

**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.)

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

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BILL: SB 1018

INTRODUCER: Senator Grimsley

SUBJECT: Contaminated Site Cleanup

DATE: March 2, 2017

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Mitchell	Rogers	EP	<b>Pre-meeting</b>
2.	_____	_____	AEN	_____
3.	_____	_____	AP	_____

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**I. Summary:**

SB 1018 provides for the advancement ahead of priority ranking for the rehabilitation of individual petroleum contaminated sites proposed for redevelopment; the elimination of the 25 percent cost-share requirement for the advanced cleanup of such sites; a \$5 million increase in the annual funding available to the Department of Environmental Protection (DEP) for petroleum rehabilitation advance cleanup work; advanced site assessments for certain sites contaminated with drycleaning solvents; and the supplementation of voluntary cleanup tax credit funding by funds not pledged by the Brownfield Areas Loan Guarantee Council for loan guarantees for brownfield redevelopment projects.

The bill has a \$5 million recurring impact to the Inland Protection Trust Fund and a \$5 million impact to either the General Revenue Fund or the Inland Protection Trust Fund.

**II. Present Situation:**

**Petroleum Restoration Program**

Petroleum is stored in thousands of underground and aboveground storage tank systems throughout Florida. Releases of petroleum into the environment may occur as a result of accidental spills, storage tank system leaks, or poor maintenance practices.<sup>1</sup> These discharges pose a significant threat to groundwater quality, and Florida relies on groundwater for 90 percent of its drinking water.<sup>2</sup> The identification and cleanup of petroleum contamination is particularly

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<sup>1</sup> Florida Department of Environmental Protection, Division of Waste Management, *Petroleum Contamination Cleanup and Discharge Prevention Programs* (2012),

[http://www.dep.state.fl.us/waste/quick\\_topics/publications/pss/pcp/geninfo/2012Program\\_Briefing\\_11Jan12.pdf](http://www.dep.state.fl.us/waste/quick_topics/publications/pss/pcp/geninfo/2012Program_Briefing_11Jan12.pdf).

<sup>2</sup> *Id.*

challenging due to Florida's diverse geology, diverse water systems, and the complex dynamics between contaminants and the environment.<sup>3</sup>

In 1983, Florida began enacting legislation to regulate underground and aboveground storage tank systems in an effort to protect Florida's groundwater from past and future petroleum releases.<sup>4</sup> The Department of Environmental Protection (DEP) is responsible for regulating these storage tank systems. In 1986, the Legislature enacted the State Underground Petroleum Environmental Response Act (SUPER Act) to address the pollution problems caused by leaking underground petroleum storage systems.<sup>5</sup> The SUPER Act authorized the Department to establish criteria for the prioritization, assessment and cleanup, and reimbursement for cleanup of contaminated areas, which led to the creation of the Petroleum Restoration Program (Restoration Program). The Restoration Program establishes the requirements and procedures for cleaning up contaminated land as well as the circumstances under which the state will pay for the cleanup.

### **Abandoned Tank Restoration Program**

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 was subsequently extended to 1992, then 1994. In 1996, the Legislature waived the deadline indefinitely for owners who are unable to pay for the closure of abandoned tanks. To be eligible for the ATRP, applicants must certify that the petroleum system has not stored petroleum products for consumption, use, or sale since March 1, 1990.<sup>6</sup> In 2016, the Legislature eliminated the June 30, 1996 application deadline.<sup>7</sup>

### **Site Rehabilitation**

Florida law requires land contaminated by petroleum to be cleaned up, or rehabilitated, so that the concentration of each contaminant in the ground is below a certain level.<sup>8</sup> These levels are known as Cleanup Target Levels (CTLs).<sup>9</sup> Once the CTLs for a contaminated site<sup>10</sup> has been attained, rehabilitation is complete and the site may be closed. When a site is closed, no further cleanup action is required unless the contaminant levels increase above the CTLs or another discharge occurs.<sup>11</sup>

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<sup>3</sup> *Id.*

<sup>4</sup> Ch. 83-310, Laws of Fla.

<sup>5</sup> Ch. 86-159, Laws of Fla.

<sup>6</sup> Chapter 89-188, Laws of Fla.

<sup>7</sup> Section 376.305(6), F.S.

<sup>8</sup> Sections 376.301(8) and 376.3071(5), F.S.

<sup>9</sup> *Id.*

<sup>10</sup> A "site" is any contiguous land, sediment, surface water, or groundwater area upon or into which a discharge of petroleum or petroleum products has occurred or for which evidence exists that such a discharge has occurred. The site is the full extent of the contamination, regardless of property boundaries.

<sup>11</sup> Florida Department of Environmental Protection, Division of Waste Management, *Petroleum Contamination Cleanup and Discharge Prevention Programs* (2012),

[http://www.dep.state.fl.us/waste/quick\\_topics/publications/pss/pcp/geninfo/2012Program\\_Briefing\\_11Jan12.pdf](http://www.dep.state.fl.us/waste/quick_topics/publications/pss/pcp/geninfo/2012Program_Briefing_11Jan12.pdf).

