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: The Professional Staff of the Appropriations Subcommittee on Agriculture, Environment, and General Government

BILL:	CS/SB 702
INTRODUCER:	Environment and Natural Resources Committee and Senator Albritton
SUBJECT:	Petroleum Cleanup
DATE:	February 24, 2020 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rogers	Rogers	EN	**Fav/CS**
2.	Reagan	Betta	AEG	**Pre-meeting**
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 702 revises provisions relating to the Petroleum Cleanup Participation Program to authorize a demonstration of cost savings to replace or supplement the existing cost-share requirement.

The bill deletes the authorization that the limited contamination assessment report and the copayment costs may be reduced or eliminated, if the owner and all operators responsible for restoration, demonstrate that they cannot financially comply with the copayment and limited contamination assessment report requirements.

The bill deletes the 120-day time limitation for negotiations for the cost-share aspect of the Petroleum Cleanup Participation Program (PCPP).

The bill deletes a prohibition in the Advance Cleanup Program for the state to pay for limited contamination assessments and replaces it with a requirement that the state issue purchase orders for such assessments.

The bill makes the following revisions to the individual application for the Advance Cleanup Program:

- It deletes the requirement that the limited contamination assessment report be included in the application.

- It adds the requirement that the property owner or responsible party must commit to continue to participate in the advanced cleanup program upon completion of the limited contamination assessment and finalization of the proposed course of action.
- It revises the requirement that the application include a proposed course of action to make it a "conceptual" proposed course of action.

The bill will increase costs for the PCPP paid by the Department of Environmental Protection (DEP) because the bill requires DEP to pay for limited contamination assessments (DEP is currently prohibited from paying for such assessments.) The bill will also increase the costs for the DEP due to the repeal of the requirement that the PCPP require a 25 percent copayment from the owner, operator, or person responsible for the conducting the site rehabilitation. See Section V.

The bill has an effective date of July 1, 2020.

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. These discharges pose a significant threat to groundwater quality,[1] the source of 90 percent of Florida's drinking water.[2] The identification and cleanup of petroleum contamination is particularly challenging due to Florida's diverse geology, diverse water systems, and the complex dynamics between contaminants and the environment.[3]

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.[4] The Department of Environmental Protection (DEP) regulates these storage tank systems.[5]

To fund the cleanup of contaminated petroleum sites, the Legislature created the Inland Protection Trust Fund (IPTF).[6] The state levies an excise tax on each barrel of petroleum and petroleum products produced in or imported into the state to fund the IPTF.[7] The state determines the amount of the excise tax for each barrel based on a formula that is dependent

[1] U.S. Environmental Protection Agency, *Underground Storage Tanks (USTs)*, https://www.epa.gov/ust (last visited Jan. 20, 2020).
[2] South Florida Water Management District, *Groundwater Modeling*, https://www.sfwmd.gov/science-data/gw-modeling (last visited Jan. 20, 2020).
[3] Florida Department of Environmental Protection, Division of Waste Management, *Petroleum Contamination Cleanup and Discharge Prevention Programs* (2012) (on file with Senate Environment and Natural Resources Committee).
[4] Chapter 83-310, Laws of Fla.
[5] Sections 376.30(3) and 376.303, F.S.
[6] Section 376.3071(3)-(4), F.S.
[7] Sections 206.9935(3) and 376.3071(7), F.S.

upon the unobligated balance of the IPTF.[8] Each year, approximately $200 million is deposited from the excise tax into the IPTF.[9,10]

The DEP may establish criteria for the prioritization, assessment and cleanup, and reimbursement for cleanup of areas contaminated by leaking underground petroleum storage tanks.[11] 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.[12] To receive rehabilitation funding assistance, a site must qualify under one of several programs, which are outlined in the table on the following page.

