

HJR 7-A — Relating to Petroleum Contamination Site Cleanup /HB 1385 New Effective Date

by Representative Nelson (Identical to SJR 18-A by Senator Hays)

This joint resolution establishes a new effective date of November 17, 2010, for HB 1385, which was passed by both chambers of the Legislature during the 2010 Regular Session of the Legislature but was vetoed by the Governor.

Pursuant to Section 9, Article III of the State Constitution, the effective date of a law passed over the veto of the Governor shall take effect on the sixtieth day after adjournment sine die of the session in which the veto is overridden, on a later date fixed in the law, or on a date fixed by resolution passed by both houses of the Legislature. This joint resolution provides an effective date of November 17, 2010, notwithstanding the veto of the Governor.

The bill requires that the Inland Protection Trust Fund be included in the list of funds from which the Legislature may not transfer unappropriated cash balances.

The bill allows the Department of Environmental Protection (DEP) to establish a long-term natural attenuation monitoring category for sites in the Petroleum Cleanup Program. When cost-effective, DEP is directed to reprioritize sites previously eligible for restoration funding assistance to long-term natural attenuation status if the sites meet certain criteria.

The bill clarifies that a local government may not deny a building permit based solely on the presence of petroleum contamination for any construction, repairs, or renovations performed in conjunction with tank upgrade activities to an existing retail fuel facility if the facility was fully operational before the building permit was requested and if the construction, repair, or renovation is performed by a licensed contractor.

The bill requires DEP to evaluate whether higher natural attenuation default concentrations for natural attenuation monitoring or long-term natural attenuation monitoring are cost-effective and will adequately protect public health and the environment. DEP must evaluate site-specific characteristics that will allow for higher natural attenuation or long-term natural attenuation concentration levels.

Unless institutional controls have been imposed by the responsible party or property owner to restrict the uses of the site, the bill precludes local governments from denying development orders or permits on the grounds that petroleum contamination exists onsite.

The bill establishes a low-scored site initiative for sites with a priority ranking score of 10 points or less and provides conditions for voluntary participation. If these conditions are met, DEP must issue a No Further Action (NFA) order, which means minimal contamination exists onsite and that contamination is not a threat to human health or the environment. If no contamination is detected, DEP may issue a site rehabilitation completion order. However, the bill clarifies that active remediation will be resumed within the 42 month period if the plume migrates beyond the property boundaries.

Sites that are eligible will be initiated by the source property owner or responsible party for the contamination and are strictly voluntary. DEP may pre-approve the cost of the assessment pursuant to s. 376.30711, F.S., including 6 months of groundwater monitoring, not to exceed \$30,000 for each site. DEP may not pay the costs associated with the establishment of institutional or engineering controls. Assessment work must be completed no later than 6 months after DEP issues its approval.

Also, the bill authorizes DEP to spend no more than \$10 million per fiscal year from the funds currently authorized from the Inland Protection Trust Fund to assess low scored sites. Funds will be made available on a first-come, first-served basis and will be limited to 10 sites in each fiscal year for each responsible party or property owner. The bill deletes the provisions relating to funding for limited interim soil-source removals, which sunsets June 30, 2010.

The bill deletes obsolete provisions relating to funding soil-source removals for sites that would become inaccessible due to road construction projects that were pending at the time the statute was written. The existing provisions will sunset June 30, 2010.

Finally, for fuel service station facilities that have orders issued by the DEP before July 1, 2010, granting an extension, the deadline shall be extended to September 30, 2011. The facilities must be in compliance with all other state and federal regulations pertaining to petroleum storage systems.

These provisions become law without the Governor's signature with an effective date of November 17, 2010.

Vote: Senate 39-0; House 120-0