### **State Funding Assistance for Rehabilitation**

In 2012, the average cost to rehabilitate a site was approximately \$400,000, but some sites may cost millions of dollars to rehabilitate.<sup>12</sup> Under Florida law, an owner of contaminated land (site owner) is responsible for rehabilitating the land unless the site owner can show that the contamination resulted from the activities of a previous owner or other third party (responsible party), who is then responsible.<sup>13</sup> Over the years, different eligibility programs have been implemented to provide state financial assistance to certain site owners and responsible parties for site rehabilitation.

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<sup>12</sup> *Id.*

<sup>13</sup> Section 376.308, F.S.

To receive rehabilitation funding assistance, a site must qualify under one of these programs, which are outlined in the following table:

<b>Table 1: State Assisted Petroleum Cleanup Eligibility Programs</b>		
<b>Program Name</b>	<b>Program Dates</b>	<b>Program Description</b>
<b>Early Detection Incentive Program (EDI)</b> (s. 376.30371(9), F.S.)	Discharges must have been reported between July 1, 1986, and December 31, 1988, to be eligible	<ul style="list-style-type: none"> <li>• First state-assisted cleanup program</li> <li>• 100 percent state funding for cleanup if site owners reported releases</li> <li>• Originally gave site owners the option of conducting cleanup themselves and receiving reimbursement from the state or having the state conduct the cleanup in priority order</li> <li>• Reimbursement option was phased out, so all cleanups are now conducted by the state</li> </ul>
<b>Petroleum Liability and Restoration Insurance Program (PLRIP)</b> (s. 376.3072, F.S.)	Discharges must have been reported between January 1, 1989, and December 31, 1998, to be eligible	<ul style="list-style-type: none"> <li>• Required facilities to purchase third party liability insurance to be eligible</li> <li>• Provides varying amounts of state-funded site restoration coverage</li> </ul>
<b>Abandoned Tank Restoration Program (ATRP)</b> (s. 376.305(6), F.S.)	For petroleum storage systems that have not stored petroleum since March 1, 1990 <sup>14</sup>	Provides 100 percent state funding for cleanup, less deductible, at facilities that had out-of-service or abandoned tanks as of March 1990
<b>Innocent Victim Petroleum Storage System Restoration Program</b> (s. 376.30715, F.S.)	The application period began on July 1, 2005, and remains open	Provides 100 percent state funding for a site acquired before July 1, 1990, that ceased operating as a petroleum storage or retail business before January 1, 1985
<b>Petroleum Cleanup Participation Program (PCPP)</b> (s. 376.3071(13), F.S.)	Remains open	<ul style="list-style-type: none"> <li>• Created to provide financial assistance for sites that had missed all previous opportunities</li> <li>• Only discharges that occurred before 1995 were eligible</li> <li>• Site owner or responsible party must pay 25 percent of cleanup costs<sup>15</sup></li> <li>• Originally had a \$300,000 cap on the amount of coverage, which was raised to \$400,000 beginning July 1, 2008</li> </ul>
<b>Consent Order (aka “Hardship” or “Indigent”)</b> (s. 376.3071(7)(c), F.S.)	The program began in 1986 and remains open	<ul style="list-style-type: none"> <li>• Created to provide financial assistance under certain circumstances for sites that the Department initiates an enforcement action to clean up</li> <li>• An agreement is formed whereby the Department conducts the cleanup and the site owner or responsible party pays for a portion of the costs</li> </ul>

<sup>14</sup> The ATRP originally had a one-year application period, but the deadline was extended. The deadline is now waived indefinitely for site owners who are financially unable to pay for the closure of abandoned tanks. Section 376.305(6)(b), F.S.

<sup>15</sup> The 25 percent copay requirement can be reduced or eliminated if the site owner and all responsible parties demonstrate that they are financially unable to comply. Section 376.3071(13)(c), F.S.

As of October 2015, there are 19,128 sites eligible for state funding through one of the above programs.<sup>16</sup> Of these, approximately 8,603 have been rehabilitated and closed, approximately 5,576 are currently undergoing some phase of rehabilitation, and approximately 4,949 await rehabilitation.<sup>17</sup>

### **Inland Protection Trust Fund**

To fund the cleanup of contaminated sites, the SUPER Act created the Inland Protection Trust Fund (IPTF).<sup>18</sup> The IPTF is funded by an excise tax per barrel on petroleum and petroleum products in or imported into the state.<sup>19</sup> The amount of the excise tax per barrel is determined by a formula, which is dependent upon the unobligated balance of the IPTF.<sup>20</sup> Each year, approximately \$200 million from the excise tax is deposited into the IPTF to fund restoration of petroleum contaminated sites.<sup>21</sup> At present, the excise tax is 80 cents per barrel.<sup>22</sup>

Funding for rehabilitation of a site is based on a relative risk scoring system. Each funding-eligible site receives a numeric score based on the threat the site contamination poses to the environment or to human health, safety, or welfare.<sup>23</sup> Sites currently in the Restoration Program range in score from 5 to 115 points, with a score of 115 representing a substantial threat and a score of 5 representing a very low threat.<sup>24</sup> Sites are rehabilitated in priority order beginning with the highest score, with funding based on available budget.<sup>25</sup> The Department sets the priority score funding threshold, which is the minimum score a site must be assigned to receive restoration funding at a particular point in time.<sup>26</sup>

### **Expediting Site Rehabilitation**

Eligible contaminated sites typically receive state rehabilitation funding in priority order based on their numeric score. However, there are some programs that allow sites to receive funding for rehabilitation or site closure out of priority score order, as long as the sites are eligible under one of the programs in Table 1. Two of these programs are Advanced Cleanup and Low Scored Site Initiative.

