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Proposed Committee Substitute by the Committee on Appropriations
(Appropriations Subcommittee on General Government)

A bill to be entitled

An act relating to the Petroleum Restoration Program;
amending s. 376.305, F.S.; revising the eligibility
requirements of the Abandoned Tank Restoration
Program; deleting provisions prohibiting the relief of
liability for persons who acquired title after a
certain date; amending s. 376.3071, F.S.; renaming the
low-scored site initiative the low-risk site
initiative; revising the conditions for eligibility
and methods for payment of costs for the low-risk site
initiative; clarifying that a change in ownership does
not preclude a site from entering into the program;
amending s. 376.30713, F.S.; reducing the number of
sites that may be proposed for certain advanced
cleanup applications; increasing the total amount for
which the department may contract for advanced cleanup
work in a fiscal year; authorizing property owners and
responsible parties to enter into voluntary cost-share
agreements under certain circumstances; providing an
effective date.

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

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



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28 Program in response to the need to provide financial assistance
29 for cleanup of sites that have abandoned petroleum storage
30 systems. For purposes of this subsection, the term "abandoned
31 petroleum storage system" means a petroleum storage system that
32 has not stored petroleum products for consumption, use, or sale
33 since March 1, 1990. The department shall establish the
34 Abandoned Tank Restoration Program to facilitate the restoration
35 of sites contaminated by abandoned petroleum storage systems.

36 (a) To be included in the program:

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

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

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

47 (b) In order to be eligible for the program, petroleum
48 storage systems from which a discharge occurred must be closed
49 pursuant to department rules before an eligibility
50 determination. However, if the department determines that the
51 owner of the facility cannot financially comply with the
52 department's petroleum storage system closure requirements and
53 all other eligibility requirements are met, the petroleum
54 storage system closure requirements shall be waived. The
55 department shall take into consideration the owner's net worth
56 and the economic impact on the owner in making the determination



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57 of the owner's financial ability. ~~The June 30, 1996, application~~
58 ~~deadline shall be waived for owners who cannot financially~~
59 ~~comply.~~

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

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

- 63 1. Sites on property of the Federal Government;
64 2. Sites contaminated by pollutants that are not petroleum
65 products; or
66 3. Sites where the department has been denied site access;
67 ~~or~~

68 ~~4. Sites which are owned by a person who had knowledge of~~
69 ~~the polluting condition when title was acquired unless the~~
70 ~~person acquired title to the site after issuance of a notice of~~
71 ~~site eligibility by the department.~~

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

74
75 ~~This subsection does not relieve a person who has acquired title~~
76 ~~after July 1, 1992, from the duty to establish by a~~
77 ~~preponderance of the evidence that he or she undertook, at the~~
78 ~~time of acquisition, all appropriate inquiry into the previous~~
79 ~~ownership and use of the property consistent with good~~
80 ~~commercial or customary practice in an effort to minimize~~
81 ~~liability, as required by s. 376.308(1)(e).~~

82 Section 2. Paragraph (b) of subsection (12), and subsection
83 (13) of section 376.3071, Florida Statutes, are amended, and
84 paragraph (c) is added to subsection (12) of that section, to
85 read:



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86 376.3071 Inland Protection Trust Fund; creation; purposes;
87 funding.-

88 (12) SITE CLEANUP.-

89 (b) Low-risk ~~Low-scored site initiative.~~ Notwithstanding
90 subsections (5) and (6), a site ~~with a priority ranking score of~~
91 ~~29 points or less~~ may voluntarily participate in the low-risk
92 ~~low-scored~~ site initiative regardless of whether the site is
93 eligible for state restoration funding.

94 1. To participate in the low-risk ~~low-scored~~ site
95 initiative, the ~~responsible party or property owner, or a~~
96 responsible party that provides evidence of authorization from
97 the property owner, must submit a "No Further Action" proposal
98 and affirmatively demonstrate that the following conditions of
99 paragraph (c) are met.:-

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

102 b. ~~Excessively contaminated soil, as defined by department~~
103 ~~rule, does not exist onsite as a result of a release of~~
104 ~~petroleum products.~~

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

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

110 e. ~~The area of groundwater containing the petroleum~~
111 ~~products' chemicals of concern is less than one-quarter acre and~~
112 ~~is confined to the source property boundaries of the real~~
113 ~~property on which the discharge originated.~~

