

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, 252.946, F.S.; providing for the
6 Florida 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 or specified sources; providing
14 for funding and fees; providing enforcement
15 authority; providing penalties; authorizing the
16 department to conduct inspections and audits;
17 providing for tort liability; providing for a
18 start-up loan; providing procedures for the
19 release of information; directing legislative
20 committees to review the Florida Accidental
21 Release Prevention and Risk Management Planning
22 Act; amending s. 252.85, F.S.; deleting certain
23 standard industrial classification codes from
24 certain annual reporting requirements; allowing
25 the Department of Community Affairs to consider
26 certain factors in assessing late fees;
27 providing an effective date.

28
29 Be It Enacted by the Legislature of the State of Florida:
30
31

1 Section 1. Part IV of chapter 252, consisting of
2 sections 252.934, 252.935, 252.936, 252.937, 252.938, 252.939,
3 252.940, 252.941, 252.942, 252.944, and 252.945, Florida
4 Statutes, is created to read:

5 252.934 Short title.--This part may be cited as the
6 "Florida Accidental Release Prevention and Risk Management
7 Planning Act."

8 252.935 Purpose.--The purpose of this part is to
9 establish adequate state authorities to implement, fund, and
10 enforce the requirements of the Accidental Release Prevention
11 Program of Section 112(r)(7) of the federal Clean Air Act and
12 federal implementing regulations for specified sources. To
13 ensure the efficient use of resources, it is the intent of the
14 Legislature for the state to seek delegation of the Section
15 112(r)(7) Accidental Release Prevention Program from the U.S.
16 Environmental Protection Agency for specified sources and for
17 duplication and redundancy to be avoided to the maximum extent
18 practicable with no expansion or addition of the regulatory
19 program.

20 252.936 Definitions.--As used in this part, the term:

21 (1) "Accidental release" means an unanticipated
22 emission of a regulated substance into the ambient air from a
23 stationary source.

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

28 (3) "Audit" means a review of information at a
29 stationary source subject to Section 112(r)(7), or submitted
30 by a stationary source subject to Section 112(r)(7), to
31 determine whether that stationary source is in compliance with

1 the requirements of this part and rules adopted to implement
2 this part. Audits must include a review of the adequacy of the
3 stationary source's Risk Management Plan, may consist of
4 reviews of information submitted to the department or the U.S.
5 Environmental Protection Agency to determine whether the plan
6 is complete or whether revisions to the plan are needed, and
7 the reviews may be conducted at the stationary source to
8 confirm that information onsite is consistent with reported
9 information.

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

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

15 (6) "Commission" means the State Emergency Response
16 Commission for Hazardous Materials created by Executive Order
17 94-138.

18 (7) "Committee" means any local emergency planning
19 committee established in the state under s. 301 of the federal
20 Emergency Planning and Community Right To Know Act, 42 USC s.
21 11001, et seq.

22 (8) "Department" means the Department of Community
23 Affairs.

24 (9) "Inspection" means a review of information at a
25 stationary source subject to Section 112(r)(7), including
26 documentation and operating practices and access to the source
27 and to any area where an accidental release could occur, to
28 determine whether the stationary source is in compliance with
29 the requirements of this part or rules adopted to implement
30 this part.

31

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

4 (11) "Person" means an individual, corporation,
5 partnership, association, state or any agency or institution
6 thereof, municipality, political subdivision of the state, and
7 any agency, department, or instrumentality of the United
8 States, and any officer, agent, or employee thereof, and, for
9 the purposes of s. 252.941, any responsible corporate officer.

10 (12) "Process" means a process as that term is defined
11 under 40 C.F.R. Part 68.

12 (13) "Program level" means a Program 1, Program 2, or
13 Program 3 stationary source level as determined under 40
14 C.F.R. Part 68.

15 (14) "Regulated substance" means any regulated
16 substance defined or listed under Section 112(r)(3) of the
17 Clean Air Act and federal implementing regulations. Consistent
18 with Section 112(r)(7) federal implementing regulations,
19 ammonia used as an agricultural nutrient, when held by
20 farmers, is exempt from this part.