Table 1: State Assisted Petroleum Cleanup Eligibility Programs

Program Name	Program Dates	Program Description
Early Detection Incentive Program (EDI) (s. 376.3071(10), F.S.)	Discharges must have been reported between July 1, 1986, and December 31, 1988, to be eligible	• First state-assisted cleanup program • 100 percent state funding for cleanup if site owners reported releases • 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 • Reimbursement option was phased out, so all cleanups are now conducted by the state
Petroleum Liability and Restoration Insurance Program (PLRIP) (s. 376.3072, F.S.)	Discharges must have been reported between January 1, 1989, and December 31, 1998, to be eligible	• Required facilities to purchase third party liability insurance to be eligible • Provides varying amounts of state-funded site restoration coverage

[8] 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. Section 206.9935(3), F.S.
[9] DEP, *SOP – 1. Introduction*, https://floridadep.gov/waste/petroleum-restoration/content/sop-1-introduction (last visited Jan. 20, 2020).
[10] Sections 206.9935 and 206.9945, F.S.
[11] Section 376.3071(5), F.S.
[12] DEP, *Petroleum Restoration Program*, https://floridadep.gov/Waste/Petroleum-Restoration (last visited Jan. 20, 2020).

Abandoned Tank Restoration Program (ATRP) (s. 376.305(6), F.S.)	For petroleum storage systems that have not stored petroleum since March 1, 1990[13]	Provides 100 percent state funding for cleanup, less deductible, at facilities that had out-of-service or abandoned tanks as of March 1990
Innocent Victim Petroleum Storage System Restoration Program (IVPSSRP) (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
Petroleum Cleanup Participation Program (PCPP) (s. 376.3071(13), F.S.)	Remains open	• Created to provide financial assistance for sites that had missed all previous opportunities • Only discharges that occurred before 1995 were eligible • Site owner or responsible party must pay 25 percent of cleanup costs[14] • Originally had a $300,000 cap on the amount of coverage, which was raised to $400,000 beginning July 1, 2008
Consent Order (aka "Hardship" or "Indigent") (s. 376.305(6)(b), F.S.)	The program began in 1986 and remains open	• Created to provide financial assistance under certain circumstances for sites that the Department initiates an enforcement action to clean up • An agreement is formed whereby the Department conducts the cleanup and the site owner or responsible party pays for a portion of the costs

Petroleum Cleanup Participation Program

In 1996, the Legislature created the Petroleum Cleanup Participation Program (PCPP) to implement a cost-sharing cleanup program to provide rehabilitation funding assistance for all property contaminated by discharges of petroleum or petroleum products from a petroleum storage system that occurred before
January 1, 1995. Petroleum discharges from sources other than a petroleum storage system cannot receive funding under the PCPP.[15] Further, the following sites are not eligible for the PCPP:

- Sites where the DEP has been denied access;
- Sites owned or operated by the federal government;

[13] 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.
[14] 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.
[15] Section 376.3071(13), F.S.

- Sites identified by the United States Environmental Protection Agency to be on, or which qualify for listing on, the National Priorities List under Superfund; and
- Sites that are eligible under ATRP, EDI, or PLRIP.[16]

The DEP ranks the PCPP program sites based on human health and safety risks.[17] When funds become available, the DEP will notify the owner, operator, or person otherwise responsible for site rehabilitation (owner or responsible party) in writing, based on that priority ranking.[18]

Limited Contamination Assessment

After approval from the DEP, the owner or responsible party must enter into a PCPP agreement with the DEP and submit a limited contamination assessment report sufficient to determine the extent of the contamination and cleanup.[19] A limited contamination assessment must be conducted by an engineer or geologist and must address:

- The site history which describes all current and past petroleum storage systems and the type of products stored in them, as well as the type and volume of products that were discharged at the source property.
- Results of a well survey conducted to locate all private water supply wells within a certain distance of the contamination.
- Results of a soil assessment conducted in and around each potential source area (fuel storage tanks, fuel dispensers, and fuel piping) to determine if there is any contaminated soil present in the unsaturated zone.
- Results of groundwater sampling and analyses from at least one properly constructed monitoring well installed in each source area. If groundwater contamination is detected, the direction of groundwater flow must be determined and additional monitoring wells are required to determine the extent of the groundwater contamination.
- Water level measurements.
- Soil and groundwater samples collected must be analyzed by a DEP approved laboratory and quality assurance samples must be collected/prepared and analyzed.[20]
- A reasonable, economical, and attainable course of action that is proposed to achieve site rehabilitation.[21]

Costs

The owner or responsible party may recommend a department certified contractor to clean up the PCPP eligible discharge but is not required to do so. Sites qualifying for the program are eligible for up to $400,000 of site rehabilitation funding.[22] The DEP may approve supplemental funding of up to $100,000 for additional remediation and monitoring at PCPP sites if such remediation

[16] Section 376.3071(13)(h), F.S.
[17] Fla. Admin Code R. 62-771.100(1).
[18] DEP, *Petroleum Cleanup Participation Program (PCPP),* https://floridadep.gov/waste/petroleum-restoration/content/petroleum-cleanup-participation-program-pcpp (last visited Jan. 20, 2020).
[19] Section 376.3071(13)(d), F.S.
[20] Fla. Admin. Code R. 62-780.300 and Ch. 62-160.
[21] DEP, *Petroleum Restoration Program, Limited Contamination Assessment Report (LCAR) Preparation Guidance* (Oct. 1, 2019), *available at* https://floridadep.gov/sites/default/files/LCAR%20Guidance%20Final%2001Oct2019_0.pdf.
[22] Section 376.3071(13)(b), F.S.

and monitoring is necessary to achieve a "No Further Action" (NFA) order.[23] The owner or responsible party must agree to pay a 25 percent copayment.[24] The limited contamination assessment report and the copayment costs may be reduced or eliminated if the owner or responsible party demonstrates an inability to pay.[25] If the negotiation of the cost-sharing agreement cannot be completed within 120-days after beginning negotiations, the DEP must terminate negotiations and the site becomes ineligible for state funding and for any liability protections under the PCPP.[26]

No Further Action

The ultimate goal for any contaminated site is for the DEP to issue it a NFA closure.[27] NFA closures usually result in reduced remediation costs and allow for contaminated site closures when remediation efforts have reached a diminishing return. An NFA order may require institutional or engineering controls be put in place to prevent or reduce exposure to contamination.[28] An institutional control is a restriction on the use of or access to a site to eliminate or minimize exposure to contaminants. Such restrictions may include, but are not limited to, deed restrictions, restrictive covenants, or conservation easements.[29] Engineering controls are modifications to a site to reduce or eliminate the potential for exposure to contaminants. Such modifications may include, but are not limited to, physical or hydraulic control measures, capping, point of use treatments, or slurry walls.[30]

Risk Management Level Options (RMOs)

Once a responsible party completes a site assessment, it has three Risk Management Level Options (RMOs) available to perform site rehabilitation to achieve an NFA order.[31] Under the RMO options, the responsible party must either rehabilitate the site to the default cleanup target levels (CTLs)[32] or to alternative CTLs established through a risk assessment. Under RMO I, the DEP will issue a NFA closure without institutional and engineering controls.[33] This option is used when concentrations of contaminants in both soil, groundwater, and surface water are equal to or less than the residential CTLs.[34] Additionally, concentrations of contaminants in soil must indicate that contaminants will not leach into the groundwater in violation of the groundwater CTL.[35] Under RMO II and RMO III, the DEP will grant an NFA order, subject to institutional controls and/or engineering controls and other conditions determined by the DEP.[36]

[23] Section 376.3071(13)(c), F.S.
[24] Section 376.3071(13)(d), F.S.
[25] *Id*.
[26] *Id*.
[27] Fla. Admin. Code R. 62-780.680.
[28] *Id*.
[29] Section 376.301(22), F.S.
[30] Section 376.301(17), F.S.
[31] Fla. Admin Code R. 62-780.680(1)-(3).
[32] Fla. Admin Code R. 62-777.
[33] Fla. Admin. Code R. 62-780.680(1).
[34] The rule also requires that no free product be present. Fla. Admin. Code R. 62-780.680(1). "Free product" means the presence of a non-aqueous phase liquid in the environment in excess of 0.01 foot in thickness, measured at its thickest point. Fla. Admin Code R. 62-780.200.
[35] Fla. Admin. Code R. 62-780.680(1).
[36] Fla. Admin Code R. 62-780.680(2).

