

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:

BILL: SB 1674

INTRODUCER: Environmental Preservation and Conservation Committee

SUBJECT: Ratification of Rules of the Department of Environmental Protection

DATE: March 13, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gudeman	Uchino		EP SPB 7084 as introduced
2.				
3.				
4.				
5.				
6.				

I. Summary:

SB 1674 ratifies Rules 62-772.300 and 62-772.400, Florida Administrative Code, relating to competitive bidding and contractor qualifications for the Petroleum Restoration Program.

II. Present Situation:

Petroleum Restoration Program

The Department of Environmental Protection (DEP) Division of Waste Management regulates underground and aboveground storage tank systems. In 1983, Florida became one of the first states to pass legislation and adopt rules to regulate underground and aboveground storage tanks.¹ Leaking storage tanks pose a significant threat to groundwater quality. Florida relies on groundwater for about 92 percent of its drinking water needs.²

In 1986, the Legislature passed the State Underground Petroleum Environmental Response Act (SUPER Act) to address the problem of pollution from leaking underground petroleum storage systems. The SUPER Act authorized the DEP to establish criteria for the prioritization, assessment, cleanup, and reimbursement for clean up of contaminated sites. The SUPER Act also created the Inland Protection Trust Fund (IPTF), which is funded by a tax on petroleum products imported or produced in Florida. The SUPER Act established the Early Detection Incentive Program (EDI), which provided site owners with the option of conducting the cleanup

¹ See ch. 83-310, Laws of Fla.

² DEP, *Storage Tank Compliance*, <http://www.dep.state.fl.us/waste/categories/tanks/> (last visited Mar. 6, 2014).

themselves, and then receive reimbursement from the IPTF, or have the state conduct the cleanup in priority order.³

The Legislature created the Petroleum Liability and Insurance Restoration Program (PLIRP) in 1988 to allow eligible petroleum facilities to purchase \$1 million in pollution liability protection from a state contracted insurer. The PLIRP also provided \$1 million worth of site restoration coverage through reimbursement or state-funded cleanup.⁴

In 1990, the Legislature established the Abandoned Tank Restoration Program (ATRP). The ATRP was created to address the contamination at facilities that had out-of-service or abandoned tanks as of March 1990. The ATRP originally had a one-year application period, but the deadline is now waived indefinitely for owners who are unable to pay for the closure of abandoned tanks.⁵

The Legislature began to phase out the state's role in the cleanup process in 1992 by shifting the cleanup sites to the reimbursement program,⁶ which was funded by increasing the excise tax on petroleum and petroleum products.⁷ The reimbursement program proved costly, and within a few years the reimbursement amount exceeded the administrative capacity of the DEP and the financial resources of the IPTF. By 1996, over 18,000 petroleum sites had been identified as contaminated and the program had accumulated \$551.5 million in outstanding reimbursement claims.⁸

In 1995, the Legislature passed a temporary measure to address the large backlog of reimbursement applications and unpaid claims and required a review of the petroleum underground storage tanks program. The measure only funded the remediation of sites that had received prior notice from the DEP.⁹

The Petroleum Preapproval Program (program) was implemented by the Legislature in 1996. The program required state-funded clean up of sites to be done on a preapproved basis, in priority order, and within the current fiscal year's budget. The program also required the DEP to use risk-based corrective action principles in the cleanup criteria rule. The Petroleum Cleanup Participation Program (PCPP) was created for sites that had missed the opportunity for state funding assistance but had reported contamination before 1995. Responsible parties were required to cost share in the cleanup and prepare a limited scope assessment at their expense. The Preapproved Advanced Cleanup (PAC) program was created to allow sites to bypass the priority ranking list and receive funding in order to facilitate a public works project or property transaction. The PAC program requires applicants to cost share in the cleanup and to prepare limited scope assessments at their expense.¹⁰

³ Chapter 86-159, Laws of Fla.

⁴ Chapter 88-331, Laws of Fla.

⁵ Chapter 90-98, Laws of Fla.

⁶ The term "cleanup sites" includes contaminated sites that are being remediated by the state or the property owner.

⁷ Chapter 92-30, Laws of Fla.

⁸ Comm. on Environmental Preservation and Conservation, The Florida Senate, *Underground Petroleum Storage Tank Cleanup Program*, (Interim Report 2005-153) (Nov. 2004).

⁹ Chapter 95-2, Laws of Fla.

¹⁰ Chapter 96-277, ss. 18-19, Laws of Fla.

In 1999, the Legislature amended the Petroleum Preapproval Program to allow the DEP to fund certain source removal activities. The bill addressed new petroleum discharges that occurred at a site with existing contamination and were reported after December 31, 1998. The bill allowed a responsible party to enter into a Site Rehabilitation Agreement with the DEP and share in the cost and coordination of the cleanup, provided that the responsible party submit an application and a Limited Contamination Assessment Report to the DEP.¹¹

The Legislature substantially amended the Petroleum Preapproval Program in 2005, to require:

- All of Florida's underground petroleum storage tanks be upgraded prior to January 1, 2010;
- The DEP to establish a process to uniformly encumber funds appropriated for the underground storage tank program throughout a fiscal year;
- The DEP to establish priorities based on a scoring system;
- Funding for limited interim soil-source removals for sites that become inaccessible for future remediation due to road infrastructure and right-of-way restrictions resulting from pending Department of Transportation projects;
- Funding for limited interim soil-source removals associated with the underground petroleum storage system upgrade that are conducted in advance of the site's priority ranking for cleanup;
- Limited funding to 10 sites per fiscal year per owner for source removal associated with the underground petroleum storage system upgrade;
- Limited funding per facility and for activities that may be funded;
- Limited funding of \$1 million per fiscal year for Department of Transportation projects, and \$10 million per fiscal year for underground petroleum storage system upgrade projects;
- Repeal of funding provisions as of June 30, 2008;
- Availability of the Preapproved Advanced Cleanup Participation Program for discharges of petroleum that are eligible for restoration funding under the Petroleum Cleanup Participation Program for the state's cost share of site rehabilitation; and
- Extension of life of the Inland Protection Financing Corporation from 2011 to 2025, and require the corporation to issue notes and bonds, and to pay for large-scale cleanups such as ports, airports, and terminal facilities that are eligible for state funding.¹²

In 2013, the Legislature amended s. 376.30711, F.S., to require all task assignments, work orders, and contracts for providers under the preapproval program be procured through competitive bidding pursuant to ss. 287.056, 287.057, and 287.059, F.S.¹³ Pursuant to s. 376.30711, F.S., the DEP is authorized to use competitive bid procedures or negotiated contracts for preapproving all costs and procedures for site-specific rehabilitation projects, but has not done so on a permanent basis.

The Legislature also required the DEP to adopt rules to implement ss. 376.3071, 376.30711, and 376.30713, F.S., by December 31, 2013, otherwise funding for the program would be terminated.

On May 30, 2013, the DEP published a Notice of Rule Development in the Florida Administrative Register to create Rule 62-772, F.A.C., and amend Rule 62-771, F.A.C. The new

¹¹ Chapter 99-376, Laws of Fla.

¹² Sections 376.3071, 376.30713, 376.3075, and 376.30715, F.S.

¹³ Chapter 2013-41, s. 29, Laws of Fla.

rules provide the procedures for the procurement of contractual services for clean up of petroleum contaminated sites and amend the procedures for establishing the priority scoring system for petroleum contaminated sites. The rules were adopted on December 27, 2013.

Legislative Ratification of Agency Rules

Pursuant to s. 120.541, F.S., a rule that meets any of three thresholds must be ratified by the Legislature. The thresholds are:

- If the rule is likely to have an adverse impact on economic growth, private sector job creation or employment, or private sector investment in excess of \$1 million in the aggregate within five years after implementation of the rule;
- If the rule is likely to have an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, or innovation in excess of \$1 million in the aggregate within five years after implementation of the rule; or
- If the rule is likely to increase regulatory costs, including any transactional costs, in excess of \$1 million in the aggregate within five years after implementation of the rule.¹⁴

The DEP prepared a Statement of Estimated Regulatory (SERC) for Rules 62-772.300 and 62-772.400, F.A.C., and determined the rules triggered a statutory threshold requiring ratification. The SERC for Rule 62-772.300, F.A.C., estimates the cost for contractors to maintain business licensure, safety compliance, workers compensation insurance, comprehensive automobile insurance, and general and professional liability insurance is approximately \$15.4 million per year. The cost estimate provided in the SERC is based on 225 contractors. As of March 2014, the number of agency term contractors is 70, decreasing the cost associated with Rule 62-772.300, F.A.C., to approximately \$4.8 million per year.¹⁵

The SERC for Rule 62-772.400, F.A.C., estimates the cost incurred by contractors to assemble and submit bids, responses, replies, and quotes to the DEP as part of the competitive procurement procedures and a one percent transaction fee for MyFloridaMarketPlace, to be approximately \$41 million per year.¹⁶

The cost requirements outlined by the DEP are already incurred by contractors in order to conduct business according to ss. 376.3071, 376.30711, and 376.30713, F.S.; however, the existing requirements are being restated in rule, requiring ratification by the Legislature.

III. Effect of Proposed Changes:

Section 1 ratifies Rules 62-772.300 and 62-772.400, F.A.C., pursuant to s. 120.541(3), F.S. The bill specifies that upon becoming law, the enactment and the effective dates of the bill are to be noted in the Florida Administrative Code or the Florida Administrative Register, as appropriate.

¹⁴ Section 120.541(2)(a)1.-3., F.S.

¹⁵ DEP, Statement of Estimated Regulatory Cost, Rule 62-772.300, F.A.C. (on file with the Senate Environmental Preservation and Conservation Committee).

¹⁶ DEP, Statement of Estimated Regulatory Cost, Rule 62-772.400, F.A.C. (on file with the Senate Environmental Preservation and Conservation Committee).

The bill specifies that it serves no other purpose other than to ratify Rules 62-772.300 and 62-772.400, F.A.C.

Section 2 provides the act takes effect upon becoming 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:

The cost estimated by the DEP to implement the rules is approximately \$46 million per year. The only new cost associated with the ratification of the rules is the 1 percent MyFloridaMarketPlace transaction fee, which was not previously paid by contractors to participate in the petroleum preapproval program. The remaining costs (approximately \$45 million) are already incurred by contractors in order to conduct business and are not considered new costs.

C. Government Sector Impact:

The DEP estimates a fiscal impact of approximately \$80,000 per year for additional personnel in the contracts and procurement office.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

None.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

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