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 Committee on Environment and Natural Resources

BILL:	SB 1418
INTRODUCER:	Senator Albritton
SUBJECT:	Soil and Groundwater Contamination
DATE:	January 28, 2022
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Collazo	Rogers	EN	**Pre-meeting**
2.			AEG	
3.			AP	

I. Summary:

SB 1418 does the following:

- Requires the Department of Environmental Protection (DEP) to adopt by rule statewide cleanup target levels (CTLs) for perfluoroalkyl and polyfluoroalkyl substances (PFAS) in soils and groundwater, which do not take effect until ratified by the Legislature.
- Provides a limitation of liability, until DEP's rules have been ratified for a particular PFAS constituent, from actions brought by local or state government entities to compel or enjoin site rehabilitation, require payment of site rehabilitation costs, or require payment of fines or penalties regarding rehabilitation based on the presence of that particular PFAS constituent.
- Tolls any statute of limitations that would bar a state or local government entity from pursuing relief under its existing authority, from the effective date of the act until site rehabilitation is complete or the Legislature ratifies the CTLs.
- Requires the Office of Program Policy Analysis and Government Accountability to conduct an analysis of programs in other states for the assessment and cleanup of soils and groundwater contamination, and submit a report of its findings and recommendations to the Governor and Legislature by January 1, 2023.

II. Present Situation:

Cleanup Target Levels

A cleanup target level (CTL) is the concentration for each contaminant identified by an applicable analytical test method, in the medium of concern, at which a site rehabilitation program is deemed complete.[1] The Department of Environmental Protection (DEP) establishes

[1] Section 376.301(8), F.S.

by rule CTLs for specific contaminants.[2] These CTLs apply to requirements for site rehabilitation across numerous programs.

Risk-Based Corrective Action

Risk-Based Corrective Action (RBCA) is a decision-making process that combines site assessments and responses to chemical releases with human health and environmental risk assessments to determine the need for remedial action and tailor corrective actions to site-specific conditions and risks, which can vary greatly.[3]

In Florida, prior to 2003, RBCA was only used under specific DEP programs such as the brownfields or petroleum programs, and contamination at a site was typically remediated to the default CTLs contained in ch. 62-777 of the Florida Administrative Code.[4] This meant there was little flexibility for site-specific remediation strategies.[5]

In 2003, the Legislature created s. 376.30701, F.S., to establish a "global RBCA" process.[6] The original goal was a flexible site-specific cleanup process reflecting the intended use of the property following cleanup, while maintaining adequate protection of human health, safety, and the environment through the evaluation of contamination toxicity and exposure pathways.[7] Section 376.30701, F.S., applies to all contaminated sites resulting from a discharge of pollutants or hazardous substances where legal responsibility for site rehabilitation exists, except for those contaminated sites subjected to the risk-based corrective action cleanup criteria established for the petroleum, brownfields, and drycleaning programs pursuant to ss. 376.3071, 376.81, and 376.3078, F.S., respectively.[8]

The statute requires DEP to establish by rule criteria for determining on a site-specific basis the tasks comprising a site rehabilitation program and the level at which a task and a program may be deemed completed.[9] Section 376.30701, F.S., contains requirements for determining or establishing appropriate CTLs for groundwater and soil using RBCA principles.[10]