Advanced Cleanup

The Legislature created the Advanced Cleanup Program in 1996 to allow eligible sites to receive state rehabilitation funding in advance of the site's priority ranking to encourage redevelopment and facilitate property transactions or public works projects.[37] To participate in Advanced Cleanup Program, a site must be eligible for restoration funding under EDI, PLRIP, ATRP, IVPSSRP, or PCPP.[38]

Applications for the Advanced Cleanup Program must include a cost-sharing commitment in addition to the 25-percent-copayment requirement.[39] An applicant may demonstrate his or her cost-sharing commitment by proposing either a commitment to pay, a demonstrated cost savings to the DEP, or both. The application must be accompanied by a $250 nonrefundable review fee, a limited contamination assessment report, a proposed course of action, and a site access agreement. The limited contamination assessment report must be sufficient to support the proposed course of action and to estimate the cost of the proposed course of action.[40] Costs incurred related to conducting the limited contamination assessment report are not refundable from the IPTF.[41]

The DEP ranks the applications for the Advanced Cleanup Program 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.[42]

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 376.3071(13), F.S., relating to the Petroleum Cleanup Participation Program (PCPP). The bill specifies that the limited contamination assessment report must be sufficient to support the proposed course of action and to estimate the cost of the proposed course of action.

The bill revises the 25-percent cost-share requirement to require the agreement with the Department of Environmental Protection (DEP) to include:

- A 25-percent cost savings to the department;
- A copayment by the owner, operator, or person otherwise responsible for conducting site rehabilitation; or
- A combination of both.

Demonstrated savings includes reduced rates by the proposed agency certified contractor or the difference in cost associated with Risk Management Options Level-I closure versus an Risk Management Options Level-II closure, or both the copayment and demonstrated cost savings.

[37] Section 376.30713(1)(a), F.S.
[38] Section 376.30713(1)(d), F.S.
[39] *Id*.
[40] *Id*.
[41] Section 376.30713(2)(a), F.S.
[42] Section 376.30713(2)(b), F.S.

Risk Management Options Level-I is defined as a No Further Action closure without institutional controls or without institutional and engineering controls. This closure applies subject to conditions in department rules and agreements.

Risk Management Options Level-II is defined as a No Further Action closure where institutional controls, and, if appropriate, engineering controls shall apply if the controls are protective of human health, public safety, and the environment. This closure applies subject to conditions in department rules and agreements.

The bill **deletes** the following:

- The requirement that the owner, operator, or person otherwise responsible for conducting site rehabilitation demonstrate the ability to meet the copayment obligation.
- The authorization that the limited contamination assessment report and the copayment costs may be reduced or eliminated if the owner and all operators responsible for restoration demonstrate that they cannot financially comply with the requirements.
- Direction to the DEP to take into consideration the owner's and operator's net worth in making the determination of financial ability.
- The 120-day time limit on negotiations after which the DEP is required to terminate negotiations and the site shall be ineligible for state funding under the PCPP and all liability protections provided for under the PCPP shall be revoked.

Section 2 of the bill amends s. 376.30713, F.S., relating to the Advanced Cleanup Program. The bill revises the requirements of an individual application for the program as follows:

- It deletes the requirement that the limited contamination assessment report be included in the application.
- It adds the requirement that the property owner or responsible party must commit to continue to participate in the advanced cleanup program upon completion of the limited contamination assessment and finalization of the proposed course of action.
- It revises the requirement that the application include a proposed course of action to make it a "conceptual" proposed course of action.

