

HOUSE OF REPRESENTATIVES FINAL BILL ANALYSIS

BILL #:	CS/CS/CS/HB 697	FINAL HOUSE FLOOR ACTION:	
SPONSOR(S):	State Affairs Committee; Agriculture & Natural Resources Appropriations Subcommittee; Agriculture and Natural Resources Subcommittee; Grant and others	115 Y's	0 N's
COMPANION BILLS:	CS/SB 100; CS/HB 351; CS/SB 92	GOVERNOR'S ACTION:	Approved

SUMMARY ANALYSIS

CS/CS/CS/HB 697 passed the House on March 4, 2016, as CS/SB 100 as amended. The Senate concurred in the House amendment to the Senate Bill and subsequently passed the bill as amended on March 10, 2016. The bill includes portions of CS/HB 351.

The bill amends the criteria for determining when a contaminated site has been cleaned up for the Global Risk Based Corrective Action and brownfield program. In part, the bill:

- Adds a definition of "background concentration" to include concentrations of contaminants that are naturally occurring or the result of anthropogenic (human) impacts unrelated to the discharge of pollutants or hazardous substances at the contaminated site undergoing rehabilitation;
- Requires DEP rules to include protocols for long-term natural attenuation for site rehabilitation;
- Requires DEP to consider the interactive effects of contaminants, including additives, synergistic, and antagonistic effects when determining what constitutes a rehabilitation program task;
- Creates an exception when applying state water quality standards if the responsible party demonstrates that the contaminants do not cause or contribute to the exceedance of applicable surface water quality criteria;
- Allows the use of risk assessment modeling and probabilistic risk assessment to create site-specific alternative cleanup target levels (CTLs); and
- Allows the use of alternative CTLs without institutional controls if certain conditions exist.

The bill also makes several changes to various state-assisted petroleum cleanup programs. In part, the bill:

- Changes the eligibility criteria of the Abandoned Tank Restoration Program (ATRP) and the Petroleum Cleanup Participation Program to allow more contaminated sites to receive state funding assistance;
- Allows sites owned by a person who had knowledge of the polluting condition when title was acquired to be eligible for ATRP;
- Directs the Department of Environmental Protection (DEP) to make efficiency and productivity a priority in the administration of the petroleum restoration program and encourages DEP to contract for private services;
- Increases the funding available to Low-Score Site Initiative (LSSI) sites and expands the activities eligible for funding under LSSI;
- Reduces the minimum number of sites that a facility owner or operator may bundle in order to be eligible for performance-based contracts from 20 sites to 5 sites under the Advanced Cleanup Program;
- Authorizes DEP to contract for \$25 million in each fiscal year of advanced cleanup work, rather than \$15 million; and
- Provides that a property owner that enters into a voluntary cost-share agreement with other property owners to bundle sites for advanced cleanup is not subject to agency term contractor assignment.

The bill appears to have a significant fiscal impact on state government, an indeterminate positive fiscal impact on the private sector, and no fiscal impact on local government.

The bill was approved by the Governor on April 6, 2016, ch. 2016-184, L.O.F., and will become effective on July 1, 2016.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0697z1.ANRS

DATE: April 6, 2016

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Risk Based Corrective Action

Present Situation

Contaminated sites are any contiguous land, sediment, surface water, or groundwater areas that contain contaminants that may be harmful to human health or the environment.¹ Prior to 2003, Florida used risk based corrective action (RBCA) (pronounced “Rebecca”) at contaminated sites under the following Department of Environmental Protection (DEP) programs: the Petroleum Restoration Program, the Brownfield Program, and the Drycleaning Facility Restoration Program (collectively “program sites”).² The program sites made up approximately 90 percent of all of the contaminated sites in Florida.³

RBCA is a process that bases remedial action for contaminated sites on potential human health effects resulting from exposure to chemical compounds.⁴ RBCA utilizes site-specific data, modeling results, risk assessment studies, institutional controls (such as deed restrictions limiting future use to industrial), engineering controls (such as placing an impervious surface over contaminated soils to prevent human exposure), or any combination thereof.⁵

DEP managed non-program sites under the Contamination Assessment Plan/Remedial Action Plan process (CAP/RAP) set forth in the Model Corrective Action for Contaminated Site Cases guidance document.⁶ These sites were required to be remediated to default cleanup target levels (CTLs).⁷ A CTL is the concentration of a contaminant identified by an applicable analytical test method, in the medium of concern (e.g., soil or water), at which a site rehabilitation program is deemed complete.⁸ DEP developed the CTLs based on human health and aesthetic factors.⁹ Aesthetic considerations include altered taste, odor, or color of the water.¹⁰ This approach offered little flexibility to provide site-specific remediation strategies, was inefficient,¹¹ and created a significant expense.¹²

Global RBCA

In 2003, the Legislature created s. 376.30701, F.S., commonly referred to as “Global Risk-Based Corrective Action” or “Global RBCA,” which required RBCA to be applied to all contaminated sites in Florida to meet CTLs.¹³ Chapter 62-777, F.A.C., provides the default CTLs and a methodology for RBCA.¹⁴

¹ Section 376.301(10), F.S.

² Charles F. Mills III, *Global RBCA: Its Implementation, Foundation in Risk-Based Theory, and Implications*, 22 J. Land Use & Envtl. L. 101, 116 (Fall 2006).

³ *Id.* at 117.

⁴ *Id.* at 102.

⁵ Ralph A. DeMeo, Michael P. Petrovich, Christopher M. Teal, *Risk-Based Corrective Action In Florida: How Is It Working?*, the Florida Bar Journal, January 2015, at 47.

⁶ Mills, *supra* note 2, at 118. In 2005, the Fifth District Court of Appeals found this guidance document to be an unpromulgated rule, and therefore invalid. *Kerper v. Department of Environmental Protection*, 894 So.2d 1006 (Fla. 5th DCA 2005).

⁷ DeMeo, *supra* note 5, at 47.

⁸ Section 376.301(7), F.S.

⁹ DEP, *Technical Report: Development of Cleanup Target Levels (CTLs) For Chapter 62-777, F.A.C.*, at 7, incorporated by reference in rule 62-777.100, F.A.C.

¹⁰ *Id.*

¹¹ DeMeo, *supra* note 5, at 47.

¹² Mills, *supra* note 2, at 133.

¹³ *Id.* at 102.

¹⁴ *Id.* at 118.

