

By Senator Baker

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1 A bill to be entitled

2 An act relating to cleanup of sites contaminated by
3 petroleum; amending s. 376.3071, F.S.; increasing public
4 funding for the restoration of certain sites contaminated by
5 petroleum; providing criteria concerning the sites that are
6 eligible for additional funds; prohibiting reimbursements
7 for expenses incurred outside of the petroleum cleanup
8 preapproval program administered by the Department of
9 Environmental Protection; amending s. 376.30711, F.S.;
10 providing requirements concerning preapproved site
11 rehabilitation agreements that govern submittal of invoices
12 to the department and payment of subcontractors; providing
13 that an exemption from requirements concerning payments to
14 subcontractors and suppliers does not apply to payments
15 associated with such preapproved agreements; amending s.
16 376.3072, F.S., relating to the Florida Petroleum Liability
17 and Restoration Insurance Program; increasing the amount of
18 funds available under the insurance program for certain
19 incidents or discharges; providing criteria concerning the
20 sites that are eligible for additional funds; prohibiting
21 reimbursements for expenses incurred outside the petroleum
22 cleanup preapproval program administered by the Department
23 of Environmental Protection; providing an effective date.

24
25 WHEREAS, ss. 376.3071 and 376.3072, Florida Statutes,
26 provide restoration funding assistance for the clean up of
27 petroleum discharges at facilities that are regulated by the
28 petroleum-storage-tank rules of the Department of Environmental
29 Protection, and

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30 WHEREAS, ss. 376.3071(13) and 376.3072, Florida Statutes,
31 establish caps for restoration funding assistance, with complete
32 phase out of assistance for new discharges beginning January 1,
33 1995, or January 1, 1999, and

34 WHEREAS, restoration funding assistance established under
35 ss. 376.3071(13) and 376.3072, Florida Statutes, has been eroded
36 in part by inflation, and

37 WHEREAS, repeated changes in funding levels for restoration
38 assistance due to s. 376.30711, Florida Statutes, caused erosion
39 in part of restoration funding assistance because of the
40 necessity to resample sites where funding was restored, and

41 WHEREAS, the inability to assign restoration funding to
42 sites having low priority-ranking scores established under s.
43 376.3071(5), Florida Statutes, has allowed contamination at some
44 sites to migrate, thereby resulting in more expensive remediation
45 of such sites, and

46 WHEREAS, the Legislature intends to increase restoration
47 funding assistance caps established under ss. 376.3071(13) and
48 376.3072, Florida Statutes, to compensate for the reduction in
49 funding due to the erosion of restoration funding assistance,
50 NOW, THEREFORE,

51
52 Be It Enacted by the Legislature of the State of Florida:

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54 Section 1. Paragraph (b) of subsection (13) of section
55 376.3071, Florida Statutes, is amended to read:

56 376.3071 Inland Protection Trust Fund; creation; purposes;
57 funding.--

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58 (13) PETROLEUM CLEANUP PARTICIPATION PROGRAM.--To encourage
59 detection, reporting, and cleanup of contamination caused by
60 discharges of petroleum or petroleum products, the department
61 shall, within the guidelines established in this subsection,
62 implement a cost-sharing cleanup program to provide
63 rehabilitation funding assistance for all property contaminated
64 by discharges of petroleum or petroleum products occurring before
65 January 1, 1995, subject to a copayment provided for in a
66 preapproved site rehabilitation agreement. Eligibility shall be
67 subject to an annual appropriation from the Inland Protection
68 Trust Fund. Additionally, funding for eligible sites shall be
69 contingent upon annual appropriation in subsequent years. Such
70 continued state funding shall not be deemed an entitlement or a
71 vested right under this subsection. Eligibility in the program
72 shall be notwithstanding any other provision of law, consent
73 order, order, judgment, or ordinance to the contrary.

74 (b) Subject to annual appropriation from the Inland
75 Protection Trust Fund, sites meeting the criteria of this
76 subsection are eligible for up to \$400,000 ~~\$300,000~~ of site
77 rehabilitation funding assistance in priority order pursuant to
78 subsection (5) and s. 376.30711. Sites meeting the criteria of
79 this subsection for which a site rehabilitation completion order
80 was issued prior to June 1, 2008, do not qualify for the 2008
81 increase in site rehabilitation funding assistance and are bound
82 by the pre-June 1, 2008, limits. Sites meeting the criteria of
83 this subsection for which a site rehabilitation completion order
84 was not issued prior to June 1, 2008, regardless of whether they
85 have previously transitioned to nonstate-funded cleanup status,
86 may continue state-funded cleanup pursuant to s. 376.30711 until

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87 a site rehabilitation completion order is issued or the increased
88 site rehabilitation funding assistance limit is reached,
89 whichever occurs first. At no time shall expenses incurred
90 outside the Preapproval Program provisions of s. 376.30711 be
91 reimbursable.