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[2] *See generally* Fla. Admin. Code Ch. 62-777.
[3] Dep't of Environmental Protection (DEP), *Contaminated Soils Forum -- Policy Group, Waste Cleanup Focus Group, Issues paper-- "Universal" Applicability of Risk-Based Correction Action at Florida Waste Cleanup Sites*, 2 (1998), *available at* https://floridadep.gov/sites/default/files/Universal-applicability-of-risk-based-corrective-action.pdf (last visited Jan. 18, 2022).
[4] Ralph DeMeo et al., *Risk-Based Corrective Action in Florida: How is it Working?*, 89 FLORIDA BAR JOURNAL 1, 47 (Jan. 2015), https://www.floridabar.org/the-florida-bar-journal/risk-based-corrective-action-in-florida-how-is-it-working/ (last visited Jan. 18, 2022).
[5] *Id*.
[6] *See* ch. 2003-173, s. 1, Laws of Fla.
[7] Ralph DeMeo et al., *Risk-Based Corrective Action in Florida: How is it Working?*, 89 FLORIDA BAR JOURNAL 1, 47 (Jan. 2015), https://www.floridabar.org/the-florida-bar-journal/risk-based-corrective-action-in-florida-how-is-it-working/ (last visited Jan. 18, 2022).
[8] Section 376.30701(1)(b), F.S.
[9] Section 376.30701(2), F.S.
[10] *Id*.

Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS)

Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS) are a group of thousands of man-made compounds developed to provide oil and water repellency, chemical and thermal stability, and friction reduction.[11] Perfluorooctane sulfonic acid (PFOS) and perfluorooctanoic acid (PFOA) are the most common and the best-studied of these compounds.[12] PFAS were widely used since the 1950s, with applications in many industries, including the aerospace, semiconductor, medical, automotive, construction, electronics, and aviation industries, as well as in consumer products (e.g., carpets, clothing, furniture, outdoor equipment, food packaging) and firefighting applications.[13] While U.S. manufacturers have voluntarily phased out use of the chemicals,[14] they persist in the environment, particularly at fire colleges, airports, and military installations.[15] Although PFOA and PFOS are no longer manufactured in the U.S., they are still produced internationally and can be imported into the U.S. in consumer goods such as carpet, leather and apparel, textiles, paper and packaging, coatings, rubber, and plastics.[16]

PFAS chemicals do not break down in the environment, can move through soil and water, and can accumulate in fish and wildlife.[17] Because of the widespread use and ease of transport, they can be found virtually everywhere. The Centers for Disease Control and Prevention has detected PFAS in nearly all persons it has tested, indicating widespread exposure in the U.S. population.[18] Based on recent studies, health effects from PFAS potentially include increased risk of certain cancers, increased cholesterol levels, impacts on hormones and the immune system, and fetal and infant developmental effects.[19]

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[11] Interstate Technology Regulatory Council (ITRC), *History and Use of PFAS*, 1 (2020), *available at* https://pfas-1.itrcweb.org/wp-content/uploads/2020/10/history_and_use_508_2020Aug_Final.pdf (last visited Jan. 18, 2022).
[12] Dep't of Health (DOH), *PFAS Chemical Awareness*, http://www.floridahealth.gov/environmental-health/hazardous-waste-sites/contaminant-facts/_documents/doh-pfas-poster.pdf (last visited Jan. 18, 2022).
[13] ITRC, *History and Use of PFAS*, 1, 8 (2020), *available at* https://pfas-1.itrcweb.org/wp-content/uploads/2020/10/history_and_use_508_2020Aug_Final.pdf (last visited Jan. 18, 2022).
[14] DEP, *PFAS Update, Presentation to the Florida Senate Committee on Environment and Natural Resources*, 18:00 (Dec. 9, 2019), *available at* https://thefloridachannel.org/videos/12-9-19-senate-committee-on-environment-and-natural-resources/ (last visited Jan. 18, 2022). In the U.S., PFOS was phased out of production around 2002, and PFOA was phased out around 2015.
[15] U.S. Environmental Protection Agency (EPA), *PFAS Explained*, https://www.epa.gov/pfas/pfas-explained (last visited Jan. 18, 2022); EPA, *Our Current Understanding of the Human Health and Environmental Risks of PFAS*, https://www.epa.gov/pfas/our-current-understanding-human-health-and-environmental-risks-pfas (last visited Jan. 18, 2022).
[16] *Id.; see also* DEP, *PFAS Update, Presentation to the Florida Senate Committee on Environment and Natural Resources*, 18:00 (Dec. 9, 2019), *available at* https://thefloridachannel.org/videos/12-9-19-senate-committee-on-environment-and-natural-resources/ (last visited Jan. 18, 2022).
[17] Centers for Disease Control and Prevention, *Per- and Polyfluorinated Substances (PFAS) Factsheet*, https://www.cdc.gov/biomonitoring/PFAS_FactSheet.html (last visited Jan. 18, 2022).
[18] *Id.*
[19] DOH, *PFAS Chemical Awareness*, 2, http://www.floridahealth.gov/environmental-health/hazardous-waste-sites/contaminant-facts/_documents/doh-pfas-poster.pdf (last visited Jan. 18, 2022).