Global RBCA does not apply to contaminated sites subject to the risk-based corrective action cleanup criteria established for the petroleum, brownfields, and drycleaning programs.¹⁵ These programs provide financial and regulatory incentives to facilitate cleanup, and are subject to RBCA criteria established for the specific program.¹⁶

In 2005, DEP adopted rules to implement Global RBCA.¹⁷ The goal was to provide for a flexible site-specific cleanup process that reflected the intended use of the property following cleanup, while maintaining adequate protection of human health, safety, and the environment.¹⁸ In 2013, DEP consolidated the contamination site cleanup criteria for petroleum contamination,¹⁹ drycleaning solvents,²⁰ brownfield cleanup,²¹ and all other contaminated sites²² into the Global RBCA rule chapter.²³

The ultimate goal for any contaminated site is for DEP to issue it a “No Further Action” (NFA) order. Upon discovery of a contaminant, DEP must be notified.²⁴ The person responsible for site rehabilitation (responsible party) must commence site assessment within 60 days of discovery of a discharge to determine the extent of contamination and facilitate selection of an appropriate remediation strategy.²⁵ This includes establishing any background concentrations of contaminations.²⁶ Background concentrations are concentrations of contaminants that are naturally occurring in the groundwater, surface water, soil, or sediment in the vicinity of the site.²⁷ DEP cannot require site rehabilitation to achieve a CTL for any contaminant more stringent than the naturally occurring background contamination.²⁸

Once a responsible party completes a site assessment, it has three Risk Management Options (RMOs) available to perform site rehabilitation to achieve a NFA order. Under the RMO options, the responsible party must either rehabilitate the site to the default CTLs established in ch. 62-777, F.A.C., or to the alternative CTLs established through a risk assessment. Responsible parties may choose to create their own alternative CTLs when present and future use of the site and site exposure characteristics differ greatly from those utilized to calculate the default CTLs such that the default CTLs are overly conservative or not conservative enough.²⁹

Under RMO I, DEP will issue a NFA order without institutional controls or without institutional and engineering controls if the exposure point concentration (EPC) for all detected chemicals do not exceed the less stringent of their corresponding default residential CTLs or their background concentration.³⁰ Under RMO II, DEP will grant a NFA order, subject to institutional controls, if the EPCs for all detected chemicals do not exceed default commercial/industrial CTLs or alternative CTLs adjusted for site-specific geologic or hydrogeologic conditions.³¹ Under RMO III, DEP will grant a NFA order, subject to institutional controls, if the EPCs for all detected chemicals do not exceed alternative CTLs adjusted for site-specific exposure scenarios determined in the exposure assessment.³²

¹⁵ Section 376.30701(1)(b), F.S.

¹⁶ See ss. 376.3071, 376.7078, and 376.83, F.S.

¹⁷ DeMeo, *supra* note 5, at 47.

¹⁸ *Id.*

¹⁹ Former ch. 62-770, F.A.C.

²⁰ Former ch. 62-782, F.A.C.

²¹ Former ch. 62-785, F.A.C.

²² Chapter 62-780, F.A.C.

²³ Notice of Rule Development, 39 Fla. Admin. R. 105 (May 30, 2013).

²⁴ Rule 62-780.210, F.A.C.

²⁵ Rule 62-780.600, F.A.C.

²⁶ Rule 62-780.600(3)(d), F.A.C.

²⁷ Rule 62-780.200(3), F.A.C.

²⁸ Section 376.30701(2)(g) and (i), F.S.

²⁹ DEP, *supra* note 9, at 43-44.

³⁰ Mills, *supra* note 2, at 125; rule 62-780.680(1), F.A.C.

³¹ *Id.*; rule 62-780.680(2), F.A.C.

³² *Id.*; rule 62-780.680(3), F.A.C.

Under each RMO, responsible parties may use several methods to rehabilitate the site to achieve a NFA order. Section 376.30701(2), F.S., requires DEP's rule to include protocols for natural attenuation as a method for site rehabilitation. Natural attenuation allows natural processes to contain the spread of contamination and reduce the concentrations of contaminants in contaminated groundwater and soil.³³ Natural attenuation processes may include sorption, biodegradation, chemical reactions with subsurface materials, diffusion, dispersion, and volatilization.³⁴ This practice may be used depending on individual site characteristics, current and projected use of the land and groundwater, the exposed population, the location of the contamination plume, the degree and extent of contamination, the rate of migration of the plume, the apparent or potential rate of degradation of contaminants through natural attenuation, and the potential for further migration in relation to the site's property boundary.³⁵

Natural attenuation monitoring is allowable if:

- Free product is not present or free product removal is not feasible;
- Contaminated soil is not present in the unsaturated zone;
- Contaminations present in the groundwater above background concentrations or applicable CTLs are not migrating beyond the temporary point of compliance or vertically;
- The characteristics of the contaminant and its transformation products are conducive to natural attenuation; and
- One of the following is met:
 - The contaminated site is anticipated to meet NFA criteria in 5 years or less as a result of natural attenuation, the background concentrations or applicable CTLs are not exceeded at the temporary point of compliance, and contaminant concentrations do not meet certain criteria; or
 - The appropriateness of natural attenuation is demonstrated by:
 - A technical evaluation of the groundwater and soil;
 - A scientific evaluation of the contamination plume migration, an estimate of the annual reduction in contaminant concentrations, and the estimated time to meet NFA; and
 - A life-cycle cost analysis of remedial alternatives.³⁶

Brownfield Redevelopment Act

A brownfield is real property, generally abandoned, idled, or underused industrial and commercial property, where expansion, redevelopment, or reuse may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.³⁷ In 1995, the Environmental Protection Agency (EPA) created the Brownfields Program to manage contaminated property through site remediation and redevelopment.³⁸ EPA's Brownfields Program provides grants and technical assistance to communities, states, tribes, and other stakeholders, giving them the resources they need to prevent, assess, safely clean up, and sustainably reuse brownfields.³⁹

In 1997, the Legislature enacted the Brownfields Redevelopment Act (Act).⁴⁰ The Act provides financial and regulatory incentives to encourage voluntary remediation and redevelopment of brownfield sites to

³³ Section 376.301(24), F.S.

³⁴ Id.

³⁵ Rule 62-780.690(1), F.A.C.

³⁶ Id.

³⁷ Section 288.107(1)(b), F.S.; EPA, *Brownfield Overview and Definition*, <http://www2.epa.gov/brownfields/brownfield-overview-and-definition> (last visited November 6, 2015).

³⁸ EPA, *Brownfield Overview and Definition*, <http://www2.epa.gov/brownfields/brownfield-overview-and-definition> (last visited November 6, 2015).

³⁹ EPA, *Brownfields*, <http://www2.epa.gov/brownfields> (last visited November 6, 2015).

⁴⁰ Chapter 97-173, Laws of Florida.

improve public health and reduce environmental hazards.⁴¹ The Act provides liability protection for program participants who have not caused or contributed to the contamination of a brownfield site on or after July 1, 1997.⁴² Since inception of the Act, 78 contaminated sites have been cleaned up, more than 75,000 confirmed and projected direct and indirect jobs have been created, and \$2.7 billion in capital investment is projected in designated brownfield areas.⁴³

Effect of the Bill

This bill makes several revisions to the Global RBCA and Brownfield program specific cleanup statutes.

