

STORAGE NAME: HB0811a.ep

DATE: April 15, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
ENVIRONMENTAL PROTECTION
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: HB 811

RELATING TO: Petroleum and petroleum products

SPONSOR(S): Representative Burroughs

STATUTE(S) AFFECTED: ss. 376.303 and 403.767, F.S.

COMPANION BILL(S): SB 1110 by Senator Myers

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

(1) ENVIRONMENTAL PROTECTION YEAS 8 NAYS 0

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I. SUMMARY:

HB 811:

- Amends s. 376.303, F.S., to prohibit the Department of Environmental Protection (DEP) from mandating secondary containment systems at aboveground storage tank facilities until the development of a program as directed by the U.S. Environmental Protection Agency (EPA) or December 31, 2004, whichever occurs first.
- Provides exemptions for specified persons from used oil transporter certification requirements.
- Provides that the act shall take effect upon becoming law.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Aboveground Storage Tank Facilities

Section 376.303, F.S., authorizes the DEP to establish rules concerning construction standards, permitting, registration of, maintenance and installation, and removal or disposal standards for aboveground storage tank facilities. Pursuant to this statutory authority the DEP adopted a rule (Chapter 62-762, Florida Administrative Code (FAC)) which requires these facilities to install secondary containment underneath a tank or internally line the tank and install secondary containment equipment inside the dike area. For those facilities installing internal liners a release detection system must be used and sampled monthly. These requirements must be met by December 31, 1999.

The specific requirements of this rule were adopted to minimize the release of regulated substances into the environment as a result of overfills, leaking tanks or pipe connections, and catastrophic events. Since the adoption of this rule in 1991: 9,850 shop fabricated tanks (tanks with less than 50,000 gallons capacity) have installed an impervious dike area; and approximately 230 field erected tanks (tanks with a capacity greater than 50,000 gallons) have been installed with an impervious dike area.

Recently concerns have been raised by the regulated community concerning these secondary containment systems. These include:

- That liners may create problems associated with stormwater management. Liner systems that can cover hundreds of acres collect stormwater and prevent it from naturally being absorbed into the ground. This can present a situation were the water would have to be discharged. Prior to any discharge these facilities would be required to obtain stormwater permits.
- Liners can be easily damaged. Pedestrian and heavy equipment traffic within the secondary containment areas can damage liner material.
- Liners cause problems with standing water and mosquitoes. At the time of rule adoption mosquito control officials testified that these liners would provide ideal breeding grounds for mosquitoes.
- Some types of liners may float after installation especially during periods when there is a high groundwater elevation.
- Liners can interfere with tank testing requirements and inhibit the cleanup of petroleum contaminated sites.

Data supplied by representatives of regulated facilities and the DEP indicates that the cost to install secondary containment systems can range from \$3,000 to \$8,000 for smaller facilities and from \$700,000 to over \$5 million for larger facilities.

Recent actions by regulators to address industry's concerns with the issues of secondary containment include:

- EPA's recommendations that a program be developed to address this issue; and
- The creation by the DEP of a Technical Advisory Committee (TAC) to evaluate liners and to recommend equivalent methods of protection. The TAC in its final recommendation proposed secondary containment be installed underneath the tank, pumps, valves and flanges but not within the entire area. Based upon these recommendations facilities can apply for approval of an alternative procedure which provides an exception to the lining of the entire dike area. To date, two alternate procedures have been proposed.

Used oil transporters

Section 403.767, F.S., requires all used oil transporters who transport more than 500 gallons annually of used oil over public highways to be certified with the DEP. This certification includes: demonstrating a knowledge of state and federal used oil regulations; having a training program in place for employees and drivers of the company; and maintaining adequate financial responsibility or insurance.

The subsequent rule adopted by the DEP (Chapter 62-710, F.A.C.) provided for exemptions to the statute. These exemptions included local governments, some private haulers, small quantity handlers; and persons who transported their own oil from one site to another. However, the Joint Administrative Procedures Council determined that no underlying statutory authority existed for the DEP to grant these exemptions.

B. EFFECT OF PROPOSED CHANGES:

Aboveground Storage Tank Facilities

The bill would amend s. 376.303, F.S., to prohibit the DEP from mandating secondary containment systems until the development of a program as directed by the EPA in its report of May 1996, "EPA Liner Study, Report to Congress, or December 31, 2004, whichever occurs first.

