

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 Committee Code Not Found

BILL: SB 7012

INTRODUCER: Environment and Natural Resources Committee

SUBJECT: Per- and Polyfluoroalkyl Substances Task Force

DATE: February 25, 2022

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|-------------------------|-----------------|------------|---------------------------------------|
| | <u>Anderson/Collazo</u> | <u>Rogers</u> | | EN Submitted as Committee Bill |
| 1. | <u>Reagan</u> | <u>Betta</u> | <u>AEG</u> | Recommend: Fav/CS |
| 2. | <u>Reagan</u> | <u>Sadberry</u> | <u>AP</u> | Pre-meeting |

I. Summary:

SPB 7012 creates the Per- and Polyfluoroalkyl Substances (PFAS) Task Force, to be known as the PFAS Task Force, within the Department of Environmental Protection (DEP) to develop recommendations on:

- Enforceable regulatory standards for PFAS in drinking water, groundwater, and soil;
- A mechanism for the identification and cleanup of contaminated areas;
- How to address liability for contamination and financial responsibility for cleanup;
- Appropriate methods and technologies, considering cost, for cleanup and treatment of PFAS contamination;
- Funding sources and mechanisms for prioritizing the distribution of funds for cleanup and remediation of PFAS contamination;
- Methods to manage waste containing PFAS to prevent possible release or discharge into the environment that could cause contamination of drinking water, groundwater, and soil;
- Appropriate testing for and monitoring of PFAS in drinking water, groundwater, and soil to protect the public health and welfare; and
- Methods to eliminate workplace exposure in the manufacturing industry.

The bill provides for the membership and operation of the task force. The bill requires the task force to convene no later than October 1, 2022, and to submit an annual report to the Governor and the Legislature, beginning October 1, 2023.

The task force is repealed on July 1, 2026.

The DEP will likely incur an increase in workload and associated costs from operating the task force. The bill also provides reimbursement for per diem and travel expenses to members for service on the task force.

II. Present Situation:

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.¹ Perfluorooctane sulfonic acid (PFOS) and perfluorooctanoic acid (PFOA) are the most common and best-studied of these compounds.² PFAS have been widely used since the 1950s in many industries, including the aerospace, semiconductor, medical, automotive, construction, electronics, and aviation industries. The compounds have also been used as coatings in a variety of consumer products, such as non-stick cookware, waterproof and stain-resistant fabrics, carpets, furniture, outdoor equipment, cleaning products, food packaging, and firefighting foams.³

While U.S. manufacturers have voluntarily phased out use of the chemicals since the early 2000s, they persist in the environment, particularly at fire colleges, airports, and military installations,⁴ where, in some circumstances, they are still used in firefighting foams.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 Because of their prevalent use and ease of transport, they can be found virtually everywhere. The U.S. 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 predominant PFAS human exposure pathways include contact in the workplace, ingestion of food containing PFAS, ingestion of drinking water contaminated with PFAS, and exposure to PFAS from consumer products or indoor dust.⁹ Based on recent studies, health effects from PFAS potentially include increased risk of certain cancers, increased cholesterol

¹ Interstate Technology Regulatory Council, *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 Nov. 5, 2021).

² Florida Department of Health (DOH), *PFAS Chemical Awareness*, available at <http://www.floridahealth.gov/environmental-health/hazardous-waste-sites/contaminant-facts/documents/doh-pfas-poster.pdf> (last visited Nov. 5, 2021).

³ Interstate Technology Regulatory Council, *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 Nov. 5, 2021).

⁴ *Id.* at 4.

⁵ For example, Federal Aviation Authority (FAA) regulations still require the use of aqueous film-forming foam (AFFF). See 14 C.F.R. § 139.317 (2021). However, due to environmental concerns, to satisfy part 139, the FAA is currently recommending against testing AFFF by discharging it and has already approved four alternatives. See Federal Aviation Authority (FAA), *National Part 139 CertAlert No. 21-01*, available at https://www.faa.gov/airports/airport_safety/certalerts/media/part-139-cert-alert-21-01-AFFF.pdf (last visited Nov. 17, 2021).

⁶ Interstate Technology Regulatory Council, *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 Nov. 5, 2021).

⁷ U.S. Centers for Disease Control and Prevention, *Per- and Polyfluorinated Substances (PFAS) Factsheet*, https://www.cdc.gov/biomonitoring/PFAS_FactSheet.html (last visited Nov. 5, 2021).