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<sup>16</sup> DEP, *2016 House Bill 697 Agency Analysis*, (December 15, 2015) (on file with the Senate Committee on Environmental Preservation and Conservation).

<sup>17</sup> *Id.*

<sup>18</sup> Section 376.3071(3)-(4), F.S.

<sup>19</sup> Sections 206.9935(3) and 376.3071(6), F.S.

<sup>20</sup> The amount of the excise tax per barrel is based on the following formula: 30 cents if the unobligated balance is between \$100 million and \$150 million; 60 cents if the unobligated balance is between \$50 million and \$100 million; and 80 cents if the unobligated balance is \$50 million or less. Section 206.9935(3), F.S.

<sup>21</sup> DEP, *2016 House Bill 697 Agency Analysis*, (December 15, 2015) (on file with the Senate Committee on Environmental Preservation and Conservation).

<sup>22</sup> Department of Revenue, *Pollutants Tax*, <http://dor.myflorida.com/dor/taxes/fuel/pollutants.html> (last visited March 11, 2017).

<sup>23</sup> Section 376.3071(5), F.S., Fla. Admin. Code R. 62-771.100.

<sup>24</sup> DEP, *2016 House Bill 697 Agency Analysis*, (December 15, 2015) (on file with the Senate Committee on Environmental Preservation and Conservation).

<sup>25</sup> Fla. Admin. Code R. 62-771.300.

<sup>26</sup> DEP, *2015 Senate Bill 314 Agency Analysis*, (Mar. 13, 2015) (on file with the Senate Committee on Environmental Preservation and Conservation).

### *Advanced Cleanup*

The advanced cleanup (formerly known as Preapproved Advanced Cleanup) of petroleum contaminated sites was begun in 1996 to allow an eligible petroleum contamination site to receive state rehabilitation funding even if the site's priority score did not fall within the threshold currently being funded.<sup>27</sup> The purpose of creating the advanced cleanup process was to facilitate property transactions and public works projects on contaminated sites.<sup>28</sup> To obtain authorization for advanced cleanup, a site must be eligible for state restoration funding under the Early Detection Incentive Program (EDI), the Petroleum Liability and Restoration Insurance Program (PLRIP), or the Abandoned Tank Restoration Program (ATRP).<sup>29</sup>

Advanced cleanup is also available for discharges eligible for restoration funding under the Petroleum Cleanup Participation Program (PCPP) for the state's cost share of site rehabilitation.<sup>30</sup> An application for advanced cleanup for a discharge eligible under PCPP must include a cost-sharing commitment for funding under the advanced cleanup criteria in addition to the 25 percent copayment requirement of the PCPP.

To apply for advanced cleanup of petroleum contamination, a facility owner or operator or the person otherwise responsible for site rehabilitation must submit an advanced cleanup application between May 1 and June 30 for the fiscal year beginning July 1 or between November 1 and December 31. The application must consist of:

- A commitment to pay 25 percent or more of the total cleanup cost deemed recoverable along with proof of the ability to pay the cost share. Applications submitted for cleanup may be submitted in one of two formats to meet the cost-share requirement:
  - The applicant may use a commitment to pay, a demonstrated cost savings to DEP, or both to meet the requirement; or
  - For an application relying on a demonstrated cost savings to DEP, the applicant shall, in conjunction with the proposed agency term contractor, establish and provide in the application a 25 percent cost savings<sup>31</sup> to DEP for cleanup of the site under the application compared to the cost of cleanup of the same site using the current rates provide to DEP by the proposed agency term contractor. DEP shall determine whether the cost savings demonstration is acceptable.
- A nonrefundable review fee of \$250 to cover DEP's administrative costs to review the application;
- A limited contamination assessment report;
- A proposed course of action; and
- A DEP site access agreement, or similar agreement.

DEP ranks applications based on the percentage of cost-sharing commitment proposed by the applicant, with the highest ranking given to the applicant who proposes the highest percentage of cost sharing. In some circumstances where applicants propose the same percentage of cost

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<sup>27</sup> Section 376.30713(1), F.S.

<sup>28</sup> *Id.*

<sup>29</sup> Section 376.30713(1)(d), F.S.

<sup>30</sup> For PCPP sites, Advanced Cleanup is only available for discharge cleanup if the 25 percent copay requirement of PCPP has not been reduced or eliminated pursuant to s. 376.3071(13)(d). s. 376.30713(1)(d), F.S.

