HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1475 Cleanup of Perfluoroalkyl and Polyfluoroalkyl Substances
SPONSOR(S): State Affairs Committee, McClure, Overdorf and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1418, SB 7012

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Environment, Agriculture & Flooding Subcommittee	17 Y, 0 N	Gawin	Moore
2) Agriculture & Natural Resources Appropriations Subcommittee	14 Y, 0 N	White	Pigott
3) State Affairs Committee	23 Y, 0 N, As CS	Gawin	Williamson

SUMMARY ANALYSIS

Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS) are a group of thousands of man-made chemical compounds developed to provide oil and water repellency, chemical and thermal stability, and friction reduction. Perfluorooctane sulfonic acid (PFOS) and perfluorooctanoic acid (PFOA) are the most common and the best-studied of these compounds. PFAS began being widely used in the 1950s, with applications in many industries, including the aerospace, semiconductor, medical, automotive, construction, electronics, and aviation industries, as well as in consumer products and firefighting foams. While U.S. manufacturers have voluntarily phased out use of the chemicals, they persist in the environment, particularly at fire colleges, airports, and military installations. PFAS chemicals do not break down in the environment, can move through soil and water, and can accumulate in fish and wildlife. Due to their widespread use and ease of transport, they can be found virtually everywhere.

The bill requires DEP to adopt by rule statewide cleanup target levels for PFAS in drinking water, groundwater, and soil using specified statutory criteria, with priority given to PFOA and PFOS, if the United States Environmental Protection Agency does not finalize its standards for PFAS in drinking water, groundwater, and soil by January 1, 2025. The bill requires the rules to be ratified by the Legislature in order to take effect.

The bill specifies that until DEP's rule has been ratified by the Legislature, a governmental entity or private water supplier may not be subject to any administrative or judicial action brought by any state or local governmental entity to compel or enjoin site rehabilitation, to require payment for the cost 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 may have an insignificant fiscal impact on the state that can be absorbed within existing resources.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Perfluoroalkyl and Polyfluoroalkyl Substances

Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS) are a group of thousands of man-made chemical compounds developed to provide oil and water repellency, chemical and thermal stability, and friction reduction.[1] Perfluorooctane sulfonic acid (PFOS) and perfluorooctanoic acid (PFOA) are the most common and the best-studied of these compounds.[2] PFAS began being widely used in the 1950s, with applications in many industries, including the aerospace, semiconductor, medical, automotive, construction, electronics, and aviation industries, as well as in consumer products and firefighting foams.[3] While U.S. manufacturers have voluntarily phased out use of the chemicals,[4] they persist in the environment, particularly at fire colleges, airports, and military installations where firefighting foam is frequently used.[5] 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.[6]

PFAS chemicals do not break down in the environment, can move through soil and water, and can accumulate in fish and wildlife.[7] Due to their widespread use and ease of transport, they can be found virtually everywhere. The Centers for Disease Control and Prevention (CDC) has detected PFAS in nearly all persons it has tested, indicating widespread exposure in the U.S. population.[8] The CDC indicated that it is still uncertain how low exposure to PFAS could impact humans, but it is possible that higher levels could lead to a variety of health issues such as increased risk of certain cancers, increased cholesterol levels, impacts on hormones and the immune system, and fetal and infant developmental effects.[9]

Federal Regulation of PFAS

The United States 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 higher than expected.[10] 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 the EPA's data collection on CECs,

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[1] 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. 23, 2022).

[2] 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. 23, 2022).

[3] ITRC, *History and Use of PFAS*, 1, 3 (2020), *available at* https://pfas-1.itrcweb.org/wp-content/uploads/2020/10/history_and_use_508_2020Aug_Final.pdf (last visited Jan. 23, 2022).

[4] United States Environmental Protection Agency (EPA), *Risk Management for Per- and Polyfluoroalkyl Substances (PFAS) under TSCA*, https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/risk-management-and-polyfluoroalkyl-substances-pfas#:~:text=On%20October%209%2C%202007%2C%20EPA,2007%20SNUR%20for%20183%20chemicals.&text=Any%20other%20uses%20of%20these,and%20review%20by%20the%20Agency. (last visited Jan. 23, 2022). In the U.S., PFOS was phased out of production around 2002, and PFOA was phased out around 2015.

[5] EPA, *PFAS Explained*, https://www.epa.gov/pfas/pfas-explained (last visited Jan. 23, 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. 23, 2022).

[6] *Id*.

[7] Centers for Disease Control and Prevention, *Per- and Polyfluorinated Substances (PFAS) Factsheet*, https://www.cdc.gov/biomonitoring/PFAS_FactSheet.html (last visited Jan. 23, 2022).

[8] *Id*.

[9] DOH, *PFAS Chemical Awareness*, 2, http://www.floridahealth.gov/environmental-health/hazardous-waste-sites/contaminant-facts/_documents/doh-pfas-poster.pdf (last visited Jan. 23, 2022).

[10] 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. 23, 2022).

all large and selected smaller public water systems across the U.S. are required to monitor for CECs.[11] The EPA's draft list of the next 30 CECs includes 29 types of PFAS and lithium.[12] If approved, these chemicals will be monitored starting in 2023 through 2025.[13]

Once the EPA's study and evaluation of a particular CEC is complete, if the EPA decides not to regulate the CEC, then it may decide to develop a health advisory level (HAL) for the detected contaminant. While HALs are non-enforceable federal limits, they serve as technical guidance for federal, state, and local officials.[14] For drinking water, the EPA has established a HAL of 70 parts per trillion for PFOA and PFOS.[15] The Florida Department of Health (DOH) has adopted the same HAL for those compounds.[16]

State Regulations

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.[17] The Department of Environmental Protection (DEP) establishes CTLs by rule for specific contaminants.[18] These CTLs apply to requirements for site rehabilitation across numerous programs.