21 (15) "Risk Management Plan" means the Risk Management
22 Plan required under Section 112(r)(7) of the Clean Air Act and
23 federal implementing regulations.

24 (16) "Section 112(r)" means the provisions of Section
25 112(r) of the Clean Air Act.

26 (17) "Section 112(r)(7)" means the accidental release
27 prevention, detection, and response provisions in Section
28 112(r)(7) of the Clean Air Act.

29 (18) "Stationary source" means any buildings,
30 structures, equipment, installations, or regulated substance
31 emitting stationary activities which belong to the same

1 industrial group, which are located on one or more contiguous
2 properties, which are under the control of the same person (or
3 persons under common control), and from which an accidental
4 release may occur. The term does not apply to transportation,
5 including storage incident to transportation of any regulated
6 substance under the provisions of this part. A stationary
7 source includes transportation containers used for storage not
8 incident to transportation and transportation containers
9 connected to equipment at the stationary source for loading or
10 unloading. Transportation includes, but is not limited to,
11 transportation that is subject to oversight or regulation
12 under 49 CFR parts 192, 193, or 195 or a state natural gas or
13 hazardous liquid program for which the state has in effect a
14 certification to the United States Department of
15 Transportation under 40 U.S.C. s. 60105. A stationary source
16 does not include naturally occurring hydrocarbon reservoirs.
17 Properties may not be considered contiguous solely because of
18 a railroad or gas pipeline right-of-way. Stationary sources
19 subject to chapter 527 whose only regulated substance subject
20 to Section 112(r)(7) is liquefied petroleum gas are exempt
21 from Part IV, chapter 252.

22 (19) "Trust fund" means the Operating Trust Fund
23 established in the department's Division of Emergency
24 Management.

25 252.937 Department powers and duties.--

26 (1) The department has the power and duty to:

27 (a)1. Seek delegation from the U.S. Environmental
28 Protection Agency to implement the Accidental Release
29 Prevention Program under Section 112(r)(7) of the Clean Air
30 Act and the federal implementing regulations for specified
31 sources subject to Section 112(r)(7) of the Clean Air Act.

1 Implementation for all other sources subject to Section
2 112(r)(7) of the Clean Air Act will be performed by the U.S.
3 Environmental Protection Agency; and

4 2. Ensure the timely submission of Risk Management
5 Plans and any subsequent revisions of Risk Management Plans.

6 (b) Adopt, modify, and repeal rules, with the advice
7 and consent of the commission, necessary to obtain delegation
8 from the U.S. Environmental Protection Agency and to
9 administer the Section 112(r)(7) Accidental Release Prevention
10 Program in this state for the specified stationary sources
11 with no expansion or addition of the regulatory program.

12 (c) Make and execute contracts and other agreements
13 necessary or convenient to the implementation of this part.

14 (d) Coordinate its activities under this part with its
15 other emergency management responsibilities, including its
16 responsibilities and activities under parts I, II, and III of
17 this chapter and with the related activities of other state
18 and local agencies, keeping separate accounts for all
19 activities conducted under this part which are supported or
20 partially supported from the Trust Fund.

21 (e) Establish, with the advice and consent of the
22 commission, a technical assistance and outreach program on or
23 before January 31, 1999, to assist owners and operators of
24 specified stationary sources subject to Section 112(r)(7) in
25 complying with the reporting and fee requirements of this
26 part. This program is designed to facilitate and ensure timely
27 submission of proper certifications or compliance schedules
28 and timely submission and registration of Risk Management
29 Plans and revised registrations and Risk Management Plans when
30 required for these sources.

31

1 (f) Make a quarterly report to the State Emergency
2 Response Commission on income and expenses for the state's
3 Accidental Release Prevention Program under this part.

