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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/08/2015	.	
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	.	
	.	

Appropriations Subcommittee on General Government (Simpson)
recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (6) of section 376.305, Florida
Statutes, is amended to read:

376.305 Removal of prohibited discharges.—

(6) The Legislature created the Abandoned Tank Restoration
Program in response to the need to provide financial assistance
for cleanup of sites that have abandoned petroleum storage



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11 systems. For purposes of this subsection, the term "abandoned
12 petroleum storage system" means a petroleum storage system that
13 has not stored petroleum products for consumption, use, or sale
14 since March 1, 1990. The department shall establish the
15 Abandoned Tank Restoration Program to facilitate the restoration
16 of sites contaminated by abandoned petroleum storage systems.

17 (a) To be included in the program:

18 1. An application must be submitted to the department ~~by~~
19 ~~June 30, 1996,~~ certifying that the system has not stored
20 petroleum products for consumption, use, or sale at the facility
21 since March 1, 1990.

22 2. The owner or operator of the petroleum storage system
23 when it was in service must have ceased conducting business
24 involving consumption, use, or sale of petroleum products at
25 that facility on or before March 1, 1990.

26 3. The site is not otherwise eligible for the cleanup
27 programs pursuant to s. 376.3071 or s. 376.3072.

28 (b) In order to be eligible for the program, petroleum
29 storage systems from which a discharge occurred must be closed
30 pursuant to department rules before an eligibility
31 determination. However, if the department determines that the
32 owner of the facility cannot financially comply with the
33 department's petroleum storage system closure requirements and
34 all other eligibility requirements are met, the petroleum
35 storage system closure requirements shall be waived. The
36 department shall take into consideration the owner's net worth
37 and the economic impact on the owner in making the determination
38 of the owner's financial ability. ~~The June 30, 1996, application~~
39 ~~deadline shall be waived for owners who cannot financially~~



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40 ~~comply.~~

41 (c) Sites accepted in the program are eligible for site
42 rehabilitation funding as provided in s. 376.3071.

43 (d) The following sites are excluded from eligibility:

44 1. Sites on property of the Federal Government;

45 2. Sites contaminated by pollutants that are not petroleum
46 products;

47 3. Sites where the department has been denied site access;
48 or

49 4. Sites which are owned by a person who had knowledge of
50 the polluting condition when title was acquired unless the
51 person acquired title to the site after issuance of a notice of
52 site eligibility by the department.

53 (e) Participating sites are subject to a deductible as
54 determined by rule, not to exceed \$10,000.

55

56 ~~This subsection does not relieve a person who has acquired title~~
57 ~~after July 1, 1992, from the duty to establish by a~~
58 ~~preponderance of the evidence that he or she undertook, at the~~
59 ~~time of acquisition, all appropriate inquiry into the previous~~
60 ~~ownership and use of the property consistent with good~~
61 ~~commercial or customary practice in an effort to minimize~~
62 ~~liability, as required by s. 376.308(1)(c).~~

63 Section 2. Paragraph (b) of subsection (12), and subsection
64 (13) of section 376.3071, Florida Statutes, are amended, and
65 paragraph (c) is added to subsection (12) of that section, to
66 read:

67 376.3071 Inland Protection Trust Fund; creation; purposes;
68 funding.-



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69 (12) SITE CLEANUP.—

70 (b) Low-risk ~~Low-scored~~ site initiative.—Notwithstanding
71 subsections (5) and (6), a site with a priority ranking score of
72 ~~29 points or less~~ may voluntarily participate in the low-risk
73 ~~low-scored~~ site initiative regardless of whether the site is
74 eligible for state restoration funding.

