

HB 961

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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
5 by petroleum; providing criteria for the sites eligible for
6 additional funds; prohibiting reimbursements for expenses
7 incurred outside the petroleum cleanup preapproved site
8 rehabilitation 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 for the sites
20 eligible for additional funds; prohibiting reimbursements
21 for expenses incurred outside the petroleum cleanup
22 preapproved site rehabilitation program administered by the
23 Department of Environmental Protection; providing an
24 effective date.

25
26 WHEREAS, ss. 376.3071 and 376.3072, Florida Statutes,
27 provide restoration funding assistance for the cleanup of
28 petroleum discharges at facilities that are regulated by the

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29 | petroleum storage tank rules of the Department of Environmental
 30 | Protection, and

31 | WHEREAS, ss. 376.3071(13) and 376.3072, Florida Statutes,
 32 | establish caps for restoration funding assistance, with complete
 33 | phase out of assistance for new discharges beginning January 1,
 34 | 1995, or January 1, 1999, and

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

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

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

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

52 |
 53 | Be It Enacted by the Legislature of the State of Florida:

54 |
 55 | Section 1. Paragraph (b) of subsection (13) of section
 56 | 376.3071, Florida Statutes, is amended to read:

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

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

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

85 was not issued prior to June 1, 2008, regardless of whether or
 86 not they have previously transitioned to nonstate-funded cleanup
 87 status, may continue state-funded cleanup pursuant to s.
 88 376.30711 until a site rehabilitation completion order is issued
 89 or the increased site rehabilitation funding assistance limit is
 90 reached, whichever occurs first. At no time shall expenses
 91 incurred outside the preapproved site rehabilitation program
 92 under s. 376.30711 be reimbursable.

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

95 376.30711 Preapproved site rehabilitation, effective March
 96 29, 1995.--

97 (5) (a) Any person who performs the conditions of a
 98 preapproved site rehabilitation agreement, pursuant to the
 99 provisions of this section and s. 376.3071(5), may file invoices
 100 with the department for payment within the schedule and for the
 101 services described in the preapproved site rehabilitation
 102 agreement. Such invoices for payment must be submitted to the
 103 department on forms provided by the department, together with
 104 evidence documenting that preapproved activities were conducted
 105 or completed in accordance with the preapproved authorization.
 106 Provided there are sufficient unencumbered funds available in
 107 the Inland Protection Trust Fund which have been appropriated
 108 for expenditure by the Legislature and provided all of the terms
 109 of the preapproved site rehabilitation agreement have been met,
 110 invoices for payment shall be paid consistent with the
 111 provisions of s. 215.422. After an applicant has submitted its
 112 invoices to the department and before payment is made, the

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113 contractor may assign its right to payment to any other person,
114 without recourse of the assignee or assignor to the state, and
115 in such cases the assignee shall be paid consistent with the
116 provisions of s. 215.422. Prior notice of the assignment and
117 assignment information shall be made to the department, which
118 notice shall be signed and notarized by the assigning party. The
119 department shall not have the authority to regulate private
120 financial transactions by which an applicant seeks to account
121 for working capital or the time value of money, unless charges
122 associated with such transactions are added as a separate charge
123 in an invoice.

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

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

137 (d) Contractors or persons to which the contractor has
138 assigned its right to payment pursuant to paragraph (a) shall
139 make prompt payment to subcontractors and suppliers for their

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140 costs associated with a preapproved site rehabilitation
141 agreement pursuant to s. 287.0585(1).

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

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

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

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

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

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

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

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

173 1. A site at which an incident has occurred shall be
 174 eligible for restoration if the insured is a participant in the
 175 third-party liability insurance program or otherwise meets
 176 applicable financial responsibility requirements. After July 1,
 177 1993, the insured must also provide the required excess
 178 insurance coverage or self-insurance for restoration to achieve
 179 the financial responsibility requirements of 40 C.F.R. s.
 180 280.97, subpart H, not covered by paragraph (d).

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

192 3. Notwithstanding paragraph (b), a site where an
 193 application is filed with the department prior to January 1,
 194 1995, where the owner is a small business under s. 288.703(1), a
 195 state community college with less than 2,500 FTE, a religious

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196 institution as defined by s. 212.08(7)(m), a charitable
197 institution as defined by s. 212.08(7)(p), or a county or
198 municipality with a population of less than 50,000, shall be
199 eligible for up to \$400,000 ~~\$300,000~~ of eligible restoration
200 costs, less a deductible of \$10,000 for small businesses,
201 eligible community colleges, and religious or charitable
202 institutions, and \$30,000 for eligible counties and
203 municipalities, provided that:

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

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

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

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

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

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

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224 4.a. By January 1, 1997, facilities at sites with existing
225 contamination shall be required to have methods of release
226 detection to be eligible for restoration insurance coverage for
227 new discharges subject to department rules for secondary
228 containment. Annual storage system testing, in conjunction with
229 inventory control, shall be considered to be a method of release
230 detection until the later of December 22, 1998, or 10 years
231 after the date of installation or the last upgrade. Other
232 methods of release detection for storage tanks which meet such
233 requirement are:

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

236 (II) Automatic tank gauging systems; or

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

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

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

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

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

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

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

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

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

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

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

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

277 a. For discharges reported to the department from July 1,
 278 1992, to June 30, 1993, the department shall pay up to \$1.2 ~~\$1~~

279 million of eligible restoration costs, less a \$1,000 deductible
 280 per incident.

281 b. For discharges reported to the department from July 1,
 282 1993, to December 31, 1993, the department shall pay up to \$1.2
 283 ~~\$1~~ million of eligible restoration costs, less a \$5,000
 284 deductible per incident. However, if, prior to the date the
 285 discharge is reported and by September 1, 1993, the owner or
 286 operator can demonstrate financial responsibility in effect in
 287 accordance with 40 C.F.R. s. 280.97, subpart H, for coverage
 288 under sub-subparagraph c., the deductible will be \$500. The \$500
 289 deductible shall apply for a period of 1 ~~one~~ year from the
 290 effective date of a policy or other form of financial
 291 responsibility obtained and in effect by September 1, 1993.

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

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

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

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

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

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

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

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

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

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

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

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

332
 333 Sites meeting the criteria of this subsection for which a site
 334 rehabilitation completion order was issued prior to June 1,

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335 2008, do not qualify for the 2008 increase in site
336 rehabilitation funding assistance and are bound by the pre-June
337 1, 2008, limits. Sites meeting the criteria of this subsection
338 for which a site rehabilitation completion order was not issued
339 prior to June 1, 2008, regardless of whether or not they have
340 previously transitioned to nonstate-funded cleanup status, may
341 continue state-funded cleanup pursuant to s. 376.30711 until a
342 site rehabilitation completion order is issued or the increased
343 site rehabilitation funding assistance limit is reached,
344 whichever occurs first. At no time shall expenses incurred
345 outside the preapproved site rehabilitation program under s.
346 376.30711 be reimbursable.

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