4 (2) To ensure that this program is self-supporting,
5 the department shall provide administrative support, including
6 staff, facilities, materials, and services to implement this
7 part for specified stationary sources subject to s. 252.939
8 and shall provide necessary funding to local emergency
9 planning committees and county emergency management agencies
10 for work performed to implement this part. Each state agency
11 with regulatory, inspection, or technical assistance programs
12 for specified stationary sources subject to this part shall
13 enter into a Memorandum of Understanding with the department
14 which specifically outlines how each agency's staff,
15 facilities, materials, and services will be utilized to
16 support implementation. At a minimum, these agencies and
17 programs include: the Department of Environmental
18 Protection's Division of Air Resources Management and Division
19 of Water Facilities, and the Department of Labor and
20 Employment Security's Division of Safety. It is the
21 Legislature's intent to implement this part as efficiently and
22 economically as possible, using existing expertise and
23 resources, if available and appropriate.

24 (3) To prevent the duplication of investigative
25 efforts and resources, the department, on behalf of the
26 commission, shall coordinate with any federal agencies or
27 agents thereof, including the federal Chemical Safety and
28 Hazard Investigation Board, or its successor, which are
29 performing accidental release investigations for specified
30 stationary sources, and may coordinate with any agencies of
31 the state which are performing accidental release

1 investigations. This accidental release investigation
2 coordination is not intended to limit or take the place of any
3 individual agency accidental release investigation under
4 separate authority.

5 (4) To promote efficient administration of this
6 program and specified stationary sources, the only agency
7 which may seek delegation from the U.S.E.P.A. for this program
8 is the Florida Department of Community Affairs. Further, the
9 Florida Department of Community Affairs shall not delegate
10 this program to any local environmental agency.

11 252.938 Funding.--

12 (1) It is the intent of the Legislature that the state
13 activities and expenditures under this part be self-sustaining
14 through fees contributed by specified sources as provided in
15 this part.

16 (2) All fees and penalties collected under this part
17 must be deposited in the Operating Trust Fund for
18 appropriation to fund the state's Accidental Release
19 Prevention Program under this part.

20 252.939 Fees.--

21 (1)(a) Any owner or operator of a specified stationary
22 source in the state which must submit a Risk Management Plan
23 to the U.S. Environmental Protection Agency under Section
24 112(r)(7) shall pay an annual registration fee for each
25 specified stationary source to the department. The annual
26 registration fee is due to the department upon initial
27 submission of a stationary source's Risk Management Plan to
28 the U.S. Environmental Protection Agency, and every April 1
29 thereafter.

30 (b) Prior individual written notice shall be provided
31 by U.S. mail by the department to owners or operators of

1 specified stationary sources in the state subject to the
2 requirements under Section 112(r)(7) to submit Risk Management
3 Plans and corresponding state registration fees. This notice
4 must include the requirements of the state fee schedule and
5 must be mailed at least 90 days before the due date for the
6 specified stationary source's initial registration and Risk
7 Management Plan submission year and at least 30 days before
8 the registration fee due date for subsequent years.

9 (c) The department shall establish a fee schedule by
10 rule for the specified stationary sources, upon the advice and
11 consent of the commission. The annual registration fee must be
12 based on a stationary source's highest program level, as
13 determined under the federal implementing regulations for
14 Section 112(r)(7) and may not exceed the following:

15 1. Program 1 Stationary Sources \$100. Multiple Program
16 1 stationary sources which are under common ownership and
17 which have the same single chemical process, shall pay a full
18 fee for the first stationary source location and a 50 percent
19 fee for subsequent locations with no owner of such multiple
20 stationary sources paying more than \$1,000. To be eligible for
21 this multiple stationary source fee provision, one single fee
22 payment must be submitted by the owner of the eligible
23 multiple stationary source locations with a listing of the
24 multiple stationary source locations and the single chemical
25 process.

26 2. Program 2 Stationary Sources \$200. Multiple Program
27 2 stationary sources which are under common ownership and
28 which have the same single chemical process, shall pay a full
29 fee for the first three stationary source locations and a 50
30 percent fee for subsequent locations with no owner of such
31 multiple stationary sources paying more than \$2,000. Multiple

1 Program 2 stationary sources which are under common ownership
2 and which are classified under one of the following Standard
3 Industrial Classification group numbers 01, 02, or 07 shall
4 pay a full fee, not to exceed \$100 for the first stationary
5 source location and a 50 percent fee for subsequent locations
6 with no owner of such multiple stationary sources paying more
7 than \$800. To be eligible for this multiple stationary source
8 fee provisions, one single fee payment must be submitted by
9 the owner of the eligible multiple stationary source locations
10 with a listing of the multiple stationary source locations and
11 the chemical process.

