

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Environmental Preservation and Conservation

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BILL: SB 1416

INTRODUCER: Senator Evers

SUBJECT: Rehabilitation Projects for Petroleum Contamination Sites

DATE: March 20, 2013

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gudeman	Uchino	EP	<b>Pre-meeting</b>
2.	_____	_____	AGG	_____
3.	_____	_____	AP	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

SB 1416 amends s. 376.30711, F.S., to provide that competitive bids for site rehabilitation are not subject to the requirements of s. 287.0595, F.S., and to delete provisions requiring the Department of Environmental Protection (DEP) to pre-approve costs or use performance-based contracts for site rehabilitation projects.

**II. Present Situation:**

The DEP Bureau of Petroleum Storage Systems regulates underground and aboveground storage tank systems. In 1983, Florida became one of the first states in the United States to pass legislation and adopt rules for underground and aboveground storage tanks systems. Leaking storage tanks pose a significant threat to groundwater quality. Florida relies on groundwater for about 92 percent of its drinking water needs.<sup>1</sup>

In 1986, the Legislature passed SB 206 which created the State Underground Petroleum Environmental Response Act (SUPER Act) to address the problems of pollution from leaking underground petroleum storage systems. The SUPER Act authorized the DEP to establish criteria for the prioritization, assessment and cleanup, and reimbursement for cleanup of contaminated sites. The bill also created the Inland Protection Trust Fund (IPTF), which is funded by a tax on petroleum products imported or produced in Florida. The SUPER Act established the Early Detection Incentive Program (EDI), which provided site owners with the

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<sup>1</sup> DEP, *Bureau of Petroleum Storage Systems*, <http://dep.state.fl.us/waste/categories/pss/default.htm> (last visited Mar. 18, 2013).

option of conducting the cleanup themselves, and then receive reimbursement from the IPTF, or have the state conduct the cleanup in priority order.<sup>2</sup>

In 1989, the Legislature passed HB 430 to create the Petroleum Liability and Insurance Restoration Program (PLIRP). PLIRP allowed eligible petroleum facilities to purchase \$1 million in pollution liability protection from a state contracted insurer. PLIRP also provided \$1 million worth of site restoration coverage through reimbursement or state cleanup.<sup>3</sup>

The Legislature passed CS/SB 2702 in 1990 to establish the Abandoned Tank Restoration Program (ATRP). ATRP was created to address the contamination at facilities that had out-of-service or abandoned tanks as of March 1990. The ATRP originally had a one-year application period, but the deadline is now waived indefinitely for owners that are financially unable to pay for the closure of abandoned tanks.<sup>4</sup>

The Legislature passed HB 2477 in 1992 to phase out the state's role in the cleanup process and shift the cleanup sites to the reimbursement program.<sup>5</sup> The excise tax on petroleum and petroleum products was increased to pay for the expanded reimbursement program. The reimbursement program proved costly and within a few years the reimbursement amount exceeded the administrative capacity of the DEP and the financial resources of the IPTF.<sup>6</sup> By 1996, over 18,000 petroleum sites had been identified as contaminated and the program had accumulated \$551.5 million in unreimbursed claims.<sup>7</sup>

In 1995, the Legislature passed SB 1290 as a temporary measure to address the large backlog of reimbursement applications and unpaid claims. The bill required that only property owners who have received prior approval from the DEP for the scope of work and costs associated with the cleanup may continue with state funded site rehabilitation.<sup>8</sup>

In 1996, the legislature passed HB 1127 to implement the Petroleum Preapproval Program. The program required state-funded cleanups to be done on a preapproved basis, in priority order, and within the current fiscal year's budget. The Preapproval Program also required the DEP to use risk-based corrective action principles in the cleanup criteria rule. The Petroleum Cleanup Participation Program (PCPP) was created for sites that had missed the opportunity for state funding assistance but had reported contamination before 1995. Responsible parties were required to cost share in the cleanup and prepare a limited scope assessment at their expense. The Preapproved Advanced Cleanup (PAC) was created to allow sites to bypass the priority ranking list and receive funding in order to facilitate a public works project or property transaction. The PAC program requires applicants to cost share in the cleanup and to prepare limited scope assessments at their expense.<sup>9</sup>

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<sup>2</sup> Chapter 86-159, Laws of Fla.

<sup>3</sup> Chapter 89-188, Laws of Fla.

<sup>4</sup> Chapter 90-98, Laws of Fla.

<sup>5</sup> The term "cleanup sites" includes contaminated sites that are being remediated by the state or the property owner.

<sup>6</sup> Chapter 92-30, Laws of Fla.

<sup>7</sup> Comm. on Environmental Preservation, The Florida Senate, *Underground Petroleum Storage Tank Cleanup Program*, (Interim Report 2005-153) (Nov. 2004).

<sup>8</sup> Chapter 95-2, Laws of Fla.

<sup>9</sup> Chapter 96-277, Laws of Fla.

