

By Senator Diaz-Balart

37-825-99

1 A bill to be entitled
2 An act relating to underground storage tank
3 systems and the petroleum contamination cleanup
4 program; amending s. 376.301, F.S.; redefining
5 the term "facility"; amending s. 376.305, F.S.;
6 providing a deadline for submittal of an
7 application under the Abandoned Tank
8 Restoration Program; amending s. 376.3071,
9 F.S.; providing for funding; providing
10 exceptions from cost recovery for sites
11 eligible for petroleum contamination cleanup
12 funding; deleting provisions relating to
13 nonreimbursable voluntary cleanup; authorizing
14 the Department of Environmental Protection to
15 recover overpayments of certain reimbursement
16 claims; providing for the termination of
17 negotiations after a specified time; deleting
18 provisions relating to an exclusion from
19 participation in the petroleum contamination
20 participation program for persons who knowingly
21 acquire title to contaminated property;
22 creating s. 376.30714, F.S.; providing
23 authority for the department and owners of
24 existing contaminated property eligible for
25 state-funded site cleanup to enter into a
26 cost-sharing agreement for site rehabilitation
27 when a new discharge occurs; providing an
28 effective date.

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30 Be It Enacted by the Legislature of the State of Florida:
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1 Section 1. Subsection (18) of section 376.301, Florida
2 Statutes, 1998 Supplement, is amended to read:

3 376.301 Definitions of terms used in ss.
4 376.30-376.319, 376.70, and 376.75.--When used in ss.
5 376.30-376.319, 376.70, and 376.75, unless the context clearly
6 requires otherwise, the term:

7 (18) "Facility" means:

8 (a) A nonresidential location containing, or which
9 contained, any underground stationary tank or tanks which
10 contain hazardous substances or pollutants and have individual
11 storage capacities greater than 110 gallons, or any
12 aboveground stationary tank or tanks which contain pollutants
13 which are liquids at standard ambient temperature and pressure
14 and have individual storage capacities greater than 550
15 gallons. This subsection shall not apply to facilities covered
16 by chapter 377, or containers storing solid or gaseous
17 pollutants, and agricultural tanks having storage capacities
18 of less than 550 gallons;~~-~~

19 (b) A residential location containing any underground
20 stationary tank or tanks that contain hazardous substances or
21 pollutants and have individual storage capacities of 1,100
22 gallons or greater; or

23 (c) A location containing any underground petroleum
24 storage system having individual storage capacities greater
25 than 110 gallons or an aboveground petroleum storage system
26 having individual capacities greater than 550 gallons where
27 the petroleum storage system is used primarily for the
28 generation of emergency electric power during disruption of
29 normal utility services.

1 This subsection does not apply to facilities covered by
2 chapter 377, containers storing solid or gaseous pollutants,
3 or agricultural tanks having storage capacities of less than
4 550 gallons.

5 Section 2. Subsections (1) and (6) of section 376.305,
6 Florida Statutes, are amended to read:

7 376.305 Removal of prohibited discharges.--

8 (1) Any person discharging a pollutant as prohibited
9 by ss. 376.30-376.319 shall immediately undertake to contain,
10 remove, and abate the discharge in accordance with the
11 criteria established in s. 376.3071(5)(b) and department rules
12 adopted thereunder ~~to the satisfaction of the department.~~

13 However, such an undertaking to contain, remove, or abate a
14 discharge shall not be deemed an admission of responsibility
15 for the discharge by the person taking such action.

16 Notwithstanding this requirement, the department may undertake
17 the removal of the discharge and may contract and retain
18 agents who shall operate under the direction of the
19 department.

20 (6) The Legislature created the Abandoned Tank
21 Restoration Program in response to the need to provide
22 financial assistance for cleanup of sites that have abandoned
23 petroleum storage systems. For purposes of this subsection the
24 term "abandoned petroleum storage system" shall mean any
25 petroleum storage system that has not stored petroleum
26 products for consumption, use, or sale since March 1, 1990.

27 The department shall establish the Abandoned Tank Restoration
28 Program to facilitate the restoration of sites contaminated by
29 abandoned petroleum storage systems.

