

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure lower taxes – By updating the list of chemicals for which manufacturing facilities must pay a fee when filing s. 313 EPCRA reports, the bill may require some manufacturing facilities either to pay a fee or pay an additional fee that they would not have had to otherwise, because the most recent list promulgated by the EPA contains several substances not contained in the list as it existed on January 1, 1998. However, the bill does not create a new fee, nor does it alter any existing fee schedule. For a more detailed explanation, refer to the discussion set forth below.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

The federal Emergency Planning and Community Right-to-Know Act, 42 USC 11001 – 11050, (“EPCRA”) was passed in response to concerns regarding the environmental and safety hazards posed by the storage and handling of toxic chemicals. These concerns were triggered by the disaster in Bhopal, India, in which more than 2,000 people suffered death or serious injury from the accidental release of methyl isocyanate. To reduce the likelihood of such a disaster in the United States, Congress imposed requirements on both states and regulated facilities.

EPCRA establishes requirements for Federal, State and local governments, Indian Tribes, and industry regarding emergency planning and “Community Right-to-Know” reporting on hazardous and toxic chemicals. The Community Right-to-Know provisions help increase the public’s knowledge and access to information on chemicals at individual facilities, their uses, and releases into the environment. States and communities, working with facilities, can use the information to improve chemical safety and protect public health and the environment.

EPCRA has two main functions:

- Subtitle A (Sections 301-305) provides for emergency planning and notification procedures in the event of an emergency release of toxic and hazardous chemicals; and
- Subtitle B (Sections 311-313) creates the "right-to-know" component of the law by imposing a reporting requirement on facilities where toxic and hazardous chemicals are found. These facilities must report the presence or release of the chemicals to the EPA and a designated state agency.

The right-to-know reporting requirements are multi-faceted, and apply mainly to large manufacturers. These requirements include: 1) Hazardous and extremely hazardous chemical reporting; and 2) Toxic chemical release reporting.

Under the hazardous and extremely hazardous chemical reporting requirements, manufacturers must report on their production, use, or storage of OSHA-regulated¹ hazardous chemicals. They must report

¹ OSHA is the Occupational Safety and Health Act of 1970. That Act provides manufacturing employees with a right-to-know about hazardous chemicals in the workplace by allowing them access to Material Safety Data Sheets (“MSDSs”). Hazardous and extremely hazardous chemical reporting requirements under EPCRA are limited to those chemicals for which an employer must maintain MSDSs. These reports are not the subject of this bill.

on-site chemicals to the State Emergency Response Commission ("SERC"),² the Local Emergency Planning Committees ("LEPC")³, and the local fire department.

Toxic chemical release reporting requirements, on the other hand, establish reporting standards for large manufacturing facilities⁴ that release in an amount above the established threshold, as a part of their normal business operations, substances deemed toxic by the United States Environmental Protection Agency.

Under Section 313 of EPCRA, large manufacturing facilities are required to submit reports each year on the amounts of listed toxic chemicals their facilities released into the environment (either routinely or as a result of accidents), or otherwise managed as waste. The purpose of this reporting requirement is to inform the public about the releases and other waste management of EPCRA section 313 chemicals in their communities and to provide the government with information for research and the development of appropriate regulations.

Section 313 requires facilities to report for each listed chemical the amount released to air, water, land, underground injection and transferred off-site to disposal. Facilities also must report the amounts of those EPCRA section 313 chemicals otherwise managed as waste, including on-site treatment, combustion for energy recovery, recycling and transfers off-site for treatment, combustion for energy recovery and recycling.

The roster of toxic chemicals for which reporting is required is known as the EPCRA Section 313 Chemical List ("the list"). This list contains hundreds of chemicals and chemical categories, along with qualifiers as to what form the chemical must take to trigger reporting requirements. The list is periodically updated and altered by the United States Environmental Protection Agency's ("EPA") Administrator through administrative rulemaking procedures. The EPA began using the most current list in the 2003 reporting year.