⁸ *Id.*

⁹ Interstate Technology Regulatory Council, *Human and Ecological Health Effects and Risk Assessment of Per- and Polyfluoroalkyl Substances (PFAS)*, 3 (2020), available at https://pfas-1.itrcweb.org/wp-content/uploads/2020/10/human_and_eco_health_508_20200918.pdf (last visited Nov. 5, 2021).

levels, liver and kidney damage, impacts on hormones and the immune system, and fetal and infant developmental effects.¹⁰

Some of the challenges to addressing PFAS are that the science surrounding the issue is rapidly evolving, exposure is perceived as involuntary, risk management strategies are ever-changing, and health impacts are greatest for the most sensitive populations.¹¹ Even while the health effects from low-level concentrations of PFAS are not yet fully understood, litigation and public interest is increasing nationally.¹²

Disposal of PFAS Contaminated Soil and Solids

PFAS contaminated soils and solids may be excavated and disposed of in landfills.¹³ However, whether PFAS is classified as a hazardous waste can affect the ability to landfill as well as the cost of disposal. Some nonhazardous waste landfills do not accept PFAS waste.¹⁴

Incineration is another method of disposal, because heat can destroy chemicals.¹⁵ Incineration is one of only a few technologies that can potentially destroy PFAS. However, there are many unknowns currently being researched to determine effective destruction temperatures, treatment time, and other risk factors.¹⁶

Federal Actions to Address PFAS

Drinking Water

Testing has detected PFAS in drinking water supplies across the country.¹⁷ However, there are no federal drinking water standards applicable to PFAS in the environment.¹⁸ The U.S. Environmental Protection Agency (EPA) researches and collects data for new chemicals that are being discovered in water called “contaminants of emerging concern” (CEC).¹⁹ While CECs do

¹⁰ DOH, *PFAS Chemical Awareness*, 2, available at <http://www.floridahealth.gov/environmental-health/hazardous-waste-sites/contaminant-facts/documents/doh-pfas-poster.pdf> (last visited Nov. 5, 2021).

¹¹ Interstate Technology Regulatory Council, *Risk Communication for Per- and Polyfluoroalkyl Substances (PFAS)*, 1 (2020), available at https://pfas-1.itrcweb.org/wp-content/uploads/2020/10/pfas_rc_tech_508_2020Aug.pdf (last visited Nov. 5, 2021).

¹² Ralph A. DeMeo and Jorge Caspary, *PFApocalypse Now: The PFAS Firestorm and Implications for Florida*, FLORIDA BAR JOURNAL, Vol. 94, No. 3, pg. 46 (2020), <https://www.floridabar.org/the-florida-bar-journal/pfapocalypse-now-the-pfas-firestorm-and-implications-for-florida/#u7068> (last visited Nov. 5, 2021).

¹³ Interstate Technology Regulatory Council, *Treatment Technologies and Methods for Per- and Polyfluoroalkyl Substances (PFAS)*, 3 (2020), available at https://pfas-1.itrcweb.org/wp-content/uploads/2020/10/treatment_tech_508_Aug-2020-Final.pdf (last visited Nov. 5, 2021).

¹⁴ *Id.*

¹⁵ *Id.* at 4.

¹⁶ *Id.*

¹⁷ Hu, Xindi C., et. al, *Detection of Poly- and Perfluoroalkyl Substances (PFASs) in U.S. Drinking Water Linked to Industrial Sites, Military Fire Training Areas, and Wastewater Treatment Plants* (2016), Environmental Science & Technology Letters 3 (10):344-350, available at <https://pubs.acs.org/doi/pdf/10.1021/acs.estlett.6b00260> (last visited Nov. 5, 2021).

¹⁸ Cordner, A., et. al., *Guideline levels for PFOA and PFOS in drinking water: the role of scientific uncertainty, risk assessment decisions, and social factors*, J. EXPO. SCI. ENVIRON. EPIDEMIOLOG. (Mar. 29, 2019), available at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6455940/pdf/41370_2018_Article_99.pdf/ (last visited Nov. 5, 2021).