The bill amends ss. 376.301 and 376.79, F.S., to add a definition for “background concentration.” This definition includes concentrations of contaminants that are naturally occurring or the result of anthropogenic (human) impacts unrelated to the discharge of pollutants or hazardous substances at the contaminated site undergoing rehabilitation. The bill also makes conforming changes to remove references to “naturally occurring” in front of “background concentration.”

Currently, DEP may not require a responsible party performing site rehabilitation to achieve a CTL for any contaminant more stringent than the background contamination. DEP’s rule only includes naturally occurring concentrations of contaminants in its definition of “background concentration.” As a result of the changes in the bill, human-created contamination may be treated as background contamination as well as naturally occurring contaminants. The change is similar to the EPA’s policy for addressing background concentrations. In certain situations, the EPA will not require rehabilitation below naturally occurring or anthropogenic background concentrations.⁴⁴ The EPA guidance requires that the anthropogenic background contamination be unrelated to the release of hazardous substances at the contaminated site.⁴⁵ Under the changes in the bill, responsible parties would only be required to rehabilitate their contaminated sites for the discharge of pollutants or hazardous substances at the contaminated site undergoing rehabilitation.

The bill defines “long-term natural attenuation” to mean natural attenuation approved by DEP as a site rehabilitation program task that lasts more than five years. The bill also amends ss. 376.30701(2) and 376.81(1), F.S., to require DEP’s Global RBCA rules to include protocols for long-term natural attenuation.⁴⁶

The bill amends ss. 376.30701(2)(e) and 376.81(1)(e), F.S., to require DEP to consider the interactive effects of contaminants, including additive, synergistic, and antagonistic effects when determining what constitutes a rehabilitation program task.⁴⁷

The bill amends ss. 376.30701(2)(g)2. and 376.81(1)(g)2., F.S., to create an exception when applying state water quality standards in determining what constitutes a rehabilitation program task. Currently, the statute requires that when surface waters are exposed to contaminated groundwater, the more protective groundwater or surface water standard CTL must be applied. The bill waives this requirement when it has been demonstrated that contaminants do not cause or contribute to the exceedance of the applicable surface water criteria.

⁴¹ DEP, Florida Brownfields Redevelopment Act – Annual Report p. 4, http://www.dep.state.fl.us/waste/quick_topics/publications/wc/brownfields/AnnualReport/2015/2014-15_FDEP_Annual.pdf (last visited November 6, 2015).

⁴² Section 376.82, F.S.

⁴³ DEP, *supra* note 41, at 2.

⁴⁴ See EPA, *Transmittal of Policy Statement: “Role of Background in CERCLA Cleanup Program” OSWER 9285.6-07P* (May 2002), available at http://rais.ornl.gov/documents/bkgpol_jan01.pdf (last visited November 5, 2015); EPA, *Guidance for Comparing Background and Chemical Concentrations in Soil for CERCLA Sites OSWER 9285.7-41* (September 2002), available at https://dec.alaska.gov/spar/csp/guidance_forms/docs/background.pdf (last visited November 5, 2015).

⁴⁵ *Id.*

⁴⁶ Rule 62-780.690, F.A.C., limits natural attenuation to a five-year period. However, the rule permits natural attenuation for a longer period if the appropriateness of natural attenuation is demonstrated through technical and scientific evaluation.

⁴⁷ Rule 62-780.650(1)(c)3., F.A.C., allows this methodology when creating a risk characterization as part of a risk assessment.

The bill amends ss. 376.30701(2)(g)3., 376.30701(2)(i)3., 376.81(1)(g)3., and 376.81(1)(i)3., F.S., to allow the use of risk assessment modeling and probabilistic risk assessment (PRA) to create site-specific alternative CTLs. PRA is a risk assessment that yields a probability distribution for risk, generally by assigning a probability distribution to represent variability or uncertainty in one or more inputs to the risk equation.⁴⁸ This method is different from the point estimate risk assessment for single values because it uses multiple variables.⁴⁹ The EPA uses this new method of risk assessment when evaluating risk at contaminated sites it regulates.⁵⁰

The bill also amends s. 376.30701(2)(g)3., F.S., to allow the use of alternative CTLs without institutional controls if:

- The only CTLs exceeded are the groundwater CTLs derived from nuisance, organoleptic,⁵¹ or aesthetic considerations;
- Concentrations of all contaminants meet the state water quality standards or the minimum criteria, based on the protection of human health, public safety, and the environment;
- All of the established groundwater CTLs for the contaminated site are met at the property boundary;
- The responsible party demonstrated that the contaminants will not migrate beyond the property boundary at concentrations that exceed the groundwater CTLs established for the contaminated site;
- The property has access to and is using an offsite water supply, and an unplugged private well is not used for domestic purposes; and
- The property owner does not object to the NFA proposal to DEP or the local pollution control program.

A brownfield contaminated site may already use alternative CTLs without institutional controls if they meet the criteria above.⁵²

The bill amends s. 376.30701(1)(b), F.S., to exclude nonprogram petroleum-contaminated sites from the RBCA procedures and requirements in s. 376.30701, F.S. The responsible party for such contaminated sites must follow the procedures and requirements in s. 376.3071, F.S., unless the responsible party requests to follow the procedures and requirements in s. 376.30701, F.S.

Petroleum Restoration Programs

Petroleum is stored in thousands of underground and aboveground storage tank systems throughout Florida. Releases of petroleum into the environment may occur as a result of accidental spills, storage tank system leaks, or poor maintenance practices.⁵³ These discharges pose a significant threat to groundwater quality, the source of 90 percent of Florida's drinking water.⁵⁴ The identification and cleanup of petroleum contamination is particularly challenging due to Florida's diverse geology, diverse water systems, and the complex dynamics between contaminants and the environment.⁵⁵

In 1983, Florida began enacting legislation to regulate underground and aboveground storage tank systems in an effort to protect Florida's groundwater from past and future petroleum releases.⁵⁶ DEP is

⁴⁸ EPA, *Risk Assessment Guidance for Superfund: Volume III – Part A, Process for Conducting Probabilistic Risk Assessment at 1-3* (December 2001) available at <http://www2.epa.gov/risk/risk-assessment-guidance-superfund-rags-volume-iii-part> (last visited November 5, 2015).

⁴⁹ *Id.* at 1-7.

⁵⁰ *See Id.* Rule 62-780.650(3), F.A.C., allows the use of PRA to perform risk assessment when establishing alternative CTLs.

⁵¹ "Organoleptic" means pertaining to, or perceived by, a sensory organ (i.e., color, taste, or odor). Rule 62-780.200(28), F.A.C.

⁵² Section 376.81(1)(g)3., F.S.

⁵³ DEP, *Guide to Florida's Petroleum Cleanup Program*, 1 (2002).