75 1. To participate in the low-risk ~~low-scored~~ site
76 initiative, the ~~responsible party or~~ property owner, or a
77 responsible party that provides evidence of authorization from
78 the property owner, must submit a “No Further Action” proposal
79 and affirmatively demonstrate that the following conditions of
80 paragraph (c) are met.÷

81 a. ~~Upon reassessment pursuant to department rule, the site~~
82 ~~retains a priority ranking score of 29 points or less.~~

83 b. ~~Excessively contaminated soil, as defined by department~~
84 ~~rule, does not exist onsite as a result of a release of~~
85 ~~petroleum products.~~

86 c. ~~A minimum of 6 months of groundwater monitoring~~
87 ~~indicates that the plume is shrinking or stable.~~

88 d. ~~The release of petroleum products at the site does not~~
89 ~~adversely affect adjacent surface waters, including their~~
90 ~~effects on human health and the environment.~~

91 e. ~~The area of groundwater containing the petroleum~~
92 ~~products’ chemicals of concern is less than one-quarter acre and~~
93 ~~is confined to the source property boundaries of the real~~
94 ~~property on which the discharge originated.~~

95 f. ~~Soils onsite that are subject to human exposure found~~
96 ~~between land surface and 2 feet below land surface meet the soil~~
97 ~~cleanup target levels established by department rule or human~~



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98 ~~exposure is limited by appropriate institutional or engineering~~
99 ~~controls.~~

100 2. Upon affirmative demonstration that ~~of~~ the conditions
101 under paragraph (c) are met ~~subparagraph 1.~~, the department
102 shall issue a site rehabilitation completion order incorporating
103 the determination of "No Further Action." proposal submitted by
104 the property owner or the responsible party that provides
105 evidence of the authorization from the property owner. ~~Such~~
106 ~~determination acknowledges that minimal contamination exists~~
107 ~~onsite and that such contamination is not a threat to the public~~
108 ~~health, safety, or welfare, water resources, or the environment.~~
109 If no contamination is detected, the department may issue a site
110 rehabilitation completion order.

111 3. Sites that are eligible for state restoration funding
112 may receive payment of costs for the low-risk ~~low-scored~~ site
113 initiative as follows:

114 a. ~~A responsible party or property owner, or responsible~~
115 party that provides evidence of authorization from the property
116 owner, may submit an assessment and limited remediation plan
117 designed to affirmatively demonstrate that the site meets the
118 conditions under paragraph (c) subparagraph 1. Notwithstanding
119 the priority ranking score of the site, the department may
120 approve the cost of the assessment and limited remediation,
121 including up to 6 months of groundwater monitoring, in one or
122 more task assignments, or modifications thereof, not to exceed
123 the threshold amount provided in s. 287.017 for CATEGORY TWO,
124 \$30,000 for each site where the department has determined that
125 the assessment and limited remediation, if applicable, will
126 likely result in a determination of "No Further Action". The



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127 department may not pay the costs associated with the
128 establishment of institutional or engineering controls, with the
129 exception of the costs associated with a professional land
130 survey or specific purpose survey, if needed, and costs
131 associated with obtaining a title report and recording fees.

132 b. Following the assessment, the department may approve up
133 to an additional \$35,000 for interim source removal pursuant to
134 department rule to achieve a "No Further Action" order or a site
135 rehabilitation completion order pursuant to subparagraph 2.

136 b. Following approval of initial site assessment results
137 provided pursuant to state funding under sub-subparagraph a.,
138 the department may approve up to an additional amount not to
139 exceed the threshold amount provided in s. 287.017 for CATEGORY
140 TWO, for limited remediation, where needed to achieve a
141 determination of "No Further Action".

142 ~~c.b.~~ The assessment and limited remediation work shall be
143 completed no later than 9 ~~6~~ months after the department
144 authorizes the start of a state funded low-risk site initiative
145 task ~~issues its approval~~. If groundwater monitoring is required
146 after the assessment and limited remediation in order to satisfy
147 the conditions of paragraph (c), the department may authorize an
148 additional 6 months to complete the monitoring.

149 ~~d.e.~~ No more than \$15 ~~\$10~~ million for the low-risk ~~low-~~
150 ~~scored~~ site initiative may be encumbered from the fund in any
151 fiscal year. Funds shall be made available on a first-come,
152 first-served basis and shall be limited to 10 sites in each
153 fiscal year for each ~~responsible party or~~ property owner or each
154 responsible party that provides evidence of authorization from
155 the property owner.



