

By Senator Dockery

15-383-05

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.

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

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 predischarge 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.  
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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.~~

1           ~~(e) The total revenues received under the provisions~~  
2 ~~of this section.~~

3           ~~(f) The annual costs of administering the provisions~~  
4 ~~of this section.~~

5           ~~(g) The recommended annual budget for the provisions~~  
6 ~~of this section.~~

7           (5)(6) All funds collected by the department pursuant  
8 to this section shall be deposited into the Inland Protection  
9 Trust Fund to be used as provided in this section.

10           Section 3. This act shall take effect upon becoming a  
11 law.

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14           SENATE SUMMARY

15           Corrects an obsolete reference to the Game and Fresh  
16           Water Fish Commission. Eliminates obsolete reporting  
17           requirements for Department of Environmental Protection  
              with respect to preapproved advanced cleanup of certain  
18           contaminated sites.