.
22 (e) Establish, with the advice and consent of the
23 commission, a technical assistance and outreach program on or
24 before January 31, 1999, to assist owners and operators of
25 stationary sources subject to Section 112(r)(7) in complying
26 with the reporting and fee requirements of this part. This
27 program is designed to facilitate and ensure timely submission
28 of proper certifications or compliance schedules and timely
29 submission and registration of Risk Management Plans and
30 revised registrations and Risk Management Plans when required.
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1 (2) To ensure that this program is self-supporting,
2 the department shall provide administrative support, including
3 staff, facilities, materials, and services to implement this
4 part for stationary sources subject to s. 252.939 and shall
5 provide necessary funding to local emergency planning
6 committees and county emergency management agencies for work
7 performed to implement this part. Each state agency with
8 regulatory, inspection, or technical assistance programs for
9 stationary sources subject to this part shall enter into a
10 Memorandum of Understanding with the department which
11 specifically outlines how each agency's staff, facilities,
12 materials, and services will be utilized to support
13 implementation. At a minimum, these agencies and programs
14 include: the Department of Environmental Protection's
15 Division of Air Resources Management and Division of Water
16 Facilities, the Department of Agriculture and Consumer
17 Services' Bureau of Liquefied Petroleum Gas, and the
18 Department of Labor and Employment Security's Division of
19 Safety. It is the Legislature's intent to implement this part
20 as efficiently and economically as possible, using existing
21 expertise and resources, if available and appropriate.

22 (3) To prevent the duplication of investigative
23 efforts and resources, the department, on behalf of the
24 commission, shall coordinate with any federal agencies or
25 agents thereof, including the federal Chemical Safety and
26 Hazard Investigation Board, or its successor, which are
27 performing accidental release investigations, and may
28 coordinate with any agencies of the state which are performing
29 accidental release investigations. This accidental release
30 investigation coordination is not intended to limit or take
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1 the place of any individual agency accidental release
2 investigation under separate authority.

3 252.938 Funding.--

4 (1) It is the intent of the Legislature that the state
5 activities and expenditures under this part be self-sustaining
6 through fees provided in this part.

7 (2) All fees and penalties collected under this part
8 must be deposited in a separate account in the Operating Trust
9 Fund for appropriation to fund the state's Accidental Release
10 Prevention Program under this part.

11 252.939 Fees.--

12 (1)(a) Any owner or operator of a stationary source in
13 the state which must submit a Risk Management Plan to the U.S.
14 Environmental Protection Agency under Section 112(r)(7) shall
15 pay an annual registration fee for each stationary source to
16 the department. The annual registration fee is due to the
17 department upon initial submission of a stationary source's
18 Risk Management Plan to the U.S. Environmental Protection
19 Agency, and every April 1 thereafter.

20 (b) Prior individual written notice shall be provided
21 by U.S. mail by the department to owners or operators of all
22 stationary sources in the state subject to the requirements
23 under Section 112(r)(7) to submit Risk Management Plans and
24 corresponding state registration fees. This notice must
25 include the requirements of the state fee schedule and must be
26 mailed at least 90 days before the due date for the stationary
27 source's initial registration and Risk Management Plan
28 submission year and at least 30 days before the registration
29 fee due date for subsequent years.

30 (c) The department shall establish a fee schedule by
31 rule, upon the advice and consent of the commission. The

1 annual registration fee must be based on a stationary source's
2 highest program level, as determined under the federal
3 implementing regulations for Section 112(r)(7) and may not
4 exceed the following:

5 Program 1 Stationary Sources \$ 150

6 Program 2 Stationary Sources \$ 200

7 Program 3 Stationary Sources \$1,000

8 (d) Annual registration fees under this section are
9 not required until after the department receives final
10 delegation approval from the U.S. Environmental Protection
11 Agency to administer the Section 112(r)(7) Accidental Release
12 Prevention Program.

13 (2) The department shall establish by rule late fees,
14 not to exceed 100 percent of the annual registration fee owed,
15 for failure to timely submit an annual registration fee. A
16 late fee may not be assessed against a stationary source
17 during the initial registration and submission year if 90 days
18 prior written notice was not provided to that stationary
19 source.

20 (3) In determining whether an annual registration fee
21 is timely submitted under subsections (1) and (2), if the fee
22 is:

23 (a) Mailed via U.S. mail, the date of submittal is the
24 date evidenced by the postmark.

25 (b) Delivered by overnight or other private mail
26 carriers, the date of submittal is the date the package is
27 deposited with the overnight carrier.