In 1999, the Legislature passed HB 2151 to amend the Petroleum Preapproval Program and allow the DEP to provide funding for certain source removal activities. The bill also addressed new petroleum discharges that occur at a site with existing contamination and were reported after December 31, 1998. The bill allows a responsible party to enter into a Site Rehabilitation Agreement with the DEP and share in the cost and coordination of the cleanup, provided that the responsible party submits an application and a Limited Contamination Assessment Report to the DEP.<sup>10</sup>

In 2005, the Legislature passed CS/SB 1318 to substantially amend the Petroleum Preapproval Program.<sup>11</sup> Specifically, CS/SB 1318:

- Required that all of Florida's underground petroleum storage tanks be upgraded prior to January 1, 2010;
- Required the DEP to establish a process to uniformly encumber funds appropriated for the underground storage tank program throughout a fiscal year;
- Authorized the DEP to establish priorities based on a scoring system;
- Provided funding for limited interim soil-source removals for sites that become inaccessible for future remediation due to road infrastructure and right-of-way restrictions resulting from a pending Department of Transportation project;
- Provided funding for limited interim soil-source removals associated with the underground petroleum storage system upgrade that are conducted in advance of the site's priority ranking for cleanup;
- Limited the funding for source removal associated with the underground petroleum storage system upgrade to 10 sites per fiscal year per owner;
- Limited the amount of funding per facility and the activities that may be funded;
- Limited the funding amount for Department of Transportation projects to \$1 million per fiscal year and \$10 million for underground petroleum storage system upgrade projects per fiscal year;
- Repealed the funding provisions as of June 30, 2008;
- Provided that the Preapproved Advanced Cleanup Participation Program is available for discharges of petroleum that are eligible for restoration funding under the Petroleum Cleanup Participation Program for the state's cost share of site rehabilitation; and
- Extended the life of the Inland Protection Financing Corporation from 2011 to 2025, and authorizes the corporation to issue notes and bonds, and to pay for large-scale cleanups such as ports, airports, and terminal facilities that are eligible for state funding.

The DEP is currently working with cleanup contractors, property owners, and other stakeholders to explore ways to make the state-funded petroleum cleanup program more efficient, including implementing the competitive bid process.

Pursuant to s. 376.30711, F.S., the state is authorized to use the competitive bid procedures or negotiated contracts for preapproving all costs and procedures for site-specific rehabilitation projects. Two competitive bidding pilot projects were conducted in 1996 and 2002; however, the DEP has not implemented competitive bidding on a permanent basis. Site cleanup and

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<sup>10</sup> Chapter 199-376, Laws of Fla.

<sup>11</sup> See ss. 376.3071, 376.30713, 376.3075, and 376.30715, F.S.

rehabilitation services are instead provided through preapproved, negotiated scopes of work under the state-funded petroleum cleanup program, which includes lump sum, and time and materials contracting.

Pursuant to s. 287.055, F.S., state agencies are required to adhere to specific competitive bidding procedures to:<sup>12</sup>

- Evaluate professional services and the capabilities of the contractor;
- Evaluate the statements of qualifications and performance data;
- Select at least three firms deemed to be the most highly qualified to perform the services; and
- Negotiate a contract with the most qualified firm for a fair, competitive, and reasonable rate.

### III. Effect of Proposed Changes:

**Section 1** amends s. 376.30711, F.S., to exempt competitive bids for site rehabilitation from s. 287.0595, F.S., which contains the DEP's rulemaking authority for pollution response action contracts. The bill also deletes provisions requiring the DEP to preapprove costs or use performance-based contracts for site rehabilitation.

The bill provides legislative support for the DEP to competitively bid any site rehabilitation activity for state-funded cleanup of petroleum contaminated sites after it has approved the site assessment.<sup>13</sup>

**Section 2** provides an effective date of July 1, 2013.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

#### C. Trust Funds Restrictions:

None.

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<sup>12</sup> See s. 287.055, F.S.

<sup>13</sup> DEP, *Senate Bill 1416 Agency Analysis* (Mar. 2013) (on file with the Senate Committee on Environmental Preservation and Conservation).

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:****B. Private Sector Impact:**

The initial preparation of bid packages could be time consuming and cause a transitional delay in authorizing work to private cleanup contractors selected as a result of the bid process. Templates would be available for subsequent use without additional delays. Bid protests could cause delays. Smaller and mid-size cleanup contractors and construction subcontractors may be disadvantaged.<sup>14</sup>

Under the current process, the DEP assumes all of the risk for contaminated site cleanups. There is limited tangible risk to cleanup contractors and property owners for unproductive work. Under a competitive bid and performance-based cleanup contract, only success toward meeting the cleanup goal would be rewarded, and an incentive could be provided to ensure the greatest possible success in the least amount of time. Delays may occur if there are a significant number of bid protests but would be expected to decrease over time, provided the DEP prevails and the contract awards are upheld.<sup>15</sup>

**C. Government Sector Impact:**

Competitively bidding state-funded petroleum contaminated site cleanups would result in significant savings of taxpayer dollars. The savings may be used to fund the cleanup of other contaminated sites awaiting cleanup.<sup>16</sup>

The fiscal impact to the DEP is indeterminate. The review and evaluation of bids on an ongoing basis could be time consuming and may require shifting resources within the DEP.<sup>17</sup>

**VI. Technical Deficiencies:**

Section 1 of the bill amends s. 376.30711(2)(a), F.S., to provide that competitive bidding is not subject to the requirements of s. 287.055, or s. 287.0595, F.S. The reference to s. 287.0595, F.S., is incorrect and should be removed. Section 287.0595, F.S., grants the DEP rulemaking authority to establish procedures for awarding contracts for cleanup of petroleum contaminated sites. It was not intended to exempt competitive bidding procedures from rulemaking.

**VII. Related Issues:**

None.

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<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

**VIII. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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