While the health effects from low-level concentrations of PFAS are not yet fully understood, litigation and public interest is increasing nation-wide.[20] In Florida, generally, issues exist regarding liability for cleanup and third-party liability.[21]

The U.S. Environmental Protection Agency (EPA) prioritizes research and data collection for new chemicals that are being discovered in water that previously had not been detected or are being detected at levels that may be different than expected.[22] These are called "contaminants of emerging concern" (CEC). While CECs do not have regulatory limits, there may be a long-term potential risk to human health or the environment associated with them. As part of EPA's data collection on CECs, all large and selected smaller public water systems across the U.S. are required to monitor for CECs.[23] Once EPA's study and evaluation is complete, if EPA decides not to regulate a CEC, then it may decide to develop a health advisory level (HAL) for the detected contaminants. While HALs are non-enforceable federal limits, they serve as technical guidance for federal, state, and local officials.[24] For drinking water, the EPA has established a HAL of 70 parts per trillion for PFOA and PFOS.[25] The Department of Health (DOH) has adopted the same HAL for those compounds.[26]

DEP has established provisional CTLs for PFAS to enable site cleanup under DEP's contaminated site cleanup criteria.[27] DEP has created numerical provisional CTLs and screening levels for PFOS and PFOA in the following categories: Provisional Groundwater CTLs, Provisional Soil CTLs, Provisional Irrigation Water Screening Levels, and Surface Water Screening Levels.[28] These provisional standards are designed to protect human health, and the provisional groundwater CTLs are the same as the EPA's HAL for drinking water.

PFAS is common in firefighting foams that have been stored and used for fire suppression, fire training, and flammable vapor suppression.[29] These firefighting agents include Class B fluorine-containing firefighting foams, such as aqueous film-forming foam (AFFF).[30] PFAS are so prevalent in firefighting agents that at least nine states have passed legislation to restrict or

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[20] Ralph A. DeMeo & Jorge Caspary, *PFApocalypse Now: The PFAS Firestorm and Implications for Florida*, 94 FLORIDA BAR JOURNAL 3, 46 (May/June 2020), https://www.floridabar.org/the-florida-bar-journal/pfapocalypse-now-the-pfas-firestorm-and-implications-for-florida/#u7068 (last visited Jan. 18, 2022).
[21] *Id*.
[22] DEP, *Regulated Drinking Water Contaminants and Contaminants of Emerging Concern*, https://floridadep.gov/comm/press-office/content/regulated-drinking-water-contaminants-and-contaminants-emerging-concern (last visited Jan. 18, 2022).
[23] *Id*.
[24] EPA, *How EPA Regulates Drinking Water Contaminants*, https://www.epa.gov/dwregdev/how-epa-regulates-drinking-water-contaminants (last visited Jan. 18, 2022).
[25] EPA, *Drinking Water Health Advisories for PFOA and PFOS*, https://www.epa.gov/ground-water-and-drinking-water/drinking-water-health-advisories-pfoa-and-pfos (last visited Jan. 18, 2022).
[26] DOH, *Maximum Contaminant Levels and Health Advisory Levels*, 5 (2016) *available at* http://www.floridahealth.gov/environmental-health/drinking-water/_documents/hal-list.pdf (last visited Jan. 18, 2022).
[27] DEP, *PFAS Update, Presentation to the Florida Senate Committee on Environment and Natural Resources*, 25:00 (Dec. 9, 2019), *available at* https://thefloridachannel.org/videos/12-9-19-senate-committee-on-environment-and-natural-resources/ (last visited Jan. 18, 2022); *see* Fla. Admin. Code Ch. 62-780.
[28] DEP, *Per-and Polyfluoroalkyl Substances (PFAS) Dynamic Plan*, 9-10 (Feb. 2021), *available at* https://floridadep.gov/sites/default/files/Dynamic_Plan_Revised_Feb2021.pdf (last visited Jan. 18, 2022).
[29] ITRC, *PFAS*, https://pfas-1.itrcweb.org/3-firefighting-foams/ (last visited Jan. 18, 2022).
[30] *Id*.