30 (a) To be included in the program:

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1 1. An application must be submitted to the department
2 by June 30, 1996, certifying that the system has not stored
3 petroleum products for consumption, use, or sale at the
4 facility since March 1, 1990.

5 2. The owner or operator of the petroleum storage
6 system when it was in service must have ceased conducting
7 business involving consumption, use, or sale of petroleum
8 products at that facility on or before March 1, 1990.

9 3. The site is not otherwise eligible for the cleanup
10 programs pursuant to s. 376.3071 or s. 376.3072.

11 (b) In order to be eligible for the program, petroleum
12 storage systems from which a discharge occurred must be closed
13 in accordance with department rules prior to an eligibility
14 determination. However, if the department determines that the
15 owner of the facility is financially unable to comply with the
16 department's petroleum storage system closure requirements and
17 all other eligibility requirements are met, the petroleum
18 storage system closure requirements shall be waived. The
19 department shall take into consideration the owner's net worth
20 and the economic impact on the owner in making the
21 determination of the owner's financial ability. Applications
22 ~~The June 30, 1996, application deadline shall be waived for~~
23 Abandoned-Tank-Restoration-Program owners who are financially
24 unable to comply must be received by the department by
25 December 31, 1999. The department may not accept any
26 application received after December 31, 1999.

27 (c) Sites accepted in the program will be eligible for
28 site rehabilitation funding as provided in s. 376.3071(12) or
29 s. 376.30711, as appropriate.

30 (d) The following sites are excluded from eligibility:

31 1. Sites on property of the Federal Government;

1 2. Sites contaminated by pollutants that are not
2 petroleum products;

3 3. Sites where the department has been denied site
4 access; or

5 4. Sites which are owned by any person who had
6 knowledge of the polluting condition when title was acquired
7 unless that person acquired title to the site after issuance
8 of a notice of site eligibility by the department.

9 (e) Participating sites are subject to a deductible as
10 determined by rule, not to exceed \$10,000.

11
12 The provisions of this subsection do not relieve any person
13 who has acquired title subsequent to July 1, 1992, from the
14 duty to establish by a preponderance of the evidence that he
15 or she undertook, at the time of acquisition, all appropriate
16 inquiry into the previous ownership and use of the property
17 consistent with good commercial or customary practice in an
18 effort to minimize liability, as required by s. 376.308(1)(c).

19 Section 3. Paragraph (c) of subsection (5), paragraphs
20 (a) and (b) of subsection (7), subsection (11), paragraph (k)
21 of subsection (12), and paragraphs (c) and (g) of subsection
22 (13) of section 376.3071, Florida Statutes, are amended to
23 read:

24 376.3071 Inland Protection Trust Fund; creation;
25 purposes; funding.--

26 (5) SITE SELECTION AND CLEANUP CRITERIA.--

27 (c) The department may provide funding for ~~shall~~
28 ~~require~~ source removal activities, if warranted and
29 cost-effective pursuant to paragraph (b), at each site
30 eligible for restoration funding from the Inland Protection
31 Trust Fund. Funding for source removal activities may be

1 provided in advance of in the order established by the
2 priority ranking system pursuant to paragraph (a) for site
3 cleanup activities, however, a separate prioritization for
4 source removal must be established consistent with paragraph
5 (a). No more than \$5 million may be encumbered from the Inland
6 Protection Trust Fund in any fiscal year for source removal
7 activities conducted in advance of the priority order
8 established for site cleanup activities under paragraph (a).
9 Once source removal at a site is complete, the department
10 shall reevaluate the site to determine the degree of active
11 cleanup needed to continue. Further, the department shall
12 determine if the reevaluated site qualifies for monitoring
13 only or if no further action is required to rehabilitate the
14 site. If additional site rehabilitation is necessary to reach
15 no further action status, the department is encouraged to
16 utilize natural attenuation and monitoring where site
17 conditions warrant.