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ Chapter 83-310, Laws of Fla.

responsible for regulating these storage tank systems. In 1986, the Legislature enacted the State Underground Petroleum Environmental Response Act (SUPER Act) to address the pollution problems caused by leaking underground petroleum storage systems.⁵⁷ The SUPER Act authorized DEP to establish criteria for the prioritization, assessment and cleanup, and reimbursement for cleanup of contaminated areas. This led to the creation of the Petroleum Restoration Program (Restoration Program).⁵⁸ The Restoration Program establishes the requirements and procedures for cleaning up contaminated land, as well as the circumstances under which the state will pay for the cleanup.⁵⁹

State Funding Assistance for Rehabilitation

The average cost to rehabilitate a site is approximately \$233,000,⁶⁰ but some sites may cost millions of dollars to rehabilitate. An owner of contaminated land or the person who caused the discharge is responsible for rehabilitating the land unless the site owner can show that the contamination resulted from the activities of a previous owner or other third party (responsible party), who is then responsible.⁶¹ Over the years, DEP has implemented different eligibility programs to provide state financial assistance to certain site owners and responsible parties for site rehabilitation. To receive rehabilitation funding assistance, a site must qualify under one of these programs, outlined below:

State-Assisted Petroleum Cleanup Eligibility Programs		
PROGRAM NAME	PROGRAM DATES	PROGRAM DESCRIPTION
Early Detection Incentive Program (EDI) s. 376.3071(9), F.S.	Discharges must have been reported between July 1, 1986, and December 31, 1988, to be eligible	<ul style="list-style-type: none"> • First state-assisted cleanup program • 100 percent state funding for cleanup if site owners reported releases • Originally gave site owners the option of conducting cleanup themselves and receiving reimbursement from the state or having the state conduct the cleanup in priority order • Reimbursement option was phased out, so all cleanups are now conducted by the state
Petroleum Liability and Restoration Insurance Program (PLRIP) s. 376.3072, F.S.	Discharges must have been reported between January 1, 1989, and December 31, 1998, to be eligible	<ul style="list-style-type: none"> • Required facilities to purchase third party liability insurance to be eligible • Provides varying amounts of state-funded site restoration coverage⁶²
Abandoned Tank Restoration Program (ATRP) s. 376.305(6), F.S.	Applications must have been submitted between June 1, 1990, and June 30, 1996	Provides 100 percent state funding for cleanup, less deductible, at facilities that had out-of-service or abandoned tanks as of March 1990

⁵⁷ Chapter 86-159, Laws of Fla.

⁵⁸ Samuel J. Morely, *Florida' New Petroleum Contamination Reimbursement Program*, 70 Fla. B.J. 24 (1996).

⁵⁹ DEP, *Petroleum Restoration Program*, <http://www.dep.state.fl.us/Waste/categories/pcp/default.htm> (last visited December 7, 2015).

⁶⁰ DEP, Agency Analysis of 2016 House Bill 697, p. 5 (December 15, 2015).

⁶¹ Section 376.308, F.S.

⁶² The PLRIP initially provided \$1M worth of site restoration coverage to eligible sites. In 1994, the state began phasing out the Department's participation in the restoration insurance program by reducing the amount of restoration coverage provided. For discharges reported from January 1, 1994, to December 31, 1996, coverage was limited to \$300,000. For discharges reported from January 1, 1997, to December 31, 1998, coverage was limited to \$150,000. Section 376.3072(2)(d)2.c.-d., F.S. In 2008, the Legislature raised the coverage for all PLRIP sites as follows: sites with \$1M in coverage were raised to \$1.2M, sites with \$300,000 in coverage were raised to \$400,000, and sites with \$150,000 in coverage were raised to \$300,000. Chapter 2008-127, s. 3, at 6, L.O.F.

State-Assisted Petroleum Cleanup Eligibility Programs		
PROGRAM NAME	PROGRAM DATES	PROGRAM DESCRIPTION
Innocent Victim Petroleum Storage System Restoration Program s. 376.30715, F.S.	The application period began on July 1, 2005, and remains open	Provides 100 percent state funding for a site acquired before July 1, 1990, that ceased operating as a petroleum storage or retail business before January 1, 1985
Petroleum Cleanup Participation Program (PCPP) s. 376.3071(13), F.S.	PCPP began on July 1, 1996, and accepted applications until December 31, 1998	<ul style="list-style-type: none"> • Created to provide financial assistance for sites that had missed all previous opportunities • Only discharges that occurred before 1995 were eligible • Site owner or responsible party must pay 25 percent of cleanup costs • Originally had a \$300,000 cap on the amount of coverage, which was raised to \$400,000 beginning July 1, 2008
Consent Order (aka "Hardship" or "Indigent") s. 376.3071(7)(c), F.S.	This program began in 1986 and remains open	<ul style="list-style-type: none"> • Created to provide financial assistance under certain circumstances for sites that DEP initiates an enforcement action to clean up • An agreement is formed whereby DEP conducts the cleanup and the site owner or responsible party pays for a portion of the costs

As of October 2015, 19,128 sites are eligible for state funding through one of the above programs.⁶³ Of these, approximately 8,603 have been rehabilitated and closed, approximately 5,576 are currently undergoing some phase of rehabilitation, and approximately 4,949 await rehabilitation.⁶⁴

Inland Protection Trust Fund

Present Situation

To fund the cleanup of contaminated sites, the SUPER Act created the Inland Protection Trust Fund (IPTF).⁶⁵ An excise tax per barrel on petroleum and petroleum products in or imported into the state funds the IPTF.⁶⁶ The amount of the excise tax per barrel is determined by a formula that is dependent upon the unobligated balance of the IPTF.⁶⁷ Each year, approximately \$200 million from the excise tax is deposited into the IPTF to fund restoration of petroleum contaminated sites.⁶⁸

Funding for rehabilitation of a site is based on a relative risk scoring system.⁶⁹ Each funding-eligible site receives a numeric score based on the threat the site contamination poses to the environment or to human health, safety, or welfare.⁷⁰ Sites currently in the Restoration Program range in score from 5 to 115 points. A score of 115 represents a substantial threat and a score of 5 represents a very low threat.⁷¹ Sites are rehabilitated in priority order beginning with the highest score, with funding based on available budget.⁷² DEP sets the priority score funding threshold, which is the minimum score a site

⁶³ DEP, Agency Analysis of 2016 House Bill 697, p. 3 (December 15, 2015).

⁶⁴ Id.

⁶⁵ Section 376.3071(3)-(4), F.S.

⁶⁶ Sections 206.9935(3) and 376.3071(7), F.S.

⁶⁷ The amount of the excise tax per barrel is based on the following formula: 30 cents if the unobligated balance is between \$100 million and \$150 million; 60 cents if the unobligated balance is between \$50 million and \$100 million; and 80 cents if the unobligated balance is \$50 million or less. Section 206.9935(3), F.S.

⁶⁸ DEP Agency Analysis of 2016 House Bill 697, p. 3 (December 15, 2015).

⁶⁹ Section 376.3071(5)(a), F.S.

⁷⁰ Chapter 62-771.100, F.A.C.

⁷¹ DEP Agency Analysis of 2016 House Bill 697, p. 3 (December 15, 2015).