prohibit the use of PFAS in firefighting agents or activities.[31] In Florida, DEP has already assessed each fire training facility in the state to ensure that PFAS-containing firefighting agents are disposed of and that only firefighting agents that do not have PFAS are being used.[32] Of the 25 active facilities in the state with known or suspected use of AFFF, investigations indicate that 22 of the 25 had analytical results for PFOA and PFOS above the provisional groundwater CTL.[33] Where contamination is identified, DEP will help the facility develop a cleanup plan to remove or contain the contamination to prevent future environmental impact and human exposure.[34]

In February of 2021, DEP published the current version of its PFAS Dynamic Plan.[35] The Dynamic Plan establishes a comprehensive path forward with the understanding that it may be necessary to change the approach as the science associated with these emerging contaminants continues to develop.[36] The plan describes the current screening and provisional CTLs, and summarizes data and lessons learned from prior and ongoing investigations. The plan states that future investigations will be based on potential risk and will include a continued coordinated response with DOH to quickly evaluate and address any impacts to drinking water resources.[37]

Office of Program Policy Analysis and Government Accountability (OPPAGA)

The Office of Program Policy Analysis and Government Accountability (OPPAGA) was created by the Legislature in 1994.[38] OPPAGA describes itself as the "research arm of the Florida Legislature."[39] OPPAGA provides data, evaluative research, and objective analyses to assist legislative budget and policy deliberations. OPPAGA conducts research as directed by state law, the presiding officers, or the Joint Legislative Auditing Committee."[40] OPPAGA's research services include:

- Performance evaluations and policy reviews of government programs;
- Research and technical assistance to legislators and legislative committees;
- Government Program Summaries (GPS), an electronic encyclopedia containing descriptive and evaluative information on all major state programs; and

[31] National Law Review, *Expert Focus: US States Outpace EPA on PFAS Firefighting Foam Laws*, https://www.natlawreview.com/article/expert-focus-us-states-outpace-epa-pfas-firefighting-foam-laws (last visited Jan. 18, 2022); The New York State Senate, *Senate Bill S439A*, https://www.nysenate.gov/legislation/bills/2019/S439 (last visited Jan. 18, 2022).
[32] DEP, *PFAS Update, Presentation to the Florida Senate Committee on Environment and Natural Resources*, 36:00 (Dec. 9, 2019), *available at* https://thefloridachannel.org/videos/12-9-19-senate-committee-on-environment-and-natural-resources/ (last visited Jan. 18, 2022).
[33] DEP, *Per-and Polyfluoroalkyl Substances (PFAS) Dynamic Plan*, 12 (Feb. 2021), *available at* https://floridadep.gov/sites/default/files/Dynamic_Plan_Revised_Feb2021.pdf (last visited Jan. 18, 2022).
[34] DEP, *Fire Training Facility Preliminary Site Assessments*, https://floridadep.gov/waste/waste-cleanup/content/fire-training-facility-preliminary-site-assessments (last visited Jan. 18, 2022).
[35] *See* DEP, *Per-and Polyfluoroalkyl Substances (PFAS) Dynamic Plan* (Feb. 2021), *available at* https://floridadep.gov/sites/default/files/Dynamic_Plan_Revised_Feb2021.pdf (last visited Jan. 18, 2022).
[36] *Id*. at 3.
[37] *Id*.
[38] Ch. 94-249, Laws of Fla.
[39] Office of Program Policy Analysis and Government Accountability (OPPAGA), *About OPPAGA*, https://oppaga.fl.gov/About (last visited Jan. 18, 2022).
[40] *Id*.

