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**HOUSE OF REPRESENTATIVES
COMMITTEE ON
NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
ANALYSIS**

BILL #: HB 1569
RELATING TO: Rehabilitation of contaminated sites
SPONSOR(S): Representative(s) LaCasa

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
 - (2) FISCAL POLICY AND RESOURCES
 - (3) COUNCIL FOR READY INFRASTRUCTURE
 - (4)
 - (5)
-

I. SUMMARY:

HB 1569 deals with extending Risk-Based Corrective Action principles to all cleanups of contaminated sites within the state. Additional provisions address the Voluntary Contamination Tax Credit programs. Include in the bill are provisions that:

Clarify who may apply for tax credits for drycleaning and brownfield contaminated site cleanup.

Allow taxpayers to claim credit on a consolidated return up to the amount of the consolidated group's tax liability.

Revise the tax credit application process to convert to calendar year, move the application deadline from December 31 to January 15, and eliminate placeholder applications.

Extend application of risk-based corrective action principles to all contaminated sites resulting from a discharge of pollutants or hazardous substances.

Provide for contamination cleanup criteria that incorporate risk-based corrective action principles to be adopted by the Department of Environmental Protection.

Provide conditions under which further rehabilitation may be required.

The bill would create minor costs for the necessary rule-making. It is anticipated that implementation of risk-based principles would result in substantial savings for individuals responsible for cleanups.

The bill would take effect upon becoming law.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Risk-based Corrective Action (RBCA), or "Rebecca" as it is commonly called is an approach to the cleanup of contaminated sites. Created in the mid-1990's as a result of state's, insurers', and private industries' discovery that resources were inadequate to finance cleanups to meet the stringent levels required by regulatory programs. In response, the American Society for Testing and Materials (ASTM) developed a standardized process that can be used for making risk-based decisions at contaminated sites in order to apply limited resources to those sites with the highest current risk.

As a result of the ASTM efforts, Emergency Standard 38 was adopted. The standard, referred to as ASTM-38, or generically as RBCA, describes a framework, or philosophy, upon which regulatory agencies can build their own risk-based guidance. This standard was adopted by the U.S. Environmental Protection Agency, first for use in petroleum storage tank cleanups and ultimately for all other types of contamination cleanup programs.

RBCA involves a process for managing contamination cleanup on a site-specific basis. Specifically, RBCA is defined as a streamlined approach in which exposure and risk assessment practices are integrated with traditional components of the corrective action (cleanup) process to ensure that appropriate and cost-effective remedies are selected, and that limited resources are properly allocated.

The RBCA process is built around three goals:

1. To ensure the protection of human health and the environment.
2. To be practical and cost-effective.
3. To provide a consistent and technically-defensible cleanup process.

When using the RBCA approach, decisions related to resource allocation, urgency of response, target cleanup levels, and remedial measures are based on current and potential risks to human health and environmental resources. Though not the original intent, cost savings can be an outcome of a properly applied RBCA process, because it fosters site specific decisions based on action needed as opposed to treating sites the same. Also, RBCA can be used to group sites within general ranges of high, medium, and low risk so that all sites can progress towards cleanup completion while limited resources can be directed at the highest risk sites.

Florida's use of RBCA principles and processes dates back to the mid-1990's. RBCA was first adopted and applied to the petroleum underground storage tank cleanup program, then to the drycleaning program and most recently to the brownfield program. [See ss. 376.3071(5), 376.81, and 376.3078(4), F.S., respectively.] Historically, dating from its first adoption to today, a series of core issues are always discussed involving the RBCA process.

Point of Compliance: The point at which contaminated land or water must meet clean-up or water quality standards.

Point of Exposure: The point at which contaminants reach a human or environmental receptor.

Institutional Controls: Administrative or legal tools utilized to prevent future uses of soil and groundwater at the property where there exists the potential for human or environmental exposure to contaminants.

Engineering Controls: The use of engineered systems to protect human health and the environment from contact with contaminated soil or groundwater.

Risk-Based Screening Levels: The levels of contaminant concentration that set the parameters for site clean-up standards. The state has adopted the following minimum clean-up standards to be applied at a point immediately adjacent to the point of exposure: applicable state standards if they exist; calculations using a life-time cancer risk level of 10^{-6} (one in one million); a hazard index of 1 or less; the best achievable detection limit; the naturally occurring background concentration; or nuisance, organoleptic, and aesthetic considerations.

Currently, sites that fall outside the three program areas in which RBCA has been adopted are subject to one of two cleanup processes. The most common process is often referred to as the CAP/RAP (Contamination Assessment Plan / Remedial Action Plan) process, wherein site cleanups are generally completed by licensed environmental professionals in accordance with the department's Model Corrective Actions for Contaminated Sites guidance document. This guidance document provides recommended procedures for the development and approval of work plans and reports.