28 (c) Hand-delivered, other than by overnight or private
29 mail carrier, the date of submittal is the date of actual
30 receipt.

31 252.940 Enforcement; procedure; remedies.--

1 (1) The department has the following enforcement
2 authority and remedies available to it for violations of this
3 part as specified in s. 252.941:

4 (a) To institute a civil action in a court of
5 competent jurisdiction in order to seek injunctive relief to
6 immediately restrain or enjoin any person from engaging in any
7 activity in violation of this part which is presenting an
8 imminent and substantial endangerment to the public health or
9 welfare or the environment; and to seek injunctive relief to
10 enforce compliance with this part or any rule, regulation,
11 program requirement, or order implementing this part.

12 (b) To institute a civil action in a court of
13 competent jurisdiction to impose and to recover a civil
14 penalty for each violation, as specified in s. 252.941(1), in
15 an amount of not more than \$10,000 per offense. However, the
16 court may receive evidence in mitigation. Each day during any
17 portion of which such violation occurs constitutes a separate
18 offense.

19 (c) To seek criminal remedies, including fines, for
20 violations as specified in s. 252.941(2).

21 (d) Failure to comply with the fee provisions under s.
22 252.939 is not a violation under s. 252.941. Section
23 252.939(2) is the sole remedy for fee provisions in s.
24 252.939, except that the department may enforce a final order
25 entered under that section pursuant to s. 120.69.

26 (2) An action may not be commenced or continued under
27 this section if the Administrator of the U.S. Environmental
28 Protection Agency has commenced and is diligently pursuing an
29 administrative order or civil or criminal action to enforce a
30 specific requirement or to impose a civil or criminal penalty
31 under Section 112(r) with respect to the specific violation.

1 If the U.S. Environmental Protection Agency initiates any
2 action after the state has initiated an action based on the
3 same cause, the state suit shall be dismissed without
4 prejudice and may be refiled only in the event that the U.S.
5 Environmental Protection Agency discontinues the enforcement
6 action prior to settlement or final judgment.

7 (3) For the purposes of this section, the department
8 may offer and accept the use of Supplemental Environmental
9 Projects, consistent with the guidelines established by the
10 U.S. Environmental Protection Agency.

11 (4) The authorities and remedies provided under this
12 section shall not take effect until after such time as the
13 department has received final delegation approval from the
14 U.S. Environmental Protection Agency to administer the Section
15 112(r)(7) Accidental Release Prevention Program.

16 252.941 Prohibitions, violations, penalties, intent.--

17 (1) It is a violation of this part, and it is
18 prohibited for any person to:

19 (a) Fail to make any submittal required by this part
20 or by rule or regulation implementing this part, or to violate
21 or fail to comply with any rule, regulation, order, plan, or
22 certification adopted or issued by the department pursuant to
23 its lawful authority under this part, other than fees under s.
24 252.939.

25 (b) Knowingly make any false statement,
26 representation, or certification in any application, record,
27 report, plan, or other document filed or required to be
28 maintained under this part, or to falsify, tamper with, or
29 knowingly render inaccurate any monitoring device or method
30 required to be maintained under this part or by any program,
31 rule, regulation, or order issued under this part.

1 (c) Fail to report to the appropriate representative
2 of the department, as established by department rule, within 1
3 working day of discovery of an accidental release of a
4 regulated substance from the stationary source, if the owner
5 or operator is required to report the release to the U.S.
6 Environmental Protection Agency under Section 112(r)(6).

7 (2) Any person who willfully commits a violation
8 specified in subsection (1) is guilty of a misdemeanor of the
9 first degree punishable as provided in s. 775.083(1)(g) by a
10 fine of not more than \$10,000 for each offense. Each day
11 during any portion of which such violation occurs constitutes
12 a separate offense.

13 (3) It is the legislative intent that the civil
14 penalties and criminal fines imposed by the court be of such
15 amount as to ensure immediate and continued compliance with
16 this section.

17 (4) The prohibitions and violations provided under
18 this section shall take effect after such time as the
19 department has received final delegation approval from the
20 U.S. Environmental Protection Agency to administer the Section
21 112(r)(7) Accidental Release Prevention Program.

22 252.942 Inspections and audits.--

23 (1)(a) Any duly authorized representative of the
24 department may at any reasonable time enter to inspect and
25 audit, in order to ascertain compliance with this part or
26 rules adopted to implement this part, any stationary source
27 subject to the requirements of Section 112(r)(7), except a
28 building that is used exclusively for a private residence.

