

By Representatives Edwards, Burroughs, Dockery and Mackey

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           and 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 United States 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.

19  
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 United States  
6 Environmental Protection Agency and for duplication and  
7 redundancy to be 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  
24 United States Environmental Protection Agency to determine  
25 whether the plan is complete or whether revisions to the plan  
26 are needed, and the reviews may be conducted at the stationary  
27 source to confirm that information onsite is consistent with  
28 reported 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 U.S.C. 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 U.S.C.  
9 s. 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. The term stationary source does not apply  
18 to transportation, including storage incident to  
19 transportation, of any regulated substance under the  
20 provisions of this part. A stationary source includes  
21 transportation containers used for storage not incident to  
22 transportation and transportation containers connected to  
23 equipment at the stationary source for loading or unloading.  
24 Transportation includes, but is not limited to, transportation  
25 subject to oversight or regulation under 49 C.F.R. part 192,  
26 part 193, or part 195, or a state natural gas or hazardous  
27 liquid program for which the state has in effect a  
28 certification to the United States Department of  
29 Transportation under 40 U.S.C. s. 60105. A stationary source  
30 does not include naturally occurring hydrocarbon reservoirs.  
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1 Properties shall not be considered contiguous solely because  
2 of a railroad or gas pipeline right-of-way.  
3 (17) "Trust fund" means the Operating Trust Fund  
4 established in the department's Division of Emergency  
5 Management.  
6 252.937 Department powers and duties.--  
7 (1) The department has the power and duty to:  
8 (a) Seek delegation from the United States  
9 Environmental Protection Agency to implement the Accidental  
10 Release Prevention Program under Section 112(r)(7) of the  
11 Clean Air Act and the federal implementing regulations and  
12 ensure the timely submission of risk management plans and any  
13 subsequent revisions of risk management plans.  
14 (b) Adopt, modify, and repeal rules, with the advice  
15 and consent of the commission, necessary to obtain delegation  
16 from the United States Environmental Protection Agency and to  
17 administer the Section 112(r)(7) Accidental Release Prevention  
18 Program in this state.  
19 (c) Make and execute contracts and other agreements  
20 necessary or convenient to the implementation of this part.  
21 (d) Coordinate its activities under this part with its  
22 other emergency management responsibilities, including its  
23 responsibilities and activities under parts I, II, and III and  
24 with the related activities of other state and local agencies,  
25 keeping separate accounts for all activities conducted under  
26 this part which are supported or partially supported from the  
27 trust fund.  
28 (e) Establish, with the advice and consent of the  
29 commission, a technical assistance and outreach program on or  
30 before January 31, 1999, to assist owners and operators of  
31 stationary sources subject to Section 112(r)(7) in complying

1 with the reporting and fee requirements of this part. This  
2 program is designed to facilitate and ensure timely submission  
3 of proper certifications or compliance schedules and timely  
4 submission and registration of risk management plans and  
5 revised registrations and risk management plans when required.

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

28 (3) To prevent the duplication of investigative  
29 efforts and resources, the department, on behalf of the  
30 commission, shall coordinate with any federal agencies or  
31 agents thereof, including the federal Chemical Safety and

1 Hazard Investigation Board, or its successor, which are  
2 performing accidental release investigations, and may  
3 coordinate with any agencies of the state which are performing  
4 accidental release investigations. This accidental release  
5 investigation coordination is not intended to limit or take  
6 the place of any individual agency accidental release  
7 investigation under separate authority.

8 252.938 Funding.--

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

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

16 252.939 Fees.--

17 (1)(a) Any owner or operator of a stationary source in  
18 the state which must submit a risk management plan to the  
19 United States Environmental Protection Agency under Section  
20 112(r)(7) shall pay an annual registration fee for each  
21 stationary source to the department. The annual registration  
22 fee is due to the department upon initial submission of a  
23 stationary source's risk management plan to the United States  
24 Environmental Protection Agency, and every April 1 thereafter.