18 (7) DEPARTMENTAL DUTY TO SEEK RECOVERY AND
19 REIMBURSEMENT.--

20 (a) Except as provided in ss. 376.305(6) and 376.3072
21 and subsections ~~subsection~~ (9) and (13) and as otherwise
22 provided by law, the department shall recover to the use of
23 the fund from a person or persons at any time causing or
24 having caused the discharge or from the Federal Government,
25 jointly and severally, all sums owed or expended from the
26 fund, pursuant to s. 376.308, except that the department may
27 decline to pursue such recovery if it finds the amount
28 involved too small or the likelihood of recovery too
29 uncertain. Sums recovered as a result of damage due to a
30 discharge related to the storage of petroleum or petroleum
31 products or other similar disaster shall be apportioned

1 between the fund and the General Revenue Fund so as to repay
2 the full costs to the General Revenue Fund of any sums
3 disbursed therefrom as a result of such disaster. Any request
4 for reimbursement to the fund for such costs, if not paid
5 within 30 days of demand, shall be turned over to the
6 department for collection.

7 (b) Except as provided in ss. 376.305(6) and 376.3072
8 and subsections subsection (9) and (13) and as otherwise
9 provided by law, it is the duty of the department in
10 administering the fund diligently to pursue the reimbursement
11 to the fund of any sum expended from the fund for cleanup and
12 abatement in accordance with the provisions of this section or
13 s. 376.3073, unless the department finds the amount involved
14 too small or the likelihood of recovery too uncertain. For
15 the purposes of s. 95.11, the limitation period within which
16 to institute an action to recover such sums shall commence on
17 the last date on which any such sums were expended, and not
18 the date that the discharge occurred.

19 (11)(a) Voluntary cleanup.--Nothing in this section
20 shall be deemed to prohibit a person from conducting site
21 rehabilitation either through his or her own personnel or
22 through responsible response action contractors or
23 subcontractors when such person is not seeking site
24 rehabilitation funding from the fund. Such voluntary cleanups
25 must meet all applicable environmental standards.

26 (b) ~~Nonreimbursable voluntary cleanup.--For sites with~~
27 ~~releases reported prior to January 1, 1995, the department~~
28 ~~shall issue a determination of "No Further Action" at sites~~
29 ~~ranked with a total priority score of 10 or less, which meet~~
30 ~~the following conditions:~~

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1 ~~1. No free product exists in wells, boreholes,~~
2 ~~subsurface utility conduits, or vaults or buildings and no~~
3 ~~other fire or explosion hazard exists as a result of a release~~
4 ~~of petroleum products.~~

5 ~~2. No excessively contaminated soil, as defined by~~
6 ~~department rule, exists onsite as a result of a release of~~
7 ~~petroleum products.~~

8 ~~3. Public supply wells for consumptive use of water~~
9 ~~expected to be affected by the site shall not be located~~
10 ~~within a 1/2-mile radius of the site; private supply wells~~
11 ~~for consumptive use of water expected to be affected by the~~
12 ~~site shall not be located within a 1/4-mile radius of the~~
13 ~~site; and there must be no current or projected consumptive~~
14 ~~use of the water affected by the site for at least the~~
15 ~~following 3 years. Where appropriate, institutional controls~~
16 ~~meeting the requirements of subparagraph (5)(b)4. may be~~
17 ~~required by the department to meet these criteria.~~

18 ~~4. The release of petroleum products at the site shall~~
19 ~~not adversely affect adjacent surface waters, including their~~
20 ~~effects on human health and the environment.~~

21 ~~5. The area of groundwater containing the petroleum~~
22 ~~products' chemicals of concern in concentrations greater than~~
23 ~~the boundary values defined in subparagraph 7. is less than~~
24 ~~one-quarter acre.~~

25 ~~6. Soils onsite that are subject to human exposure~~
26 ~~found between land surface and 2 feet below land surface shall~~
27 ~~meet the criteria established pursuant to sub-subparagraph~~
28 ~~(5)(b)9.a. Where appropriate, institutional or engineering~~
29 ~~controls meeting the requirements of subparagraph (5)(b)4. may~~
30 ~~be required by the department to meet these criteria.~~

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1 ~~7. Concentrations of the petroleum products' chemicals~~
2 ~~of concern in groundwater at the property boundary of the real~~
3 ~~property on which the petroleum contamination originates shall~~
4 ~~not exceed the criteria established pursuant to~~
5 ~~sub-subparagraph (5)(b)7.a. Where appropriate, institutional~~
6 ~~or engineering controls meeting the requirements of~~
7 ~~subparagraph (5)(b)4. may be required by the department to~~
8 ~~meet these criteria.~~