12 3. Program 3 Stationary Sources \$1,000.

13 (d) Annual registration fees under this section are
14 not required until after the department receives final
15 delegation approval from the U.S. Environmental Protection
16 Agency to administer the Section 112(r)(7) Accidental Release
17 Prevention Program for the specified stationary sources.

18 (2) The department shall establish by rule late fees,
19 not to exceed 10 percent per month of the annual registration
20 fee owed, and not to exceed a total of 50 percent, for failure
21 to timely submit an annual registration fee. A late fee may
22 not be assessed against a stationary source during the initial
23 registration and submission year if 90 days prior written
24 notice was not provided to that stationary source.

25 (3) In determining whether an annual registration fee
26 is timely submitted under subsections (1) and (2), if the fee
27 is:

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

30
31

1 (b) Delivered by overnight or other private mail
2 carriers, the date of submittal is the date the package is
3 deposited with the overnight carrier.

4 (c) Hand-delivered, other than by overnight or private
5 mail carrier, the date of submittal is the date of actual
6 receipt.

7 (4) If the Legislature directs the department to seek
8 authority to implement and enforce Section 112(r)(7) of the
9 Clean Air Act for additional stationary sources, the
10 department shall, with the advise of the commission, review
11 and suggest revisions, if necessary and appropriate, to the
12 fees specified in s. 252.939.

13 252.940 Enforcement; procedure; remedies.--

14 (1) The department has the following enforcement
15 authority and remedies for specified stationary sources
16 available to it for violations of this part as specified in s.
17 252.941:

18 (a) To institute a civil action in a court of
19 competent jurisdiction in order to seek injunctive relief to
20 immediately restrain or enjoin any person from engaging in any
21 activity in violation of this part which is presenting an
22 imminent and substantial endangerment to the public health or
23 welfare or the environment; and to seek injunctive relief to
24 enforce compliance with this part or any rule, regulation,
25 program requirement, or order implementing this part.

26 (b) To institute a civil action in a court of
27 competent jurisdiction to impose and to recover a civil
28 penalty for each violation, as specified in s. 252.941(1), in
29 an amount of not more than \$10,000 per offense. However, the
30 court may receive evidence in mitigation. Each day during any
31

1 portion of which such violation occurs constitutes a separate
2 offense.

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

5 (d) Failure to comply with the fee provisions under s.
6 252.939 is not a violation under s. 252.941. Section
7 252.939(2) is the sole remedy for fee provisions in s.
8 252.939, except that the department may enforce a final order
9 entered under that section pursuant to s. 120.69.

10 (2) An action may not be commenced or continued under
11 this section if the Administrator of the U.S. Environmental
12 Protection Agency has commenced and is diligently pursuing an
13 administrative order or civil or criminal action to enforce a
14 specific requirement or to impose a civil or criminal penalty
15 under Section 112(r) with respect to the specific violation.
16 If the U.S. Environmental Protection Agency initiates any
17 action after the state has initiated an action based on the
18 same cause, the state suit shall be dismissed without
19 prejudice and may be refiled only in the event that the U.S.
20 Environmental Protection Agency discontinues the enforcement
21 action prior to settlement or final judgment.

22 (3) For the purposes of this section, the department
23 may offer and accept the use of emergency planning, training,
24 and response-related Supplemental Environmental Projects,
25 consistent with the guidelines established by the U.S.
26 Environmental Protection Agency.

27 (4) The authorities and remedies provided under this
28 section shall not take effect until after such time as the
29 department has received final delegation approval from the
30 U.S. Environmental Protection Agency to administer the Section

31

1 112(r)(7) Accidental Release Prevention Program for specified
2 stationary sources.

3 252.941 Prohibitions, violations, penalties, intent.--

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

6 (a) Fail to make any submittal required by this part
7 or by rule or regulation implementing this part, or to violate
8 or fail to comply with any rule, regulation, order, plan, or
9 certification adopted or issued by the department pursuant to
10 its lawful authority under this part, other than fees under s.
11 252.939.

