

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 961 Cleanup of Sites Contaminated by Petroleum
SPONSOR(S): Machek
TIED BILLS: **IDEN./SIM. BILLS:** SB 1982

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Environmental Protection</u>	_____	<u>Kliner</u>	<u>Kliner</u>
2) <u>Environment & Natural Resources Council</u>	_____	_____	_____
3) <u>Policy & Budget Council</u>	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The bill increases the restoration cap amount for the Petroleum Cleanup Participation Program from \$300,000 to \$400,000. For the Florida Petroleum Liability and Restoration Insurance Program, \$1 million caps are increased to \$1.2 million, \$300,000 caps are increased to \$400,000, and \$150,000 caps are increased to \$300,000.

In all cases these cap increases only apply to Petroleum Cleanup Participation Program and Florida Petroleum Liability and Restoration Insurance Program eligible sites 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. These cap increases also apply to sites that have reached the current statutory caps and have transitioned to the party responsible for the contamination for completion of the cleanup. Expenses incurred for such sites that have transitioned out of state funding due to reaching the increased caps are not reimbursable.

The bill also requires a remediation preapproval contractor to submit an invoice within 30 days after the date of the DEP's written acceptance of each interim deliverable or the final deliverable specified in a site rehabilitation agreement. In addition, remediation preapproval contractors or their assignees are required to pay subcontractors in accordance with the prompt payment provisions of section 287.0585(1), F.S. The bill also states that section 287.0585(2), F.S., which provides for an alternative to the prompt payment provisions, shall not apply to preapproval site rehabilitation agreements.

The fiscal impact of the bill may extend the Petroleum Cleanup Program by five years and may increase expenditures by \$234.7 million for petroleum contamination cleanup by raising certain funding assistance caps. The bill does not appear to have a fiscal impact on local government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: By increasing the program caps, owners and operators and insurance carriers would not have to cover as much of the costs of petroleum contamination cleanups and in many cases may not have to pay for any cleanup costs at all if the actual cleanup costs approximate the average cleanup costs.

Subcontractors may benefit from the 30 day requirement for the submission of invoices and the prompt payment provisions.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Section 376.3071(13), F.S., established the Petroleum Cleanup Participation Program (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 376.3072, F.S., established the Florida Petroleum Liability and Restoration Insurance Program (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.

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 pre-approved basis ranked in priority order.² Remediation contractors must be qualified by the DEP to participate in the Preapproval Program. Subcontractors to preapproval contractors have to wait until contractors submit invoices to the DEP in order to get paid. If there are payment agreements between the contractor and subcontractors there may be a longer waiting period for payment. The preapproval program has received, over the years, some complaints from subcontractors who have had to wait months before the contractor paid for their services.

Effect of Proposed Changes

The bill raises the state funded cap amounts so that sites registered in either the PCPP or PLRIP programs have a higher probability of achieving a complete cleanup with state funding. The bill increases the restoration cap amount for the PCPP from \$300,000 to \$400,000. For the PLRIP, \$1 million caps are increased to \$1.2 million, \$300,000 caps are increased to \$400,000 and \$150,000 caps are increased to \$300,000.

¹ The trust fund is primarily funded 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.

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.

The bill also requires a remediation preapproval contractor to submit an invoice within 30 days after the date of the DEP's written acceptance of each interim deliverable or the final deliverable specified in a site rehabilitation agreement. In addition, remediation preapproval contractors or their assignees are required to pay subcontractors in accordance with the prompt payment provisions of s. 287.0585(1), F.S.³ The bill also provides that s. 287.0585(2), F.S., which provides for an alternative to the prompt payment provisions, shall not apply to preapproval site rehabilitation agreements.

According to the DEP, the average cost of a cleanup is approximately \$400,000, but the range could be anywhere from \$50,000 to over \$5 million. There are short-term financial impacts associated with active sites which will occur within the next five years and long-term financial impacts as sites awaiting cleanup become active. The long-term impacts will occur over the life of the preapproval program, which is presently projected to continue until at least 2030. The changes proposed in the bill would redirect available funds to the PLRIP and PCPP sites and could therefore affect the timing of when other eligible sites awaiting cleanup receive funding. The net result would be an increase in the total number of years needed to complete the program. It is therefore estimated the completion date for the program would move to 2035.

C. SECTION DIRECTORY:

Section 1 amends s. 376.3071(13), F.S., to increase the cap amount for PCPP sites from \$300,000 to \$400,000. This section also provides criteria for which PCPP sites qualify for the increase and identifies which sites are excluded. This section also specifies that monies expended by a responsible party for site rehabilitation due to a site reaching its cap amount are not reimbursable.

Section 2 amends s. 376.3071(5), F.S., to provide for a time frame of 30 days for preapproval contractors to submit an invoice to the DEP once the interim or final deliverable is approved by the DEP. This section provides for prompt payment to subcontractors in accordance with section 287.0585(1), F.S., and exempts contractors from section 287.0585(2), F.S., which allows for payment agreements resulting in delayed payments.

Section 3 amends s. 376.3072, F.S., to increase the cap amounts for PLRIP sites from \$1 million to \$1.2 million, from \$300,000 to \$400,000 and from \$150,000 to \$300,000. This section provides criteria for which PLRIP sites qualify for the increase and identifies which sites are exempt. This section also specifies that monies expended by a responsible party for site rehabilitation due to a site reaching its cap amount are not reimbursable.

Section 4 provides for an effective date of July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

³ This subsection provides, in part, that if the contractor, without reasonable cause, fails to make payments to subcontractors and suppliers within 7 working days after the receipt by the contractor of full or partial payment, the contractor shall 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 for payment. Such penalty shall be in addition to actual payments owed and shall not exceed 15 percent of the outstanding balance due. In addition to the above, the contractor may also be liable for court costs and attorneys fees.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The private sector would gain by the same amount as the proposed cap increases. Owners and operators and insurance carriers would not have to cover as much of the costs of cleanups and in many cases may not have to pay for any cleanup costs if the actual cleanup costs fall within the new cap amounts.

Subcontractors may benefit from the 30 day requirement for the submission of invoices and the prompt payment provisions.

D. FISCAL COMMENTS:

The average cost of a petroleum contamination cleanup is approximately \$400,000, but could range from \$50,000 to over \$5 million. The provisions of the bill will have the following short and long term financial impacts:

Short Term:

Program	Total Sites	Total Active Sites	Current Funding Cap	Proposed Funding Cap	Estimated Increase In Funding
PLRIP	1655	632	\$1 mill	\$1.2 mill	\$126.4 mill
	776	284	\$300,000	\$400,000	\$28.4 mill
	668	198	\$150,000	\$300,000	\$29.7 mill
PCPP	1374	452	\$300,000	\$400,000	\$45.2 mill
Other:					
Transitional Sites Back Into Preapproval Program		100			\$5 mill
				Total	\$234.7 mill

Long Term:

The DEP estimates completing cleanup of all eligible sites in the petroleum Cleanup Program will occur in 2030. The bill will redirect available funds to the PLRIP and PCPP sites and could therefore affect the timing of when other eligible sites awaiting cleanup receive funding. The net result would be an increase by five years (2035) the time needed to complete the program.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None noted.

B. RULE-MAKING AUTHORITY:

No rulemaking authority is given in the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES