

By Senator Lawson

6-1128-04

1 A bill to be entitled
2 An act relating to pollution control; amending
3 s. 376.121, F.S., relating to liability for
4 damage to natural resources; conforming
5 provisions to the transfer of the Game and
6 Fresh Water Fish Commission to the Fish and
7 Wildlife Conservation Commission; amending s.
8 376.30713, F.S.; eliminating obsolete
9 provisions that require the Department of
10 Environmental Protection to report on
11 preapproved advanced cleanup projects;
12 providing an effective date.

13

14 Be It Enacted by the Legislature of the State of Florida:

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16 Section 1. Subsection (10) of section 376.121, Florida
17 Statutes, is amended to read:

18 376.121 Liability for damage to natural
19 resources.--The Legislature finds that extensive damage to the
20 state's natural resources is the likely result of a pollutant
21 discharge and that it is essential that the state adequately
22 assess and recover the cost of such damage from responsible
23 parties. It is the state's goal to recover the costs of
24 restoration from the responsible parties and to restore
25 damaged natural resources to their pre-discharge condition. In
26 many instances, however, restoration is not technically
27 feasible. In such instances, the state has the responsibility
28 to its citizens to recover the cost of all damage to natural
29 resources. To ensure that the public does not bear a
30 substantial loss as a result of the destruction of natural
31 resources, the procedures set out in this section shall be

1 used to assess the cost of damage to such resources. Natural
2 resources include coastal waters, wetlands, estuaries, tidal
3 flats, beaches, lands adjoining the seacoasts of the state,
4 and all living things except human beings. The Legislature
5 recognizes the difficulty historically encountered in
6 calculating the value of damaged natural resources. The value
7 of certain qualities of the state's natural resources is not
8 readily quantifiable, yet the resources and their qualities
9 have an intrinsic value to the residents of the state, and any
10 damage to natural resources and their qualities should not be
11 dismissed as nonrecoverable merely because of the difficulty
12 in quantifying their value. In order to avoid unnecessary
13 speculation and expenditure of limited resources to determine
14 these values, the Legislature hereby establishes a schedule
15 for compensation for damage to the state's natural resources
16 and the quality of said resources.

17 (10) For discharges of more than 30,000 gallons, the
18 department shall, in consultation with the Fish and Wildlife
19 Conservation Commission ~~Game and Fresh Water Fish Commission~~,
20 adopt rules ~~by July 1, 1994~~, to assess compensation for the
21 damage to natural resources based upon the cost of restoring,
22 rehabilitating, replacing, or acquiring the equivalent of the
23 damaged natural resources; the diminution in the value of
24 those resources pending restoration; and the reasonable cost
25 of assessing those damages. The person responsible for a
26 discharge shall be given an opportunity to consult with the
27 department on the assessment design and restoration program.

28 (a) For discharges greater than 30,000 gallons, the
29 person responsible has the option to pay the amount of
30 compensation calculated pursuant to the compensation schedule
31 established in subsection (4) or pay the amount determined by

1 a damage assessment performed by the department. If the person
2 responsible for the discharge elects to have a damage
3 assessment performed, then such person shall notify the
4 department in writing of such decision within 15 days after
5 the discovery of the discharge. The decision to have a damage
6 assessment performed to determine compensation for a discharge
7 shall be final; the person responsible for a discharge may not
8 later elect to use the compensation schedule for computing
9 compensation. Failure to make such notice shall result in the
10 amount of compensation for the total damage to natural
11 resources being calculated based on the compensation schedule.
12 The compensation shall be paid within 90 days after receipt of
13 a written request from the department.

14 (b) In the event the person responsible for a
15 discharge greater than 30,000 gallons elects to have a damage
16 assessment performed, said person shall pay to the department
17 an amount equal to the compensation calculated pursuant to
18 subsection (4) for the discharge using a volume of 30,000
19 gallons. The payment shall be made within 90 days after
20 receipt of a written request from the department.

21 (c) After completion of the damage assessment, the
22 department shall advise the person responsible for the
23 discharge of the amount of compensation due to the state. A
24 credit shall be given for the amount paid pursuant to
25 paragraph (b). Payment shall be made within 90 days after
26 receipt of a written request from the department. In no event
27 shall the total compensation paid pursuant to this section be
28 less than the dollar amount calculated pursuant to paragraph
29 (b).

30 Section 2. Section 376.30713, Florida Statutes, is
31 amended to read:

1 376.30713 Preapproved advanced cleanup.--

2 (1) In addition to the legislative findings provided
3 in s. 376.30711, the Legislature finds and declares:

4 (a) That the inability to conduct site rehabilitation
5 in advance of a site's priority ranking pursuant to s.
6 376.3071(5)(a) may substantially impede or prohibit property
7 transactions or the proper completion of public works
8 projects.

9 (b) While the first priority of the state is to
10 provide for protection of the water resources of the state,
11 human health, and the environment, the viability of commerce
12 is of equal importance to the state.

13 (c) It is in the public interest and of substantial
14 economic benefit to the state to provide an opportunity for
15 site rehabilitation to be conducted on a limited basis at
16 contaminated sites, in advance of the site's priority ranking,
17 to facilitate property transactions or public works projects.

18 (d) It is appropriate for persons responsible for site
19 rehabilitation to share the costs associated with managing and
20 conducting preapproved advanced cleanup, to facilitate the
21 opportunity for preapproved advanced cleanup, and to mitigate
22 the additional costs that will be incurred by the state in
23 conducting site rehabilitation in advance of the site's
24 priority ranking. Such cost sharing will result in more
25 contaminated sites being cleaned up and greater environmental
26 benefits to the state. The provisions of this section shall
27 only be available for sites eligible for restoration funding
28 under EDI, ATRP, or PLIRP.

29 (2) The department is authorized to approve an
30 application for preapproved advanced cleanup at eligible
31 sites, prior to funding based on the site's priority ranking

1 established pursuant to s. 376.3071(5)(a), in accordance with
2 the provisions of this section. Persons who qualify as an
3 applicant under the provisions of this section shall only
4 include the facility owner or operator or the person otherwise
5 responsible for site rehabilitation.

6 (a) Preapproved advanced cleanup applications may be
7 submitted between May 1 and June 30 and between November 1 and
8 December 31 of each fiscal year. Applications submitted
9 between May 1 and June 30 shall be for the fiscal year
10 beginning July 1. An application shall consist of:

11 1. A commitment to pay no less than 25 percent of the
12 total cleanup cost deemed recoverable under the provisions of
13 this section along with proof of the ability to pay the cost
14 share.

15 2. A nonrefundable review fee of \$250 to cover the
16 administrative costs associated with the department's review
17 of the application.

18 3. A limited contamination assessment report.

19 4. A proposed course of action.
20

21 The limited contamination assessment report shall be
22 sufficient to support the proposed course of action and to
23 estimate the cost of the proposed course of action. Any costs
24 incurred related to conducting the limited contamination
25 assessment report are not refundable from the Inland
26 Protection Trust Fund. Site eligibility under this subsection,
27 or any other provision of this section, shall not constitute
28 an entitlement to preapproved advanced cleanup or continued
29 restoration funding. The applicant shall certify to the
30 department that the applicant has the prerequisite authority
31 to enter into a preapproved advanced cleanup contract with the

1 department. This certification shall be submitted with the
2 application.

3 (b) The department shall rank the applications based
4 on the percentage of cost-sharing commitment proposed by the
5 applicant, with the highest ranking given to the applicant
6 that proposes the highest percentage of cost sharing. If the
7 department receives applications that propose identical
8 cost-sharing commitments and which exceed the funds available
9 to commit to all such proposals during the preapproved
10 advanced cleanup application period, the department shall
11 proceed to rerank those applicants. Those applicants
12 submitting identical cost-sharing proposals which exceed
13 funding availability shall be so notified by the department
14 and shall be offered the opportunity to raise their individual
15 cost-share commitments, in a period of time specified in the
16 notice. At the close of the period, the department shall
17 proceed to rerank the applications in accordance with this
18 paragraph.

19 (3)(a) Based on the ranking established under
20 paragraph (2)(b) and the funding limitations provided in
21 subsection (4), the department shall commence negotiation with
22 such applicants. If the department and the applicant agree on
23 the course of action, the department may enter into a contract
24 with the applicant. The department is authorized to negotiate
25 the terms and conditions of the contract.

26 (b) Preapproved advanced cleanup shall be conducted
27 under the provisions of ss. 376.3071(5)(b) and 376.30711. If
28 the terms of the preapproved advanced cleanup contract are not
29 fulfilled, the applicant forfeits any right to future payment
30 for any site rehabilitation work conducted under the contract.

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1 (c) The department's decision not to enter into a
2 preapproved advanced cleanup contract with the applicant shall
3 not be subject to the provisions of chapter 120. If the
4 department is not able to complete negotiation of the course
5 of action and the terms of the contract within 60 days after
6 commencing negotiations, the department shall terminate
7 negotiations with that applicant.

8 (4) The department is authorized to enter into
9 contract for a total of up to \$10 million of preapproved
10 advanced cleanup work in each fiscal year. However, no
11 facility shall be preapproved for more than \$500,000 of
12 cleanup activity in each fiscal year. For the purposes of
13 this section the term "facility" shall include, but not be
14 limited to, multiple site facilities such as airports, port
15 facilities, and terminal facilities even though such
16 enterprises may be treated as separate facilities for other
17 purposes under this chapter.

18 ~~(5) By December 31, 1998, the department shall submit~~
19 ~~a report to the Governor, the President of the Senate, and the~~
20 ~~Speaker of the House of Representatives on the progress and~~
21 ~~level of activity under the provisions of this section. The~~
22 ~~report shall include the following information:~~

23 ~~(a) A list of sites under a preapproved advanced~~
24 ~~cleanup contract, to be identified by the facility number.~~

25 ~~(b) The total number of preapproved advanced cleanup~~
26 ~~applications submitted to the department.~~

27 ~~(c) The priority ranking scores of each participating~~
28 ~~site.~~

29 ~~(d) The total amount of contract work authorized and~~
30 ~~conducted for each site and the percentage and amount of cost~~
31 ~~share.~~