The DEP's cleanup criteria are based on applicable ground water and surface water standards, ground water guidance concentrations, contaminant leachability factors and soil exposure guidelines. The DEP's CAP/RAP process has always incorporated general notions of risk-based cleanup but without the clear direction and authority provided by the statute for the RBCA programs.

The second typically used cleanup process is the federal Resource Conservation and Recovery Act (RCRA) program, which the DEP has been authorized by the EPA to administer in Florida. RCRA cleanups in Florida are governed by federal regulations adopted as Florida rules, where they are equivalent or more stringent, and federal program guidance.

In April 1998, when the Brownfields Cleanup Criteria Rule was adopted, the regulated community, environmental interests and health advocacy groups requested that the DEP provide an ongoing forum for interested parties to discuss evolving technical and scientific issues associated with contaminated site cleanup and the re-use of a variety of media using risk-based management principles. In response, the DEP hosted the first Contaminated Soils Forum (CSF) in July 1998, and the CSF has met seven times since then. During 1999 and 2000, the concept of applying RBCA to all sites contaminated with pollutants or hazardous substances regardless of program

status was the subject of some discussion at the CSF meetings. This concept has been dubbed "Global RBCA" since it would apply RBCA principles to all cleanups. In general, application of RBCA principles has been embraced as a streamlined approach that offers a more cost-efficient cleanup process.

Aside from the RBCA debate there is another issue concerning the DEP and the EPA. The issue regards the application of state ARARs (Applicable or Relevant and Appropriate Requirements) at Superfund sites in Florida. Currently, the EPA has opted to apply a cancer risk range from 10^{-4} (one in ten thousand) to 10^{-6} (one in one million) in establishing cleanup requirements at Superfund sites. If the state has adopted cleanup requirements that are different from the EPA's, the EPA must accept them as the standards to be applied at sites being cleaned up under federal Superfund program within the state. The EPA takes the position that Florida has not promulgated statewide ARARs since RBCA in Florida applies only to three program areas. The result is application of cleanup requirements at some Superfund sites that are less stringent than Florida's statutorily adopted standard of 10^{-6} cancer risk for contaminated sites.

Voluntary Cleanup Tax Credits (VCTC)

In 1998, the legislature passed CS/SB 244 which included provisions authorizing the DEP to issue Voluntary Cleanup Tax Credits (VCTC) as an additional incentive to encourage site rehabilitation at brownfield sites in designated brownfield areas, at sites eligible for the dry cleaning solvent cleanup program, and at certain sites that are ineligible for the dry cleaning program. The law allows an eligible applicant to receive up to 35 percent of the costs of voluntary cleanup activity that is integral to site rehabilitation, not to exceed \$250,000 per site per year in tax credits. The total amount of tax credits that may be granted by the DEP is \$2 million annually. These tax credits can be applied toward Corporate Income Tax or Intangible Personal Property Tax in Florida. Also, these tax credits are transferable; however, transferred credits may not be transferred again, although they may succeed to a surviving or acquiring entity after merger or acquisition.

The DEP established rules as directed for the implementation of the VCTC program. In 1998, one application was received and a credit issued in the amount of \$30,228. In 1999, three applications were granted and credits issued in the amount of \$118,438. In 2000, five applications were granted and credits issued in the amount of \$213,852.

C. EFFECT OF PROPOSED CHANGES:

For a detailed description of the changes see the "Section-By-Section Analysis."

Adoption of Global RBCA principles similar to that for the existing programs would give the DEP clear authority to apply consistent site rehabilitation cleanup criteria at all contaminated sites resulting from a discharge of pollutants or hazardous substances. The DEP would also have clear authority to allow alternative cleanup target levels, where appropriate based on site-specific circumstances, and to allow the use of institutional and engineering controls to eliminate or control exposure at sites with remaining contamination. Also, application of RBCA to all cleanups in the state may assist the state in its efforts with EPA concerning ARAR's.

Proposed changes to the VCTC law have the effect of:

Making consistent the terminology used in existing sections of law that govern the program. (See ss. 199.1055, 220.1845, and 376.30781, F.S., wherein various inconsistent terms are used to describe the VCTC entity including "taxpayer," "applicant," and "owner, operator, or real property owner.")

Converting the application process from a tax-year to a calendar-year system. This would eliminate an issue that has caused considerable confusion since the program's inception.

Changing the application deadline from December 31 to January 15 of the year following the calendar year for which they are claiming site rehabilitation costs. This change would eliminate problems associated with completing site rehabilitation activities and application preparation by the end of the year. Specifically, the change would permit more time for review by professional engineers and geologists and CPA's.

Clarifying that applications must be complete by the deadline and that placeholder applications will not be accepted or secure a place in the first-come, first-served line.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Amends s. 199.1055, F.S.

