

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 Environmental Preservation and Conservation

BILL: SB 100

INTRODUCER: Senator Simpson

SUBJECT: Petroleum Restoration Program

DATE: October 5, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hinton	Rogers	EP	Pre-meeting
2.			AGG	
3.			AP	

I. Summary:

SB 100 revises provisions related to the Abandoned Tank Restoration Program, the Low-Scored Site Initiative, and the Advanced Cleanup Program.

The bill amends requirements for participation in the Abandoned Tank Restoration Program (ATRP) by removing the deadline to apply to the ATRP and removing the waiver for those financially unable to properly close the storage tank. The bill also allows owners of sites to participate in the ATRP whether or not they had knowledge of polluting conditions when they purchased the property.

The Petroleum Restoration Program (Restoration Program), an existing program, establishes the requirements and procedures for cleaning up contaminated land as well as the circumstances under which the state will pay for the cleanup. Under the Restoration Program, eligible contaminated sites are rehabilitated by the state in priority order. Two programs under the Restoration Program allow sites to receive rehabilitation funding out of priority order under certain circumstances. These programs are the Low-Scored Site Initiative and Advanced Cleanup.

The bill changes the name of the Low-Scored Site Initiative to the Low-Risk Site Initiative (LRSI) and requires a responsible party who wishes to participate in LRSI to provide evidence of authorization from the property owner. The bill also revises the criteria that must be met to participate in LRSI. In addition, the bill increases the amount of money that may be encumbered from the Inland Protection Trust Fund each year to fund LRSI from \$10 million to \$15 million and increases the funding limit per site from \$30,000 to \$35,000.

The bill reduces the minimum number of sites that a facility owner or operator or other responsible party must bundle in order to be eligible for performance-based contracts under

Advanced Cleanup from 20 to 10. The bill also increases the annual allocation for Advanced Cleanup contracts from \$15 million to \$25 million.

II. Present Situation:

Water Quality Standards

Under s. 303 of the federal Clean Water Act (CWA), states are incentivized to adopt water quality standards (WQSs) for their navigable waters and must review and update those standards at least once every three years. These standards include:

- Designation of a waterbody's beneficial uses, such as water supply, recreation, fish propagation, and navigation;
- Water quality criteria that define the amounts of pollutants, in either numeric or narrative standards, that the waterbody can contain without impairment of the designated beneficial uses; and
- Anti-degradation requirements.¹

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.² These discharges pose a significant threat to groundwater quality, and Florida relies on groundwater for 90 percent of its drinking water.³ 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.⁴

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.⁵ The Department of Environmental Protection (Department or DEP) is responsible for regulating these storage tank systems. In 1986, the Legislature enacted the State Underground Petroleum Environmental Response Act (SUPER Act) to address the pollution problems caused by leaking underground petroleum storage systems.⁶ The SUPER Act authorized the Department to establish criteria for the prioritization, assessment and cleanup, and reimbursement for cleanup of contaminated areas, which led to the creation of the Petroleum Restoration Program (Restoration Program). The Restoration Program establishes the requirements and procedures for cleaning up contaminated land as well as the circumstances under which the state will pay for the cleanup.

¹ 33 U.S.C. s. 1313(c)(2)(A) (2014); 40 C.F.R. ss. 131.6 and 131.10-131.12.

² DEP, Guide to Florida's Petroleum Cleanup Program 1 (2002), (on file with the Senate Committee on Environmental Preservation and Conservation.

³ *Id.*

⁴ *Id.*

⁵ Ch. 83-310, Laws of Fla.

⁶ Ch. 86-159, Laws of Fla.

Abandoned Tank Restoration Program

In 1990, the Legislature established the Abandoned Tank Restoration Program (ATRP). The ATRP was created to address the contamination at facilities that had out-of-service or abandoned tanks as of March 1990. The ATRP originally had a one-year application period, but the deadline was subsequently extended to 1992, then 1994. In 1996, the Legislature waived the deadline indefinitely for owners who are unable to pay for the closure of abandoned tanks. To be eligible for the ATRP, applicants must certify that the petroleum system has not stored petroleum products for consumption, use, or sale since March 1, 1990.⁷