92 Section 2. Subsection (5) of section 376.30711, Florida
93 Statutes, is amended to read:

94 376.30711 Preapproved site rehabilitation, effective March
95 29, 1995.--

96 (5) (a) Any person who performs the conditions of a
97 preapproved site rehabilitation agreement, pursuant to the
98 provisions of this section and s. 376.3071(5), may file invoices
99 with the department for payment within the schedule and for the
100 services described in the preapproved site rehabilitation
101 agreement. Such invoices for payment must be submitted to the
102 department on forms provided by the department, together with
103 evidence documenting that preapproved activities were conducted
104 or completed in accordance with the preapproved authorization.
105 Provided there are sufficient unencumbered funds available in the
106 Inland Protection Trust Fund which have been appropriated for
107 expenditure by the Legislature and provided all of the terms of
108 the preapproved site rehabilitation agreement have been met,
109 invoices for payment shall be paid consistent with the provisions
110 of s. 215.422. After an applicant has submitted its invoices to
111 the department and before payment is made, the contractor may
112 assign its right to payment to any other person, without recourse
113 of the assignee or assignor to the state, and in such cases the
114 assignee shall be paid consistent with the provisions of s.
115 215.422. Prior notice of the assignment and assignment

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116 information shall be made to the department, which notice shall
117 be signed and notarized by the assigning party. The department
118 shall not have the authority to regulate private financial
119 transactions by which an applicant seeks to account for working
120 capital or the time value of money, unless charges associated
121 with such transactions are added as a separate charge in an
122 invoice.

123 (b) The contractor shall submit an invoice to the
124 department within 30 days after the date of the department's
125 written acceptance of each interim deliverable or written
126 approval of the final deliverable specified in a preapproved site
127 rehabilitation agreement.

128 (c) ~~(b)~~ Payments shall be made by the department based on
129 the terms of a contract for site rehabilitation work. The
130 department may, based on its experience and the past performance
131 and concerns regarding a contractor, retain up to 25 percent of
132 the contracted amount or use performance bonds to assure
133 performance. The amount of retainage or performance bond or
134 bonds, as well as the terms and conditions, shall be a part of
135 the site-specific performance-based contract.

136 (d) Contractors or persons to which the contractor has
137 assigned its right to payment pursuant to paragraph (a) shall
138 make prompt payment to subcontractors and suppliers for their
139 costs associated with a preapproved site rehabilitation agreement
140 pursuant to s. 287.0585(1).

141 (e) The exemption in s. 287.0585(2) shall not apply to
142 payments associated with a preapproved site rehabilitation
143 agreement.

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144 (f)~~(e)~~ The department shall provide certification within 30
145 days after notification from a contractor that the terms of the
146 contract for site rehabilitation work have been completed.
147 Failure of the department to do so shall not constitute a default
148 certification of completion. The department also may withhold
149 payment if the validity or accuracy of the contractor's invoices
150 or supporting documents is in question.

151 (g)~~(d)~~ Nothing in this section shall be construed to
152 authorize payment to any person for costs of contaminated soil
153 treatment or disposal that does not meet the applicable rules of
154 this state for such treatment or disposal, including all general
155 permitting, state air emission standards, monitoring, sampling,
156 and reporting rules more specifically described in department
157 rules.

158 (h)~~(e)~~ If any contractor fails to perform, as determined by
159 the department, contractual duties for site rehabilitation
160 program tasks, the department shall terminate the contractor's
161 eligibility for participation in the program.

162 (i)~~(f)~~ The contractor responsible for conducting site
163 rehabilitation shall keep and preserve suitable records in
164 accordance with the provisions of s. 376.3071(12)(e).