9 ~~8. The department is authorized to establish alternate~~
10 ~~cleanup target levels for onsite nonboundary wells pursuant to~~
11 ~~the criteria in subparagraph (5)(b)8.~~

12 ~~9. A scientific evaluation that demonstrates that the~~
13 ~~boundary criteria in subparagraph 7. will not be exceeded and~~
14 ~~a 1-year site-specific groundwater monitoring plan approved in~~
15 ~~advance by the department validates the scientific evaluation.~~
16 ~~If the boundary criteria in subparagraph 7. are exceeded at~~
17 ~~any time, the department may order an extension of the~~
18 ~~monitoring period for up to 12 additional months from the time~~
19 ~~of the excess reading. The department shall determine the~~
20 ~~adequacy of the groundwater monitoring system at a site. All~~
21 ~~wells required by the department pursuant to this paragraph~~
22 ~~shall be installed before the monitoring period begins.~~

23 ~~10. Costs associated with activities performed~~
24 ~~pursuant to this paragraph for sites which qualify for a~~
25 ~~determination of "No Further Action" under this paragraph~~
26 ~~shall not be reimbursable from the Inland Protection Trust~~
27 ~~Fund.~~

28 (12) REIMBURSEMENT FOR CLEANUP EXPENSES.--Except as
29 provided in s. 2(3), chapter 95-2, Laws of Florida, this
30 subsection shall not apply to any site rehabilitation program
31 task initiated after March 29, 1995. Effective August 1, 1996,

1 no further site rehabilitation work on sites eligible for
2 state-funded cleanup from the Inland Protection Trust Fund
3 shall be eligible for reimbursement pursuant to this
4 subsection. The person responsible for conducting site
5 rehabilitation may seek reimbursement for site rehabilitation
6 program task work conducted after March 28, 1995, in
7 accordance with s. 2(2) and (3), chapter 95-2, Laws of
8 Florida, regardless of whether the site rehabilitation program
9 task is completed. A site rehabilitation program task shall
10 be considered to be initiated when actual onsite work or
11 engineering design, pursuant to chapter 62-770, Florida
12 Administrative Code, which is integral to performing a site
13 rehabilitation program task has begun and shall not include
14 contract negotiation and execution, site research, or project
15 planning. All reimbursement applications pursuant to this
16 subsection must be submitted to the department by January 3,
17 1997. The department shall not accept any applications for
18 reimbursement or pay any claims on applications for
19 reimbursement received after that date; provided, however if
20 an application filed on or prior to January 3, 1997, was
21 returned by the department on the grounds of untimely filing,
22 it shall be refiled within 30 days after the effective date of
23 this act in order to be processed.

24 (k) Audits.--

25 1. The department is authorized to perform financial
26 and technical audits in order to certify site restoration
27 costs and ensure compliance with this chapter. The department
28 shall seek recovery of any overpayments based on the findings
29 of these audits or audits conducted by the Auditor General.
30 The department must commence any audit within 5 years after
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1 the date of reimbursement, except in cases where the
2 department alleges specific facts indicating fraud.

3 2. Upon determination by the department that any
4 portion of costs which have been reimbursed are disallowed,
5 the department shall give written notice to the applicant
6 setting forth with specificity the allegations of fact which
7 justify the department's proposed action and ordering
8 repayment of disallowed costs within 60 days of notification
9 of the applicant.

10 3. In the event the applicant does not make payment to
11 the department within 60 days of receipt of such notice, the
12 department shall seek recovery in a court of competent
13 jurisdiction to recover reimbursement overpayments made to the
14 person responsible for conducting site rehabilitation, unless
15 the department finds the amount involved too small or the
16 likelihood of recovery too uncertain.

17 4. In addition to the amount of any overpayment, the
18 applicant shall be liable to the department for interest of 1
19 percent per month or the prime rate, whichever is less, on the
20 amount of overpayment, from the date of overpayment by the
21 department until the applicant satisfies the department's
22 request for repayment pursuant to this paragraph. The
23 calculation of interest shall be tolled during the pendency of
24 any litigation.