25 (b) Prior individual written notice shall be provided  
26 by United States mail by the department to owners or operators  
27 of all stationary sources in the state subject to the  
28 requirements under Section 112(r)(7) to submit risk management  
29 plans and corresponding state registration fees. This notice  
30 must include the requirements of the state fee schedule and  
31 must be mailed at least 90 days before the due date for the

1 stationary source's initial registration and risk management  
2 plan submission year and at least 30 days before the  
3 registration fee due date for subsequent years.  
4 (c) The department shall establish a fee schedule by  
5 rule, upon the advice and consent of the commission. The  
6 annual registration fee must be based on a stationary source's  
7 highest program level, as determined under the federal  
8 implementing regulations for Section 112(r)(7) and may not  
9 exceed the following:  
10 1. Program 1 Stationary Sources.....\$ 150  
11 2. Program 2 Stationary Sources.....\$ 200  
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 United States Enviromental  
16 Protection Agency to administer the Section 112(r)(7)  
17 Accidental Release Prevention Program.  
18 (2) The department shall establish by rule late fees,  
19 not to exceed 100 percent of the annual registration fee owed,  
20 for failure to timely submit an annual registration fee. A  
21 late fee may not be assessed against a stationary source  
22 during the initial registration and submission year if 90 days  
23 prior written notice was not provided to that stationary  
24 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 United States mail, the date of  
29 submittal is the date evidenced by the postmark.  
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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           252.940 Enforcement; procedure; remedies.--

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

11           (a) To institute a civil action in a court of  
12 competent jurisdiction in order to seek injunctive relief to  
13 immediately restrain or enjoin any person from engaging in any  
14 activity in violation of this part which is presenting an  
15 imminent and substantial endangerment to the public health or  
16 welfare or the environment; and to seek injunctive relief to  
17 enforce compliance with this part or any rule, regulation,  
18 program requirement, or order implementing this part.

19           (b) To institute a civil action in a court of  
20 competent jurisdiction to impose and to recover a civil  
21 penalty for each violation, as specified in s. 252.941(1), in  
22 an amount of not more than \$10,000 per offense. However, the  
23 court may receive evidence in mitigation. Each day during any  
24 portion of which such violation occurs constitutes a separate  
25 offense.

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

28           (d) Failure to comply with the fee provisions under s.  
29 252.939 is not a violation under s. 252.941. Section  
30 252.939(2) is the sole remedy for fee provisions in s.

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1 252.939, except that the department may enforce a final order  
2 entered under that section pursuant to s. 120.69.

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

16 (3) For the purposes of this section, the department  
17 may offer and accept the use of supplemental environmental  
18 projects, consistent with the guidelines established by the  
19 United States Environmental Protection Agency.

20 (4) The authorities and remedies provided under this  
21 section shall not take effect until after such time as the  
22 department has received final delegation approval from the  
23 United States Environmental Protection Agency to administer  
24 the Section 112(r)(7) Accidental Release Prevention Program.

25 252.941 Prohibitions, violations, penalties, intent.--

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

28 (a) Fail to make any submittal required by this part  
29 or by rule implementing this part, or to violate or fail to  
30 comply with any rule, order, plan, or certification adopted or  
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1 issued by the department pursuant to its lawful authority  
2 under this part, other than fees under s. 252.939.

3 (b) Knowingly make any false statement,  
4 representation, or certification in any application, record,  
5 report, plan, or other document filed or required to be  
6 maintained under this part, or to falsify, tamper with, or  
7 knowingly render inaccurate any monitoring device or method  
8 required to be maintained under this part or by any program,  
9 rule, or order issued under this part.

10 (c) Fail to report to the appropriate representative  
11 of the department, as established by department rule, within 1  
12 working day of discovery of an accidental release of a  
13 regulated substance from the stationary source, if the owner  
14 or operator is required to report the release to the United  
15 States Environmental Protection Agency under Section  
16 112(r)(6).

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

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

27 (4) The prohibitions and violations provided under  
28 this section shall take effect after such time as the  
29 department has received final delegation approval from the  
30 United States Environmental Protection Agency to administer  
31 the Section 112(r)(7) Accidental Release Prevention Program.