12 (b) Knowingly make any false statement,
13 representation, or certification in any application, record,
14 report, plan, or other document filed or required to be
15 maintained under this part, or to falsify, tamper with, or
16 knowingly render inaccurate any monitoring device or method
17 required to be maintained under this part or by any program,
18 rule, regulation, or order issued under this part.

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

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

31

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

5 (4) The prohibitions and violations provided under
6 this section shall take effect after such time as the
7 department has received final delegation approval from the
8 U.S. Environmental Protection Agency to administer the Section
9 112(r)(7) Accidental Release Prevention Program for specified
10 stationary sources.

11 252.942 Inspections and audits.--

12 (1)(a) Any duly authorized representative of the
13 department may at any reasonable time enter to inspect and
14 audit, in order to ascertain compliance with this part or
15 rules adopted to implement this part, any specified stationary
16 source subject to the requirements of Section 112(r)(7),
17 except a building that is used exclusively for a private
18 residence.

19 (b) Any duly authorized representative may at any
20 reasonable time have access to any specified stationary source
21 subject to Section 112(r)(7) for inspection and copying any
22 supporting documentation required under this part.

23 (c) A person may not refuse reasonable entry or access
24 to any authorized representative of the department who
25 requests entry for purposes of inspection and who presents
26 appropriate credentials; nor shall any person obstruct,
27 hamper, or interfere with such inspection.

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

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

1 (b) The appropriate inspection warrant as provided in
2 this section is obtained.

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

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

9 1. It appears that the properties to be inspected may
10 be connected with or contain evidence of the violation of any
11 of the provisions of this Part or any rule properly
12 promulgated thereunder; or

13 2. The inspection sought is an integral part of a
14 larger scheme of systematic routine inspections that are
15 necessary to, and consistent with, the continuing efforts of
16 the department to ensure compliance with the provisions of
17 this part and any rules adopted thereunder.

18 (c) The judge shall, before issuing the warrant, have
19 the application for the warrant duly sworn to and subscribed
20 by a representative of the department; and he or she may
21 receive further testimony from witnesses, supporting
22 affidavits, or depositions in writing to support the
23 application. The affidavit and further proof must set forth
24 the facts tending to establish the grounds specified in
25 paragraph (b) or the reasons for believing that such grounds
26 exist.

27 (d) Upon examination of the application and proofs
28 submitted and if satisfied that cause exists for issuing the
29 inspection warrant, the judge shall issue a warrant, signed by
30 him or her with the name of his or her office, to any
31 department representative, which warrant will authorize the

1 representative to inspect the property described in the
2 warrant.

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

19 (5) Upon request, owners or operators of specified
20 stationary sources subject to Section 112(r)(7) shall receive
21 an oral exit interview at the conclusion of an inspection or
22 audit.

23 (6) Following an audit or inspection, the department
24 shall issue the owner or operator a written preliminary
25 determination of any necessary revisions to the stationary
26 source Risk Management Plan to ensure that the plan meets the
27 requirements of this part and rules adopted to implement this
28 part. The preliminary determination must include an
29 explanation of the basis for the revisions, reflecting
30 industry standards and guidelines to the extent that such

31

1 standards and guidelines are applicable, and must include a
2 timetable for their implementation.

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

8 252.944 Tort liability.--The commission and the
9 committees are state agencies, and the members of the
10 commission and committees are officers, employees, or agents
11 of the state for the purpose of s. 768.28.

12 252.945 Start up loan.--The department may advance a
13 start up loan in the amount of \$400,000 from the hazardous
14 materials account in the Operating Trust Fund to support
15 initial implementation of this part. This loan must be repaid
16 in equal annual installments by 2006, beginning October 1,
17 2001.

18 252.946 Public records.--With regard to information
19 submitted to the U.S. Environmental Protection Agency under
20 this part or Section 112(r)(7), the Department of Community
21 Affairs, the State Hazardous Materials Emergency Response
22 Commission, and any local emergency planning committee may
23 assist persons in electronically accessing such information
24 held by the U.S. Environmental Protection Agency in its
25 centralized database. If requested, the department, the
26 commission, or a committee may furnish copies of such U.S.
27 Environmental Protection Agency records. For these, and any
28 other records copies, the department, the commission, or the
29 committees may charge a fee of up to \$1.00 per page for over
30 25 pages copied, per person, per year.