25 5. Financial and technical audits frequently are
26 conducted under this section many years after the site
27 rehabilitation activities were performed and the costs
28 examined in the course of the audit were incurred by the
29 person responsible for site rehabilitation. During the
30 intervening span of years, the department's rule requirements
31 and its related guidance and other nonrule policy directives

1 may have changed significantly. The Legislature finds that it
2 may be appropriate for the department to provide relief to
3 persons subject to such requirements in financial and
4 technical audits conducted pursuant to this section.

5 a. The department is authorized to grant variances and
6 waivers from the documentation requirements of subparagraph
7 (e)2. and from the requirements of rules applicable in
8 technical and financial audits conducted under this section.
9 Variances and waivers shall be granted when the person
10 responsible for site rehabilitation demonstrates to the
11 department that application of a financial or technical
12 auditing requirement would create a substantial hardship or
13 would violate principles of fairness. For purposes of this
14 subsection, "substantial hardship" means a demonstrated
15 economic, technological, legal, or other type of hardship to
16 the person requesting the variance or waiver. For purposes of
17 this subsection, "principles of fairness" are violated when
18 the application of a requirement affects a particular person
19 in a manner significantly different from the way it affects
20 other similarly situated persons who are affected by the
21 requirement or when the requirement is being applied
22 retroactively without due notice to the affected parties.

23 b. A person whose reimbursed costs are subject to a
24 financial and technical audit under this section may file a
25 written request to the department for grant of a variance or
26 waiver. The request shall specify:

27 (I) The requirement from which a variance or waiver is
28 requested.

29 (II) The type of action requested.

30 (III) The specific facts which would justify a waiver
31 or variance.

1 (IV) The reason or reasons why the requested variance
2 or waiver would serve the purposes of this section.

3 c. Within 90 days after receipt of a written request
4 for variance or waiver under this subsection, the department
5 shall grant or deny the request. If the request is not granted
6 or denied within 90 days of receipt, the request shall be
7 deemed approved. An order granting or denying the request
8 shall be in writing and shall contain a statement of the
9 relevant facts and reasons supporting the department's action.
10 The department's decision to grant or deny the petition shall
11 be supported by competent substantial evidence and is subject
12 to ss. 120.569 and 120.57. Once adopted, model rules
13 promulgated by the Administration Commission under s. 120.542
14 shall govern the processing of requests under this provision;
15 however, the department may process requests prior to the
16 adoption of those model rules.

17 6. The Comptroller may audit the records of persons
18 who receive or who have received payments pursuant to this
19 chapter in order to verify site restoration costs, ensure
20 compliance with this chapter, and verify the accuracy and
21 completeness of audits performed by the department pursuant to
22 this paragraph. The Comptroller may contract with entities or
23 persons to perform audits pursuant to this subparagraph. The
24 Comptroller shall commence any audit within 1 year after the
25 department's completion of an audit conducted pursuant to this
26 paragraph, except in cases where the department or the
27 Comptroller alleges specific facts indicating fraud.

28 (13) PETROLEUM CLEANUP PARTICIPATION PROGRAM.--To
29 encourage detection, reporting, and cleanup of contamination
30 caused by discharges of petroleum or petroleum products, the
31 department shall, within the guidelines established in this

1 subsection, implement a cost-sharing cleanup program to
2 provide rehabilitation funding assistance for all property
3 contaminated by discharges of petroleum or petroleum products
4 occurring before January 1, 1995, subject to a copayment
5 provided for in a preapproved site rehabilitation agreement.
6 Eligibility shall be subject to an annual appropriation from
7 the Inland Protection Trust Fund. Additionally, funding for
8 eligible sites shall be contingent upon annual appropriation
9 in subsequent years. Such continued state funding shall not
10 be deemed an entitlement or a vested right under this
11 subsection. Eligibility in the program shall be
12 notwithstanding any other provision of law, consent order,
13 order, judgment, or ordinance to the contrary.