Site Rehabilitation

Florida law requires land contaminated by petroleum to be cleaned up, or rehabilitated, so that the concentration of each contaminant in the ground is below a certain level.⁸ These levels are known as Cleanup Target Levels (CTLs).⁹ Once the CTLs for a contaminated site¹⁰ has been attained, rehabilitation is complete and the site may be closed. When a site is closed, no further cleanup action is required unless the contaminant levels increase above the CTLs or another discharge occurs.¹¹

State Funding Assistance for Rehabilitation

In 2002, the average cost to rehabilitate a site was approximately \$300,000, but some sites may cost millions of dollars to rehabilitate.¹² Under Florida law, an owner of contaminated land (site owner) 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.¹³ Over the years, different eligibility programs have been implemented to provide state financial assistance to certain site owners and responsible parties for site rehabilitation.

⁷ Chapter 89-188, Laws of Fla.

⁸ Section 376.3071(5)(b)3., F.S.

⁹ *Id.*

¹⁰ A “site” is any contiguous land, sediment, surface water, or groundwater area upon or into which a discharge of petroleum or petroleum products has occurred or for which evidence exists that such a discharge has occurred. The site is the full extent of the contamination, regardless of property boundaries.

¹¹ DEP, Guide to Florida’s Petroleum Cleanup Program 24 (2002), (on file with the Senate Committee on Environmental Preservation and Conservation.

¹² *Id.* at 26.

¹³ Section 376.308, F.S.

To receive rehabilitation funding assistance, a site must qualify under one of these programs, which are outlined in the following table:

Table 1: State Assisted Petroleum Cleanup Eligibility Programs		
Program Name	Program Dates	Program Description
Early Detection Incentive Program (EDI) (s. 376.30371(9), F.S.)	Discharges must have been reported between July 1, 1986, and December 31, 1988, to be eligible	<ul style="list-style-type: none"> • 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	<ul style="list-style-type: none"> • Required facilities to purchase third party liability insurance to be eligible • Provides varying amounts of state-funded site restoration coverage
Abandoned Tank Restoration Program (ATRP) (s. 376.305(6), F.S.)	Applications must have been submitted between June 1, 1990, and June 30, 1996 ¹⁴	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 (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.)	PCPP began on July 1, 1996, and accepted applications until December 31, 1998	<ul style="list-style-type: none"> • 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 costs¹⁵ • 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. 376.3071(7)(c), F.S.)	The program began in 1986 and remains open	<ul style="list-style-type: none"> • 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

¹⁴ 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.

¹⁵ 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.

As of January 2015, there are 19,261 sites eligible for state funding through one of the above programs. Of these, approximately 8,348 have been rehabilitated and closed, approximately 5,059 are currently undergoing some phase of rehabilitation, and approximately 5,854 await rehabilitation.¹⁶

Inland Protection Trust Fund

To fund the cleanup of contaminated sites, the SUPER Act created the Inland Protection Trust Fund (IPTF).¹⁷ The IPTF is funded by an excise tax per barrel on petroleum and petroleum products in or imported into the state.¹⁸ The amount of the excise tax per barrel is determined by a formula, which is dependent upon the unobligated balance of the IPTF.¹⁹ Each year, \$196 million to \$199 million from the excise tax is deposited into the IPTF, of which \$110 million to \$125 million is generally available for site rehabilitation.

Funding for rehabilitation of a site is based on a relative risk scoring system. 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.²⁰ Sites currently in the Restoration Program range in score from 5 to 115 points, with a score of 115 representing a substantial threat and a score of 5 representing a very low threat. Sites are rehabilitated in priority order beginning with the highest score, with funding based on available budget.²¹ The Department sets the priority score funding threshold, which is the minimum score a site must be assigned to receive restoration funding at a particular point in time. Currently, the threshold is set at 30 points.²²

Expediting Site Rehabilitation

As described above, eligible contaminated sites typically receive state rehabilitation funding in priority order based on their numeric score. However, there are some programs that allow sites to receive funding for rehabilitation or site closure out of priority score order, as long as the sites are eligible under one of the programs in Table 1. Two of these programs are Advanced Cleanup and Low Scored Site Initiative.

