

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1075 Inland Protection  
**SPONSOR(S):** Natural Resources & Public Lands Subcommittee: Raburn  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 1438

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Natural Resources & Public Lands Subcommittee	12 Y, 2 N, As CS	Gregory	Shugar
2) Agriculture & Natural Resources Appropriations Subcommittee			
3) Government Accountability Committee			

### SUMMARY ANALYSIS

The Department of Environmental Protection (DEP) regulates underground and aboveground storage tank systems in an effort to protect Florida's groundwater from past and future petroleum releases. DEP may establish criteria for the prioritization, assessment and cleanup, and reimbursement for cleanup of areas contaminated by leaking underground petroleum storage tanks. The Petroleum Restoration Program (PRP) establishes the requirements and procedures for cleaning up contaminated land, as well as the circumstances under which the state will pay for the cleanup. To fund the cleanup of contaminated sites, the Legislature created the Inland Protection Trust Fund (IPTF). An excise tax per barrel on petroleum and petroleum products in or imported into the state funds the IPTF.

In response to significant discharges of drycleaning solvents at drycleaning facilities as part of the normal operation of these facilities, the Legislature created the Drycleaning Solvent Cleanup Program (program) because these discharges pose a significant threat to the quality of the state's groundwater and inland surface waters. The program facilitates remedial measures, provides reliable alternative sources of water, encourages real property owners to voluntarily cleanup property contaminated with drycleaning solvents, and improves the marketability and use of property contaminated with drycleaning solvents. DEP may use funds from the Water Quality Assurance Trust Fund (WQATF) to rehabilitate contaminated facilities. The WQATF receives its funds from taxes collected on gross receipts on all charges imposed by the drycleaning facility or the dry drop-off facility for the drycleaning or laundering of clothing or other fabrics; taxes collected on each gallon of perchloroethylene sold; fees collected for registration of drycleaning facilities and wholesale supply facilities; and all penalties, judgments, recoveries, reimbursements, loans, and other fees and charged under the drycleaning solvent cleanup program.

The bill expands the use of the Inland Protection Trust Fund (IPTF), traditionally used for petroleum contamination site cleanup, for use for the program. Specifically, the bill:

- Requires a minimum of \$150 million to be appropriated annually to the IPTF;
- Directs \$30 million annually from the IPTF to the WQATF for the program;
- Authorizes the WQATF to receive \$30 million annually from the IPTF for use in the program; and
- Requires DEP to create, by rule, a scoring system to assign state contractors to program tasks and sites.

The bill may have a negative fiscal impact on DEP. The bill may have a positive fiscal impact on owners of eligible facilities contaminated with drycleaning solvents. The bill may have negative fiscal impact on petroleum contaminated sites.

The bill provides an effective date of July 1, 2018.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

##### Cleanup for Petroleum Contaminated Sites, Inland Protection Trust Fund

Petroleum is stored in thousands of underground and aboveground storage tank systems throughout Florida. Releases of petroleum into the environment may occur because of accidental spills, storage tank system leaks, or poor maintenance practices. These discharges pose a significant threat to groundwater quality, the source of 90 percent of Florida's drinking water. The identification and cleanup of petroleum contamination is particularly challenging due to the diverse geology in Florida, diverse water systems, and the complex dynamics between contaminants and the environment.

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>1</sup> The Department of Environmental Protection (DEP) regulates these storage tank systems.<sup>2</sup> Further, DEP may establish criteria for the prioritization, assessment and cleanup, and reimbursement for cleanup of areas contaminated by leaking underground petroleum storage tanks.<sup>3</sup> The Petroleum Restoration Program (PRP) establishes the requirements and procedures for cleaning up contaminated land, as well as the circumstances under which the state will pay for the cleanup.<sup>4</sup>

An owner of contaminated land or the person who caused the discharge 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>5</sup> Over the years, DEP has implemented different eligibility programs to provide state financial assistance to certain site owners and responsible parties for site rehabilitation. To receive rehabilitation funding assistance, a site must qualify for one of the Petroleum Cleanup Eligibility Programs:

- Early Detection Incentive Program, s. 376.3071(10), F.S.;
- Petroleum Liability and Restoration Insurance Program, s. 376.3072, F.S.;
- Abandoned Tank Restoration Program, s. 376.305(6), F.S.;
- Innocent Victim Petroleum Storage System Restoration Program, s. 376.30715, F.S.;
- Petroleum Cleanup Participation Program, s. 376.3071(13), F.S.; and
- Consent Order (aka "Hardship" or "Indigent"), s. 376.3071(8)(e), F.S.