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156 e.d. Program deductibles, copayments, and the limited
157 contamination assessment report requirements under paragraph
158 (13) (c) do not apply to expenditures under this paragraph.

159 (c) The department shall issue a site rehabilitation
160 completion order incorporating the "No Further Action Proposal"
161 submitted by a property owner or a responsible party that
162 provides evidence of authorization from the property owner upon
163 affirmative demonstration that all of the following conditions
164 are met:

165 1. Soil saturated with petroleum or petroleum products, or
166 soil that causes a total corrected hydrocarbon measurement of
167 500 parts per million or higher for Gasoline Analytical Group or
168 50 parts per million or higher for Kerosene Analytical Group, as
169 defined by department rule, does not exist onsite as a result of
170 a release of petroleum products.

171 2. A minimum of 6 months of groundwater monitoring
172 indicates that the plume is shrinking or stable.

173 3. The release of petroleum products at the site does not
174 adversely affect adjacent surface waters, including their
175 effects on human health and the environment.

176 4. The area of groundwater containing the petroleum
177 products' chemicals of concern is confined to the source
178 property boundaries of the real property on which the discharge
179 originated, or has migrated from the source property only to a
180 transportation facility of the Department of Transportation.

181 5. The groundwater contamination containing the petroleum
182 products chemicals of concern is not a threat to any permitted
183 potable water supply well.

184 6. Soils onsite that are subject to human exposure found



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185 between land surface and 2 feet below land surface meet the soil
186 cleanup target levels established pursuant to s.
187 376.3071(5)(b)9., or human exposure is limited by appropriate
188 institutional or engineering controls.

189
190 Issuance of a site rehabilitation completion order under this
191 paragraph acknowledges that minimal contamination exists onsite
192 and that such contamination is not a threat to the public
193 health, safety, or welfare, water resources, or the environment.
194 If the department determines that a discharge for which a site
195 rehabilitation completion order was issued pursuant to this
196 subsection may pose a threat to the public health, safety, or
197 welfare, water resources, or the environment, the issuance of
198 the site rehabilitation completion order, with or without
199 conditions, does not alter eligibility for state-funded
200 rehabilitation that would otherwise be applicable under this
201 section.

202 (13) PETROLEUM CLEANUP PARTICIPATION PROGRAM.—To encourage
203 detection, reporting, and cleanup of contamination caused by
204 discharges of petroleum or petroleum products, the department
205 shall, within the guidelines established in this subsection,
206 implement a cost-sharing cleanup program to provide
207 rehabilitation funding assistance for all property contaminated
208 by discharges of petroleum or petroleum products from a
209 petroleum storage system occurring before January 1, 1995,
210 subject to a copayment provided for in a Petroleum Cleanup
211 Participation Program site rehabilitation agreement. Eligibility
212 is subject to an annual appropriation from the fund.
213 Additionally, funding for eligible sites is contingent upon



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214 annual appropriation in subsequent years. Such continued state
215 funding is not an entitlement or a vested right under this
216 subsection. Eligibility shall be determined in the program,
217 notwithstanding any other provision of law, consent order,
218 order, judgment, or ordinance to the contrary.

219 (a)1. The department shall accept any discharge reporting
220 form received before January 1, 1995, as an application for this
221 program, and the facility owner or operator need not reapply.

222 2. Owners or operators of property, regardless of whether
223 ownership has changed, which is contaminated by petroleum or
224 petroleum products from a petroleum storage system may apply for
225 such program by filing a written report of the contamination
226 incident, including evidence that such incident occurred before
227 January 1, 1995, with the department. Incidents of petroleum
228 contamination discovered after December 31, 1994, at sites which
229 have not stored petroleum or petroleum products for consumption,
230 use, or sale after such date shall be presumed to have occurred
231 before January 1, 1995. An operator's filed report shall be an
232 application of the owner for all purposes. Sites reported to the
233 department after December 31, 1998, are not eligible for the
234 program.