⁷² Chapter 62-771.300(3), F.A.C.

must be assigned to receive restoration funding at a particular point in time. The threshold is periodically raised or lowered depending on the Restoration Program's current budget, projected expenditures for the remainder of the fiscal year, and the next fiscal year's anticipated budget. Currently, the threshold is set at 30 points.⁷³

Section 376.3071(4)(q), F.S., allows the trust fund to be used for program deductibles, copayments, and limited contamination assessment reports that otherwise would be paid by another state agency for state-funded petroleum contamination site rehabilitation. This provision expires on July 1, 2016.

Effect of the Bill

The bill directs DEP to make efficiency and productivity a priority in the administration of the petroleum restoration program and encourages DEP to contract for private services.

The bill removes the expiration date in s. 376.3071(4)(q), F.S. Thus, DEP may continue to use the trust fund for program deductibles, copayments, and limited contamination assessment reports that otherwise would be paid by another state agency for state-funded petroleum contamination site rehabilitation.

Further, the bill specifies that issuance of a site rehabilitation completion order under the program's cleanup criteria and low-score site initiative does not alter a site's eligibility for state-funded remediation if DEP determines that site conditions are not protective of human health.

Lastly, the bill relaxes the prohibition that institutional controls may not be acquired with moneys from the trust fund. The bill authorizes DEP to pay for costs associated with a professional land survey, specific purpose survey, and the cost associated with obtaining a title report and recording fees.

Abandoned Tank Restoration Program

Present Situation

The Legislature created the ATRP in 1990 to address the problem of out-of-service or abandoned tanks that had contamination associated with previous operation.⁷⁴ The original program had a one-year application period. The Legislature extended the application deadline to participate in the program to 1992, 1994, and finally in 1996 the deadline was waived indefinitely for owners financially unable to comply with tank closure.⁷⁵ To be included in the program:

- Applicants must have submitted an application to DEP by June 30, 1996, unless the owner of the site cannot financially comply with DEP's closure rule;
- Owner or operator of the petroleum storage system when it was in service must have ceased conducting business involving consumption, use, or sale of petroleum products at that facility on or before March 1, 1990;
- The site must not be otherwise eligible for the ECI, Consent Order, or PLRIP cleanup programs;
- The site must have been closed pursuant to DEP's petroleum storage tank regulations, unless DEP determines the owner of the facility cannot financially comply with the closure rules;
- The site must be eligible for site rehabilitation funding in s. 376.3071, F.S.;
- The site must not be:
 - Owned by the Federal Government;
 - Contaminated by pollutants that are not petroleum products;
 - A site where DEP has been denied site access; and
 - Be owned by an individual who had knowledge of the polluting condition when title was acquired, unless the person acquired title to the site after issuance of a notice of site eligibility by DEP.⁷⁶

⁷³ DEP, *Petroleum Restoration Program*, <http://www.dep.state.fl.us/waste/categories/pcp/default.htm> (last visited December 7, 2015).

⁷⁴ DEP, *Abandoned Tank Restoration >> Petroleum Cleanup Program*, <http://www.dep.state.fl.us/waste/categories/pcp/pages/atrp.htm>, (last visited December 9, 2015).

⁷⁵ *Id.*

⁷⁶ Section 376.305(6), F.S.; rule 62-769.800(3), F.A.C.

There are 4,084 ATRP eligible discharges. The ATRP has helped remediate 2,138.⁷⁷

Effect of the Bill

The bill changes several portions of the eligibility requirements for ATRP. Specifically, the bill:

- Reopens the ATRP by deleting the application date, June 30, 1996, that limited participation in the program by amending s. 376.305(6)(a)1. and 376.305(6)(b), F.S.
- Removes prohibition for sites eligible for rehabilitation under s. 376.3071, F.S., from participating in the ATRP by amending s. 376.305(6)(a)3., F.S. This change would allow EDI program sites and Consent Order sites to participate in ATRP.
- Provides that a site is not eligible for ATRP if it is eligible for cleanup under s. 376.3071(13), F.S., PCPP, based on discharge reports received by DEP before January 1, 1995, or a written report of contamination submitted to DEP on or before December 31, 1998.
- Allows sites where the owner had knowledge of polluting condition prior to acquisition of the property to participate in ATRP by repealing s. 376.305(6)(d)4., F.S. The bill also removes the reference to a defense from liability under s. 376.308(1)(c), F.S., that site owners who acquired title to property after July 1, 1992, demonstrate that they undertook all appropriate inquiry into the previous ownership and use of the property when seeking inclusion in the program.

DEP estimates these changes would create 20 new abandoned tank-related remediation activities per year.⁷⁸

Low Score Site Initiative

Present Situation

As described above, eligible contaminated sites typically receive state rehabilitation funding in priority order based on their numeric score. However, there are some programs that allow sites to receive funding for rehabilitation or site closure out of priority score order, as long as the sites are eligible under one of the cleanup programs. The Legislature created the Low Scored Site Initiative (LSSI) to expedite the assessment and closure of sites that contain minimal contamination and that are not a threat to human health or the environment. To participate in LSSI, a site owner or responsible party must demonstrate that the following criteria are met:

- Upon assessment, the site retains a priority ranking score of 29 points or less;
- No excessively contaminated soil exists onsite;
- A minimum of six months of groundwater monitoring indicates that the contamination plume is shrinking or stable;
- The remaining contamination resulting from petroleum products does not adversely affect adjacent surface waters;
- The area of groundwater contamination is less than one-quarter acre and is confined to the source property boundary; and
- Soils onsite found between the land surface and two feet below the land surface must meet the soil cleanup target levels established by DEP unless human exposure is limited by appropriate institutional or engineering controls.⁷⁹

An assessment is conducted to determine whether the above criteria are met.⁸⁰ DEP may pay the assessment costs for sites eligible for funding under EDI, ATRP, Innocent Victim, PLRIP, or PCPP.⁸¹ DEP may only spend \$10 million per fiscal year for LSSI.⁸² These funds may only be used to fund site

⁷⁷ DEP, Agency Analysis of 2016 House Bill 697, p. 3 (December 15, 2015).

⁷⁸ DEP, Agency Analysis of 2016 House Bill 697, p. 5 (December 15, 2015).

⁷⁹ Section 376.3071(12)(b)1., F.S.

⁸⁰ DEP, Petroleum Restoration Program, *Procedural and Technical Guidance for the Low-Scored Site Initiative*, p. 9 (2013) available at: <http://www.dep.state.fl.us/waste/categories/pcp/pages/screening.htm> (last visited December 9, 2015).

⁸¹ Id. at 3.