To fund the cleanup of contaminated sites, the Legislature created the Inland Protection Trust Fund (IPTF).<sup>6</sup> An excise tax per barrel on petroleum and petroleum products in or imported into the state funds the IPTF.<sup>7</sup> The amount of the excise tax per barrel is determined by a formula that is dependent upon the unobligated balance of the IPTF.<sup>8</sup> In fiscal year 2016 – 2017, the Legislature appropriated \$166,705,572 to the IPTF and \$118 million from the IPTF for petroleum tank cleanup.<sup>9</sup> In fiscal year

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<sup>1</sup> Chapter 83-310, Laws of Fla.

<sup>2</sup> Sections 376.30(3)(a) and 376.303, F.S.

<sup>3</sup> Section 376.3071(5), F.S.

<sup>4</sup> DEP, *Petroleum Restoration Program*, <https://floridadep.gov/waste/petroleum-restoration> (last visited January 14, 2018).

<sup>5</sup> Section 376.308, F.S.

<sup>6</sup> Sections 376.3071(3) and (4), F.S.

<sup>7</sup> Sections 206.9935(3) and 376.3071(7), F.S.

<sup>8</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 above \$50 million, but below \$100 million; and 80 cents if the unobligated balance is \$50 million or less; s. 206.9935(3), F.S.

<sup>9</sup> Chapter 2016-66, s. 1671, Laws of Fla.

2017 – 2018, the Legislature appropriated \$160,667,360 to the IPTF and \$115 million from the IPTF for petroleum tank cleanup.<sup>10</sup>

DEP provides funding for site rehabilitation on a relative risk scoring system.<sup>11</sup> 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>12</sup> Sites currently in the PRP range in score from five to 115 points. DEP funds the rehabilitation of sites in priority order beginning with the highest score, with available budget.<sup>13</sup> DEP sets the priority score funding threshold, which is the minimum score a site must achieve to receive restoration funding at a particular point in time. The threshold is periodically raised or lowered depending on the PRP's current budget, projected expenditures for the remainder of the fiscal year, and the next fiscal year's anticipated budget of the PRP. Currently, the threshold is set at 20 points.<sup>14</sup> DEP directs state contractors to conduct rehabilitation tasks based on its rules.<sup>15</sup>

As of January 2018, 19,332 eligible discharges existed throughout the state. DEP completed cleanup of 9,903 sites. DEP is currently working on 6,610 discharges in the following discharges categories: Assessment - 3,986; Active Remediation - 497; Remedial Action Plans - 725; and Passive Remediation - 1,402.<sup>16</sup>

### Drycleaning Solvent Cleanup, Water Quality Assurance Trust Fund

Drycleaning solvents are all nonaqueous solvents used in the cleaning of clothing and other fabrics. Solvents may include perchloroethylene (also known as tetrachloroethylene) and petroleum-based solvents, and their breakdown products.<sup>17</sup> Drycleaning solvents can be safely used if managed properly. However, drycleaning solvents can harm people, animals, and plants if released into the environment by contaminating soil and water.<sup>18</sup>

In response to significant discharges of drycleaning solvents at drycleaning facilities as part of the normal operation of these facilities, the Legislature created the Drycleaning Solvent Cleanup Program (program) because these discharges pose a significant threat to the quality of the state's groundwater and inland surface water.<sup>19</sup> The program facilitates remedial measures, provides reliable alternative sources of water, encourages real property owners to voluntarily cleanup property contaminated with drycleaning solvents, and improves the marketability and use of property contaminated with drycleaning solvents.<sup>20</sup>

The program pays for the cleanup of properties contaminated from the operation of drycleaning facilities or wholesale supply facilities. DEP may use funds from the Water Quality Assurance Trust Fund (WQATF) to rehabilitate contaminated facilities.<sup>21</sup> The WQATF receives its funds from taxes collected on gross receipts on all charges imposed by the drycleaning facility or the dry drop-off facility for the drycleaning or laundering of clothing or other fabrics; taxes collected on each gallon of perchloroethylene sold; fees collected for registration of drycleaning facilities and wholesale supply facilities; and all penalties, judgments, recoveries, reimbursements, loans, and other fees and charged

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<sup>10</sup> Chapter 2017-70, s. 1673, Laws of Fla.

<sup>11</sup> Sections 376.3071(5)(a) and (6), F.S.

<sup>12</sup> Rule 62-771.100, F.A.C.

<sup>13</sup> Rule 62-771.300(6), F.A.C.