The reports must be sent to the EPA and to designated state agencies that act as the EPA's delegates in administering the program. In Florida, the Department of Community Affairs ("DCA") is designated as the state agency to receive the reports and to carry out other functions under EPCRA.

Because many responsibilities for the administration of EPCRA have been delegated to state governments, Florida enacted the Florida Hazardous Materials Emergency Response and Community Right-to-Know Act of 1988. In the enactment, the Legislature stated its intent that the state activities and expenditures be self-sustaining, supported primarily by fees.⁵ To that end, the Legislature established a fee of no more than \$150, to be determined by rulemaking, to be paid by facility operators filing a report required for EPCRA s. 313 chemicals. The fee is deposited into the DCA's Operating Trust Fund. This Florida law currently requires fees to be paid only for reports filed for chemicals contained in the list in effect on January 1, 1998.⁶

As stated previously, the EPA requires facilities to file reports based on the chemical list last promulgated immediately prior to the 2003 reporting year. Because Florida law only requires fees to be paid for reports filed for chemicals contained in the list in effect on January 1, 1998, fees that accompany reports inadvertently submitted for de-listed chemicals must be refunded. Also, because the more recent 2003 inventory lists chemicals that are not contained in the list referenced by statute, DCA may be unable to collect fees for some reports.

² In Florida, the Governor has designated the Department of Community Affairs, Division of Emergency Management as the SERC.

³ Florida has eleven LEPCs corresponding to the local Regional Planning Councils. A Council acts as the LEPC for its particular region.

⁴ Facilities required to report under EPCRA Section 313 include those that manufacture in Standard Industrial Classifications, employ ten or more full-time workers, and manufacture, process, import or otherwise use toxic chemicals above yearly threshold amounts.

⁵ Section 252.84(1), F.S.

⁶ Section 252.85(3), F.S.

According to the DCA, the refunds must be processed through the department's Finance and Accounting section, and must then be vouchered by the Chief Financial Officer. The department asserts that this process of refunding inadvertently paid fees is both time consuming and inefficient.

Effect of Proposed Changes

HB 5 w/CS amends the popular name of the "Florida Hazardous Materials Emergency Response and Community Right-to-Know Act of 1988," changing it to the "Florida Emergency Planning and Community Right-to-Know Act." The bill also eliminates the reference to the list of s. 313 EPCRA substances as that list existed on January 1, 1998 and substitutes the list in existence as of January 1, 2005. The bill does not alter the range of the reporting fees established in the statutes, however, because the more recent list contains a few additional substances, some manufacturing facilities, that otherwise would not have had to, may be required to pay a fee.

C. SECTION DIRECTORY:

Section 1. Amends s. 252.81, F.S., to rename the "Florida Hazardous Materials Emergency Response and Community Right-to-Know Act of 1988," as the "Florida Emergency Planning and Community Right-to-Know Act."

Section 2. Amends s. 252.85(3), F.S., to update a reference to the list of s. 313 EPCRA reportable substances for which payment of a fee must be made by manufacturing facilities when s. 313 EPCRA reports are submitted to the agency.

Section 3. Provides an effective date of July 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See the FISCAL COMMENTS section below.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not alter the range of the reporting fees established in the statutes, however, because the most recent list contains a few additional substances, some manufacturing facilities, that otherwise would not have had to, may be required to file a report and pay a fee of up to \$150 per report.

D. FISCAL COMMENTS:

The DCA may realize a slight increase in overall program revenues due to the reports and fees that are required for the few additional substances included in the most recent chemical list, however, that increase is not expected to be significant – approximately \$70,000. The DCA asserts that both the department and industry will realize a cost savings if the ambiguity concerning which list should govern state EPCRA reporting and payment requirements is resolved.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require cities or counties to spend funds or take actions requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

No additional rulemaking authority is required to implement the provisions of this bill

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 12, 2005, the Committee on Domestic Security adopted one amendment and then reported the bill favorably as amended, with a committee substitute. The amendment changes the popular name of the act from the "Florida Hazardous Materials Emergency Response and Community Right-to-Know Act of 1988" to the "Florida Emergency Planning and Community Right-to-Know Act."