Contaminated Site Cleanup

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.[19]

In 2003, the Legislature established a "global" RBCA process for the state.[20] It created 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.[21] All contaminated sites resulting from a discharge of pollutants or hazardous substances where legal responsibility for site rehabilitation exists, except for those contaminated sites subject to the RBCA cleanup criteria established for the petroleum, brownfields, and dry cleaning programs, must follow this process.[22]

DEP is required 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.[23] DEP considers a variety of factors related to the current and potential risk of exposure to

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[11] *Id*.

[12] Federal Register, *Drinking Water Contaminant Candidate List 5-Draft*, https://www.federalregister.gov/documents/2021/07/19/2021-15121/drinking-water-contaminant-candidate-list-5-draft (last visited Jan. 23, 2022).

[13] *Id*.

[14] EPA, *How EPA Regulates Drinking Water Contaminants*, https://www.epa.gov/dwregdev/how-epa-regulates-drinking-water-contaminants (last visited Jan. 23, 2022).

[15] 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. 23, 2022).

[16] 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. 23, 2022).

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

[18] *See generally* ch. 62-777, Fla. Admin. Code.

[19] 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. 23, 2022).

[20] *See* ch. 2003-173, s. 1, Laws of Fla.

[21] 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. 23, 2022).

[22] Section 376.30701(1)(b), F.S.

[23] Section 376.30701(2), F.S.

contaminants to determine and establish appropriate CTLs for groundwater and soil using RBCA principles.[24]

Regulation of PFAS

DEP has established provisional CTLs for PFAS to enable site cleanup under DEP's contaminated site cleanup criteria.[25] DEP has created numerical provisional CTLs and screening levels for PFOS and PFOA in provisional groundwater CTLs, provisional soil CTLs, provisional irrigation water screening levels, and surface water screening levels.[26] 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.[27] These firefighting agents include Class B fluorine-containing firefighting foams, such as aqueous film-forming foam (AFFF).[28] DEP has 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.[29] 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.[30] 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.[31]

In February of 2021, DEP published the current version of its PFAS Dynamic Plan.[32] The Dynamic Plan establishes a comprehensive path forward for addressing PFAS contamination in the state with the understanding that it may be necessary to change the approach as the science associated with these emerging contaminants continues to develop.[33] The plan describes the current screening and provisional CTLs and summarizes data and lessons learned from prior and ongoing investigations into PFAS contamination. 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.[34]

Effect of the Bill

The bill requires DEP to adopt by rule statewide cleanup target levels for PFAS in drinking water, groundwater, and soil using statutory RBCA criteria, with priority given to PFOA and PFOS, if the EPA does not finalize its standards for PFAS in drinking water, groundwater, and soil by January 1, 2025. The bill requires the rules for statewide cleanup target levels to be ratified by the Legislature in order to take effect.

The bill specifies that until DEP's rule has been ratified by the Legislature, a governmental entity or private water supplier may not be subject to any administrative or judicial action brought by any state or local governmental entity to compel or enjoin site rehabilitation, to require payment for the cost of

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[24] Section 376.30701(2)(a)-(i), F.S.
[25] 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. 23, 2022). *See* ch. 62-780, Fla. Admin. Code.
[26] *Id*.
[27] ITRC, *PFAS*, https://pfas-1.itrcweb.org/3-firefighting-foams/ (last visited Jan. 23, 2022).
[28] *Id*.
[29] DEP, *Fire Training Facility Preliminary Site Assessments*, https://floridadep.gov/waste/waste-cleanup/content/fire-training-facility-preliminary-site-assessments (last visited Jan. 23, 2022).
[30] 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. 23, 2022).
[31] DEP, *Fire Training Facility Preliminary Site Assessments*, https://floridadep.gov/waste/waste-cleanup/content/fire-training-facility-preliminary-site-assessments (last visited Jan. 23, 2022).
[32] *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. 23, 2022).
[33] *Id*. at 3.
[34] *Id*.

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 specifies that until site rehabilitation is completed or rules for statewide cleanup target levels are ratified by the Legislature, any statute of limitations that would bar a state or local government entity from pursuing relief in accordance with its existing authority is tolled from the effective date of the bill.

The bill specifies that it does not affect the ability or authority to seek any recourse or relief from any person who may have liability with respect to a contaminated site and who did not receive protection under the bill.

B. SECTION DIRECTORY:

Section 1. Creates s. 376.91, F.S., related to statewide cleanup of PFAS.

Section 2. Provides a directive to the Division of Law Revision.

Section 3. Provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may have an insignificant negative fiscal impact on DEP that can be absorbed within existing resources for the rulemaking requirements of the bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

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 expenditure 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 adopt rules related to PFAS cleanup target levels if the EPA has not finalized its standards for PFAS in drinking water, groundwater, and soil by January 1, 2025.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 23, 2022, the State Affairs Committee adopted an amendment and reported the bill favorably as a committee substitute. The amendment specified that the requirement for DEP to adopt rules related to PFAS only applies if the EPA has not finalized its PFAS standards by July 1, 2025, and specified that a governmental entity or private water supplier may not be subject to certain administrative or judicial actions until DEP's rules have been ratified by the Legislature.

This analysis is drafted to the committee substitute as approved by the State Affairs Committee.