31

1 Section 2. In the interim prior to the regular
2 legislative session in 2000, the appropriate substantive
3 committees of the Senate and the House of Representatives
4 shall conduct a review of the Florida Accidental Release
5 Prevention and Risk Management Planning Act. The Department
6 of Community Affairs, the State Emergency Response Commission,
7 local emergency planning committees, the Department of
8 Environmental Protection, the Department of Labor and
9 Employment Security, county emergency management agencies, and
10 all other agencies or private entities providing regulatory,
11 inspection, or technical assistance shall provide information
12 and assist in the review as needed. The review should include
13 an analysis of the effectiveness and efficiency of the
14 program, including the technical assistance and outreach
15 programs offered; the level of participation in the program;
16 the quality of the Risk Management Plans submitted; the
17 adequacy of the administrative support provided and the
18 efficiency and effectiveness of program administration,
19 monitoring, coordination, and recordkeeping; the adequacy and
20 quality of investigative efforts; the adequacy of the fee
21 structure; the adequacy and quality of contracts entered into,
22 audits, or inspections; and any other aspect of the program as
23 determined by the legislative committees. Subsequent to this
24 review, the legislative committees are to make recommendations
25 regarding whether to continue the program. The committees are
26 to address what, if any, statutory provisions should be
27 modified in order to improve the program. Legislation should
28 be promulgated to effectuate the committees' recommendations.

29 Section 3. Subsections (3) and (4) of section 252.85,
30 Florida Statutes, are amended to read:

31 252.85 Fees.--

1 (3) Any owner or operator of a facility ~~with a~~
2 ~~Standard Industrial Classification Code between 20 and 39~~ that
3 is required to submit a report or filing ~~United States~~
4 ~~Environmental Protection Agency Form R report to the~~
5 ~~commission~~ under s. 313 of EPCRA shall pay an annual reporting
6 fee not to exceed \$150 ~~per Form R report~~ for those s. 313
7 EPCRA listed substances in effect on January 1, 1998 ~~1996~~.
8 The department shall establish by rule the date by which the
9 fee is to be paid, as well as a formula or method of
10 determining the applicable fee under this subsection.

11 (4)(a) The department may assess a late fee for the
12 failure to submit a report or filing that substantially
13 complies with the requirements of EPCRA or s. 252.87 by the
14 specified date or for failure to pay any fee, including any
15 late fee, required by this section. This late fee shall be in
16 addition to the fee otherwise imposed pursuant to this
17 section. If the department elects to impose a late fee, it
18 shall provide the owner or operator with a written notice that
19 identifies the specific requirements which have not been met
20 and advises of its intent to assess a late fee.

21 (b) The department may impose a late fee, subject to
22 the limitations set forth below:

23 1. If the report, filing, or fee is submitted within
24 30 days after the receipt of the department's notice, no late
25 fee may be assessed.

26 2. If the report, filing, or fee is not submitted
27 within 30 days after the receipt of the department's notice,
28 the department may impose a late fee in an amount equal to the
29 amount of the annual registration fee, filing fee, or Section
30 313 ~~Form R~~ fee due, not to exceed \$2,000.

31

1 3. If the report, filing, or fee is not submitted
2 within 90 days after the receipt of the department's notice,
3 the department may issue a second notice. If the report,
4 filing, or fee is not submitted within 30 days after receipt
5 of the department's second notice, the department may assess a
6 second late fee in an amount equal to twice the amount of the
7 annual registration fee, filing fee, or Section 313 ~~Form R~~ fee
8 due, not to exceed \$4,000.

9 4. The department may consider, but is not limited to
10 considering, the following factors in assessing late
11 fees: good-faith attempt to comply; history of noncompliance;
12 ability to pay or continue in business; threat to health and
13 safety posed by noncompliance; and degree of culpability.

14 Section 4. This act shall take effect upon becoming a
15 law.