Advanced Cleanup

Advanced Cleanup (formerly known as Preapproved Advanced Cleanup) is a program that was created in 1996 to allow an eligible site to receive state rehabilitation funding even if the site's priority score does not fall within the threshold currently being funded.²³ The purpose of creating Advanced Cleanup was to facilitate property transactions or public works projects on

¹⁶ DEP, *Senate Bill 314 Agency Analysis*, (Mar. 13, 2015) (on file with the Senate Committee on Environmental Preservation and Conservation).

¹⁷ Section 376.3071(3)-(4), F.S.

¹⁸ Sections 206.9935(3) and 376.3071(6), F.S.

¹⁹ 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 between \$50 million and \$100 million; and 80 cents if the unobligated balance is \$50 million or less. Section 206.9935(3), F.S.

²⁰ Fla. Admin. Code R. 62-771.100.

²¹ Fla. Admin. Code R. 62-771.300.

²² DEP, *Senate Bill 314 Agency Analysis*, (Mar. 13, 2015) (on file with the Senate Committee on Environmental Preservation and Conservation).

²³ Section 376.30713(1), F.S.

contaminated sites.²⁴ To participate in Advanced Cleanup, a site must be eligible for state rehabilitation funding under the Early Detection Incentive Program (EDI), the Petroleum Liability and Restoration Insurance Program (PLRIP), the Abandoned Tank Restoration Program (ATRP), the Innocent Victim Petroleum Storage System Restoration Program (Innocent Victim), or the Petroleum Cleanup Participation Program (PCPP).²⁵

To apply for Advanced Cleanup, a site owner or responsible party must bid a cost share of the total site rehabilitation.²⁶ The cost share must be at least 25 percent of the total cost of rehabilitation.²⁷ For PCPP sites, the cost share must be at least 25 percent of the state's share of the rehabilitation, as the site owner or responsible party is already required to pay for 25 percent of the total cost of rehabilitation to be eligible for PCPP.²⁸ Alternatively, an applicant may use a commitment to pay, a demonstrated cost savings to DEP, or both to meet this requirement if the application proposes a performance-based contract for the cleanup of 20 or more sites.²⁹

In years when the Department runs a bid cycle, bids may be accepted in two windows of May 1 through June 30 and November 1 through December 31.³⁰ Bids are awarded based solely on the proposed cost-share percentage and not the estimated dollar amount of that share.³¹ The Department may enter into Advanced Cleanup contracts for a total of up to \$15 million per fiscal year,³² and no more than \$5 million per fiscal year may be approved for rehabilitation work at an individual facility.³³

Low Scored Site Initiative

The Low Scored Site Initiative (LSSI) was created to expedite the assessment and closure of sites that contain minimal contamination and that are not a threat to human health or the environment. To participate in LSSI, a site owner or responsible party must demonstrate that the following criteria are met:

- Upon assessment, the site retains a priority ranking score of 29 points or less;
- No excessively contaminated soil exists onsite;
- A minimum of six months of groundwater monitoring indicates that the plume is shrinking or stable;
- The remaining contamination resulting from petroleum products does not adversely affect adjacent surface waters;
- The area of groundwater contamination is less than one-quarter acre and is confined to the source property boundary; and

²⁴ *Id.*

²⁵ For PCPP sites, Advanced Cleanup is only available if the 25 percent copay requirement of PCPP has not been reduced or eliminated. Section 376.30713(1)(d), F.S.

²⁶ Section 376.30713(2)(a), F.S.

²⁷ *Id.*

²⁸ Section 376.30713(1)(d)-(2)(a), F.S.

²⁹ Section 376.30713(2)(a)1., F.S.

³⁰ Section 376.30713(2)(a), F.S.

³¹ Section 376.30713(2)(b), F.S.

³² Section 376.30713(4), F.S.

³³ A "facility" includes, but is not limited to, "multiple site facilities such as airports, port facilities, and terminal facilities even though such enterprises may be treated as separate facilities for other purposes under this chapter." Section 376.30713(4), F.S.