14 (c) Upon notification by the department that
15 rehabilitation funding assistance is available for the site
16 pursuant to subsection (5) and s. 376.30711, the owner,
17 operator, or person otherwise responsible for site
18 rehabilitation shall provide the department with a limited
19 contamination assessment report and shall enter into a
20 preapproved site rehabilitation agreement with the department
21 and a contractor qualified under s. 376.30711(2)(b). The
22 agreement shall provide for a 25-percent copayment by the
23 owner, operator, or person otherwise responsible for
24 conducting site rehabilitation. The owner, operator, or
25 person otherwise responsible for conducting site
26 rehabilitation shall adequately demonstrate the ability to
27 meet the copayment obligation. The limited contamination
28 assessment report and the copayment costs may be reduced or
29 eliminated if the owner and all operators responsible for
30 restoration under s. 376.308 demonstrate that they are
31 financially unable to comply with the copayment and limited

1 contamination assessment report requirements. The department
2 shall take into consideration the owner's and operator's net
3 worth in making the determination of financial ability. If the
4 department and the owner, operator, or person otherwise
5 responsible for site rehabilitation are unable to complete
6 negotiations of the cost-sharing agreement within 120 days
7 after commencing negotiations, the department shall terminate
8 the negotiation; the site becomes ineligible for state funding
9 under this subsection; and all liability protections provided
10 under this subsection are revoked.

11 (g) The following shall be excluded from participation
12 in the program:

13 1. Sites at which the department has been denied
14 reasonable site access to implement the provisions of this
15 section.

16 2. Sites that were active facilities when owned or
17 operated by the Federal Government.

18 3. Sites that are identified by the United States
19 Environmental Protection Agency to be on, or which qualify for
20 listing on, the National Priorities List under Superfund.
21 This exception does not apply to those sites for which
22 eligibility has been requested or granted as of the effective
23 date of this act under the Early Detection Incentive Program
24 established pursuant to s. 15, chapter 86-159, Laws of
25 Florida.

26 4. The contamination is covered under the Early
27 Detection Incentive Program, the Abandoned Tank Restoration
28 Program or the Petroleum Liability and Restoration Insurance
29 Program, in which case site rehabilitation funding assistance
30 shall continue under the respective program.

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1 ~~5. Any person who knowingly acquires title to~~
2 ~~contaminated property shall not be eligible for restoration~~
3 ~~funding pursuant to this subsection. The provisions of this~~
4 ~~subsection do not relieve any person who has acquired title~~
5 ~~subsequent to July 1, 1992, from the duty to establish by a~~
6 ~~preponderance of the evidence that he or she undertook, at the~~
7 ~~time of acquisition, all appropriate inquiry into the previous~~
8 ~~ownership and use of the property consistent with good~~
9 ~~commercial or customary practice in an effort to minimize~~
10 ~~liability, as required by s. 376.308(1)(c). The provisions of~~
11 ~~this subparagraph do not apply to any person who acquires~~
12 ~~title by succession or devise.~~

13 Section 4. Section 376.30714, Florida Statutes, is
14 created to read:

15 376.30714 Site rehabilitation agreements.--

16 (1) In addition to the legislative findings provided
17 in s. 367.3071, the Legislature finds that:

18 (a) The provisions of s. 376.3071(5)(a) and s.
19 376.30711 have delayed cleanup of low-priority sites
20 determined to be eligible for state funding under ss. 376.305,
21 376.3071 and 376.3072.

22 (b) While compliance with the department's rules
23 pertaining to storage tank systems is expected to
24 significantly diminish the occurrence and extent of discharges
25 of petroleum products from petroleum storage systems,
26 discharges from these systems and discharges at sites with
27 existing contamination may still occur. In some cases, it may
28 be difficult to distinguish between discharges that have been
29 determined to be eligible for state funding from those
30 discharges reported after December 31, 1998, which are
31 ineligible for state funding.

1 (c) Beginning January 1, 1999, restoration coverage
2 under s. 376.3072(2)(d) is not provided for discharges of
3 petroleum products from petroleum storage systems that are
4 reported to the department after December 31, 1998. This will
5 result in discharges that are ineligible for state-funded
6 cleanup on sites with existing contamination.

7 (d) It is necessary for the discharger and may be
8 desirable for the department to address the requirements for
9 cleanup of discharges of petroleum products reported to the
10 department after December 31, 1998, which occur at sites with
11 existing contamination.