⁸² Section 376.3071(12)(b)3., F.S.

assessments.⁸³ Each site may only receive up to \$30,000 that can include six months of ground water monitoring.⁸⁴ Each site owner or responsible party is limited to 10 eligible sites per fiscal year.⁸⁵ Site assessment must be completed within six months.⁸⁶ Funds are allocated on a first-come, first-served basis.⁸⁷ Sites not eligible for state rehabilitation funding may still qualify for closure under LSSI if an assessment reveals that the above criteria are met, but DEP will not pay for the assessment.⁸⁸

If the assessment shows the above criteria are met, there are three options for site closure:

- If no contamination is detected during the assessment, DEP may issue a site rehabilitation completion order;⁸⁹
- If the assessment demonstrates that minimal contamination exists onsite, but the above criteria are met, DEP may issue an LSSI No Further Action administrative order. This determination acknowledges that the contamination is not a threat to human health or the environment;⁹⁰ or
- If soil between the land surface and two feet below the land surface exceeds soil cleanup target levels, but the above criteria are otherwise met, DEP may issue a site rehabilitation completion order with conditions. This determination requires that institutional and/or engineering controls be put in place to prevent human or environmental exposure to the contamination.⁹¹ DEP is not authorized to fund such controls.⁹²

If at any time data collected during the assessment indicate that the above criteria for closure will not be met, assessment activities will be terminated.⁹³ LSSI funding will be discontinued if it is determined at any point that a closure cannot be accomplished within the \$30,000 funding limit, unless the site owner or responsible party is willing to contribute funds to the assessment work.⁹⁴ A site determined to be ineligible for LSSI funding retains its current program eligibility and will receive rehabilitation funding in priority order.

Effect of the Bill

The bill changes numerous aspects of the LSSI program. Specifically the bill:

- Requires a responsible party to submit a No Further Action proposal that demonstrates the current eligibility criteria by amending s. 376.3071(12)(b)1., F.S.;
- Requires a responsible party who wishes to participate in the LSSI to provide evidence of authorization from the property owner by amending ss. 376.3071(12)(b)1. and 376.3071(12)(b)3.a. and d., F.S.;
- Requires DEP to issue a site rehabilitation completion order that incorporates the No Further Action proposal submitted by the property owner or responsible party if the eligibility criteria are met by amending s. 376.3071(12)(b)2., F.S., and creating s. 376.3071(12)(b)4., F.S.;
- Revises the criteria that a responsible party must demonstrate to participate in LSSI by repealing s. 376.3071(12)(b)1.a. through f., F.S. and creating s. 376.3071(12)(b)4., F.S. The criteria is revised as follows:
 - Provides a more specific standard for the prohibition on the presence of excessively contaminated soil on the site. Specifically, soil saturated with petroleum or petroleum

⁸³ Id.

⁸⁴ Id.

⁸⁵ Id.

⁸⁶ Id.

⁸⁷ Id.

⁸⁸ DEP, Petroleum Restoration Program, *Procedural and Technical Guidance for the Low-Scored Site Initiative*, p. 1-2 (2013)

available at: <http://www.dep.state.fl.us/waste/categories/pcp/pages/screening.htm> (last visited December 9, 2015).

⁸⁹ Section 376.3071(12)(b)2., F.S.

⁹⁰ Id.

⁹¹ DEP, Petroleum Restoration Program, *Procedural and Technical Guidance for the Low-Scored Site Initiative*, p. 3 (2013) available at: <http://www.dep.state.fl.us/waste/categories/pcp/pages/screening.htm> (last visited December 9, 2015).

⁹² Section 376.3071(12)(b)3.a., F.S.

⁹³ DEP, Petroleum Restoration Program, *Procedural and Technical Guidance for the Low-Scored Site Initiative*, p. 11 (2013) available at: <http://www.dep.state.fl.us/waste/categories/pcp/pages/screening.htm> (last visited December 9, 2015).

⁹⁴ Id.

- products, or soil that causes a total corrected hydrocarbon measurement of 500 parts per million (ppm) or higher for Gasoline Analytical Group or 50 ppm or higher for Kerosene Analytical Group, as defined by DEP rule, must not exist onsite as a result of a release of petroleum products;
- Requires that a minimum of 12 months, rather than 6 months, of groundwater monitoring indicates that the contamination plume is shrinking;
 - Specifies that the requirement that contamination remaining at the site does not adversely affect adjacent surface waters includes the effects of those waters on human health and the environment;
 - Removes the requirement that the area of groundwater contamination is less than one-quarter acre;
 - Restricts contaminated sites eligible for LSSI to areas that contain petroleum products' chemicals of concern that:
 - Are confined to the source property boundaries of the real property on which the discharge originated; or
 - Have migrated from the source property onto or beneath a transportation facility for which DEP has approved, and the governmental entity owning the transportation facility has agreed to institutional controls. The bill provides that this does not impose any legal liability on the transportation facility owner, obligate such owner to engage in remediation, or waive such owner's right to recovery costs for damages; and
 - Adds a requirement that the groundwater contamination containing the petroleum products' chemicals of concern is not a threat to any permitted potable water supply well;
- Provides that a site rehabilitation completion order acknowledges that minimal contamination exists onsite and that such contamination is not a threat to the public health, safety, or welfare, water resources, or the environment. If the DEP determines that a discharge for which a site rehabilitation completion order was issued pursuant to LSSI may pose a threat to the public health, safety, or welfare, water resources, or the environment, then the issuance of the site rehabilitation completion order does not alter eligibility for state-funded rehabilitation that would otherwise apply;
 - Increases funding limit per site from \$30,000 to \$35,000 by amending s. 376.3071(12)(b)3.a., F.S.;
 - Authorizes responsible parties to submit limited remediation plans and to receive funding assistance for 12 months of limited remediation, not solely assessment and monitoring, by amending s. 376.3071(12)(b)3.a., F.S.;
 - Increases the amount of time DEP may use funding to pay for groundwater monitoring from 6 months to 12 months by amending s. 376.3071(12)(b)3.a., F.S.;
 - Allows DEP to use funding to pay for land surveys and title reports and recording fees associated with institutional controls by amending s. 376.3071(12)(b)3.a., F.S.;
 - Authorizes DEP to approve an additional \$35,000 for limited remediation where needed to achieve "No Further Action" by adding s. 376.3071(12)(b)3.b., F.S.;
 - Extends the time period for work to be complete from 6 months to 15 months by amending s. 376.3071(12)(b)3.c., F.S. DEP may extend the completion deadline an additional 12 months if groundwater monitoring is necessary; and
 - Increases the amount DEP may use for LSSI from \$10 million to \$15 million per fiscal year by amending s. 376.3071(12)(b)3.d., F.S.

