

response to petroleum contamination from a leaking underground petroleum storage tank in Marion County.² The law provided, in part, for required cleanup of petroleum discharges, but by 1985 the Department of Environmental Regulation³ realized that an incentive program was needed to accelerate the cleanup process.⁴

The Legislature enacted the State Underground Petroleum Environmental Response Act of 1986 (SUPER Act) to address the problems of pollution from leaking underground petroleum storage systems.⁵ As an incentive to report and clean up contamination from leaking petroleum storage systems, the SUPER Act established the Early Detection Incentive Program (EDI).⁶ The EDI program allowed owners or operators of contaminated sites to clean up the sites themselves using private contractors and their own funds and then be reimbursed from the state's Inland Protection Trust Fund (IPTF),⁷ or have their sites listed on the state's priority cleanup list and wait for the state to clean up the sites.⁸

The EDI program's eligibility ended on December 31, 1988; however the state recognized that there was a continuing need to provide financial assistance for the cleanup of sites that had abandoned or out-of-service petroleum storage systems.⁹ To address this continuing need, the Abandoned Tank Restoration Program was established in 1990 to provide financial assistance for cleanup of these sites.¹⁰ Sites accepted into this program were eligible for reimbursement of cleanup costs after satisfying certain criteria.

Comprehensive legislation was passed in 1996 that moved the program from a reimbursement program to a prior-approval program, which is the program that exists today. Among other things, the legislation created a new cost-sharing amnesty program called the Petroleum Cleanup Participation Program and provided for another cost-sharing program to allow sites to be cleaned up out of priority order to facilitate real property transactions or public works projects.¹¹

In 2005, the Legislature created the Innocent Victim Petroleum Storage System Restoration Program (Program)¹² for property owners with contaminated sites that were acquired prior to July 1, 1990. To be eligible for cleanup, the site must have ceased operating as a petroleum storage or retail business prior to January 1, 1985.¹³ According to the Department of Environmental Protection (DEP), the term "acquired" is not defined in ch. 376, F.S., which has caused debate in understanding the eligibility requirements of the Program.¹⁴ Specifically,

² *Id.*

³ Currently, the Department of Environmental Protection administers the underground storage tank program.

⁴ Bureau of Petroleum Storage Sys., *supra* note 1, at 1.

⁵ Comm. Environmental Preservation, *Underground Petroleum Storage Tank Cleanup Program*, 2 (Interim Project Report 2005-153) (Nov. 2004).

⁶ *Id.*

⁷ The Inland Protection Trust Fund (IPTF) was created in 1986 to pay for the expedited cleanup of petroleum contaminated sites. The IPTF is a "non-lapsing revolving trust fund with revenues generated from an excise tax per barrel of petroleum products currently produced or imported into the State." Bureau of Petroleum Storage Sys., *supra* note 1, at 1.

⁸ *Id.* at 12.

⁹ *See* Comm. on Environmental Preservation, *supra* note 5, at 2.

¹⁰ Bureau of Petroleum Storage Sys., *supra* note 1, at 12.

¹¹ Comm. on Environmental Preservation, *supra* note 5, at 3.

¹² *See* ch. 2005-71, s. 28, and ch. 2005-180, s. 4, Laws of Fla.

¹³ Section 376.30715, F.S.

¹⁴ Dep't of Environmental Protection, *Draft Bill Analysis for SB 2018 as amended on March 19, 2008*, 2 (2008).

The debate has arisen when an owner of a contaminated property has, after July 1, 1990, transferred the property into a revocable trust or inherited the property as a surviving spouse. DEP has determined that moving the property into a revocable trust or a surviving spouse inheriting the property does constitute a change in ownership.¹⁵

As of February 2008, there are 17,789 eligible petroleum facilities in the petroleum cleanup program.¹⁶

III. **Effect of Proposed Changes:**

This bill amends s. 376.30715, F.S., relating to the Innocent Victim Petroleum Storage System Restoration Program. The bill provides that a contaminated site acquired by the *current owner* prior to July 1, 1990, which has ceased operating as a petroleum storage or retail business prior to January 1, 1985, is eligible for financial cleanup assistance.

The bill further clarifies that a transfer of property to a spouse, a surviving spouse in trust or free of trust, or a revocable trust created for the benefit of the settler does not disqualify the site from participating in the program.

The bill has an effective date of July 1, 2008.

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.

¹⁵ *Id.*

¹⁶ Bureau of Petroleum Storage Sys., *Monthly Summary Report for Petroleum Cleanup and Compliance and Enforcement of Petroleum Storage and Distribution Systems*, 4 (March 13, 2008), available at http://www.dep.state.fl.us/waste/quick_topics/publications/pss/pcp/monthly_summary/MonthlySummaryReport02-2008.pdf (last visited April 4, 2008).

B. Private Sector Impact:

This bill will allow property owners who have been denied eligibility under the innocent victim restoration program because the property had been transferred to a spouse to now qualify for financial assistance under the program. It is not known how many properties would be added to the list to receive state financial restoration assistance. The Department of Environmental Protection has several cases involving trusts or inheritances pending that could be resolved by the provisions of this bill.¹⁷ It is anticipated that the actual number of properties that would qualify for state financial assistance would be very small.

C. Government Sector Impact:

Under the bill, additional properties would be added to the list of properties eligible for state financial assistance for cleanup and restoration. The average cost to clean up a site is approximately \$400,000.¹⁸ The actual number of sites to be added to the list is expected to be very small.

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.)**CS by Judiciary on April 8, 2008:**

The committee substitute corrects a cross-reference in the bill.

B. Amendments:

None.

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

¹⁷ Dep't of Environmental Protection, *supra* note 14, at 3.

¹⁸ *Id.*