The bill **deletes** the following from the requirements for an individual application:

- The requirement that the limited contamination assessment report be sufficient to support the proposed course of action and to estimate the cost of the proposed course of action. Although this provision is deleted from the application requirements, the bill adds it as a requirement for limited contamination assessments that receive state funding (see below).
- The prohibition on refunding costs incurred related to conducting the limited contamination assessment report from the Inland Protection Trust Fund.
- The statement that site eligibility is not an entitlement to advanced cleanup or continued restoration funding; note, however, paragraph (2)(e) of this section retains this same language, so the deletion likely has no legal effect.

Upon acceptance of an advanced cleanup application, the bill requires the applicant's contractor to submit to the DEP a scope of work for a limited contamination assessment. When the scope of work is negotiated and agreed upon, the DEP must issue one or more purchase orders of up to $35,000 each for the limited contamination assessment. The limited contamination assessment

report must be sufficient to support the proposed course of action and to estimate the cost of the proposed course of action.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may provide cost savings under the Petroleum Cleanup Participation Program (PCPP) for owners, operators, or persons otherwise responsible for conducting site rehabilitation by allowing them to demonstrate cost savings in lieu of or in addition to the copayment requirement. The bill, however, removes the provision that allowed such applicants to reduce or eliminate costs associated with the limited contamination assessment report and the copayment costs if the applicant demonstrated that he or she could not financially comply.

The bill will have a positive fiscal impact on participants in the Advanced Cleanup Program as the bill requires the Department of Environmental Protection (DEP) to pay for the limited contamination assessment.

C. Government Sector Impact:

The bill will increase the costs to the DEP for the PCPP because of the bill's requirement that the DEP pay for limited contamination assessments (the state is currently prohibited

from paying for such assessments.) Multiple variables are associated with each contaminated site and each site requires extensive assessment to determine the depth of contamination.[43] Accordingly, project costs and the cost of limited contamination assessments could vary widely. However, a report by the DEP indicates that site assessments (funded by the DEP through other petroleum restoration programs) cost $37,303,020 for 1,056 sites in fiscal year 2018-2019,[44] an average cost of approximately $35,000 per assessment, which is the amount of the purchase order authorization contained in the bill. Note, however, that limited contamination assessment reports do not need to have the same scope as a site assessment report.[45]

The bill also will increase costs to the DEP for individual clean-up projects due to the repeal of the current statutory requirement that the PCPP require a 25 percent copayment from the owner, operator, or person responsible for the conducting the site rehabilitation.

SB 2500, the General Appropriations Act, appropriates $125 million for the petroleum tank clean-up program. The addition of paying for assessments and the repeal of the 25 percent copayment for projects will ultimately provide for an increased state cost per project and, since there is a finite amount appropriated for the program, reduce the number of sites rehabilitated.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 376.3071 and 376.30713.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

CS by Environment and Natural Resources Committee on January 27, 2020:

- Replaces RMO-I and RMO-II with Risk Management Options Level-I and Risk Management Options Level-II.

[43] Florida Department of Environmental Protection, Division of Waste Management, *Petroleum Contamination Cleanup and Discharge Prevention Programs* (2012) (on file with Senate Environment and Natural Resources Committee).
[44] DEP, *Petroleum Restoration Program Dashboard* (June 2019), *available at* https://floridadep.gov/sites/default/files/PRP_Dashboard_Jun2019_v2.pdf.
[45] DEP, *Petroleum Restoration Program, Limited Contamination Assessment Report (LCAR) Preparation Guidance* (Jan 19, 2020), *available at* https://floridadep.gov/sites/default/files/LCAR%20Guidance%20Final%2001Oct2019_0.pdf.

- Provides definitions with Risk Management Options Level-I and Risk Management Options Level-II.
- Makes minor language clarifications.

B. Amendments:

None.