165 Section 3. Paragraphs (a), (d), and (e) of subsection (2)
166 of section 376.3072, Florida Statutes, are amended to read:

167 376.3072 Florida Petroleum Liability and Restoration
168 Insurance Program.--

169 (2) (a) Any owner or operator of a petroleum storage system
170 may become an insured in the restoration insurance program at a
171 facility provided:

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172 1. A site at which an incident has occurred shall be
173 eligible for restoration if the insured is a participant in the
174 third-party liability insurance program or otherwise meets
175 applicable financial responsibility requirements. After July 1,
176 1993, the insured must also provide the required excess insurance
177 coverage or self-insurance for restoration to achieve the
178 financial responsibility requirements of 40 C.F.R. s. 280.97,
179 subpart H, not covered by paragraph (d).

180 2. A site which had a discharge reported prior to January
181 1, 1989, for which notice was given pursuant to s. 376.3071(9) or
182 (12), and which is ineligible for the third-party liability
183 insurance program solely due to that discharge shall be eligible
184 for participation in the restoration program for any incident
185 occurring on or after January 1, 1989, in accordance with
186 subsection (3). Restoration funding for an eligible contaminated
187 site will be provided without participation in the third-party
188 liability insurance program until the site is restored as
189 required by the department or until the department determines
190 that the site does not require restoration.

191 3. Notwithstanding paragraph (b), a site where an
192 application is filed with the department prior to January 1,
193 1995, where the owner is a small business under s. 288.703(1), a
194 state community college with less than 2,500 FTE, a religious
195 institution as defined by s. 212.08(7) (m), a charitable
196 institution as defined by s. 212.08(7) (p), or a county or
197 municipality with a population of less than 50,000, shall be
198 eligible for up to \$400,000 ~~\$300,000~~ of eligible restoration
199 costs, less a deductible of \$10,000 for small businesses,
200 eligible community colleges, and religious or charitable

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201 institutions, and \$30,000 for eligible counties and
202 municipalities, provided that:

203 a. Except as provided in sub-subparagraph e., the facility
204 was in compliance with department rules at the time of the
205 discharge.

206 b. The owner or operator has, upon discovery of a
207 discharge, promptly reported the discharge to the department, and
208 drained and removed the system from service, if necessary.

209 c. The owner or operator has not intentionally caused or
210 concealed a discharge or disabled leak detection equipment.

211 d. The owner or operator proceeds to complete initial
212 remedial action as defined by department rules.

213 e. The owner or operator, if required and if it has not
214 already done so, applies for third-party liability coverage for
215 the facility within 30 days of receipt of an eligibility order
216 issued by the department pursuant to this provision.

217
218 However, the department may consider in-kind services from
219 eligible counties and municipalities in lieu of the \$30,000
220 deductible. The cost of conducting initial remedial action as
221 defined by department rules shall be an eligible restoration cost
222 pursuant to this provision.

223 4.a. By January 1, 1997, facilities at sites with existing
224 contamination shall be required to have methods of release
225 detection to be eligible for restoration insurance coverage for
226 new discharges subject to department rules for secondary
227 containment. Annual storage system testing, in conjunction with
228 inventory control, shall be considered to be a method of release
229 detection until the later of December 22, 1998, or 10 years after

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230 the date of installation or the last upgrade. Other methods of
231 release detection for storage tanks which meet such requirement
232 are:

233 (I) Interstitial monitoring of tank and integral piping
234 secondary containment systems;

235 (II) Automatic tank gauging systems; or

236 (III) A statistical inventory reconciliation system with a
237 tank test every 3 years.

238 b. For pressurized integral piping systems, the owner or
239 operator must use:

240 (I) An automatic in-line leak detector with flow
241 restriction meeting the requirements of department rules used in
242 conjunction with an annual tightness or pressure test; or

243 (II) An automatic in-line leak detector with electronic
244 flow shut-off meeting the requirements of department rules.

245 c. For suction integral piping systems, the owner or
246 operator must use:

247 (I) A single check valve installed directly below the
248 suction pump, provided there are no other valves between the
249 dispenser and the tank; or

250 (II) An annual tightness test or other approved test.

251 d. Owners of facilities with existing contamination that
252 install internal release detection systems in accordance with
253 sub-subparagraph a. shall permanently close their external
254 groundwater and vapor monitoring wells in accordance with
255 department rules by December 31, 1998. Upon installation of the
256 internal release detection system, these wells shall be secured
257 and taken out of service until permanent closure.

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258 e. Facilities with vapor levels of contamination meeting
259 the requirements of or below the concentrations specified in the
260 performance standards for release detection methods specified in
261 department rules may continue to use vapor monitoring wells for
262 release detection.