114 f. ~~Soils onsite that are subject to human exposure found~~



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115 ~~between land surface and 2 feet below land surface meet the soil~~
116 ~~cleanup target levels established by department rule or human~~
117 ~~exposure is limited by appropriate institutional or engineering~~
118 ~~controls.~~

119 2. Upon affirmative demonstration that ~~of~~ the conditions
120 under paragraph (c) are met ~~subparagraph 1.~~, the department
121 shall issue a site rehabilitation completion order incorporating
122 the determination of "No Further Action." proposal submitted by
123 the property owner or the responsible party that provides
124 evidence of the authorization from the property owner. Such
125 ~~determination acknowledges that minimal contamination exists~~
126 ~~onsite and that such contamination is not a threat to the public~~
127 ~~health, safety, or welfare, water resources, or the environment.~~
128 If no contamination is detected, the department may issue a site
129 rehabilitation completion order.

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

133 a. ~~A responsible party or property owner, or responsible~~
134 party that provides evidence of authorization from the property
135 owner, may submit an assessment and limited remediation plan
136 designed to affirmatively demonstrate that the site meets the
137 conditions under paragraph (c) subparagraph 1. Notwithstanding
138 the priority ranking score of the site, the department may
139 approve the cost of the assessment and limited remediation,
140 including up to 6 months of groundwater monitoring, in one or
141 more task assignments, or modifications thereof, not to exceed
142 the threshold amount provided in s. 287.017 for CATEGORY TWO,
143 \$30,000 for each site where the department has determined that



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144 the assessment and limited remediation, if applicable, will
145 likely result in a determination of "No Further Action". The
146 department may not pay the costs associated with the
147 establishment of institutional or engineering controls, with the
148 exception of the costs associated with a professional land
149 survey or specific purpose survey, if needed, and costs
150 associated with obtaining a title report and recording fees.

151 b. Following approval of initial site assessment results
152 provided pursuant to state funding under sub-subparagraph a.,
153 the department may approve up to an additional amount not to
154 exceed the threshold amount provided in s. 287.017 for CATEGORY
155 TWO, for limited remediation, where needed to achieve a
156 determination of "No Further Action".

157 ~~c.~~ The assessment and limited remediation work shall be
158 completed no later than 9 ~~6~~ months after the department
159 authorizes the start of a state funded low-risk site initiative
160 task ~~issues its approval.~~ If groundwater monitoring is required
161 after the assessment and limited remediation in order to satisfy
162 the conditions of paragraph (c), the department may authorize an
163 additional 6 months to complete the monitoring.

164 ~~d.~~ No more than \$15 ~~\$10~~ million for the low-risk ~~low-~~
165 ~~scored~~ site initiative may be encumbered from the fund in any
166 fiscal year. Funds shall be made available on a first-come,
167 first-served basis and shall be limited to 10 sites in each
168 fiscal year for each ~~responsible party or~~ property owner or each
169 responsible party that provides evidence of authorization from
170 the property owner.

171 ~~e.~~ Program deductibles, copayments, and the limited
172 contamination assessment report requirements under paragraph



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173 (13) (c) do not apply to expenditures under this paragraph.

174 (c) The department shall issue a site rehabilitation
175 completion order incorporating the "No Further Action Proposal"
176 submitted by a property owner or a responsible party that
177 provides evidence of authorization from the property owner upon
178 affirmative demonstration that all of the following conditions
179 are met:

180 1. Soil saturated with petroleum or petroleum products, or
181 soil that causes a total corrected hydrocarbon measurement of
182 500 parts per million or higher for Gasoline Analytical Group or
183 50 parts per million or higher for Kerosene Analytical Group, as
184 defined by department rule, does not exist onsite as a result of
185 a release of petroleum products.

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

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

191 4. The area of groundwater containing the petroleum
192 products' chemicals of concern is confined to the source
193 property boundaries of the real property on which the discharge
194 originated, or has migrated from the source property only to a
195 transportation facility of the Department of Transportation.

196 5. The groundwater contamination containing the petroleum
197 products chemicals of concern is not a threat to any permitted
198 potable water supply well.

199 6. Soils onsite that are subject to human exposure found
200 between land surface and 2 feet below land surface meet the soil
201 cleanup target levels established pursuant to s.



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202 376.3071(5)(b)9., or human exposure is limited by appropriate
203 institutional or engineering controls.