235 (b) Subject to annual appropriation from the fund, sites
236 meeting the criteria of this subsection are eligible for up to
237 \$400,000 of site rehabilitation funding assistance in priority
238 order pursuant to subsections (5) and (6). Sites meeting the
239 criteria of this subsection for which a site rehabilitation
240 completion order was issued before June 1, 2008, do not qualify
241 for the 2008 increase in site rehabilitation funding assistance
242 and are bound by the pre-June 1, 2008, limits. Sites meeting the



243 criteria of this subsection for which a site rehabilitation
244 completion order was not issued before June 1, 2008, regardless
245 of whether they have previously transitioned to nonstate-funded
246 cleanup status, may continue state-funded cleanup pursuant to
247 this section until a site rehabilitation completion order is
248 issued or the increased site rehabilitation funding assistance
249 limit is reached, whichever occurs first. The department may not
250 pay expenses incurred beyond the scope of an approved contract.

251 (c) Upon notification by the department that rehabilitation
252 funding assistance is available for the site pursuant to
253 subsections (5) and (6), the owner, operator, or person
254 otherwise responsible for site rehabilitation shall provide the
255 department with a limited contamination assessment report and
256 shall enter into a Petroleum Cleanup Participation Program site
257 rehabilitation agreement with the department. The agreement must
258 provide for a 25-percent copayment by the owner, operator, or
259 person otherwise responsible for conducting site rehabilitation.
260 The owner, operator, or person otherwise responsible for
261 conducting site rehabilitation shall adequately demonstrate the
262 ability to meet the copayment obligation. The limited
263 contamination assessment report and the copayment costs may be
264 reduced or eliminated if the owner and all operators responsible
265 for restoration under s. 376.308 demonstrate that they cannot
266 financially comply with the copayment and limited contamination
267 assessment report requirements. The department shall take into
268 consideration the owner's and operator's net worth in making the
269 determination of financial ability. In the event the department
270 and the owner, operator, or person otherwise responsible for
271 site rehabilitation cannot complete negotiation of the cost-



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272 sharing agreement within 120 days after beginning negotiations,
273 the department shall terminate negotiations and the site shall
274 be ineligible for state funding under this subsection and all
275 liability protections provided for in this subsection shall be
276 revoked.

277 (d) A report of a discharge made to the department by a
278 person pursuant to this subsection or any rules adopted pursuant
279 to this subsection may not be used directly as evidence of
280 liability for such discharge in any civil or criminal trial
281 arising out of the discharge.

282 (e) This subsection does not preclude the department from
283 pursuing penalties under s. 403.141 for violations of any law or
284 any rule, order, permit, registration, or certification adopted
285 or issued by the department pursuant to its lawful authority.

286 (f) Upon the filing of a discharge reporting form under
287 paragraph (a), the department or local government may not pursue
288 any judicial or enforcement action to compel rehabilitation of
289 the discharge. This paragraph does not prevent any such action
290 with respect to discharges determined ineligible under this
291 subsection or to sites for which rehabilitation funding
292 assistance is available pursuant to subsections (5) and (6).

293 (g) The following are excluded from participation in the
294 program:

295 1. Sites at which the department has been denied reasonable
296 site access to implement this section.

297 2. Sites that were active facilities when owned or operated
298 by the Federal Government.

299 3. Sites that are identified by the United States
300 Environmental Protection Agency to be on, or which qualify for



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301 listing on, the National Priorities List under Superfund. This
302 exception does not apply to those sites for which eligibility
303 has been requested or granted as of the effective date of this
304 act under the Early Detection Incentive Program established
305 pursuant to s. 15, chapter 86-159, Laws of Florida.

306 4. Sites for which contamination is covered under the Early
307 Detection Incentive Program, the Abandoned Tank Restoration
308 Program, or the Petroleum Liability and Restoration Insurance
309 Program, in which case site rehabilitation funding assistance
310 shall continue under the respective program.

311 Section 3. Paragraph (a) of subsection (2) and subsection
312 (4) of section 376.30713, Florida Statutes, are amended to read:

313 376.30713 Advanced cleanup.—

314 (2) The department may approve an application for advanced
315 cleanup at eligible sites, before funding based on the site's
316 priority ranking established pursuant to s. 376.3071(5) (a),
317 pursuant to this section. Only the facility owner or operator or
318 the person otherwise responsible for site rehabilitation
319 qualifies as an applicant under this section.