12 (e) It is appropriate for persons assuming
13 responsibility for cleanup of such discharges occurring after
14 December 31, 1998, at sites with existing contamination to
15 share the costs associated with managing and conducting
16 cleanup of those discharges, upon application to the
17 department and in accordance with a priority established for
18 such cleanup in a negotiated site-rehabilitation agreement.

19 (2) For the purposes of this section only, the term:

20 (a) "New discharge" means a discharge of petroleum
21 products reported after December 31, 1998, occurring at a site
22 having existing contamination.

23 (b) "Existing contamination" means contamination that
24 has been determined by the department to be eligible for
25 state-funded cleanup under s. 376.305, s. 376.3071, or s.
26 376.3072 before the new discharge.

27 (c) "Qualified site" means a site at which there is
28 new discharge and for which the applicant has entered into a
29 site-rehabilitation agreement with the department.

30 (d) "Applicant" means a facility owner, operator,
31 discharger, or entity accepting responsibility for cleanup of

1 a new discharge on a qualified site who has entered into a
2 site-rehabilitation agreement with the department. Execution
3 of the site-rehabilitation agreement does not constitute an
4 admission of liability for the new discharge by the applicant.

5 (3) Free product attributable to a new discharge must
6 be removed to the extent practicable and in accordance with
7 department rules at the expense of the owner, operator, or
8 other responsible party. Free product removal attributable to
9 existing contamination must be performed in accordance with s.
10 376.3071(5)(c) or s. 376.3071(1)(b) and with department
11 rules.

12 (4) Beginning January 1, 1999, the department may
13 negotiate and enter into site-rehabilitation agreements with
14 applicants at sites at which there is existing contamination
15 and at which a new discharge occurs. The site-rehabilitation
16 agreement must include, but need not be limited to, provisions
17 establishing the funding responsibilities of the department
18 and the applicant for cleanup of the qualified site,
19 establishing procedures to guarantee the applicant's
20 commitment to pay its agreed-upon amount of site
21 rehabilitation as set forth in the agreement, and establishing
22 the priority in which cleanup of the qualified site will
23 occur. Under any negotiated site-rehabilitation agreement, the
24 applicant will be responsible for no more than the cleanup
25 costs at the qualified site which are attributable to the new
26 discharge; however, the payment of any applicable deductibles,
27 copayments, or other program eligibility requirements under
28 ss. 376.305, 376.3071, and 376.3072 continue to apply to the
29 existing contamination and must be accounted for in the
30 negotiated site-rehabilitation agreement. The department may
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1 preapprove or conduct additional assessment activities at the
2 site.

3 (5) Applications for site-rehabilitation agreements
4 may be submitted to the department not later than 120 days
5 after discovery of the new discharge, on forms and in
6 accordance with instructions provided by the department, and
7 must include, but need not be limited to:

8 (a) A limited contamination-assessment report that is
9 sufficient to demonstrate the extent of the new discharge and
10 that may include any other evidence relevant to establish the
11 extent or volume of the new discharge or the impact of the new
12 discharge relative to the existing contamination in order to
13 determine the appropriate funding responsibilities of the
14 applicant and the department. The limited
15 contamination-assessment report shall be used as a basis for
16 establishing the site-rehabilitation funding responsibilities
17 between the applicant and the department for the new discharge
18 and the existing contamination and for establishing the
19 priority in which cleanup of the new discharge and the
20 existing contamination will occur, based on s. 376.3071(5)(b)
21 and taking into consideration the cost effectiveness
22 associated with the timing of site-rehabilitation activities.

23 (b) Certification by the applicant that the applicant
24 has the prerequisite authority to enter into the
25 site-rehabilitation agreement.

26 (6) Any costs incurred by the applicant in complying
27 with subsection (5) are not refundable from the Inland
28 Protection Trust Fund.

29 (7) Only one application may be submitted for any new
30 discharge under this section.

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1 (8) If the department and the applicant are unable to
2 agree on the apportionment of the funding responsibilities for
3 a site otherwise qualified under this section, the provisions
4 of chapter 120 apply. The administrative law judge shall, in
5 making any determinations or recommendations regarding the
6 apportionment of the funding responsibilities of the
7 department and the applicant for the new discharge and the
8 existing contamination, consider any admissible evidence
9 relating to apportionment of the discharges.

