

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.)

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

BILL: SB 1982

INTRODUCER: Senator Baker

SUBJECT: Cleanup of petroleum-contaminated sites

DATE: April 1, 2008

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Branning	Kiger	EP	Pre-meeting
2.			GO	
3.			FT	
4.			GA	
5.				
6.				

I. Summary:

This bill increases the statutory cap amounts for Petroleum Cleanup Participation Program (PCPP) sites and Petroleum Liability and Restoration Insurance Program (PLRIP) sites that are eligible for state funding assistance. The increases in the cap amounts only apply to sites in these programs where the Department of Environmental Protection (DEP) has not issued a site rehabilitation completion order prior to June 1, 2008, indicating that the discharge has been remediated. Requires a remediation preapproval contractor to submit an invoice within a certain time. Requires prompt payment by a contractor to subcontractors.

This bill amends ss. 376.3071, 376.30711, and 376.3072, F.S.

II. Present Situation:

Section 376.3071(13), F.S., established the PCPP which provides for \$300,000 in restoration funding for site rehabilitation, subject to an annual appropriation from the Inland Protection Trust Fund.¹ Section 376.072, F.S., established the PLRIP which provides site rehabilitation restoration funding at various levels depending upon when the discharge was reported to the DEP. There are three levels of PLRIP restoration assistance: \$1 million, \$300,000, and \$150,000. Over the years, inflation, changes in appropriation amounts and expanding contamination plumes have impacted the effectiveness of the cap amounts provided by the PCPP and PLRIP programs.

¹ This trust fund is funded primarily by excise taxes on petroleum and petroleum products, registration fees on petroleum storage tanks, and inspection fees on facilities where petroleum storage tanks are located. A primary use of the fund is to investigate and assess contaminated sites and to cleanup and rehabilitate contaminated sites.

At the present time, sites that undergo site rehabilitation which are eligible under either the PCPP or PLRIP programs have caps on the amount of public funding that is provided for cleanup. Once the cap is reached, the site transitions back to the responsible party for the completion of contamination cleanup. The responsible party typically finances the remainder of the cleanup costs either from personal finances or through an insurance carrier if the claim was approved.

In 1996, the Petroleum Cleanup Preapproval Program was authorized to fund state cleanups on a preapproved basis ranked in priority order.² This replaced the prior reimbursement program for petroleum cleanups. Remediation contractors must be qualified by the DEP to participate in the Preapproval Program. Subcontractors to qualified contractors have to wait until contractors submit invoices to the DEP in order to get paid. The waiting period for payment may be longer if there are other agreements between the contractor and subcontractor. Over the years, the preapproval program has received complaints from subcontractors who have had to wait months before the contractor paid for their services.

III. Effect of Proposed Changes:

Section 1 amends s. 376.3071, F.S., to increase the statutory cap amount for PCPP sites from \$300,000 to \$400,000. Sites meeting the criteria of the PCPP program for which a site rehabilitation completion order was issued prior to June 1, 2008, do not qualify for the 2008 increase in site rehabilitation funding assistance and are bound by the pre-June 1, 2008, limits. Sites meeting the criteria of the program for which a site rehabilitation completion order was not issued prior to June 1, 2008, regardless of whether they have previously transitioned to nonstate-funded cleanup status, may continue state-funded cleanup until a site rehabilitation completion order is issued or the increased site rehabilitation funding assistance limit is reached, whichever occurs first. At no time shall expenses outside the Preapproval Program be reimbursable.

Section 2 amends s. 376.30711, F.S., to provide that the contractor shall submit an invoice to the DEP within 30 days after the date of the department's written acceptance of each interim deliverable or written approval of the final deliverable specified in a preapproved site rehabilitation agreement.

Contractors or persons to which the contractor has assigned its right to payment shall make prompt payment to subcontractors and suppliers for their costs associated with a preapproved site rehabilitation agreement.

The exemption in s. 287.0585(2), F.S., relating to late payments by contractors to subcontractors and suppliers, does not apply to payments associated with a preapproved site rehabilitation agreement.

Section 3 amends s. 376.3072, F.S., to increase the following statutory cap amounts for PLRIP sites:

- \$1 million to \$1.2 million

² Prior to 1996, the DEP administered a petroleum cleanup program that allowed for the reimbursement of cleanup costs to eligible parties. Reimbursement expenditures for petroleum contamination cleanup work were made on a first-come, first-served basis without regard to the ranking of the contamination site.

- \$300,000 to \$400,000
- \$150,000 to \$300,000

Sites meeting the criteria for the PLRIP program for which a site rehabilitation completion order was issued prior to June 1, 2008, do not qualify for the 2008 increase in site rehabilitation funding assistance and are bound by the pre-June 1, 2008 limits. Sites meeting the criteria for the PLRIP program for which a site rehabilitation completion order was not issued prior to June 1, 2008, regardless of whether or not they have previously transitioned to nonstate-funded cleanup status, may continue state-funded cleanup until a site rehabilitation completion order is issued or the increased site rehabilitation funding assistance limit is reached, whichever ever occurs first. At no time shall expenses incurred outside the Preapproval Program be reimbursable.

Section 4 provides that the bill will take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Owners and operators of eligible PCPP and PLRIP sites could received a financial benefit under this bill. The owners and operators and the insurance carriers would not have to cover as much of the costs of the cleanups when they transition out of state financial assistance. In some cases, the entire cost of the cleanup may be paid for by state funds if the total cost of the cleanup is within the new funding caps.

C. Government Sector Impact:

It is difficult to project the total cleanup costs associated with a contaminated cleanup because of the unknown variables associated with each site. The average cost of a petroleum contaminated cleanup is approximately \$400,000; however, it can also range from \$50,000 to over \$5 million. The following are the short-term financial impacts as indicated by the DEP:

Program	Total Sites	Total Active Sites	Current Funding Cap	Proposed Funding Cap
PLRIP	1655	632	\$1 M	\$1.2 M
	776	284	\$300,000	\$400,000
	668	198	\$150,000	\$300,000
PCPP	1374	452	\$300,000	\$400,000
Other				
Transitional sites back in Preapproval Program		100		

If all of the active sites in the PLRIP and PCPP qualify for the increased funding amounts, the maximum worst case increased financial exposure for the Inland Protection Trust Fund would be \$234.7 million.³ It is unlikely, however, that all of the active sites would qualify for the increased funding caps. The actual increase in state funding that would impact the Inland Protection Trust Fund is not known at this time.

The DEP estimates completing cleanup of all eligible sites in the petroleum cleanup program in 2030. This bill will redirect available funds to the PLRIP and PCPP sites and could, therefore, affect the timing of when other eligible sites awaiting cleanup will receive funding. This could increase the time needed to complete the cleanup program by 5 years.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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.

³ This amount is derived at by multiplying the active sites by the increased amount of funding to the new cap.

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