320 (a) Advanced cleanup applications may be submitted between
321 May 1 and June 30 and between November 1 and December 31 of each
322 fiscal year. Applications submitted between May 1 and June 30
323 shall be for the fiscal year beginning July 1. An application
324 must consist of:

325 1. A commitment to pay 25 percent or more of the total
326 cleanup cost deemed recoverable under this section along with
327 proof of the ability to pay the cost share. An application
328 proposing that the department enter into a performance-based
329 contract for the cleanup of 10 ~~20~~ or more sites may use a



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330 commitment to pay, a demonstrated cost savings to the
331 department, or both to meet the cost-share requirement. For an
332 application relying on a demonstrated cost savings to the
333 department, the applicant shall, in conjunction with the
334 proposed agency term contractor, establish and provide in the
335 application the percentage of cost savings in the aggregate that
336 is being provided to the department for cleanup of the sites
337 under the application compared to the cost of cleanup of those
338 same sites using the current rates provided to the department by
339 the proposed agency term contractor. The department shall
340 determine whether the cost savings demonstration is acceptable.
341 Such determination is not subject to chapter 120.

342 2. A nonrefundable review fee of \$250 to cover the
343 administrative costs associated with the department's review of
344 the application.

345 3. A limited contamination assessment report.

346 4. A proposed course of action.

347

348 The limited contamination assessment report must be sufficient
349 to support the proposed course of action and to estimate the
350 cost of the proposed course of action. Costs incurred related to
351 conducting the limited contamination assessment report are not
352 refundable from the Inland Protection Trust Fund. Site
353 eligibility under this subsection or any other provision of this
354 section is not an entitlement to advanced cleanup or continued
355 restoration funding. The applicant shall certify to the
356 department that the applicant has the prerequisite authority to
357 enter into an advanced cleanup contract with the department. The
358 certification must be submitted with the application.



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359 (4) The department may enter into contracts for a total of
360 up to ~~\$25~~ ~~\$15~~ million of advanced cleanup work in each fiscal
361 year. However, a facility or an applicant who bundles multiple
362 sites as specified in subparagraph (2)(a)1. may not be approved
363 for more than \$5 million of cleanup activity in each fiscal
364 year. A property owner or responsible party may enter into a
365 voluntary cost-share agreement in which the property owner or
366 responsible party commits to bundle multiple sites and lists the
367 facilities that will be included in those future bundles. The
368 facilities listed are not subject to agency term contractor
369 assignment pursuant to department rule. The department reserves
370 the right to terminate the voluntary cost-share agreement if the
371 property owner or responsible party fails to submit an
372 application to bundle multiple sites within an open application
373 period in which it is eligible to participate. For the purposes
374 of this section, the term "facility" includes, but is not
375 limited to, multiple site facilities such as airports, port
376 facilities, and terminal facilities even though such enterprises
377 may be treated as separate facilities for other purposes under
378 this chapter.

379 Section 4. This act shall take effect July 1, 2015.

380
381 ===== T I T L E A M E N D M E N T =====

382 And the title is amended as follows:

383 Delete everything before the enacting clause
384 and insert:

385 A bill to be entitled
386 An act relating to the Petroleum Restoration Program;
387 amending s. 376.305, F.S.; removing the requirement



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388 that applications for the Abandoned Tank Restoration
389 Program must have been submitted to the Department of
390 Environmental Protection by a certain time; deleting
391 provisions prohibiting the relief of liability for
392 persons who acquired title after a certain date;
393 amending s. 376.3071, F.S.; revising the conditions
394 for eligibility and methods for payment of costs for
395 the low-risk site initiative; clarifying that a change
396 in ownership does not preclude a site from entering
397 into the program; amending s. 376.30713, F.S.;
398 reducing the number of sites that may be proposed for
399 certain advanced cleanup applications; increasing the
400 total amount for which the department may contract for
401 advanced cleanup work in a fiscal year; authorizing
402 property owners and responsible parties to enter into
403 voluntary cost-share agreements under certain
404 circumstances; providing an effective date.