- Policy Notes, a weekly electronic newsletter of policy research of interest to Florida policymakers.[41]

III. Effect of Proposed Changes:

Section 1 creates s. 376.91, F.S., entitled "Statewide cleanup of perfluoroalkyl and polyfluoroalkyl substances."

The bill contains a definitions section, defining two terms as they are used in s. 376.91, F.S.:
- "Department" is defined as "the Department of Environmental Protection."
- "PFAS" is defined as "perfluoroalkyl and polyfluoroalkyl substances, including perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS)."

The bill requires the Department of Environmental Protection (DEP) to adopt by rule statewide cleanup target levels for PFAS in soils and groundwater. These cleanup target levels must be developed using the criteria set forth in s. 376.30701, F.S., which establishes a process for risk-based corrective action, and priority must be given to PFOA and PFOS. The bill prohibits these cleanup target levels from taking effect until ratified by the Legislature.

The bill provides that, until DEP's rule for a particular PFAS constituent has been ratified by the Legislature, a person may not be subject to any administrative or judicial action brought by or on behalf of any state or local governmental entity to compel or enjoin site rehabilitation, to require payment for the costs of rehabilitation of environmental contamination, or to require payment of any fines or penalties regarding rehabilitation based on the presence of that particular PFAS constituent. The bill tolls any statute of limitations that would bar a state or local government entity from pursuing relief in accordance with its existing authority, from the effective date of the bill until site rehabilitation is completed or cleanup target levels are ratified by the Legislature. The bill states that it does not affect the ability or authority to seek contribution from any person who may have liability with respect to a contaminated site and who did not receive the liability protection provided by the bill.

Section 2 requires the Office of Program Policy Analysis and Government Accountability (OPPAGA) to conduct an analysis of programs in other states for the assessment and cleanup of soil and groundwater contamination. The assessment must include programs for brownfields, petroleum, drycleaning solvents, and other chemical contamination. Based on this analysis, OPPAGA must recommend any changes to Florida's current programs that would improve the state's ability to effectively address environmental contamination assessment and cleanup, including the efficacy of consolidating the state's programs into a single remediation program.

The analysis must include, at a minimum:
- Funding mechanisms and sources of funding.
- Funding eligibility requirements.
- Current levels of funding.

[41] *Id.*

- An evaluation of best practices for successful cleanup programs and single remediation programs in other states and how such practices and programs address the needs of investigation and remediation stakeholders.
- A comparison of best practices for successful cleanup programs and single remediation programs in other states and cleanup and remediation programs in this state.

The bill requires OPPAGA to submit a report of its findings and any recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1, 2023.

Section 3 directs the Division of Law Revision to replace the phrase "the effective date of this act" wherever it occurs in the bill with the date the bill becomes a law.

Section 4 states that the bill takes effect upon becoming a law.

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's liability protections against state and local government actions regarding site rehabilitation for PFAS constituents may have an indeterminate, positive fiscal impact on private entities that receive such liability protections.

C. Government Sector Impact:

The bill may result in increased costs for the Department of Environmental Protection (DEP). The bill requires DEP to adopt by rule cleanup target levels for PFAS in soils and groundwater.

The bill may result in increased costs for the Legislature's Office of Program Policy Analysis and Government Accountability. The bill requires the office to conduct an analysis of programs in other states for the assessment and cleanup of soil and groundwater contamination, and submit a report of its findings and recommendations to the Governor and Legislature by January 1, 2023.

The bill's liability protections against state and local government actions regarding site rehabilitation for PFAS constituents may have an indeterminate, positive fiscal impact on public entities that receive such liability protections.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 376.91 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.

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