¹⁹ U.S. Environmental Protection Agency (EPA), *Determining the Prevalence of Contaminants in Treated and Untreated Drinking Water*, <https://www.epa.gov/water-research/determining-prevalence-contaminants-treated-and-untreated-drinking-water> (last visited Nov. 15, 2021); Florida Department of Environmental Protection (DEP), *Regulated Drinking Water*

not have regulatory limits, there may be a long-term potential risk to human health or the environment associated with them.²⁰ The EPA requires all large and selected smaller public water systems across the U.S. to monitor for CECs.²¹ The EPA uses this data to determine whether to regulate a CEC and may decide to instead develop a health advisory level (HAL) for the detected contaminants. HALs are non-enforceable and non-regulatory federal limits that serve as technical guidance for federal, state, and local officials.²² For drinking water, the EPA has established a HAL of 70 parts per trillion for PFOA and PFOS.²³ The Florida Department of Health (DOH) has adopted the same HAL for those compounds.²⁴

Additionally, other U.S. federal agencies and programs are actively involved in PFAS-related matters, such as the CDC, which studies the exposure of the U.S. population to PFAS; the U.S. Department of Health and Human Services Agency for Toxic Substances and Disease Registry, which funds studies to assess exposure to and health effects from PFAS; and the U.S. Department of Defense (DOD), which funds projects to assess PFAS occurrence, fate and transport, ecotoxicity, and remediation, as well as fluorine-free firefighting foams.²⁵

EPA's PFAS Action Plan and PFAS Strategic Roadmap

In 2019, the EPA released a formal PFAS Action Plan, which outlined actions that the agency planned to take, including developing a maximum contaminant level (MCL) for states and local water utilities under the federal Safe Drinking Water Act. An MCL would be an enforceable regulatory standard²⁶ and PFOA and PFOS would be listed as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).²⁷ The EPA is also developing groundwater cleanup recommendations.²⁸

In 2021, the EPA released a PFAS Strategic Roadmap, which is intended to build on and accelerate implementation of policy actions identified in the PFAS Action Plan and to commit to bolder new policies to safeguard public health, protect the environment, and hold polluters accountable.²⁹ Some of the key actions for 2021 identified in the PFAS Strategic Roadmap

Contaminants and Contaminants of Emerging Concern, <https://floridadep.gov/comm/press-office/content/regulated-drinking-water-contaminants-and-contaminants-emerging-concern> (last visited Nov. 5, 2021).

²⁰ *Id.*

²¹ *Id.*; see also EPA, *Learn About the Unregulated Contaminant Monitoring Rule*, <https://www.epa.gov/dwucmr/learn-about-unregulated-contaminant-monitoring-rule> (last visited Nov. 15, 2021).

²² 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 Nov. 5, 2021).

²³ *Id.*

²⁴ 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 Nov. 5, 2021). The HAL is identified as 0.07 micrograms per liter (ug/L), which is equivalent to 70 parts per trillion. See *id.*

²⁵ Interstate Technology Regulatory Council, *Regulation of Per- and Polyfluoroalkyl Substances (PFAS)*, 1 (2020), available at https://pfas-1.itrcweb.org/wp-content/uploads/2020/10/regs_508_Aug-2020-Final.pdf (last visited Nov. 5, 2021).

²⁶ EPA, *Per- and Polyfluoroalkyl Substances (PFAS) Action Plan* (Feb. 2019), available at https://www.epa.gov/sites/production/files/2019-02/documents/pfas_action_plan_021319_508compliant_1.pdf (last visited Nov. 5, 2021); updated at EPA, *PFAS Action Plan: Program Update* (Feb. 2020), available at https://www.epa.gov/sites/production/files/2020-01/documents/pfas_action_plan_feb2020.pdf (last visited Nov. 5, 2021).

²⁷ *Id.*

²⁸ *Id.*

²⁹ EPA, *PFAS Strategic Roadmap: EPA's Commitments to Action 2021-2024*, 5 (2021) available at https://www.epa.gov/system/files/documents/2021-10/pfas-roadmap_final-508.pdf (last visited Nov. 17, 2021).

include publishing a national PFAS testing strategy; undertaking national monitoring for PFAS in drinking water; publishing the final toxicity assessment for GenX and five additional PFAS; engaging directly with affected communities; accelerating public health protections by identifying PFAS categories; and educating the public about the risks of PFAS.³⁰

DOD National PFAS Task Force

The DOD formed a national PFAS Task Force in 2019 and has collaborated with other agencies and entities to address PFAS issues at military installations.³¹ The goals of the PFAS Task Force are to mitigate and eliminate the use of the current aqueous film-forming foam (AFFF), fulfill PFAS cleanup responsibilities, understand the impacts of PFAS on human health, and expand PFAS-related public outreach.³²