<sup>31</sup> For aggregate applications of five sites or more the percentage is not specified.

sharing and funds are not available to commit to all of such proposals, applicants may raise their individual cost share commitments and DEP will rerank the applications.<sup>32</sup>

DEP negotiates with applicants based on DEP's rankings. If DEP and an applicant agree on the course of action, DEP may enter into a contract with the applicant and negotiate the terms and conditions of the contract. Advanced cleanup must be conducted pursuant to requirements of the Inland Protection Trust Fund and DEP rule. If the terms of the advanced cleanup contract are not fulfilled, the applicant forfeits any right to future payment for any site rehabilitation work conducted under the contract.<sup>33</sup>

DEP may enter into contracts for a total of up to \$25 million of advanced cleanup work in each fiscal year.<sup>34</sup> All funds collected by DEP pursuant contracts for advanced cleanup work must be deposited into the Inland Protection Trust Fund to be used in the advanced cleanup of petroleum contaminated sites.<sup>35</sup>

### ***Low Scored Site Initiative***

The Low Scored Site Initiative (LSSI) was created to expedite the assessment and closure of sites that contain minimal contamination and that are not a threat to human health or the environment. Low scored sites have a priority ranking score of 29 points or less.<sup>36</sup> These sites are eligible for state funds of up to \$70,000 each for assessment and limited remediation. DEP may not encumber more than \$15 million for LSSI in any fiscal year.<sup>37</sup>

### **Drycleaning Solvent Cleanup Program**

The Florida Legislature has established a state-funded program to cleanup properties that are contaminated as a result of operations of a drycleaning facility or wholesale supply facility (Ch. 376, F.S.). The program is administered by DEP. The legislation was supported by the drycleaning industry to address environmental, economic, and liability issues resulting from drycleaning solvent contamination. The program limits the liability of the owner, operator and real property owner of drycleaning or wholesale supply facilities for cleanup of drycleaning solvent contamination if the parties meet the conditions stated in the law.<sup>38</sup>

### ***Funding: Taxes and Fees***

A fund has been established to pay for costs related to the cleanup of these properties. The source of revenue for the fund is a gross receipts sales tax, a tax on perchloroethylene sold to or imported by a drycleaning facility, and annual registration fees.<sup>39</sup>

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<sup>32</sup> Section 376.30713(2)(b), F.S.

<sup>33</sup> Section 376.30713(3), F.S.

<sup>34</sup> Section 376.30713(4), F.S.

<sup>35</sup> Section 376.30713(5), F.S.

<sup>36</sup> Section 376.3071(12)(b), F.S.

<sup>37</sup> *Id.*

<sup>38</sup> Florida Department of Environmental Protection, *Dry Cleaning Solvent Cleanup Program*,

[http://www.dep.state.fl.us/waste/quick\\_topics/publications/wc/drycleaning/information/General-Information\\_04Jan17.pdf](http://www.dep.state.fl.us/waste/quick_topics/publications/wc/drycleaning/information/General-Information_04Jan17.pdf)

<sup>39</sup> *Id.*

### ***Program Application***

The application period for entry into the Drycleaning Solvent Cleanup Program ended December 31, 1998. Applications to the Drycleaning Solvent Cleanup Program are no longer being accepted.<sup>40</sup>

### ***Eligibility and Priority Ranking***

Section 376.3078(3), F.S., identifies certain criteria that must be met in order for a site to be eligible, and to remain eligible, for the program. Eligibility in this program does not relieve the owner, operator, or real property owner from federal actions or from current waste management requirements. The score that the site receives determines the order in which the Department will begin site rehabilitation activities. For eligible sites, costs incurred by the state for site rehabilitation will be absorbed at the expense of the fund minus a deductible amount as specified in the law.<sup>41</sup>

### ***Scoring System***

DEP uses a scoring system to rank and prioritize eligible sites for rehabilitation. Sites are assigned points based upon statutory point values for each site's characteristics.<sup>42</sup> DEP has developed a priority list of sites for rehabilitation based upon the scoring system, with ranking commensurate with the size of a site's score.<sup>43</sup> Regardless of scoring, however, any site having a condition that exhibits a fire or explosion hazard is highest priority for rehabilitation. The following site characteristics are assigned points in the scoring system:

- The threat the site poses to drinking water supplies based on;
  - The size of the largest uncontaminated public water supply well located within 1 mile of the site;
  - The size of the largest uncontaminated private drinking water well located within 1 mile of the site;
  - The size of the largest contaminated public water supply well located within 1 mile of the site;
  - The size of the largest contaminated private drinking water well located within 1 mile of the site;
  - The proximity of both uncontaminated and contaminated water wells to the site;
- The vulnerability of groundwater to contamination from the site;
- The Aquifer Classification for the aquifer area where the site is located;
- The concentrations of chlorinated drycleaning solvents in the soil of the site; and
- The location of the site if it is within:
  - One half mile of an uncontaminated surface water body used as a permitted public water system;
  - One half mile of an Outstanding Florida Water body;
  - One quarter mile of a surface water body; or
  - One quarter mile of an area of critical state concern.

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<sup>40</sup> *Id.*

<sup>41</sup> Section 376.3078(3)(e), F.S.

<sup>42</sup> Section 376.3078(7), F.S.

<sup>43</sup> Section 376.3078(8), F.S.



Scored sites are incorporated into the priority list on a quarterly basis with the ranking of all sites adjusted accordingly. Assignments for program tasks to be conducted by state contractors are made according to the current priority list and based on criteria DEP determines is necessary to achieve cost-effective site rehabilitation. Regardless of the score of a site, DEP may initiate emergency action for those sites that are a threat to human health and safety, or where failure to prevent migration of drycleaning solvents would cause irreversible damage to the environment.<sup>44</sup>

***Contaminated Site Cleanup Criteria***

DEP rules establish criteria for the purpose of determining, on a site-specific basis, a site rehabilitation program and the level at which a site rehabilitation program may be deemed completed. These rules incorporate to the maximum extent feasible, risk-based corrective action principles to achieve protection of human health and safety and the environment in a cost-effective manner.<sup>45</sup>

***Average Costs and Budget Projections***

The cost for cleanup at a site varies greatly depending on the extent of contamination. Typically, sites that transition quickly from assessment to no further action (closure), have lower average costs than sites that remain in the cleanup process. The below chart includes the average costs per phase of cleanup for no further action (closed) sites, and the average costs per phase for sites that are still undergoing cleanup (active) sites. This provides the range in costs associated with closed and active sites.