Petroleum Cleanup Participation Program

Present Situation

In 1996, the Legislature created PCPP to implement a cost-sharing cleanup program to provide rehabilitation funding assistance for all property contaminated by discharges of petroleum or petroleum products that occurred before January 1, 1995.⁹⁵ Sites reported after December 31, 1998, are not eligible for the program.⁹⁶ Further the following sites are not eligible for PCPP:

- Sites where DEP has been denied access;
- Sites owned or operated by the federal government;
- Sites identified by the Environmental Protection Agency to be on or qualify for the National Priority List under Superfund; and
- Site that are eligible under ATRP, EDI, or PLRIP.⁹⁷

DEP ranks PCPP program sites based on human health and safety risks.⁹⁸ When funds become available to clean up the site based on that priority ranking, DEP will notify the owner in writing.⁹⁹ The owner, operator, or person otherwise responsible for site rehabilitation must then prepare and provide DEP a limited contamination assessment report sufficient to determine the extent of the contamination and cleanup.¹⁰⁰ After selecting a certified petroleum rehabilitation contractor to clean up the site, the owner must enter into a preapproved site rehabilitation agreement with DEP.¹⁰¹ Sites qualifying for the program are eligible for up to \$400,000 of site rehabilitation funding.¹⁰² The owner, operator, or person responsible must agree to pay a 25 percent copayment.¹⁰³ The copayment percentage may be reduced or eliminated if the owner or responsible party demonstrates an inability to pay.¹⁰⁴

Florida contains 2,152 PCPP eligible discharges.¹⁰⁵ The program has helped remediate 768.¹⁰⁶

Effect of the Bill

The bill changes several aspects of PCPP. Specifically, the bill:

- Specifies that DEP must implement a cost-sharing program to provide funding assistance for all property contaminated by discharges of petroleum or petroleum products from a petroleum storage system by amending s. 376.3071(13), F.S. Thus, petroleum discharges for sources other than a petroleum storage system cannot receive funding assistance under PCPP;
- Allows an owner or operator to apply for PCPP regardless of whether ownership of the contaminated site has changed by amending s. 376.3071(13)(a)2., F.S.;
- Reopens PCPP by removing the requirement that sites must have been reported to DEP by December 31, 1998, to be eligible for participation by amending s. 376.3071(13)(a)2., F.S.; and
- Authorizes DEP to approve supplemental funding of up to \$100,000 for additional remediation and monitoring at PCPP sites if such remediation and monitoring is necessary to achieve a determination of “No Further Action” by amending s. 376.3071(13)(c), F.S.

⁹⁵ Section 376.3071(13), F.S.

⁹⁶ Section 376.3071(13)(a)2., F.S.

⁹⁷ Section 376.3071(13)(g), F.S.

⁹⁸ Rule 62-771.100(4), F.A.C.

⁹⁹ DEP, *Petroleum Cleanup Participation Program*, <http://www.dep.state.fl.us/waste/categories/pcp/pages/pcpp.htm>, (last visited December 9, 2015).

¹⁰⁰ Section 376.3071(13)(c), F.S.

¹⁰¹ *Id.*; DEP, *Petroleum Cleanup Participation Program*, <http://www.dep.state.fl.us/waste/categories/pcp/pages/pcpp.htm>, (last visited December 9, 2015).

¹⁰² Section 376.3071(13)(b), F.S.

¹⁰³ Section 376.3071(13)(c), F.S.

¹⁰⁴ *Id.*

¹⁰⁵ DEP Agency Analysis of 2016 House Bill 697, p. 3 (December 15, 2015).

¹⁰⁶ *Id.*

Advanced Cleanup

Present Situation

The Legislature created Advanced Cleanup (formerly known as Preapproved Advanced Cleanup) in 1996 to allow an eligible site to receive state rehabilitation funding even if the site's priority score does not fall within the threshold currently being funded.¹⁰⁷ The purpose of creating Advanced Cleanup was to facilitate property transactions or public works projects on contaminated sites.¹⁰⁸ To participate in Advanced Cleanup, a site must be eligible for state rehabilitation funding under EDI, PLRIP, ATRP, the Innocent Victim program, or PCPP.¹⁰⁹

To apply for Advanced Cleanup, a site owner or responsible party must bid a cost share of the total site rehabilitation.¹¹⁰ The cost share must be at least 25 percent of the total cost of rehabilitation.¹¹¹ For PCPP sites, the cost share must be at least 25 percent of the state's share of the rehabilitation, as the site owner or responsible party is already required to pay for 25 percent of the total cost of rehabilitation to be eligible for PCPP.¹¹² Alternatively, an applicant may use a commitment to pay, a demonstrated cost savings to DEP, or both to meet this requirement if the application proposes a performance-based contract for the cleanup of 20 or more sites.¹¹³

In years when DEP runs a bid cycle, bids may be accepted in two windows of May 1 through June 30 and November 1 through December 31.¹¹⁴ DEP accepts bids awarded based solely on the proposed highest cost-share percentage and not the estimated dollar amount of that share.¹¹⁵ DEP may enter into Advanced Cleanup contracts for a total of up to \$15 million per fiscal year,¹¹⁶ and no more than \$5 million per fiscal year may be approved for rehabilitation work at an individual site.¹¹⁷ DEP has received applications totaling \$22.8 million during Fiscal Year 2014-15.¹¹⁸ The average cost share proposed to be borne by the applicant has been 35 percent (the program requires a minimum of 25 percent) or \$8 million.¹¹⁹

Effect of the Bill

The bill makes several changes to the Advanced Cleanup Program. Specifically the bill:

- Reduces the minimum number of sites that a facility owner or operator may bundle to demonstrate a cost savings in order to be eligible for performance-based contracts from 20 sites to 5 sites by amending s. 376.30713(2)(a)1.a., F.S.;
- Requires individual sites to submit an application for advanced cleanup in one of two formats to meet cost share requirement. The formats include:
 - Applications proposing that DEP enter into a performance-based contract may use a commitment to pay, a demonstrated cost savings to DEP, or both to meet requirements; or
 - Applications relying on a demonstrated cost savings to DEP must establish and provide a 25 percent cost savings to DEP for cleanup of the site under the application compared to the cost of cleanup of the same site using the current rates provided to DEP by the

¹⁰⁷ Section 376.30713(2), F.S.

¹⁰⁸ Section 376.30713(1), F.S.

¹⁰⁹ For PCPP sites, Advanced Cleanup is only available if the 25 percent copay requirement of PCPP has not been reduced or eliminated. Section 376.30713(1)(d), F.S.

¹¹⁰ Section 376.30713(2)(a), F.S.

¹¹¹ Id.

¹¹² Section 376.30713(1)(d)-(2)(a), F.S.

¹¹³ Section 376.30713(2)(a)1., F.S.

¹¹⁴ Section 376.30713(2)(a), F.S.

¹¹⁵ Section 376.30713(2)(b), F.S.

¹¹⁶ Section 376.30713(4), F.S.

¹¹⁷ A "facility" includes, but is not limited to, "multiple site facilities such as airports, port facilities, and terminal facilities even though such enterprises may be treated as separate facilities for other purposes under this chapter." Section 376.30713(4), F.S.

¹¹⁸ DEP Agency Analysis of 2016 House Bill 697, p. 3 (December 15, 2015).