204
205 Issuance of a site rehabilitation completion order under this
206 paragraph acknowledges that minimal contamination exists onsite
207 and that such contamination is not a threat to the public
208 health, safety, or welfare, water resources, or the environment.

209 If the department determines that a discharge for which a site
210 rehabilitation completion order was issued pursuant to this
211 subsection may pose a threat to the public health, safety, or
212 welfare, water resources, or the environment, the issuance of
213 the site rehabilitation completion order, with or without
214 conditions, does not alter eligibility for state-funded
215 rehabilitation that would otherwise be applicable under this
216 section.

217 (13) PETROLEUM CLEANUP PARTICIPATION PROGRAM.—To encourage
218 detection, reporting, and cleanup of contamination caused by
219 discharges of petroleum or petroleum products, the department
220 shall, within the guidelines established in this subsection,
221 implement a cost-sharing cleanup program to provide
222 rehabilitation funding assistance for all property contaminated
223 by discharges of petroleum or petroleum products from a
224 petroleum storage system occurring before January 1, 1995,
225 subject to a copayment provided for in a Petroleum Cleanup
226 Participation Program site rehabilitation agreement. Eligibility
227 is subject to an annual appropriation from the fund.
228 Additionally, funding for eligible sites is contingent upon
229 annual appropriation in subsequent years. Such continued state
230 funding is not an entitlement or a vested right under this



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231 subsection. Eligibility shall be determined in the program,
232 notwithstanding any other provision of law, consent order,
233 order, judgment, or ordinance to the contrary.

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

237 2. Owners or operators of property, regardless of whether
238 ownership has changed, which is contaminated by petroleum or
239 petroleum products from a petroleum storage system may apply for
240 such program by filing a written report of the contamination
241 incident, including evidence that such incident occurred before
242 January 1, 1995, with the department. Incidents of petroleum
243 contamination discovered after December 31, 1994, at sites which
244 have not stored petroleum or petroleum products for consumption,
245 use, or sale after such date shall be presumed to have occurred
246 before January 1, 1995. An operator's filed report shall be an
247 application of the owner for all purposes. Sites reported to the
248 department after December 31, 1998, are not eligible for the
249 program.

250 (b) Subject to annual appropriation from the fund, sites
251 meeting the criteria of this subsection are eligible for up to
252 \$400,000 of site rehabilitation funding assistance in priority
253 order pursuant to subsections (5) and (6). Sites meeting the
254 criteria of this subsection for which a site rehabilitation
255 completion order was issued before June 1, 2008, do not qualify
256 for the 2008 increase in site rehabilitation funding assistance
257 and are bound by the pre-June 1, 2008, limits. Sites meeting the
258 criteria of this subsection for which a site rehabilitation
259 completion order was not issued before June 1, 2008, regardless



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260 of whether they have previously transitioned to nonstate-funded
261 cleanup status, may continue state-funded cleanup pursuant to
262 this section until a site rehabilitation completion order is
263 issued or the increased site rehabilitation funding assistance
264 limit is reached, whichever occurs first. The department may not
265 pay expenses incurred beyond the scope of an approved contract.

266 (c) Upon notification by the department that rehabilitation
267 funding assistance is available for the site pursuant to
268 subsections (5) and (6), the owner, operator, or person
269 otherwise responsible for site rehabilitation shall provide the
270 department with a limited contamination assessment report and
271 shall enter into a Petroleum Cleanup Participation Program site
272 rehabilitation agreement with the department. The agreement must
273 provide for a 25-percent copayment by the owner, operator, or
274 person otherwise responsible for conducting site rehabilitation.
275 The owner, operator, or person otherwise responsible for
276 conducting site rehabilitation shall adequately demonstrate the
277 ability to meet the copayment obligation. The limited
278 contamination assessment report and the copayment costs may be
279 reduced or eliminated if the owner and all operators responsible
280 for restoration under s. 376.308 demonstrate that they cannot
281 financially comply with the copayment and limited contamination
282 assessment report requirements. The department shall take into
283 consideration the owner's and operator's net worth in making the
284 determination of financial ability. In the event the department
285 and the owner, operator, or person otherwise responsible for
286 site rehabilitation cannot complete negotiation of the cost-
287 sharing agreement within 120 days after beginning negotiations,
288 the department shall terminate negotiations and the site shall



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289 be ineligible for state funding under this subsection and all
290 liability protections provided for in this subsection shall be
291 revoked.