The task force has made substantial progress toward understanding the DOD's use of AFFF and researching fluorine-free alternatives to AFFF, although there are challenges. A viable alternative to AFFF must meet military specifications in terms of the time a fire must be put out and EPA standards for human health and the environment. It must also be usable in existing equipment and it must not degrade over time in storage. Notwithstanding these challenges, DOD officials remain cautiously optimistic that the DOD will find and deploy a PFAS-free alternative by the end of Fiscal Year 2024.³³

For cleanup, the DOD follows the CERCLA. The CERCLA is a law that was passed by Congress on December 11, 1980, to form what is commonly known as Superfund.³⁴ Thousands of contaminated sites exist nationally due to hazardous waste being dumped, left out in the open, or otherwise improperly managed.³⁵ These sites include manufacturing facilities, processing plants, landfills, and mining sites.³⁶ The CERCLA created a tax on the chemical and petroleum industries and required that the money collected be used to clean up hazardous waste sites throughout the country.³⁷ Superfund allows the EPA to clean up contaminated sites.³⁸ It also forces the parties responsible for the contamination to either perform cleanups or reimburse the government for EPA-led cleanup work.³⁹ When there is no viable responsible party, Superfund gives the EPA the funds and authority to clean up contaminated sites.⁴⁰

³⁰ *Id.* at 10-21.

³¹ U.S. Department of Defense (DOD), *Memo re: Per- and Polyfluoroalkyl Substances Task Force* (Jul. 2019), available at <https://media.defense.gov/2019/Aug/09/2002169524/-1/-1/1/PER-AND-POLYFLUOROALKYL-SUBSTANCES-TASK-FORCE.PDF> (last visited Nov. 5, 2021).

³² DOD, *DOD's PFAS Public Outreach Focuses on Cleanup Progress, PFAS-Free Firefighting Solutions, Officials Say*, <https://www.defense.gov/News/News-Stories/Article/Article/2818535/dods-pfas-public-outreach-focuses-on-cleanup-progress-pfas-free-firefighting-so/> (last visited Nov. 15, 2021).

³³ *Id.*

³⁴ EPA, *What is CERCLA?*, [Superfund - What is CERCLA? \(servicenowservices.com\)](https://www.epa.gov/cercla) (last visited Jan. 25, 2022).

³⁵ EPA, *What is Superfund?*, [Superfund - What is Superfund? \(servicenowservices.com\)](https://www.epa.gov/superfund) (last visited Jan. 25, 2022).

³⁶ *Id.*

³⁷ EPA, *What is CERCLA?*, [Superfund - What is CERCLA? \(servicenowservices.com\)](https://www.epa.gov/cercla) (last visited Jan. 25, 2022).

³⁸ EPA, *What is Superfund?*, [Superfund - What is Superfund? \(servicenowservices.com\)](https://www.epa.gov/superfund) (last visited Jan. 25, 2022).

³⁹ *Id.*

⁴⁰ *Id.*

Federal agencies must comply with substantive and procedural CERCLA requirements to the same extent as private entities.⁴¹ The following sequence of events generally applies to all sites, both privately and federally-owned or operated: preliminary assessment; site investigation; listing on the National Priorities List; remedial investigation; feasibility study; record of decision; remedial design; remedial action; long-term operation; and maintenance.⁴² The remedy selected for cleanup at a federal facility must meet the CERCLA's cleanup standards.⁴³

As noted, the first step is the preliminary assessment and site inspection phase. At about 50 off-base sites around DOD installations, where PFOS or PFOA have been identified in drinking water levels that exceed the EPA's HAL of 70 parts per trillion, the DOD has implemented short-term solutions such as bottled water and point-of-use filters.⁴⁴ The DOD has also completed or at least begun the preliminary assessment and site inspection phase at 669 installations where it believes PFAS may have been used or potentially released; the goal is to have all 669 completed by the end of Fiscal year 2023.⁴⁵

The DOD has held two virtual PFAS public engagements thus far, in July and October 2021. Attendees were primarily from communities around military installations where PFAS substances have been identified in groundwater, although representatives from the White House and the EPA also attended. The next public engagement is scheduled for January 2022 and plans are for more to follow.⁴⁶

Florida's Efforts to Address PFAS

The DEP is undertaking efforts to minimize human exposure to PFAS. Prior widespread use of PFAS has led to contamination of Florida's groundwater resources, including three areas identified under the federal third Unregulated Contaminant Monitoring Rule (UCMR3) sampling of public supply wells; 22 areas identified by DEP sampling of certified fire training facilities; 27 areas identified by sampling of select State Cleanup Program sites; 15 areas identified by DEP sampling of select dry-cleaning program sites; and 20 current and former federal facilities.⁴⁷

Drinking Water

Between 2013 and 2015, the EPA conducted a study that indicated that some utilities in Florida had total levels of PFOA and PFOS above the EPA's HAL.⁴⁸ As a result of coordinated efforts

⁴¹ EPA, *Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and Federal Facilities*, <https://www.epa.gov/enforcement/comprehensive-environmental-response-compensation-and-liability-act-cercla-and-federal> (last visited Nov. 17, 2021).