- Soils onsite found between the land surface and two feet below the land surface must meet the soil cleanup target levels (SCTLs) established by the Department unless human exposure is limited by appropriate institutional or engineering controls.³⁴

An assessment is conducted to determine whether the above criteria are met.³⁵ The state pays the assessment costs for sites eligible for funding under EDI, ATRP, Innocent Victim, PLRIP, or PCPP.³⁶ Funding for LSSI is limited to \$10 million per fiscal year, which may only be used to fund site assessments.³⁷ Each site has a funding cap of \$30,000, and each site owner or responsible party is limited to 10 eligible sites per fiscal year.³⁸ Funds are allocated on a first-come, first-served basis.³⁹ Sites not eligible for state rehabilitation funding may still qualify for closure under LSSI if an assessment reveals that the above criteria are met, but the state will not pay for the assessment.⁴⁰

If the assessment shows the above criteria are met, there are three options for site closure:

- If no contamination is detected during the assessment, the Department may issue a site rehabilitation completion order;⁴¹
- If the assessment demonstrates that minimal contamination exists onsite, but the above criteria are met, the Department may issue an LSSI no further action administrative order. This determination acknowledges that the contamination is not a threat to human health or the environment; or⁴²
- If soil between the land surface and two feet below the land surface exceeds SCTLs, but the above criteria are otherwise met, the Department may issue a site rehabilitation completion order with conditions. This determination requires that institutional and/or engineering controls be put in place to prevent human or environmental exposure to the contamination. The state is not authorized to fund such controls.⁴³

If at any time data collected during the assessment indicate that the above criteria for closure will not be met, assessment activities will be terminated.⁴⁴ LSSI funding will be discontinued if it is determined at any point that a closure cannot be accomplished within the \$30,000 funding limit, unless the site owner or responsible party is willing to contribute funds to the assessment work.⁴⁵ A site determined to be ineligible for LSSI funding retains its current program eligibility and will receive rehabilitation funding in priority order.

³⁴ Section 376.3071(11)(b)1., F.S.

³⁵ DEP Petroleum Restoration Program, Procedural and Technical Guidance for the Low-Scored Site Initiative 9 (2013), available at http://www.dep.state.fl.us/Waste/quick_topics/publications/pss/pcp/screening/LSSI-Guidance_30Aug13.pdf (last accessed Oct. 5, 2015).

³⁶ *Id.* at 3.

³⁷ Section 376.3071(11)(b)3.c., F.S.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ DEP, Petroleum Restoration Program, Procedural and Technical Guidance for the Low-Scored Site Initiative 1-2 (2013).

⁴¹ Section 376.3071(12)(b)2., F.S.

⁴² *Id.*

⁴³ DEP Petroleum Restoration Program, Procedural and Technical Guidance for the Low-Scored Site Initiative 3 (2013).

⁴⁴ *Id.* at 11.

⁴⁵ *Id.*

III. Effect of Proposed Changes:

Section 1 amends s. 376.305, F.S., concerning the Abandoned Tank Restoration Program

The bill expands the Abandoned Tank Restoration Program (ATRP) program by removing the reporting deadline, which currently separates eligible from ineligible sites. The expansion of the program will provide state funding eligibility for remediation of a large but indeterminate number of discharges. It also specifies that a site eligible for the PCPP may not participate in the ATRP.

The bill removes a provision specifying that the owner of a site in the ATRP must provide evidence that he or she had a complete understanding of the use of the property prior to acquisition.

The bill removes a section that excludes site owners from eligibility for site rehabilitation funding when the site owner, “had knowledge of the polluting condition when title was acquired, unless the person acquired title to the site after issuance of a notice of site eligibility by the department.”

Section 2 amends s. 376.3071, F.S., concerning the Low Risk Site Initiative

The bill changes the name of the Low Scored Site Initiative to the Low-Risk Site Initiative (LRSI) and makes various changes to the program. The bill requires a responsible party who wishes to participate in LRSI to provide evidence of authorization from the property owner.

To participate in LRSI, the bill requires a property owner or responsible party to submit a “No Further Action” proposal that demonstrates the required criteria are met. In addition, the bill revises the criteria in the following manner:

- Removes the requirement that a contaminated site must have a priority ranking score of 29 points or less;
- Provides a more specific standard for the prohibition on the presence of excessively contaminated soil on the site. Specifically, soil saturated with petroleum or petroleum products, or soil that causes a total corrected hydrocarbon measurement of 500 parts per million (ppm) or higher for Gasoline Analytical Group or 50 ppm or higher for Kerosene Analytical Group, as defined by DEP rule, must not exist onsite as a result of a release of petroleum products;
- Specifies that the requirement that contamination remaining at the site does not adversely affect adjacent surface waters includes the effects of those waters on human health and the environment;
- Removes the requirement that the area of groundwater contamination is less than one-quarter acre;
- Allows the presence of groundwater containing petroleum products’ chemicals of concern that is not confined to the source property boundaries if it only migrates to a transportation facility of the Florida Department of Transportation; and
- Adds a requirement that the groundwater contamination containing the petroleum products’ chemicals of concern is not a threat to any permitted potable water supply well.