263 f. The department may approve other methods of release
264 detection for storage tanks and integral piping which have at
265 least the same capability to detect a new release as the methods
266 specified in this subparagraph.

267 (d)1. With respect to eligible incidents reported to the
268 department prior to July 1, 1992, the restoration insurance
269 program shall provide up to \$1.2 ~~\$1~~ million of restoration for
270 each incident and shall have an annual aggregate limit of \$2
271 million of restoration per facility.

272 2. For any site at which a discharge is reported on or
273 after July 1, 1992, and for which restoration coverage is
274 requested, the department shall pay for restoration in accordance
275 with the following schedule:

276 a. For discharges reported to the department from July 1,
277 1992, to June 30, 1993, the department shall pay up to \$1.2 ~~\$1~~
278 million of eligible restoration costs, less a \$1,000 deductible
279 per incident.

280 b. For discharges reported to the department from July 1,
281 1993, to December 31, 1993, the department shall pay up to \$1.2
282 ~~\$1~~ million of eligible restoration costs, less a \$5,000
283 deductible per incident. However, if, prior to the date the
284 discharge is reported and by September 1, 1993, the owner or
285 operator can demonstrate financial responsibility in effect in
286 accordance with 40 C.F.R. s. 280.97, subpart H, for coverage

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287 | under sub-subparagraph c., the deductible will be \$500. The \$500
288 | deductible shall apply for a period of 1 ~~one~~ year from the
289 | effective date of a policy or other form of financial
290 | responsibility obtained and in effect by September 1, 1993.

291 | c. For discharges reported to the department from January
292 | 1, 1994, to December 31, 1996, the department shall pay up to
293 | \$400,000 ~~\$300,000~~ of eligible restoration costs, less a
294 | deductible of \$10,000.

295 | d. For discharges reported to the department from January
296 | 1, 1997, to December 31, 1998, the department shall pay up to
297 | \$300,000 ~~\$150,000~~ of eligible restoration costs, less a
298 | deductible of \$10,000.

299 | e. Beginning January 1, 1999, no restoration coverage shall
300 | be provided.

301 | f. In addition, a supplemental deductible shall be added as
302 | follows:

303 | (I) A supplemental deductible of \$5,000 if the owner or
304 | operator fails to report a suspected release within 1 working day
305 | after discovery.

306 | (II) A supplemental deductible of \$10,000 if the owner or
307 | operator, within 3 days after discovery of an actual new
308 | discharge, fails to take steps to test or empty the storage
309 | system and complete such activity within 7 days.

310 | (III) A supplemental deductible of \$25,000 if the owner or
311 | operator, after testing or emptying the storage system, fails to
312 | proceed within 24 hours thereafter to abate the known source of
313 | the discharge or to begin free product removal relating to an
314 | actual new discharge and fails to complete abatement within 72
315 | hours, although free product recovery may be ongoing.

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316 (e) The following are not eligible to participate in the
317 Petroleum Liability and Restoration Insurance Program:

318 1. Sites owned or operated by the Federal Government during
319 the time the facility was in operation.

320 2. Sites where the owner or operator has denied the
321 department reasonable site access.

322 3. Any third-party claims relating to damages caused by
323 discharges discovered prior to January 1, 1989.

324 4. Any incidents discovered prior to January 1, 1989, are
325 not eligible to participate in the restoration insurance program.
326 However, this exclusion shall not be construed to prevent a new
327 incident at the same location from participation in the
328 restoration insurance program if the owner or operator is
329 otherwise eligible. This exclusion shall not affect eligibility
330 for participation in the EDI program.

331
332 Sites meeting the criteria of this subsection for which a site
333 rehabilitation completion order was issued prior to June 1, 2008,
334 do not qualify for the 2008 increase in site rehabilitation
335 funding assistance and are bound by the pre-June 1, 2008, limits.

336 Sites meeting the criteria of this subsection for which a site
337 rehabilitation completion order was not issued prior to June 1,
338 2008, regardless of whether or not they have previously
339 transitioned to nonstate-funded cleanup status, may continue
340 state-funded cleanup pursuant to s. 376.30711 until a site
341 rehabilitation completion order is issued or the increased site
342 rehabilitation funding assistance limit is reached, whichever
343 occurs first. At no time shall expenses incurred outside the
344 Preapproval Program provisions of s. 376.30711, be reimbursable.

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Section 4. The act shall take effect July 1, 2008.