⁴² *Id.*

⁴³ *Id.*

⁴⁴ DOD, *DOD's PFAS Public Outreach Focuses on Cleanup Progress, PFAS-Free Firefighting Solutions, Officials Say*, <https://www.defense.gov/News/News-Stories/Article/Article/2818535/dods-pfas-public-outreach-focuses-on-cleanup-progress-pfas-free-firefighting-so/> (last visited Nov. 15, 2021).

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ DEP, *Per- and Polyfluoroalkyl Substances (PFAS) Dynamic Plan*, 3 (Feb. 2021)[hereinafter *DEP Dynamic Plan*], available at https://floridadep.gov/sites/default/files/Dynamic_Plan_Revised_Feb2021.pdf (last visited Nov. 8, 2021).

⁴⁸ 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 Nov. 5, 2021).

between the DEP and the impacted water systems, most of these facilities have returned to levels below the HALs and all of the facilities currently meet federal drinking water standards.⁴⁹ The DEP continues to provide technical assistance and potential funding assistance to the few facilities that are not below the advisory level.⁵⁰

The DOH established a lifetime drinking water health advisory for PFOS and PFOA of 70 parts per trillion, in line with the EPA's HAL, for contamination identified in private and public water supply wells.⁵¹ The DOH and the DEP use the HAL of 70 parts per trillion to determine appropriate response actions in their coordinated response to PFAS contamination.⁵²

Contaminated Site Cleanup

The DEP has established provisional cleanup target levels (CTLs) for PFAS to protect human health and enable site cleanup under the DEP's contaminated site cleanup criteria.⁵³ The 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.⁵⁴ These CTLs have not been promulgated by rule.⁵⁵ The provisional groundwater CTLs are the same as the EPA's HAL for drinking water.

In Florida, issues exist regarding liability for cleanup and third-party liability.⁵⁶ Where PFAS is detected above the HAL and/or provisional CTLs, the DEP is sending "62-780 letters" that assign liability and timeframes for cleanup, leading to concerns about the substantial costs and lack of capacity to comply.⁵⁷ Stakeholders, including the DOD, have questioned the enforceability of the CTLs, arguing that the CTLs are not promulgated and are not considered applicable or relevant and appropriate requirements as required by the CERCLA.⁵⁸ However, the DEP asserts in its 2021 PFAS Dynamic Plan (discussed in more detail below), that the provisional CTLs are allowable and enforceable under Florida law.⁵⁹ The EPA's HAL and the

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ 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 Nov. 5, 2021). The HAL is identified as 0.07 micrograms per liter (ug/L), which is equivalent to 70 parts per trillion. *See id.*

⁵² *DEP Dynamic Plan* at 5. The HAL is identified as 70 nanograms per liter (ng/L), which is equivalent to 70 parts per trillion. *See id.*

⁵³ DEP, *Provisional PFOA and PFOS Cleanup Target Levels and Screening Levels* (Oct. 2020), available at <https://floridadep.gov/waste/district-business-support/documents/provisional-pfoa-and-pfos-cleanup-target-levels-screening> (last visited Nov. 8, 2021); *see also* Fla. Admin. Code Ch. 62-780.

⁵⁴ *DEP Dynamic Plan* at 9-10 (Feb. 2021); *see also* Fla. Admin. Code Ch. 62-780.

⁵⁵ *DEP Dynamic Plan* at 9. The DEP's plan states that parties responsible for site rehabilitation have the option of proposing alternative CTLs to the DEP's provision CTLs.

⁵⁶ Ralph A. DeMeo and Jorge Caspary, *PFAPocalypse Now: The PFAS Firestorm and Implications for Florida*, FLORIDA BAR JOURNAL, Vol. 94, No. 3, pg. 46 (2020), <https://www.floridabar.org/the-florida-bar-journal/pfapocalypse-now-the-pfas-firestorm-and-implications-for-florida/#u7068> (last visited Nov. 5, 2021).