10 (9) The following are not covered by this section:

11 (a) New discharges from storage systems owned or
12 operated by the Federal Government when the new discharge
13 occurred.

14 (b) New discharges at facilities that failed to
15 correct a violation cited in a previous compliance inspection
16 when that failure contributed to or was the cause of the new
17 discharge.

18 (c) New discharges intentionally caused by the owner,
19 operator, responsible party, or applicant.

20 (d) Sites to which the department has been denied
21 access.

22 (e) New discharges at sites that are identified by the
23 United States Environmental Protection Agency to be on or that
24 qualify for listing on the National Priorities List under
25 Superfund. This exception does not apply to those sites for
26 which eligibility has been requested or granted as of the
27 effective date of this section under the Early Detection
28 Incentive Program.

29 (f) New discharges at sites where the person or entity
30 required to report the new discharge upon its discovery as
31 required by department rule, or where the person or entity

1 required to initiate free product recovery, as required by
2 department rule, failed to do so.

3 (10) Negotiations for agreements under this section
4 will commence in the order received, based on the date of the
5 application. If the department is unable to complete
6 negotiations of the agreement within 90 days after commencing
7 negotiations, the department shall terminate negotiations with
8 the applicant and the site shall receive no further
9 consideration under this section. However, if the parties are
10 negotiating under this section in good faith and need
11 additional time in which to continue negotiations, the parties
12 may agree to continue negotiations.

13 (11) Site rehabilitation conducted at qualified sites
14 must be conducted under ss. 376.3071(5)(b) and 376.30711. If
15 the terms of the agreement are not fulfilled by the
16 application, the applicant forfeits any right to continued
17 funding for any site rehabilitation work under the agreement
18 and is subject to enforcement action by the department or
19 local government to compel cleanup of the new discharge.

20 (12) The department may enter into agreements under
21 this section for a total of up to \$5 million in each fiscal
22 year, subject to annual appropriation. However, a qualified
23 site may not be approved for more than \$250,000 of cleanup
24 activity in each fiscal year. The funding limitations under
25 ss. 376.305, 376.3071, and 376.3072 continue to apply to the
26 existing contamination.

27 (13) New discharges otherwise meeting the criteria of
28 this section or any site-rehabilitation agreement made under
29 this section do not create an independent entitlement to
30 continued restoration funding or to cleanup of the existing
31 contamination in advance of its previous priority order.

1 (14) Upon execution of the site-rehabilitation
2 agreement, neither the department nor any local government may
3 pursue any judicial or enforcement action to compel
4 rehabilitation of the new discharge that is the subject of the
5 agreement so long as the applicant remains in compliance with
6 the terms and conditions of the agreement. However, if state
7 funding of any agreement entered into under this section is
8 discontinued, the provisions of this subsection no longer
9 apply to the new discharge. For purposes of chapter 95, a
10 cause of action by the department or any local government to
11 compel cleanup of the new discharge or to compel payment of
12 costs of the new discharge does not accrue during the time
13 that the site-rehabilitation agreement is in effect.

14 (15) This section does not preclude the department
15 from pursuing penalties in accordance with ss. 376.303(1)(k)
16 and 376.311 for violations of any law or any rule, order,
17 permit, registration, or certification adopted or issued by
18 the department under its lawful authority.

19 Section 5. This act shall take effect upon becoming a
20 law.

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SENATE SUMMARY

For purposes of the law relating to underground storage tank systems and the petroleum contamination cleanup program:

1. Redefines the term "facility" to include systems with capacities greater than 1,100 gallons and systems used primarily for generation of emergency electric power.
2. Provides a deadline for the submittal of an application under the Abandoned Tank Restoration Program.
3. Provides for funding of source removal in advance of site priority orders.
4. Deletes nonreimbursable voluntary cleanup provisions.
5. Authorizes the Department of Environmental Protection to recover overpayments based on audits by the Auditor General.
6. Provides for the termination of negotiations of cost-sharing agreements after 120 days.
7. Eliminates exclusion from the petroleum contamination participation program for any person who knowingly acquires title to contaminated property.
8. Authorizes the department and owners of existing contaminated property eligible for state-funded site cleanup to enter into a cost-sharing agreement for site rehabilitation when a new discharge occurs.