The bill directs the DEP to adopt rules concerning the need for secondary containment under and around these facilities upon the development of the EPA program or the 2004 deadline whichever occurs first.

Used oil transporters

The bill proposes to provide in statute a series of exemptions previously provided in rule from the current requirements of s. 403.767, F.S. Exemptions provided are for:

1. local governments and contracted private solid waste haulers who collect used oil from homeowners and take the used oil to a public used oil collection center;
2. persons who transport less than 55 gallons of used oil at one time and store that oil in a tightly closed container; and
3. persons who transport their own used oil generated at noncontiguous sites to their own central collection facility.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

Yes, the bill directs the DEP to determine by rule the need for secondary containment systems.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No

(3) any entitlement to a government service or benefit?

No

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

None

(2) what is the cost of such responsibility at the new level/agency?

None

(3) how is the new agency accountable to the people governed?

NA

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No

b. Does the bill require or authorize an increase in any fees?

No

c. Does the bill reduce total taxes, both rates and revenues?

No

d. Does the bill reduce total fees, both rates and revenues?

No

e. Does the bill authorize any fee or tax increase by any local government?

No

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

NA

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

NA

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

NA

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

NA

(2) Who makes the decisions?

NA

(3) Are private alternatives permitted?

NA

(4) Are families required to participate in a program?

NA

(5) Are families penalized for not participating in a program?

NA

b. Does the bill directly affect the legal rights and obligations between family members?

NA

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

NA

(2) service providers?

NA

(3) government employees/agencies?

NA

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Amends s. 376.303, F.S., 1996 Supplement, to prohibit the DEP from mandating secondary containment systems and authorizes the DEP to adopt rules concerning secondary containment under certain circumstances.

Section 2: Amends s. 403.767, F.S., to exempt certain persons from certified transporter requirements.

Section 3: Provides that the bill shall take effect upon becoming law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

There would be a one-time cost to the DEP for promulgating the rules for secondary containment systems.

2. Recurring Effects:

None

3. Long Run Effects Other Than Normal Growth:

None

4. Total Revenues and Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

Some cost would be associated with meeting the used oil transporter certification requirements.

2. Recurring Effects:

None

3. Long Run Effects Other Than Normal Growth:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Some cost would be associated with meeting the used oil transporter certification requirements.

2. Direct Private Sector Benefits:

Delays or eliminates the cost of installing secondary containment systems and preparing a used oil transporter certification program.

3. Effects on Competition, Private Enterprise and Employment Markets:

Facilities that have installed secondary containment systems would be at a competitive disadvantage with those facilities that have yet to comply. For small facilities (under 50,000 gallons) the containment system can cost from \$3,000 to \$8,000. For large facilities (over 50,000 gallons) installation can exceed \$1 million for a typical system. These cost figures are based on information supplied by the DEP.

D. FISCAL COMMENTS:

As stated in the Local Government and Private Sector cost sections the loss of exemptions that were historically provided by rule and subsequently determined invalid would carry some additional expense for used oil transporters.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

The DEP opposes the secondary containment provisions provided by the bill. Specifically they cite that the bill:

- Places the emphasis on the outcome of a yet to be developed EPA voluntary program that may be appropriate for a nationwide approach but may not provide adequate protection to the groundwater resources with the state.
- Further delays the installation of secondary containment. The analysis cites that the rule adopted in 1991 gave all facilities nine years to come into compliance.

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- Would lessen the protection provided to groundwater and surface water that is currently in statute and rule.

Finally, the DEP cites that the TAC has the ability to set criteria for establishing alternative containment systems.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 15, 1997, the Committee on Environmental Protection heard HB 811, it was passed unanimously, there were two amendments adopted. The first amendment removes from the bill the section prohibiting the DEP from mandating secondary containment systems; and, removes DEP's authorization to adopt rules concerning secondary containment under certain circumstances. The second amendment adopted allows persons who transport their own used oil, which is generated at their own noncontiguous facilities, to their own central collection facility for storage, processing and energy recovery, to do so without being required to have certification if they fulfill insurance requirements provided in the bill.

An additional amendment was withdrawn from consideration.

VII. SIGNATURES:

COMMITTEE ON ENVIRONMENTAL PROTECTION:

Prepared by:

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Wayne S. Kiger

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