If DEP determines that the property owner or responsible party has demonstrated that these conditions are met, DEP must issue a site rehabilitation completion order that incorporates the “No Further Action” proposal. This determination acknowledges that minimal contamination exists onsite and that such contamination is not a threat to the public health, safety, or welfare, water resources, or the environment. If DEP determines that a discharge for which a site rehabilitation completion order was issued pursuant to LRSI may pose a threat to the public health, safety, or welfare, water resources, or the environment, the issuance of the site rehabilitation completion order does not alter eligibility for state-funded rehabilitation that would otherwise apply.

Under current law, DEP can approve the cost of the assessment, including six months of groundwater monitoring. The bill authorizes DEP to approve the cost of both the assessment *and* remediation if the DEP determines that it will result in a finding of “No Further Action” The approval may be provided in one or more task assignments or modifications. The total amount authorized for a particular site is increased from \$30,000 to \$35,000. The bill authorizes DEP to pay the costs associated with a professional land survey or specific purpose survey, if needed, and costs associated with obtaining a title report and recording fees.

The bill requires DEP to procure contractual services for LRSI in accordance with chapter 287, F.S., and applicable DEP rules in order to ensure the work is conducted in a cost-effective manner.

The bill increases the amount of time within which assessment and remediation work must be completed from six months to nine months. If groundwater monitoring is required following the assessment in order to satisfy the LRSI conditions, DEP may authorize an additional six months to complete the monitoring.

The bill also increases the annual amount of money that may be encumbered from the Inland Protection Trust Fund to fund LRSI from \$10 million to \$15 million.

Section 3 amends s. 376.30713, F.S., concerning Advanced Cleanup

The bill reduces the minimum number of sites that a facility owner or operator or other responsible party must bundle in order to be eligible for performance-based contracts under Advanced Cleanup from 20 to 10.

The bill increases the annual allocation for Advanced Cleanup contracts from \$15 million to \$25 million.

The bill allows a property owner or responsible party to enter into a voluntary cost share agreement for bundling multiple sites and to provide a list of the sites to be included in future bundles. The sites that will be included in a future bundle are not subject to agency term contractor assignment pursuant to rule. The DEP may terminate the voluntary cost share agreement if the application to bundle multiple sites is not submitted during the open application period. This provision will extend the period of time listed sites will be remediated because they are not subject to the agency term contractor assignment.

Section 4 provides an effective date of July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill appears to have an indeterminate positive fiscal impact on the private sector because more rehabilitation contracts may be awarded as a result of increasing the total funding limits for Advanced Cleanup and LRSI.

C. Government Sector Impact:

The bill increases the amount of money that may be encumbered from the Inland Protection Trust Fund to fund LRSI contracts from \$10 million to \$15 million and increases the annual allocation for Advanced Cleanup contracts from \$15 million to \$25 million. However, these changes do not increase DEP's overall annual appropriation for the Restoration Program, but rather revise how much of the annual appropriation may be expended on these programs within the Restoration Program.

There may be an indeterminate fiscal impact on DEP as a result of reducing the number of sites that must be bundled to be eligible to compete for performance-based contracts for Advanced Cleanup from 20 to 10. According to DEP, the process of bundling sites and implementing cleanups under a performance-based contract has resulted in an average cost savings ranging between 25 percent and 40 percent.⁴⁶ The decrease in the number of sites needed for a bundle in conjunction with raising the amount of funds available may result in pushing the average cost savings closer to 25 percent. However, the decreased bundled site requirement together with the increased amount of available funds should result in more sites being cleaned up sooner, resulting in an overall cost savings over time.

⁴⁶ DEP, *Senate Bill 314 Agency Analysis*, 3, (Mar. 13, 2015) (on file with the Senate Committee on Environmental Preservation and Conservation).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 376.305, 376.3071, 376.30713.

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.