29 (b) Any duly authorized representative may at any
30 reasonable time have access to any stationary source subject
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1 to Section 112(r)(7) for inspection and copying any supporting
2 documentation required under this part.

3 (c) A person may not refuse reasonable entry or access
4 to any authorized representative of the department who
5 requests entry for purposes of inspection and who presents
6 appropriate credentials; nor shall any person obstruct,
7 hamper, or interfere with such inspection.

8 (2) An inspection or audit under subsection (1) may be
9 conducted only after:

10 (a) Consent for the inspection is received from the
11 owner, operator, or person in charge; or

12 (b) The appropriate inspection warrant as provided in
13 this section is obtained.

14 (3)(a) An inspection warrant as authorized by this
15 chapter may be issued by a judge of any county court or
16 circuit court of this state which has jurisdiction over the
17 place or thing to be searched.

18 (b) When a proper affidavit is made, the judge may
19 issue an inspection warrant if:

20 1. It appears that the properties to be inspected may
21 be connected with or contain evidence of the violation of any
22 of the provisions of this Part or any rule properly
23 promulgated thereunder; or

24 2. The inspection sought is an integral part of a
25 larger scheme of systematic routine inspections that are
26 necessary to, and consistent with, the continuing efforts of
27 the department to ensure compliance with the provisions of
28 this part and any rules adopted thereunder.

29 (c) The judge shall, before issuing the warrant, have
30 the application for the warrant duly sworn to and subscribed
31 by a representative of the department; and he or she may

1 receive further testimony from witnesses, supporting
2 affidavits, or depositions in writing to support the
3 application. The affidavit and further proof must set forth
4 the facts tending to establish the grounds specified in
5 paragraph (b) or the reasons for believing that such grounds
6 exist.

7 (d) Upon examination of the application and proofs
8 submitted and if satisfied that cause exists for issuing the
9 inspection warrant, the judge shall issue a warrant, signed by
10 him or her with the name of his or her office, to any
11 department representative, which warrant will authorize the
12 representative to inspect the property described in the
13 warrant.

14 (4) The department shall periodically audit Risk
15 Management Plans submitted by owners or operators of
16 stationary sources subject to Section 112(r)(7) and require
17 revisions of such plans when necessary to ensure compliance
18 with this part. The audit and revision requirements must
19 substantially comply with federal regulations implementing
20 Section 112(r)(7). The department shall develop, with the
21 advice and consent of the commission, an annual audit work
22 plan which identifies stationary sources or audits based on
23 the program resources available. Stationary sources will be
24 prioritized for audits based on factors which include, but are
25 not limited to, stationary source location and proximity to
26 population centers, chemical characteristics and inventories,
27 stationary source accident history, process accident history,
28 compliance or inspection by allied agency programs, and the
29 results of stationary sources' self-audits.

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1 (5) Upon request, owners or operators of stationary
2 sources subject to Section 112(r)(7) shall receive an oral
3 exit interview at the conclusion of an inspection or audit.

4 (6) Following an audit or inspection, the department
5 shall issue the owner or operator a written preliminary
6 determination of any necessary revisions to the stationary
7 source Risk Management Plan to ensure that the plan meets the
8 requirements of this part and rules adopted to implement this
9 part. The preliminary determination must include an
10 explanation of the basis for the revisions, reflecting
11 industry standards and guidelines to the extent that such
12 standards and guidelines are applicable, and must include a
13 timetable for their implementation.

14 (7) The department shall provide reasonable notice of
15 its intent to conduct an onsite inspection or audit of a
16 stationary source. Inspections or audits may be conducted
17 without notice in response to an accidental release or to
18 protect the public health, safety, and welfare.

19 252.944 Tort liability.--The commission and the
20 committees are state agencies, and the members of the
21 commission and committees are officers, employees, or agents
22 of the state for the purpose of s. 768.28.

23 252.945 Start up loan.--The department may advance a
24 start up loan in the amount of \$500,000 from the hazardous
25 materials account in the Operating Trust Fund to support
26 initial implementation of this part. This loan must be repaid
27 in equal annual installments by 2006, beginning October 1,
28 2001.

29 Section 2. This act shall take effect upon becoming a
30 law.

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SENATE SUMMARY

Creates the Florida Accidental Release Prevention and Risk Management Planning Act. Directs the Department of Community Affairs to seek delegation from the U.S. Environmental Protection Agency to implement the Accidental Release Prevention Program under the federal Clean Air Act. Provides funding, fees, enforcement authority, and penalties. Authorizes the department to conduct inspections and audits. Provides for tort liability. Provides for a start-up loan from the department's operating trust fund.