⁵⁷ *Id.*

⁵⁸ *See* Department of the Army, Letter to DEP, *Subject: Florida Department of Environmental Protection (FDEP) Requirements for Addressing Per- and Polyfluoroalkyl Substances*, 2 (June 6, 2019), available at <https://floridadep.gov/sites/default/files/FL%20DEP%20Response%206%20June%202019.pdf> (last visited Nov. 5, 2021).

⁵⁹ *DEP Dynamic Plan* at 9; *see also* Fla. Admin. Code Rules 62-780.150(6),(7) and 62-780.650(1). The rules authorize alternative CTLs if calculated using the appropriate equations. *See* Fla. Admin. Code R. 62-777.170. In addition to default

DEP's provisional CTL for groundwater has become a standard in site assessments and remediation, despite arguments that the DEP must adopt CTLs through the formal rulemaking process.⁶⁰

Firefighting Facilities

PFAS is common in firefighting foams that have been stored and used for fire suppression, fire training, and flammable vapor suppression.⁶¹ These firefighting agents include Class B fluorine-containing firefighting foams, such as AFFF.⁶² In Florida, the 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.⁶³ Of the 25 active facilities in the state with known or suspected use of AFFF, investigations indicate that 22 facilities had analytical results for PFOA and PFOS above the provisional groundwater CTL.⁶⁴ Where contamination is identified, the DEP helps the facility develop a cleanup plan to remove or contain the contamination to prevent future environmental impact and human exposure.⁶⁵

DEP PFAS Dynamic Plan

In February of 2021, the DEP published the current version of its PFAS Dynamic Plan (plan), which serves as a coordinated approach with other state and federal agencies on PFAS developments and issues.⁶⁶ The plan establishes a comprehensive path forward, while considering that it may be necessary to change the approach as the science associated with these emerging contaminants continues to develop.⁶⁷ 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 the DOH to quickly evaluate and address any impacts to drinking water resources.⁶⁸

The DEP's stated objectives in its dynamic plan are to:

- Be a national leader in response to PFAS concerns;
- Provide a technical and regulatory framework for the development of screening and CTLs for the protection of human health and the environment;

CTLs promulgated by rule, the rule references the methods that must be used to develop alternative CTLs; *see* s. 376.30701(2), F.S. The DEP is authorized to approve alternative CTLs on a site-specific basis.

⁶⁰ Ralph A. DeMeo and Jorge Caspary, *PFApocalypse Now: The PFAS Firestorm and Implications for Florida*, FLORIDA BAR JOURNAL, Vol. 94, No. 3, pg. 46 (2020), <https://www.floridabar.org/the-florida-bar-journal/pfapocalypse-now-the-pfas-firestorm-and-implications-for-florida/#u7068> (last visited Nov. 5, 2021).

⁶¹ Interstate Technology Regulatory Council, *PFAS*, <https://pfas-1.itrcweb.org/3-firefighting-foams/> (last visited Nov. 5, 2021).

⁶² *Id.*

⁶³ DEP, *Fire Training Facility Preliminary Site Assessments*, <https://floridadep.gov/waste/waste-cleanup/content/fire-training-facility-preliminary-site-assessments> (last visited Nov. 5, 2021); *DEP Dynamic Plan* at 3.

⁶⁴ *DEP Dynamic Plan* at 12.

⁶⁵ DEP, *Fire Training Facility Preliminary Site Assessments*, <https://floridadep.gov/waste/waste-cleanup/content/fire-training-facility-preliminary-site-assessments> (last visited Nov. 5, 2021).

⁶⁶ *See DEP Dynamic Plan.*

⁶⁷ *Id.* at 3.