Phase of Cleanup	Assessment	Design	Remedial Action	Operation & Maintenance	Monitoring	Interim Remedial Measure	Total Average Cost
Closed Sites	\$96,038	\$20,516	\$98,817	\$84,160	\$31,347	\$59,954	\$184,469
Active Sites	\$147,211	\$55,598	\$257,120	\$212,836	\$49,390	\$86,511	\$578,605

Annual budget projections require the Drycleaning Solvent Cleanup Program to track average costs associated with each phase of cleanup, and to anticipate the number of sites that will transition from one phase of cleanup to the next. Based on a dataset of 322 sites, where the remedy has been selected or the site has been closed, approximately 72 percent of all sites will require active remediation to reach closure, 10 percent will require monitoring only to reach closure, and 18 percent will meet the requirements for no further action following the site assessment. The average cost for site closure will depend on the type of closure achieved (active remediation, monitoring only, or no further action), as shown below.<sup>46</sup>

<sup>44</sup> Section 376.3078(7) and (8), F.S.

<sup>45</sup> Fla. Admin. Code Ch. 62-780.

<sup>46</sup> Email message dated March 12, 2017, from Wayne Kiger, Director’s Office, Division of Waste Management, Florida Department of Environmental Protection (on file with the Senate Committee on Environmental Preservation and Conservation).

Sites Issued a Site Rehabilitation Completion Order (Closure) following:	Average Cost
Active Remediation	\$306,462
Monitoring Only	\$138,308
No Further Action	\$62,419

**The Brownfields Redevelopment Act**

The term “brownfield” was originally coined in the 1970s and referred to any previously developed property, regardless of any contamination issues. The term as it is currently used is defined by the U.S. Environmental Protection Agency (EPA) as, “real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.”<sup>47</sup> In 1995, the EPA created the Brownfields Program in order to manage contaminated property through site remediation and redevelopment. The program was designed to provide local communities access to federal funds allocated for redevelopment, including environmental assessments and cleanups, environmental health studies, and environmental training programs.<sup>48</sup>

In 1997, the Florida Legislature enacted the Brownfields Redevelopment Act (Act).<sup>49</sup> The Act provides financial and regulatory incentives to encourage voluntary remediation and redevelopment of brownfield sites in order to improve public health and reduce environmental hazards.<sup>50</sup> The Act provides liability protection for program participants who have not caused or contributed to the contamination of a brownfield site on or after July 1, 1997.<sup>51</sup>

***Voluntary Cleanup Tax Credits***

In 1998, the Florida Legislature established the Voluntary Cleanup Tax Credit (VCTC) Program to provide an incentive for the voluntary cleanup of drycleaning solvent-contaminated sites and brownfield sites in designated brownfield areas (s. 376.30781, F.S.). At these sites, a tax credit of 50 percent is allowed for the cost of voluntary cleanup activity that is integral to site rehabilitation, with a maximum of \$500,000 per site per year. Additionally, at brownfield sites in designated brownfield areas, a one-time 50 percent tax credit is allowed for solid waste removal, with a maximum of \$500,000 per site. Tax credits may be applied to state corporate income tax.

<sup>47</sup> Robert A. Jones and William F. Welsh, Michigan Brownfield Redevelopment Innovation: Two Decades of Success 2 (Sept. 2010), available at <http://www.miseagrant.umich.edu/downloads/focus/brownfields/10-201-EMU-Final-Report.pdf> (last visited March 10, 2017).

<sup>48</sup> The Florida Brownfields Association, Brownfields 101 2, available at <http://c.ymcdn.com/sites/www.floridabrownfields.org/resource/resmgr/imported/Brownfields101.pdf> (last visited March 10, 2017).

<sup>49</sup> Ch. 97-173, s. 1, Laws of Fla.