<sup>14</sup> DEP, *Petroleum Restoration Program Priority Score Funding Threshold History*, <https://floridadep.gov/waste/petroleum-restoration/content/priority-score-funding-threshold-history> (last visited January 14, 2018).

<sup>15</sup> Section 376.3071(5)(b), F.S.

<sup>16</sup> Email from Kevin Cleary, Director of Legislative Affairs, DEP, Re: PRP and Drycleaning Questions (January 16, 2018).

<sup>17</sup> Section 376.301(15), F.S.

<sup>18</sup> United States Environmental Protection Agency, *State Coalition for Remediation of Drycleaners, A Citizen's Guide to Drycleaner Cleanup*, [https://drycleancoalition.org/download/citizens\\_guide\\_drycleaner\\_cleanup.pdf](https://drycleancoalition.org/download/citizens_guide_drycleaner_cleanup.pdf) (last visited January 14, 2018).

<sup>19</sup> Sections 376.3078(1)(a) and (b), F.S.

<sup>20</sup> Sections 376.3078(1)(c) through (f), F.S.

<sup>21</sup> Section 376.3078(2)(b), F.S.

under the drycleaning solvent cleanup program.<sup>22</sup> During fiscal years 2016 – 2017 and 2017 – 2018, the Legislature appropriated \$8.5 million from the WQATF for the program.<sup>23</sup>

Like the PRP, DEP scores each facility to determine the order in which it will begin site rehabilitation activities.<sup>24</sup> Each facility's score is based on fire risk, threat to drinking water supplies, groundwater vulnerability, aquifer classification, conditions favoring continual scoring, and environmental setting.<sup>25</sup> Facilities with the highest score receive the highest priority for rehabilitation.<sup>26</sup> DEP incorporates scored sites into the priority list on a quarterly basis with the ranking of all sites previously on the list adjusted accordingly.<sup>27</sup> State contractors are assigned program tasks according to the current priority list and based on DEP's determination of contractor logistics, geographical considerations, and other criteria DEP determines necessary to achieve cost-effective site rehabilitation.<sup>28</sup> DEP assigns program tasks beginning with the highest-ranked sites on the priority list at the effective date DEP makes the assignment and proceeds through lower-ranked sites.<sup>29</sup> DEP adds all scored sites to the priority list on a quarterly basis until it has assigned all the sites.<sup>30</sup> Once DEP makes an assignment, a subsequent quarterly adjustment to the priority list does not alter that assignment unless DEP can achieve a more cost-effective approach by reassignment, a compelling public health condition or an environmental condition warrants a reassignment, or the reassignment is otherwise in the public interest.<sup>31</sup>

In 2017, the Legislature created advanced site assessment for the program to allow real property owners eligible for site rehabilitation at an eligible facility under the program to request a site assessment in advance of the priority ranking if they meet certain criteria.<sup>32</sup> The law reserved ten percent of the WQATF appropriation for the drycleaning solvent cleanup program to fund advanced site assessment.<sup>33</sup>

The state pays for the costs incurred for site rehabilitation from the WQATF, minus a deductible paid by the applicant or current real property owner.<sup>34</sup> The facilities are rehabilitated using the principles of risk based corrective action found in chapter 62-780, F.A.C.<sup>35</sup> There are 1,421 eligible facilities. DEP has rehabilitated 210 facilities and initiated cleanup activities at 259 sites.<sup>36</sup>

The application period for entry into the program ended December 31, 1998. DEP no longer accepts applications to the program.<sup>37</sup>

### **Effect of the Proposed Changes**

The bill creates s. 376.3071(15), F.S., and amends s. 376.3071(1)(d) and 376.3071(3), F.S., to require a minimum of \$150 million to be appropriated annually to the IPTF to implement the PRP and the program.

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<sup>22</sup> Sections 376.3074(e) and 376.3078(2)(a), F.S.

<sup>23</sup> Chapters 2016 – 66, s. 1668 and 2017 – 70, s. 1670, L.O.F.

<sup>24</sup> Sections 376.3078(7) and (8), F.S.

<sup>25</sup> Section 376.3078(7), F.S.

<sup>26</sup> Section 376.3078(8)(b), F.S.

<sup>27</sup> Section 376.3078(8)(c), F.S.

<sup>28</sup> Section 376.3078(8)(d), F.S.

<sup>29</sup> Section 376.3078(8)(e), F.S.

<sup>30</sup> Section 376.3078(8)(f), F.S.

<sup>31</sup> Section 376.3078(8)(g), F.S.