⁶⁸ *Id.*

- Implement a response strategy that minimizes risks to human health and protects Florida’s resources;
- Identify PFAS contamination through site investigations;
- Continue efforts to prevent and reduce further impacts through outreach and communication; and
- Continue efforts to identify areas of potential or known contamination and address environmental impacts through risk mitigation and remediation.⁶⁹

The DEP has stated in its plan that going forward, it is working to identify other potential contaminated sites and challenges that are impacting PFAS investigative work.⁷⁰ The DEP is also working to improve its technical understanding of PFAS through additional data and assessment work.⁷¹

Actions of Other States

States across the country are increasingly regulating PFAS. Absent federal PFAS standards, multiple states have developed their own health-based water guidelines to direct decisions about contaminated site cleanup and drinking water surveillance and treatment.⁷² Some states, including California, Colorado, Connecticut, Massachusetts, Michigan, Minnesota, New Hampshire, New Jersey, New York, North Carolina, and Vermont, have set numerical limits by state law or agency rulemaking by either formally adopting the EPA’s HALs or selecting other limits based on their own analysis of the scientific data.⁷³

Several other states are also beginning to address PFAS chemicals in other capacities.⁷⁴ In recent years, states have enacted legislation to restrict PFAS in firefighting foam, regulate the presence of PFAS in drinking water by establishing MCLs, restrict PFAS in food packaging and consumer products, and allocate funds for cleanup and remediation, among other measures.⁷⁵

In addition to passing legislation, some states have also made efforts to address PFAS through legal action. States such as Michigan, Minnesota, New Hampshire, New Jersey, New York,

⁶⁹ *Id.* at 4.

⁷⁰ *Id.* at 18-19.

⁷¹ *Id.* at 20.

⁷² Silverman, Gerald B., *Glass Half-Full on State Solutions to Chemicals in Water*, Bloomberg Environment (Sep. 18, 2018), <https://news.bloombergenvironment.com/environment-and-energy/glass-half-full-on-state-solutions-to-chemicals-in-water-corrected> (last visited Nov. 8, 2021); National Conference of State Legislatures (NCSL), *Per- and polyfluoroalkyl Substances (PFAS) | State Legislation and Federal Action*, <https://www.ncsl.org/research/environment-and-natural-resources/per-and-polyfluoroalkyl-substances-pfas-state-laws.aspx> (last visited Nov. 8, 2021).

⁷³ See e.g., Mich. Admin. Code R. 325.10604g (2020); N.H. Rev. Stat. Ann. § 485:16-e (2020); N.J. Admin. Code § 7:10-5.2 (2020); N.J. Admin. Code § 7:14A-7.9 (2020); and N.Y. Comp. Codes R. & Regs. tit. 6, § 597 (2017).

⁷⁴ National Conference of State Legislatures (NCSL), *Per- and polyfluoroalkyl Substances (PFAS) | State Legislation and Federal Action*, <https://www.ncsl.org/research/environment-and-natural-resources/per-and-polyfluoroalkyl-substances-pfas-state-laws.aspx> (last visited Nov. 8, 2021).

⁷⁵ *Id.*; see e.g., Legislation in North Carolina to fund the monitoring and treatment of PFAS; in Washington to appropriate funds to implement recommendations on addressing PFAS contamination in drinking water; in Minnesota to prohibit the use of certain flame-retardant chemicals in certain types of furniture and children’s products; in New York to establish requirements for consumer notices for the use of PFAS and other chemicals in children’s products; in Pennsylvania to declare an area a special drinking water resource-impacted community based on the discovery of hazardous substances.

Ohio, and Vermont have sued the manufacturers of PFAS chemicals for threatening public health and the environment in their state.⁷⁶

Task Force

Under Florida law, a task force is an advisory body created without specific statutory enactment for a time not to exceed one year, or created by specific statutory enactment for a time not to exceed three years, and appointed to study a specific problem and recommend a solution or policy alternative related to that problem.⁷⁷ The existence of a task force terminates upon the completion of its assignment.⁷⁸

Florida law requires an advisory body to inform the Legislature and the public of the body's purposes, memberships, activities, and expenses.⁷⁹ Moreover, unless expressly permitted in statute, Florida law prohibits advisory board member compensation. However, members may receive per diem and reimbursement of travel expenses.⁸⁰

III. Effect of Proposed Changes:

The bill creates the Per- and Polyfluoroalkyl Substances (PFAS) Task Force, to be known as the PFAS Task Force (task force), within the Department of Environmental Protection (DEP).

The bill provides for membership of the task force, requiring that it be composed of a total of 16 members. It will include one representative from each of the following state entities:

- The DEP appointed by the Secretary;
- The Department of Health appointed by the State Surgeon General;
- The Department of Agriculture and Consumer Services appointed by the Commissioner;
- The Division of Emergency Management appointed by the Director; and
- The Bureau of Fire Standards and Training appointed by the Chief Financial Officer.