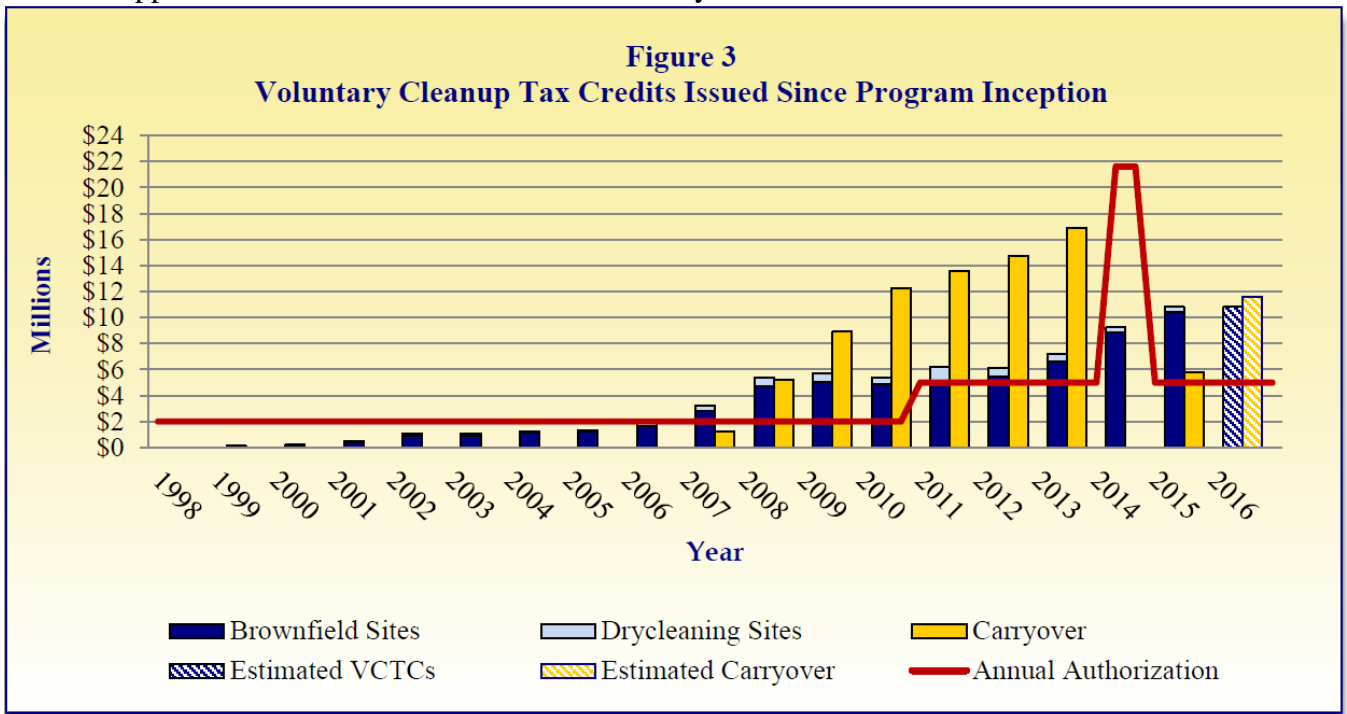
<sup>50</sup> DEP, Florida Brownfields Redevelopment Act-1998 Annual Report 1 (1998), available at [http://www.dep.state.fl.us/waste/quick\\_topics/publications/wc/brownfields/leginfo/1998/98final.pdf](http://www.dep.state.fl.us/waste/quick_topics/publications/wc/brownfields/leginfo/1998/98final.pdf) (last visited March 10, 2017).

<sup>51</sup> Section 376.82, F.S.

Effective July 1, 2011, the Legislature increased the annual tax credit authorization from \$2 million to \$5 million. The VCTC Program has approved \$66,875,735 in tax credits since it began. However, approved applications must wait until sufficient credits exist to claim them.<sup>52</sup>

Effective July 1, 2015, the Legislature approved a one-time VCTC authorization of \$21.6 million. This authorization was only effective through June 30, 2016. On July 1, 2016, the annual VCTC authorization returned to \$5 million per year.<sup>53</sup> The additional authorization allowed DEP to issue certificates for all approved tax credits, eliminating the backlog.<sup>54</sup>

The Brownfields and VCTC Programs have been successful in promoting the cleanup and redevelopment of contaminated, underutilized properties. The one-time increase in the annual authorized VCTC funding level addressed all approved tax credits through June 30, 2015. However, as shown in the figure below, since 2007, the approved tax credits have exceeded the available authorization, and since 2012, the approved tax credits have averaged more than \$8.3 million per year. If the dollar amount of future tax credit applications remains consistent with the previous 5 years, the backlog for un-issued tax credits will continue to grow. As of the issuance of the August 2016 Brownfields Redevelopment Program Report, DEP anticipated, with the \$5 million authorization available July 1, 2016, it will issue tax credit certificates to 33 of the 99 applicants for 2015 expenditures. Sixty-four applicants will receive their tax credits in July 2017 and nine applicants will receive their tax credits in July 2018.<sup>55</sup>



<sup>52</sup> DEP, *Florida Brownfields Redevelopment Program Annual Report* (2016), [http://dep.state.fl.us/waste/quick\\_topics/publications/wc/brownfields/AnnualReport/2016/2015-16\\_FDEP\\_Annual.pdf](http://dep.state.fl.us/waste/quick_topics/publications/wc/brownfields/AnnualReport/2016/2015-16_FDEP_Annual.pdf)

<sup>53</sup> Section 376.30781(4), F.S.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

### ***Brownfield Areas Loan Guarantees***

The Brownfield Areas Loan Guarantee Program provides a limited state guaranty of up to 5 years of loan guarantees or loan loss reserves issued pursuant to law through partnership agreements with local governments, financial institutions, and others associated with the redevelopment of brownfield areas pursuant to the Brownfields Redevelopment Act. The limited state loan guaranty applies only to 50 percent of the primary lenders' loans for redevelopment in brownfield areas, unless the project is for affordable housing or a new health care facility or health care provider, in which case the guaranty applies to up to 75 percent of the primary lender's loan. The Brownfields Area Loan Guaranty Council, established in s. 376.86, F.S., reviews and approves or denies guaranty requests.<sup>56</sup> The Council has approved two loan guarantees since the inception of the Program. Pursuant to s. 376.86, F.S., the state may have up to \$5 million of loan guarantees in place at a time. The full \$5 million became available for other guarantees on July 1, 2012, and is currently available.<sup>57</sup>

### **III. Effect of Proposed Changes:**

#### **Advanced Cleanup - Property Redevelopment**

SB 1018 adds legislative findings regarding the rehabilitation of a site contaminated by discharges of petroleum or petroleum products in advance of its priority ranking. The bill contains findings that the inability to advance a site's priority ranking may substantially impede or prohibit property redevelopment and that it is in the public interest and of substantial economic benefit to the state to advance site rehabilitation on a limited basis in order to encourage property redevelopment.

