

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Date: March 16, 1998 Revised: _____

Subject: Public Records

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Gee</u>	<u>Voigt</u>	<u>NR</u>	<u>Fav/2 amendments</u>
2.	<u>Schmith</u>	<u>Yeatman</u>	<u>CA</u>	<u>Favorable</u>
3.	_____	_____	<u>GO</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This bill provides exemptions from public records disclosure requirements for information provided by a stationary source subject to the Accidental Release Prevention Program under the federal Clean Air Act. The bill includes a finding of public necessity and an expiration date for the exemptions. The Act will only become a law if SB 812, or similar legislation, is enacted.

This bill creates section 252.943 of the Florida Statutes.

II. Present Situation:

Section 112(r) of the federal Clean Air Act establishes the Accidental Release Prevention Program, intended to prevent accidental releases of listed toxic, flammable, and explosive substances and to minimize the consequences of such releases. The program, codified in 42 USCS 7412, sets out a general duty for owners and operators of stationary sources who produce, process, handle, or store listed substances or any other extremely hazardous substances to initiate specific activities to prevent and mitigate accidental releases. Among these requirements is the development of Risk Management Plans, which require that listed substances be reported if on the premises.

Section 112 creates an independent safety board, the Chemical Safety and Hazard Investigation Board. Among other duties, the board investigates (or causes to be investigated) and reports to the public the circumstances and causes of serious accidental releases. Because making public certain information regarding specific substances and their uses could reveal trade secrets, section 112 exempts such information from being released, upon a determination by the board that to do so would cause substantial harm to a person's competitive position.

The federal program may be delegated to a state when the state has in place a program meeting federal requirements. SB 812, if enacted, would establish such a program for the State of Florida. If SB 812 is enacted, this bill or similar legislation must be enacted to provide for the necessary confidentiality under Florida law. Although s. 24, Art. I of the State Constitution and s. 119.07, F.S., generally establish the right of the public to inspect any public record, the State Constitution authorizes exemptions to be created under general law.

III. Effect of Proposed Changes:

Section 1. Section 252.943, F.S., is created to provide exemptions from s. 119.07(1), F.S., for specified information under three circumstances:

1. Whenever Section 112(r) of the federal Clean Air Act authorizes a stationary source subject to Section 112(r)(7) to exclude trade secret information from its Risk Management Plan, the owner or operator must furnish the information so excluded to the State Hazardous Materials Emergency Response Commission upon request. Such information is confidential and exempt from the provisions of s. 119.07(1), F.S. The commission may not disclose such information except under a final determination by the EPA Administrator that such information is not entitled to trade secret protection, or pursuant to an order of court.
2. Whenever Section 112(r) of the federal Clean Air Act authorizes an owner or operator of a stationary source subject to Section 112(r)(7) to elect to withhold from disclosure specific information, such information is confidential and exempt from the provisions of s. 119.07(1), F.S.
3. Any information that is provided to the DCA or its agent, in the process of conducting an inspection, audit, or investigation which is authorized under Section 112(r) for exemption from the provisions of s. 119.07(1), F.S., is confidential and exempt from s. 119.07(1), F.S.

These exemptions are subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and expire on October 2, 2003, unless reviewed and reenacted by the Legislature.

The bill permits the DCA, the State Hazardous Materials Emergency Response Commission, and any local emergency planning committee to fulfill requests for public records under s. 119.07, F.S., for information electronically submitted under this program or furnished under the section 112(r)(7) Accidental Release Prevention Program to the EPA's centralized database, by referral to the database or other reasonably accessible data collection points. Upon request, the DCA, the commission, or the committees must furnish copies of public records not available through electronic data collection points, and may elect to furnish copies of public records which are available through electronic data collection points. The DCA, the commission, or the committees may charge a fee of up to \$1 per page, per person, per year for over 10 pages of materials copied.

Section 2. A Legislative finding is provided that it is a public necessity that information provided by a stationary source subject to the Accidental Release Prevention Program under the federal

Clean Air Act be held confidential in order to protect legitimate property rights associated with trade secrets while allowing state officials to review and oversee Risk Management Plans, and that disclosure of the information is likely to cause substantial harm to the competitive position of a stationary source.

Section 3. The act will take effect on the effective date of SB 812 or similar legislation, relating to clean air, and shall not take effect if that legislation does not become a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

This bill provides exemptions from ch. 119, F.S., for trade secret information and any information authorized to be withheld from disclosure under section 112(r) of the federal Clean Air Act. The exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and expires on October 2, 2003 unless reenacted.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The exemption could benefit companies using listed chemicals, as disclosure could reveal trade secrets.

Persons requesting certain public records from the DCA, the State Hazardous Materials Emergency Response Commission; or local emergency planning committees might have to pay a fee of \$1.00 per person, per page in copying costs.

C. Government Sector Impact:

The exemptions impose no costs to government.

VI. Technical Deficiencies:

This bill provides for trade secret information to be exempt from s. 119.07, F.S., under three different circumstances. Although the exempt information is presumably the same information in each instance, it could be argued that the bill actually creates three exemptions. Senate policy, as set out in the document “Public Records and Meeting Exemption Guidelines,” is that one exemption per bill provides the most deliberative and informed manner for consideration of such significant legislation.

A further concern is that, in addition to creating public record exemptions, this bill provides procedures for disclosing non-confidential information and establishes a fee for copying. These provisions, unrelated to the creation of the exemptions, appear to violate the constitutional single-subject requirement for the creation of exemptions.

Finally, this bill was printed before SB 812 was printed and numbered. Section 3 of the bill provides that this bill will only take effect upon enactment of SB____. As the unnumbered bill has now been numbered as SB 812, an amendment should be considered to correct this technicality.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Natural Resources:

As filed, the bill provided procedures for disclosing non-confidential information and authorized a fee for copying. Because these provisions are unrelated to the creation of the exemptions and appear to violate the constitutional single-subject requirement for the creation of exemptions, they have been deleted from this bill and have been amended into SB 812, which establishes the Accidental Release Prevention Program.

Deletes provisions that would have permitted the State Hazardous Materials Emergency Response Commission and any local emergency planning committee to fulfill requests for public records under s. 119.07, F.S., for information electronically submitted under this program or furnished under the section 112(r)(7) Accidental Release Prevention Program to the EPA’s centralized database, by referral to the database or other reasonably accessible data collection points. Also deleted are provisions that required, upon request, the DCA, the commission, or the committees to furnish copies of public records not available through electronic data collection points, and authorized them to furnish copies of public records which are available through electronic data collection points. Deleted as well are provisions authorizing the DCA, the commission, or the committees to charge a fee of up to \$1 per page, per person, per year for over 10 pages of materials copied.

#2 by Natural Resources:

Inserts "SB 812" as the unnumbered bill referenced at page 3, line 13.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