Clarifies existing references to the term "taxpayer" to provide consistency throughout this section of law.

Provides that tax credits granted under this section shall only be good for five years. However, if the credit is transferred the transferee shall have five years from the transfer date to use the credit.

Section 2: Amends s. 220.1845, F.S.

Clarifies existing references to the term "taxpayer" to provide consistency throughout this section of law.

Provides that tax credits granted under this section shall only be good for five years. However, if the credit is transferred the transferee shall have five years from the transfer date to use the credit.

Section 3: Creates s. 376.30701, F.S.

Permits the use of RBCA at all contaminated sites where legal responsibility for site rehabilitation exists pursuant to existing law. Excluded sites are those already eligible for petroleum, brownfields, or drycleaning programs. Additional sites to be excluded include those for which a cleanup agreement currently exists or a "no further action" order has been issued, however, site owners in this category may elect to enter into another agreement using RBCA if they so decide.

RBCA will be used at sites where rehabilitation is being conducted voluntarily, pursuant to departmental order or as part of a state-managed cleanup.

The use of RBCA shall not delay actions to any emergency responses required concerning the discharge of pollutants or hazardous substances.

The DEP is directed to adopt by July 1, 2002, a rule that describes the procedures and standards to be used in creating a RBCA program for these sites. Specific issues to be addressed in the rule will:

Identify tasks that comprise a site rehabilitation program, including how to determine the level at which a rehabilitation program may be deemed completed. In developing these criteria for this, the rule shall:

Consider the current exposure and potential risk of exposure to humans and the environment, including multiple pathways of exposure.

Consider the physical, chemical, and biological characteristics of each contaminant.

Establish the point of compliance at the source of the contamination. However, this point may be temporarily moved to the boundary of the property while cleanup is proceeding. The point of compliance may also extend beyond the property boundary, temporarily, if needed to address the current conditions of the plume. Should the point go beyond the property boundary notice shall be given to the affected property owners, residents, or business tenants. These individuals will have 30 days to comment on the issue.

Ensure that all contaminated sites will ultimately achieve the applicable cleanup target levels. Should there not be an applicable cleanup standard than the DEP shall apply the following in establishing them: calculations using a lifetime cancer risk level of 10^{-6} ; a hazard index of 1 or less; the best achievable detection limit; and nuisance, organoleptic, and aesthetic considerations. However, no target level for any individual contaminant shall be more stringent than site-specific, naturally occurring background concentrations. Alternative cleanup target levels, in conjunction with institutional and engineering controls may be allowed if it can be proved that human health, public safety, and the environment will be protected.

Allow for the use of natural attenuation, institutional, or engineering controls. If institutional or engineering controls are proposed they must be pre-approved by the DEP and notice given to affected parties. Removal of these controls must also have approval from the DEP and any additional cleanup shall be undertaken, if necessary.

Consider the additive effects of contaminants. Additionally, the synergistic and antagonistic effects shall be considered when the scientific data becomes available.

Apply to the maximum extent feasible, a RBCA process that achieves protection of human health and safety and the environment.

Create a process that tailors site rehabilitation tasks to site-specific conditions and risks. Which shall include, at a minimum, the current and projected use of the affected groundwater and surface water in the vicinity of the site, the current and projected land used in the area, the exposed population, the degree and extent of contamination, the rate of contaminant migration, the rate of contaminant degradation through natural attenuation, and the location of the plume.

Establish points at which risk management decisions will be made.

Provide that no additional site rehabilitation shall be required unless:

Fraud was committed concerning the rehabilitation.

New information confirms the existence of previously unknown contamination.

Remediation efforts failed to achieve site rehabilitation criteria.

The level of risk achieved is insufficient because of a change in exposure conditions, such as a change in land use.

A new discharge of pollutants or hazardous substances has occurred.

Section 4: Amends s. 376.30781, F.S.

Clarifies existing references to “taxpayer” and “applicant” to provide consistency throughout this section of law.

Changes the VCTC application period from a tax year to a calendar year. Additional changes are made to the VCTC application, which include: changing the filing deadline from December 31 to January 15; prohibiting the filing of placeholder applications; clarifying where applications are to be submitted; and deleting unnecessary language relating to the old deadlines.

Section 5: Provides that the act shall take effect upon becoming law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

There will be some cost associated with the rule-making process that is required by the bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

It is anticipated that a positive economic benefit should be realized by the private sector because of the use of RBCA principles. The ability to manage risk through institutional controls and engineering controls should result in substantial savings for site cleanups.

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require municipalities or counties to spend money or to take action that requires a significant expenditure of money.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority that municipalities or counties have to raise revenues.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the percentage of state tax revenues shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

The bill directs the DEP to undertake rule-making as necessary to implement a statewide RBCA program and to make modifications concerning the VCTC program.

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION:

Prepared by:

Staff Director:

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