

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 Governmental Operations Committee

BILL: SB 1982

INTRODUCER: Senator Baker

SUBJECT: Cleanup of Petroleum-Contaminated Sites

DATE: April 4, 2008

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Branning</u>	<u>Kiger</u>	<u>EP</u>	Favorable
2.	<u>McKay</u>	<u>Wilson</u>	<u>GO</u>	Favorable
3.	_____	_____	<u>FT</u>	_____
4.	_____	_____	<u>GA</u>	_____
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. The bill requires a remediation preapproval contractor to submit an invoice within a certain time, and requires prompt payment by a contractor to subcontractors.

This bill amends sections 376.3071, 376.30711, and 376.3072 of the Florida Statutes.

II. Present Situation:

Petroleum Cleanup

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

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.

contamination plumes have impacted the effectiveness of the cap amounts provided by the PCPP and PLRIP programs.

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.

Late payments by state contractors to subcontractors and suppliers

Section 287.0585, F.S., provides that when a contractor receives from a state agency any payment for contractual services, commodities, supplies, or construction contracts, except those construction contracts subject to the provisions of chapter 339, F.S., relating to transportation finance, the contractor must pay such moneys received to each subcontractor and supplier in proportion to the percentage of work completed by each subcontractor and supplier at the time of receipt of the payment. If the contractor receives less than full payment, then the contractor must disburse only the funds received on a pro rata basis. If the contractor without reasonable cause fails to make payments required to subcontractors and suppliers within 7 working days after the receipt by the contractor of full or partial payment, the contractor must pay to the subcontractors and suppliers a penalty in the amount of one-half of 1 percent of the amount due, per day, from the expiration of the period allowed herein for payment. This penalty must be in addition to actual payments owed, capped at 15 percent of the outstanding balance due.

In addition to other fines or penalties, a person found not in compliance with these provisions may be ordered by the court to make restitution for attorney's fees and all related costs to the aggrieved party or the Department of Legal Affairs when it provides legal assistance pursuant to this section. The Department of Legal Affairs may provide legal assistance to subcontractors or vendors in proceedings brought against contractors under the provisions of this section.

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.

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.

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
- \$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, which 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 receive 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.

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

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:

The bill subjects site rehabilitation contractors to the prompt payment provisions of s. 287.0585, F.S., which permits the Department of Legal Affairs (DLA) to provide legal assistance to subcontractors and vendors. If the DLA provides such assistance, the DLA may receive an award of legal fees and costs related to its assistance. It is unknown whether the DLA currently provides such legal assistance to subcontractors and vendors.

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.