

ENROLLED  
HB 961

2008 Legislature

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

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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:

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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.

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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~~

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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.

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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.