292 (d) A report of a discharge made to the department by a
293 person pursuant to this subsection or any rules adopted pursuant
294 to this subsection may not be used directly as evidence of
295 liability for such discharge in any civil or criminal trial
296 arising out of the discharge.

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

301 (f) Upon the filing of a discharge reporting form under
302 paragraph (a), the department or local government may not pursue
303 any judicial or enforcement action to compel rehabilitation of
304 the discharge. This paragraph does not prevent any such action
305 with respect to discharges determined ineligible under this
306 subsection or to sites for which rehabilitation funding
307 assistance is available pursuant to subsections (5) and (6).

308 (g) The following are excluded from participation in the
309 program:

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

312 2. Sites that were active facilities when owned or operated
313 by the Federal Government.

314 3. Sites that are identified by the United States
315 Environmental Protection Agency to be on, or which qualify for
316 listing on, the National Priorities List under Superfund. This
317 exception does not apply to those sites for which eligibility



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318 has been requested or granted as of the effective date of this
319 act under the Early Detection Incentive Program established
320 pursuant to s. 15, chapter 86-159, Laws of Florida.

321 4. Sites for which contamination is covered under the Early
322 Detection Incentive Program, the Abandoned Tank Restoration
323 Program, or the Petroleum Liability and Restoration Insurance
324 Program, in which case site rehabilitation funding assistance
325 shall continue under the respective program.

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

328 376.30713 Advanced cleanup.—

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

335 (a) Advanced cleanup applications may be submitted between
336 May 1 and June 30 and between November 1 and December 31 of each
337 fiscal year. Applications submitted between May 1 and June 30
338 shall be for the fiscal year beginning July 1. An application
339 must consist of:

340 1. A commitment to pay 25 percent or more of the total
341 cleanup cost deemed recoverable under this section along with
342 proof of the ability to pay the cost share. An application
343 proposing that the department enter into a performance-based
344 contract for the cleanup of 10 ~~20~~ or more sites may use a
345 commitment to pay, a demonstrated cost savings to the
346 department, or both to meet the cost-share requirement. For an



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347 application relying on a demonstrated cost savings to the
348 department, the applicant shall, in conjunction with the
349 proposed agency term contractor, establish and provide in the
350 application the percentage of cost savings in the aggregate that
351 is being provided to the department for cleanup of the sites
352 under the application compared to the cost of cleanup of those
353 same sites using the current rates provided to the department by
354 the proposed agency term contractor. The department shall
355 determine whether the cost savings demonstration is acceptable.
356 Such determination is not subject to chapter 120.

357 2. A nonrefundable review fee of \$250 to cover the
358 administrative costs associated with the department's review of
359 the application.

360 3. A limited contamination assessment report.

361 4. A proposed course of action.

362

363 The limited contamination assessment report must be sufficient
364 to support the proposed course of action and to estimate the
365 cost of the proposed course of action. Costs incurred related to
366 conducting the limited contamination assessment report are not
367 refundable from the Inland Protection Trust Fund. Site
368 eligibility under this subsection or any other provision of this
369 section is not an entitlement to advanced cleanup or continued
370 restoration funding. The applicant shall certify to the
371 department that the applicant has the prerequisite authority to
372 enter into an advanced cleanup contract with the department. The
373 certification must be submitted with the application.

374 (4) The department may enter into contracts for a total of
375 up to \$25 ~~\$15~~ million of advanced cleanup work in each fiscal



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376 year. However, a facility or an applicant who bundles multiple
377 sites as specified in subparagraph (2)(a)1. may not be approved
378 for more than \$5 million of cleanup activity in each fiscal
379 year. A property owner or responsible party may enter into a
380 voluntary cost-share agreement in which the property owner or
381 responsible party commits to bundle multiple sites and lists the
382 facilities that will be included in those future bundles. The
383 facilities listed are not subject to agency term contractor
384 assignment pursuant to department rule. The department reserves
385 the right to terminate the voluntary cost-share agreement if the
386 property owner or responsible party fails to submit an
387 application to bundle multiple sites within an open application
388 period in which it is eligible to participate. For the purposes
389 of this section, the term "facility" includes, but is not
390 limited to, multiple site facilities such as airports, port
391 facilities, and terminal facilities even though such enterprises
392 may be treated as separate facilities for other purposes under
393 this chapter.

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