1           252.942 Inspections and audits.--  
2           (1)(a) Any duly authorized representative of the  
3 department may at any reasonable time enter to inspect and  
4 audit, in order to ascertain compliance with this part or  
5 rules adopted to implement this part, any stationary source  
6 subject to the requirements of Section 112(r)(7), except a  
7 building that is used exclusively for a private residence.  
8           (b) Any duly authorized representative may at any  
9 reasonable time have access to any stationary source subject  
10 to Section 112(r)(7) for inspection and copying any supporting  
11 documentation required under this part.  
12           (c) A person may not refuse reasonable entry or access  
13 to any authorized representative of the department who  
14 requests entry for purposes of inspection and who presents  
15 appropriate credentials; nor shall any person obstruct,  
16 hamper, or interfere with such inspection.  
17           (2) An inspection or audit under subsection (1) may be  
18 conducted only after:  
19           (a) Consent for the inspection is received from the  
20 owner, operator, or person in charge; or  
21           (b) The appropriate inspection warrant as provided in  
22 this section is obtained.  
23           (3)(a) An inspection warrant as authorized by this  
24 section may be issued by a judge of any county court or  
25 circuit court of this state which has jurisdiction over the  
26 place or thing to be searched.  
27           (b) When a proper affidavit is made, the judge may  
28 issue an inspection warrant if:  
29           1. It appears that the properties to be inspected may  
30 be connected with or contain evidence of the violation of any  
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1 of the provisions of this part or any rule properly adopted  
2 under this part; or

3 2. The inspection sought is an integral part of a  
4 larger scheme of systematic routine inspections that are  
5 necessary to, and consistent with, the continuing efforts of  
6 the department to ensure compliance with the provisions of  
7 this part and any rules adopted under this part.

8 (c) The judge shall, before issuing the warrant, have  
9 the application for the warrant duly sworn to and subscribed  
10 by a representative of the department; and he or she may  
11 receive further testimony from witnesses, supporting  
12 affidavits, or depositions in writing to support the  
13 application. The affidavit and further proof must set forth  
14 the facts tending to establish the grounds specified in  
15 paragraph (b) or the reasons for believing that such grounds  
16 exist.

17 (d) Upon examination of the application and proofs  
18 submitted and if satisfied that cause exists for issuing the  
19 inspection warrant, the judge shall issue a warrant, signed by  
20 him or her with the name of his or her office, to any  
21 department representative, which warrant shall authorize the  
22 representative to inspect the property described in the  
23 warrant.

24 (4) The department shall periodically audit risk  
25 management plans submitted by owners or operators of  
26 stationary sources subject to Section 112(r)(7) and require  
27 revisions of such plans when necessary to ensure compliance  
28 with this part. The audit and revision requirements must  
29 substantially comply with federal regulations implementing  
30 Section 112(r)(7). The department shall develop, with the  
31 advice and consent of the commission, an annual audit work

1 plan which identifies stationary sources or audits based on  
2 the program resources available. Stationary sources shall be  
3 prioritized for audits based on factors which include, but are  
4 not limited to, stationary source location and proximity to  
5 population centers, chemical characteristics and inventories,  
6 stationary source accident history, process accident history,  
7 compliance or inspection by allied agency programs, and the  
8 results of stationary sources' self-audits.

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

12 (6) Following an audit or inspection, the department  
13 shall issue the owner or operator a written preliminary  
14 determination of any necessary revisions to the stationary  
15 source risk management plan to ensure that the plan meets the  
16 requirements of this part and rules adopted to implement this  
17 part. The preliminary determination must include an  
18 explanation of the basis for the revisions, reflecting  
19 industry standards and guidelines to the extent that such  
20 standards and guidelines are applicable, and must include a  
21 timetable for their implementation.

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

27 252.944 Tort liability.--The commission and the  
28 committees are state agencies, and the members of the  
29 commission and committees are officers, employees, or agents  
30 of the state, for the purpose of s. 768.28.

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