The task force will also include one representative of each of the following organizations, appointed by the Governor:

- The Florida League of Cities;
- The Florida Association of Counties;
- The Florida Water Environment Association;

⁷⁶ See e.g., *Nessela and Michigan v. 3M Company, et. al.*, Complaint, available at https://www.michigan.gov/documents/ag/Complaint_2020-01-14_final_678329_7.pdf; *State of Minnesota v. 3M Company*, Complaint, available at <https://www.mncourts.gov/mncourtsgov/media/High-Profile-Cases/27-CV-10-28862/Complaint-123010.pdf>; *State of New Hampshire v. 3M Company, et al*, Complaint, available at <https://www.courts.state.nh.us/caseinfo/pdf/civil/3M-Chemours-445/3M-Chemours-Complaint.pdf>; *State of New Hampshire v. Monsanto Co., et al*, Complaint, available at <https://www.courts.state.nh.us/caseinfo/pdf/civil/Monsanto/102720Monsanto-complaint.pdf>; *State of New Jersey v. 3M Company, et al*, Complaint, available at https://www.nj.gov/oag/newsreleases19/AFFF_Complaint.pdf; *State of Ohio v. Dupont and Company*, Complaint, available at <https://www.ohioattorneygeneral.gov/Files/Briefing-Room/News-Releases/Environmental-Enforcement/2018-02-08-DuPont-Complaint.aspx>; *State of Vermont v. 3M Company and DuPont Company*, Complaint, available at <https://ago.vermont.gov/wp-content/uploads/2019/06/20190626-SOV-v-3M-et-al-Complaint-NON-AFFF-FILE-STAMPED-COPY.pdf>.

⁷⁷ Section 20.03(8), F.S.

⁷⁸ *Id.*

⁷⁹ Section 20.052(3), F.S.

⁸⁰ Section 20.052(4)(d), F.S.; see also s. 112.061, F.S.

- The Florida Section of the American Water Works Association;
- The Florida Airports Council;
- The National Waste and Recycling Association;
- The Florida Brownfields Association;
- The Florida Ground Water Association;
- The Florida Sunshine Chapter of the Solid Waste Association of North America;
- The Manufacturers Association of Florida; and
- The Florida Professional Firefighters.

The bill provides requirements about the operation of the task force, including:

- Requiring the task force to elect a chair from its membership;
- Requiring that the task force operate in a manner consistent with state law governing advisory boards created by specific statutory enactment, except as otherwise provided;⁸¹
- Requiring the task force to meet at least quarterly and to conduct its meetings through teleconferences or other means;
- Authorizing members of the task force to receive reimbursement for per diem and travel expenses for their service on the task force; and
- Requiring the DEP to assign staff to assist the task force in the performance of its duties.

The bill requires the task force to develop recommendations for:

- Enforceable regulatory standards for PFAS in drinking water, groundwater, and soil;
- A mechanism for the identification and cleanup of contaminated areas;
- Methods to address liability for contamination and financial responsibility for cleanup;
- Appropriate methods and technologies, considering cost, for cleanup and treatment of PFAS contamination;
- Funding sources and mechanisms for prioritizing the distribution of funds for cleanup and remediation of PFAS contamination;
- Methods to manage waste containing PFAS to prevent possible release or discharge into the environment that could cause contamination of drinking water, groundwater, and soil;
- Appropriate testing for and monitoring of PFAS in drinking water, groundwater, and soil to protect the public health and welfare; and
- Methods to eliminate workplace exposure within the manufacturing and firefighting industries.

The bill requires the task force to convene by October 1, 2022. The bill requires the task force to submit an annual report to the Governor and the Legislature, beginning on October 1, 2023, that includes its progress, findings, recommendations, and the following information:

- The current science on PFAS, including harmful levels and ingestion and exposure routes, with particular attention to significant developments;
- Geographic areas with particularly high levels of contamination identified in the state; and
- Past and present actions by the state and federal government to address PFAS.

⁸¹ Although the PFAS Task Force is not an advisory board created by specific statutory enactment – meaning that there will be no codification of the PFAS Task Force in Florida Statutes – the bill will nevertheless apply the requirements for such advisory boards found in s. 20.052, F.S., to the PFAS Task Force, except as otherwise specified in the bill.

The bill provides for repeal of the task force on July 1, 2026.

The bill takes effect on July 1, 2022.

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:

None.

C. Government Sector Impact:

The Department of Environmental Protection will likely incur an increase in workload and associated costs from operating the task force. The bill also provides reimbursement for per diem and travel expenses to members for service on the task force.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill creates an undesignated section of law.

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.