The bill creates a separate procedure and criteria for the advancement ahead of its priority ranking of an individual contamination site slated for property redevelopment. The submittal of advanced cleanup applications for such sites are not limited to the two annual application periods from May 1 through June 30 and from November 1 through December 31, as are all other advanced cleanup applications, but are instead accepted on a first-come, first-served basis. Applicants for the advanced cleanup of individual contamination sites slated for redevelopment are also not subject to the 25 percent cost share copayment commitment required of other advanced cleanup applicants provided they demonstrate, as deemed acceptable by DEP, that the following have been included in their applications for cleanup:

- Certification that:
  - The applicant has consulted with the local government having jurisdiction over the area about the proposed redevelopment of the site;
  - The local government is in agreement with or approves the proposed redevelopment; and
  - The proposed redevelopment complies with applicable laws and requirements for such redevelopment; and
- A demonstrated reasonable assurance that the applicant has sufficient financial resources to implement and complete the redevelopment project.

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<sup>56</sup> Section 376.86, F.S.

<sup>57</sup> *Id.*

The certifications required to be included in the site redevelopment advanced cleanup application are sufficient if the application is accompanied by one or more of the following:

- A legally recorded or officially approved land use or site plan or a reference to such recorded or approved use or plan;
- A development order or approval;
- A building permit;
- A similar official document issued by the local government which reflects the local government's approval of the proposed redevelopment of the site; or
- A letter from the local government which describes the proposed redevelopment of the site and expresses the local government's agreement with or approval of the proposed redevelopment.

The bill also increases the dollar amount of the contracts for advance cleanup work into which DEP is authorized to enter from \$25 million to a total of \$30 million in each fiscal year. DEP is authorized to designate up to \$5 million of those funds for the advance cleanup of individual contaminated sites that meet the criteria in the bill for redevelopment. A single facility or applicant for advance cleanup of an individual contaminated site slated for redevelopment may not be approved for more than \$1 million of cleanup activity per fiscal year.

#### **Advanced Site Assessment - Drycleaning**

SB 1018 authorizes DEP, regardless of the priority score of a site, to initiate site assessment and remediation activities at sites that, in DEP's judgment, are a threat to human health and safety or where failure to prevent migration of drycleaning solvents would cause irreversible damage to the environment. The bill makes a finding that it is in the public interest and of substantial environmental and economic benefit to the state to conduct site assessments on a limited basis at sites contaminated with drycleaning solvents in advance of the priority ranking of contaminated sites.

The bill provides that a property owner who is eligible for site rehabilitation under the drycleaning solvent cleanup program may request, and DEP may authorize, an advanced site assessment if the following criteria are met:

- Information from the site assessment would be sufficient for DEP to better evaluate the actual risk of the contamination, reducing the risk to public health and the environment;
- The property owner agrees to:
  - Implement the appropriate institutional controls at the time the owner requests the advanced site assessment; and
  - Upon completion of the cleanup, implement and maintain the required institutional controls, or a combination of institutional and engineering controls, when the site meets site rehabilitation criteria for closure with controls in accordance with DEP rules for site rehabilitation;
- Current conditions at the site allow the site assessment to be conducted in a manner that will result in cost savings to the Water Quality Assurance Trust Fund;
- The annual Water Quality Assurance Trust Fund appropriation for the drycleaning solvent cleanup program is sufficient to pay for the site assessment; and

- The property owner provides access to the site and has paid the appropriate deductible amount depending on when contamination was reported to DEP as part of a completed application for the Drycleaning Contamination Cleanup Program to rehabilitate the drycleaning facility.

The bill also provides that a site may be assessed out of priority ranking order at DEP's discretion when the site assessment will provide a cost savings to the program.

The bill requires an advanced site assessment under the drycleaning solvent cleanup program to incorporate risk-based corrective action principles to achieve protection of human health and safety and the environment in a cost-effective manner, in accordance with DEP rules for site rehabilitation. The advanced site assessment must also be sufficient to estimate the cost of cleanup, the proposed course of action for site cleanup, and that the site is appropriate for one of the following:

- Remedial action at the site to mitigate risks that, in the judgment of DEP, are a threat to human health or where failure to prevent migration of drycleaning solvents would cause irreversible damage to the environment;
- Additional groundwater monitoring at the site to support natural attenuation monitoring or long-term groundwater monitoring; or
- A recommendation of "no further action," with or without institutional controls or institutional and engineering controls, if the site meets the "no further action" criteria in accordance with DEP rules for site rehabilitation.