<sup>32</sup> Chapter 2017 – 95, s. 8 Laws of Fla.; s. 378.3078(14), F.S.

<sup>33</sup> Section 378.3078(14)(e), F.S.

<sup>34</sup> Section 376.3078(3)(e), F.S.

<sup>35</sup> Section 376.3078(4), F.S.

<sup>36</sup> Email from Kevin Cleary, Director of Legislative Affairs, DEP, Re: PRP and Drycleaning Questions (January 16, 2018).

<sup>37</sup> Section 376.3078(3)(e)4., F.S.

The bill expands the use of the Inland Protection Trust Fund (IPTF), traditionally used for petroleum contamination site cleanup, for the program. Specifically, the bill:

- Creates s. 376.3071(12)(c), F.S., to direct \$30 million annually from the IPTF to the WQATF for the program;
- Amends s. 376.3078(2)(a), F.S., to authorize the WQATF to receive \$30 million annually from the IPTF for use in the program;
- Amends s. 376.3071(1)(a), F.S., to identify drycleaning solvents stored in the state as a hazardous undertaking;
- Amends s. 376.3071(1)(g), F.S., to require the program be implemented in a manner that reduces costs and improves the efficiency of rehabilitation activities to reduce the significant backlog of contaminated sites eligible for state-funded rehabilitation and the corresponding threat to the public health, safety, and welfare, water resources, and the environment;
- Amends s. 376.3078(2)(a), F.S., to state that the Legislature intends to use the IPTF to respond without delay to incidents of inland contamination related to the storage of drycleaning solvents in order to protect the public health, safety, and welfare and to minimize environmental damage;
- Amends s. 376.3078(2)(b), F.S., to state that the Legislature intends DEP to implement rules and procedures to improve the efficiency and productivity of the program;
- Amends s. 376.3078(3), F.S., to authorize use of the IPTF to fund the program;
- Amends s. 376.3078(4), (4)(i), (4)(o), and (4)(p), F.S., to authorize DEP to use the IPTF to obligate money to address incidents of inland contamination related to the storage of drycleaning solvents that may pose a threat to the public health, safety, or welfare, water resources, or the environment;
- Amends s. 376.3078(2)(b), F.S., to prohibit DEP from obligating funds from the WQATF in excess of its annual appropriation from the WQATF and the IPTF; and
- Amends s. 376.3078(14)(e), F.S., to authorize the use of funds received from the IPTF for advanced site assessment for the program.

The bill also creates s. 376.3078(15), F.S., to require DEP to create, by rule, a scoring system to assign state contractors to program tasks and sites. DEP must have 25 individual state contractors for the program by December 31, 2018. The scoring system, at a minimum, must consider the contractor's qualifications, the contractor's rates, and any of the contractor's performance evaluations for previous work performed for the program. The bill also amends s. 376.3078(8)(d) to require the assignment of program tasks or sites based on DEP's scoring system. The bill amends s. 376.3078(8)(d) and (8)(e), F.S., to add sites to the items that state contractors may be assigned for the program. This appears to create a task assignment system for state contractors similar to the PRP.

#### B. SECTION DIRECTORY:

**Section 1.** Amends s. 376.3071, F.S., relating to the IPTF, creating, purpose, and funding.

**Section 2.** Amends s. 376.3078, F.S., relating to drycleaning facility restoration, funds, uses, liability, and recovery of expenditures.

**Section 3.** Provides an effective date of July 1, 2018.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may have a negative fiscal impact on DEP by requiring the department to create, by rule, a scoring system to assign state contractors to program tasks and sites, soliciting state contractors to perform drycleaning facility cleanup, and implementing the task assignment system.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill may have a positive fiscal impact on owners of eligible facilities contaminated with drycleaning solvents by directing more funds to the WQATF for drycleaning solvent cleanup.

The bill may have negative fiscal impact of owners of sites contaminated with petroleum by directing a portion of the IPTF to the WQATF for drycleaning solvent cleanup.

**D. FISCAL COMMENTS:**

The bill may have a positive fiscal impact on DEP by directing a minimum of \$150 million annually to the IPTF and \$30 million annual to the WQATF from the IPTF.

### **III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The bill requires DEP to create, by rule, a scoring system to assign state contractors to program tasks and sites.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On January 23, 2018, the Natural Resources and Public Lands Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment removed the provision that directed all penalties, judgments, recoveries, reimbursements, loans, and other fees and charges collected under the program to the IPTF. All penalties, judgments, recoveries, reimbursements, loans, and other fees and charges collected under the program will continue to be directed to the WQATF.