¹¹⁹ Id.

proposed agency term contractor. The applicant must work with the agency term contractor to demonstrate the cost savings;

- Requires a contractor to have a site access agreement from the property owner(s) and evidence of authorization as part of the advanced cleanup application. The agreement must be in the form of a DEP site access agreement approved by DEP that does not violate state law concerning required elements of an advanced cleanup application;
- Increases the amount that DEP may contract for advanced cleanup work from \$15 million to \$25 million by amending s. 376.30713(4), F.S.; and
- Allows a property owner or responsible party to enter into a voluntary cost share agreement for bundling multiple sites and to provide a list of the sites to be included in future bundles by amending s. 376.30713(4), F.S. The bill further provides that a property owner that enters into a voluntary cost-share agreement with other property owners to bundle sites is not subject to agency term contractor assignment. DEP may terminate, or amend, the voluntary cost share agreement if the application fails to submit an application to bundle any site, not already covered by an advance cleanup contract, under such voluntary cost-share agreement within a subsequent open application period during which it is eligible to participate. This provision will extend the period of time listed sites will be remediated because they are not subject to the agency term contractor assignment.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill appears to have a significant fiscal impact on the state. A breakdown of the impact is discussed below.

Section 2. Abandoned Tank Restoration Program

The bill reopens the ATRP by deleting the application date, June 30, 1996, that limited participation in the program. The removal of the application deadline could potentially allow a number of additional sites into the ATRP. DEP estimates changes to this program would create 20 new abandoned tank related remediation activities per year. The average cost to remediate a discharge is \$233,000. Given the assumption of 20 new discharges per year, the total estimated annual cost would be $\$233,000 \times 20 = \4.66 million per year.¹²⁰

Section 3. Inland Protection Trust Fund

The bill makes permanent the authorization to use the trust fund for program deductibles, copayments, and limited contamination assessment reports that otherwise would be paid by another state agency for state-funded petroleum contamination site rehabilitation. This provision is currently set to expire on July 1, 2016.

The bill relaxes the prohibition that institutional controls may not be acquired with moneys from the trust fund. The bill authorizes DEP to pay for costs associated with a professional land survey, specific purpose survey, and the costs associated with obtaining a title report and recording fees. DEP estimates that this change may result in \$7.6 million in savings by encouraging more sites to participate in LSSI.¹²¹

¹²⁰ DEP Agency Analysis of 2016 Senate Bill 100, p. 4 (October 5, 2015).

¹²¹ DEP, SB 100 Barcode 334112-222728 Analysis Chart from DEP, available upon request from the State Affair Committee.

Section 3. Low-Risk Site Initiative

The bill increases from \$30,000 to \$35,000 the amount of funds DEP may approve for performing site assessment, limited remediation, and 6 months of groundwater monitoring for LSSI sites. On average, DEP handles 300 LSSI sites per year. According to DEP, this increase would cost approximately \$1.5 million annually, or \$6 million for the remaining four year anticipated life of the LSSI program. These costs may be offset due to the increased site closure opportunities provided in the bill to the LSSI program.¹²²

Further, the bill provides up to an additional \$35,000 for limited remediation where needed to achieve a no further action determination at LSSI sites. DEP estimates that the total cost would be \$10.5 million for the remaining four year anticipated life of the LSSI program.¹²³

Section 3. Petroleum Cleanup Participation Program

The bill eliminates the reporting deadline for PCPP eligible discharges that provided that sites reported to DEP after December 31, 1998, are not eligible for the program. DEP estimates this change will have a fiscal impact of approximately \$930,000 per year. This fiscal impact represents the annual cost as amortized over the life of the program. DEP's estimate assumes four new sites per year will apply for the program with an average cost of \$233,000 to remediate a site. DEP's estimate assumes 64 additional sites may qualify for the program. The total cost to remediate the sites that did not participate from 1999 to 2015 will be approximately \$14.9 million.¹²⁴

The bill also authorizes DEP to approve supplemental funding of up to \$100,000 for additional remediation and monitoring if such remediation and monitoring is necessary to achieve a determination of "No Further Action." DEP estimates this change could have a fiscal impact between approximately \$1.35 million and \$13.5 million over the life of the program depending on the number of newly reported discharged at PCPP facilities.¹²⁵

Section 4. Advanced Cleanup

The bill reduces the minimum number of sites that a facility owner or operator may bundle to demonstrate a cost savings in order to be eligible for performance-based contracts in the Advanced Cleanup Program from 20 sites to 5 sites. According to DEP, the current process of bundling sites and implementing cleanups under a performance-based contract has resulted in an average cost savings ranging between 25 percent and 40 percent. The decrease in the number of sites needed for a bundle in conjunction with raising the amount of funds available may result in pushing the average cost savings closer to 25 percent. Concurrently, there may be a positive indeterminate fiscal impact realized because the number of sites being rehabilitated at a discounted price would increase.¹²⁶

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

¹²² DEP Agency Analysis of 2016 Senate Bill 100, p. 5 (October 5, 2015).

¹²³ Id.

¹²⁴ Id.

¹²⁵ DEP, SB 100 Barcode 334112-222728 Analysis Chart from DEP, available upon request from the State Affair Committee.

¹²⁶ DEP Agency Analysis of 2016 Senate Bill 100, p. 5 (October 5, 2015).

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Overall Restoration Funding Availability

The bill appears to have an indeterminate positive fiscal impact on the private sector because more sites contaminated with petroleum will be eligible to receive financial assistance to facilitate cleanup and more funding will be available to pay for the cleanup.

Section 1. Background Concentrations and Alternative CTLs

The bill will likely have an indeterminate positive economic impact on persons or entities that must rehabilitate a contaminated site. The amounts and types of contaminants, as well as the underlying geology, vary at each site resulting in a wide range of costs associated with site rehabilitation. However, property owners will no longer be required to rehabilitate a site for background concentrations caused by human activities unrelated to the discharge of pollutants or hazardous substances at the contaminated site undergoing rehabilitation. Further, these property owners will not be required to use institutional controls when an alternative CTL is used for site remediation in certain situations. Therefore, there will likely be a reduced cost associated with site cleanup.

Section 4. Advanced Cleanup

The bill reduces the minimum number of sites that a facility owner or operator may bundle to demonstrate a cost savings in order to be eligible for performance-based contracts in the Advanced Cleanup Program from 20 sites to 5 sites. This may positively impact contaminated site owners by providing an opportunity for more property owners to participate in the program.

D. FISCAL COMMENTS:

The bill expands the number of sites eligible for petroleum site cleanup and allows DEP to increase spending on the LSSI projects. These modifications will not require an increase in funding. However, expanding the program and increasing the amount DEP may spend will result in fewer funds available for more sites. These modifications will delay the termination of state-funded petroleum cleanup. An estimated extension in program funding is not available at this time.

In Fiscal Year 2015-2016, \$125,000,000 from the IPTF was appropriated for petroleum site cleanup. The Fiscal Year 2016-2017 General Appropriations Act includes \$118,000,000 from the IPTF for petroleum site cleanup.