If the site is not appropriate for one of these actions, it is not eligible for advanced site assessment. DEP must notify the property owner in writing of this determination and return the site to the priority ranking order based on its priority score.

The bill requires that advanced site assessment program tasks be assigned by the drycleaning solvent cleanup program. Task assignment must be based on:

- The potential for the development of new site assessment information to allow DEP to better evaluate the actual risk of the contamination;
- Compatibility with appropriate institutional controls or a combination of institutional and engineering controls;
- The potential for cost savings to the Water Quality Assurance Trust Fund;
- The availability of funds from the annual Water Quality Assurance Trust Fund appropriation for the drycleaning solvent program;
- DEP's determination of contractor logistics;
- Geographical considerations; and
- Other criteria that DEP determines are necessary to achieve the most cost-effective approach.

The bill limits available funding for advanced site assessments to 10 percent of the annual Water Quality Assurance Trust Fund appropriation for the drycleaning solvent cleanup program. The total funds that may be committed to any one site are capped at \$70,000. DEP must prioritize requests for advanced site assessment at sites under the drycleaning solvent cleanup program based on the date of receipt and the environmental and economic value to the state until the available funding for advanced site assessments has been obligated.

**Voluntary Cleanup Tax Credit Funding (VCTC) - Brownfield Areas Loan Guarantees**

The bill provides that funds that are not pledged by the Brownfield Areas Loan Guarantee Council for loan guarantees or loan loss reserves guaranteeing loans for redevelopment projects in brownfield areas must be made available annually for voluntary cleanup corporate income tax credit (VCTC) authorizations that are available for voluntary cleanup activity that is integral to site rehabilitation at drycleaning-solvent-contaminated sites or brownfield sites in designated brownfield areas. DEP must determine, by June 1 of each year, the amount of funds not pledged for such loan guarantees or loan loss reserves that will be made available for VCTC authorizations. Since the Brownfield Areas Loan Guarantee Program has rarely been used and is not currently used, this will result in the entire \$5 million allocated to that program being available to be used to authorize additional VCTC tax credits.

The bill takes effect July 1, 2017.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate as such authority existed on February 1, 1989; or reduce the percentage of state tax shared with counties or municipalities.

**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 bill should have a positive fiscal impact on the private sector. Redevelopment of property will be encouraged by an additional \$5 million available annually for petroleum contamination site rehabilitation for sites proposed for redevelopment. In addition, up to \$5 million in funds not pledged for brownfield project loan guarantees will be available for voluntary cleanup corporate income tax credits for the rehabilitation of dry-cleaning solvent contaminated sites or brownfield sites. Some property owners eligible for site rehabilitation under the drycleaning solvent cleanup program who can demonstrate that

assessment of their sites has the potential to reduce the risk to public health and the environment and realize cost savings to the Water Quality Assurance Trust Fund will be able to advance ahead of their priority ranking for assessment and rehabilitation.

**C. Government Sector Impact:**

The bill will have a \$5 million recurring impact to the Inland Protection Trust Fund. The bill will have a \$5 million recurring impact to either the General Revenue Fund or the Inland Protection Trust Fund by effectively increasing the annual cap on the VCTC.

**VI. Technical Deficiencies:**

Section 3 of the bill amends the Brownfield Areas Loan Guarantee Program. The Brownfield Areas Loan Guarantee Program authorizes DEP to use up to \$5 million from the Inland Protection Trust Fund as a loan guarantee. None of this money has ever been paid out and none is encumbered. The bill states that funds not pledged as loan guarantees must be “made available annually” for the voluntary cleanup tax credit (VCTC). This language appears to anticipate a recurring annual transfer of funds from the Inland Protection Trust Fund to the General Revenue Fund to offset the revenue reduction that occurs when a VCTC is taken against a corporate income tax return. Since loan guarantee funds are not paid out annually, the annual transfer of \$5 million for use in a tax credit program that is fully utilized would result in a new \$5 million cost to the state. Whether the cost is a reimbursement to general revenue from the Inland Protection Trust Fund or whether it is a direct revenue reduction to general revenue is not a significant distinction from a practical budgeting standpoint.

Nothing in the bill language raises the annual cap of \$5 million for these VCTC credits. Staff understands that the intent of the language is to increase the annual limit of the VCTC to \$10 million annually. Staff recommends that the language be revised to amend ss. 220.1845 and 376.30781, F.S., to increase the cap. No other change, including the revision to the loan guarantee, would be necessary. Alternatively, the bill language would need to be amended to (1) properly effectuate a transfer of unencumbered funds from the Inland Protection Trust Fund to the General Revenue Fund and (2) authorize the \$5 million VCTC cap to be exceeded if such a transfer occurs.

There is a drafting incongruity at line 125 of the bill. New sub-sub-paragraph c.(I) and (II) should be moved and inserted between lines 99 and 100 of the bill.

**VII. Related Issues:**

Section 2 of the bill contains language that authorizes DEP to initiate site assessment and remediation activities of drycleaning contaminated sites regardless of the score of a site, which is mixed with the emergency action language. This wording is unclear. If the intent is to allow site reassessment to be accomplished pursuant to subsection (14), this language is unnecessary as (14) makes clear those site assessments that can be accomplished outside the scoring system.

**VIII. Statutes Affected:**

This bill amends sections 376.30713, 376.3078, and 376.86 of the Florida Statutes.



**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.

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

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