

By the Committees on Appropriations; and Environmental Preservation and Conservation; and Senator Simpson

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1 A bill to be entitled  
2 An act relating to the Petroleum Restoration Program;  
3 amending s. 376.305, F.S.; revising the eligibility  
4 requirements of the Abandoned Tank Restoration  
5 Program; deleting provisions prohibiting the relief of  
6 liability for persons who acquired title after a  
7 certain date; amending s. 376.3071, F.S.; renaming the  
8 low-scored site initiative the low-risk site  
9 initiative; revising the conditions for eligibility  
10 and methods for payment of costs for the low-risk site  
11 initiative; clarifying that a change in ownership does  
12 not preclude a site from entering into the program;  
13 revising the eligibility requirements for receiving  
14 rehabilitation funding; amending s. 376.30713, F.S.;  
15 reducing the number of sites that may be proposed for  
16 certain advanced cleanup applications; increasing the  
17 total amount for which the department may contract for  
18 advanced cleanup work in a fiscal year; authorizing  
19 property owners and responsible parties to enter into  
20 voluntary cost-share agreements under certain  
21 circumstances; providing an effective date.

22  
23 Be It Enacted by the Legislature of the State of Florida:

24  
25 Section 1. Subsection (6) of section 376.305, Florida  
26 Statutes, is amended to read:

27 376.305 Removal of prohibited discharges.—

28 (6) The Legislature created the Abandoned Tank Restoration  
29 Program in response to the need to provide financial assistance

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

37 (a) To be included in the program:

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

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

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

48 4. The site is not otherwise eligible for the Petroleum  
49 Cleanup Participation Program under s. 376.3071(13) based on any  
50 discharge reporting form received by the department before  
51 January 1, 1995, or a written report of contamination submitted  
52 to the department on or before December 31, 1998.

53 (b) In order to be eligible for the program, petroleum  
54 storage systems from which a discharge occurred must be closed  
55 pursuant to department rules before an eligibility  
56 determination. However, if the department determines that the  
57 owner of the facility cannot financially comply with the  
58 department's petroleum storage system closure requirements and

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59 all other eligibility requirements are met, the petroleum  
60 storage system closure requirements shall be waived. The  
61 department shall take into consideration the owner's net worth  
62 and the economic impact on the owner in making the determination  
63 of the owner's financial ability. ~~The June 30, 1996, application~~  
64 ~~deadline shall be waived for owners who cannot financially~~  
65 ~~comply.~~

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

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

69 1. Sites on property of the Federal Government;  
70 2. Sites contaminated by pollutants that are not petroleum  
71 products; or

72 3. Sites where the department has been denied site access;  
73 ~~or~~

74 ~~4. Sites which are owned by a person who had knowledge of~~  
75 ~~the polluting condition when title was acquired unless the~~  
76 ~~person acquired title to the site after issuance of a notice of~~  
77 ~~site eligibility by the department.~~

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

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

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88 Section 2. Paragraph (b) of subsection (12), and subsection  
89 (13) of section 376.3071, Florida Statutes, are amended, and  
90 paragraph (c) is added to subsection (12) of that section, to  
91 read:

92 376.3071 Inland Protection Trust Fund; creation; purposes;  
93 funding.—

94 (12) SITE CLEANUP.—

95 (b) Low-risk ~~Low-scored site initiative~~.—Notwithstanding  
96 subsections (5) and (6), a site ~~with a priority ranking score of~~  
97 ~~29 points or less~~ may voluntarily participate in the low-risk  
98 ~~low-scored~~ site initiative regardless of whether the site is  
99 eligible for state restoration funding.

100 1. To participate in the low-risk ~~low-scored~~ site  
101 initiative, the ~~responsible party or property owner, or a~~  
102 responsible party that provides evidence of authorization from  
103 the property owner, must submit a "No Further Action" proposal  
104 and affirmatively demonstrate that the following conditions  
105 under paragraph (c) are met.±

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

108 b. ~~Excessively contaminated soil, as defined by department~~  
109 ~~rule, does not exist onsite as a result of a release of~~  
110 ~~petroleum products.~~

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

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

116 e. ~~The area of groundwater containing the petroleum~~

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117 ~~products' chemicals of concern is less than one quarter acre and~~  
118 ~~is confined to the source property boundaries of the real~~  
119 ~~property on which the discharge originated.~~

120 ~~f. Soils onsite that are subject to human exposure found~~  
121 ~~between land surface and 2 feet below land surface meet the soil~~  
122 ~~cleanup target levels established by department rule or human~~  
123 ~~exposure is limited by appropriate institutional or engineering~~  
124 ~~controls.~~

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

136 3. Sites that are eligible for state restoration funding  
137 may receive payment of costs for the low-risk ~~low-severity~~ site  
138 initiative as follows:

139 a. A ~~responsible party or~~ property owner, or a responsible  
140 party that provides evidence of authorization from the property  
141 owner, may submit an assessment and limited remediation plan  
142 designed to affirmatively demonstrate that the site meets the  
143 conditions under paragraph (c) ~~subparagraph 1.~~ Notwithstanding  
144 the priority ranking score of the site, the department may  
145 approve the cost of the assessment and limited remediation,

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146 including up to 6 months of groundwater monitoring, in one or  
147 more task assignments, or modifications thereof, not to exceed  
148 the threshold amount provided in s. 287.017 for CATEGORY TWO,  
149 \$30,000 for each site where the department has determined that  
150 the assessment and limited remediation, if applicable, will  
151 likely result in a determination of "No Further Action." The  
152 department may not pay the costs associated with the  
153 establishment of institutional or engineering controls, with the  
154 exception of the costs associated with a professional land  
155 survey or specific purpose survey, if needed, and costs  
156 associated with obtaining a title report and recording fees.

157 b. Following approval of initial site assessment results  
158 provided pursuant to state funding under sub-subparagraph a.,  
159 the department may approve up to an additional amount not to  
160 exceed the threshold amount provided in s. 287.017 for CATEGORY  
161 TWO, for limited remediation, where needed to achieve a  
162 determination of "No Further Action."

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

170 d. ~~e.~~ No more than \$15 ~~\$10~~ million for the low-risk low-  
171 scored site initiative may be encumbered from the fund in any  
172 fiscal year. Funds shall be made available on a first-come,  
173 first-served basis and shall be limited to 10 sites in each  
174 fiscal year for each ~~responsible party or~~ property owner or each

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175 responsible party that provides evidence of authorization from  
176 the property owner.

177 ~~e.d.~~ Program deductibles, copayments, and the limited  
178 contamination assessment report requirements under paragraph  
179 (13) (c) do not apply to expenditures under this paragraph.

180 (c) The department shall issue a site rehabilitation  
181 completion order incorporating the "No Further Action" proposal  
182 submitted by a property owner or a responsible party that  
183 provides evidence of authorization from the property owner upon  
184 affirmative demonstration that all of the following conditions  
185 are met:

186 1. Soil saturated with petroleum or petroleum products, or  
187 soil that causes a total corrected hydrocarbon measurement of  
188 500 parts per million or higher for Gasoline Analytical Group or  
189 50 parts per million or higher for Kerosene Analytical Group, as  
190 defined by department rule, does not exist onsite as a result of  
191 a release of petroleum products.

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

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

197 4. The area of groundwater containing the petroleum  
198 products' chemicals of concern is confined to the source  
199 property boundaries of the real property on which the discharge  
200 originated, or has migrated from the source property only to a  
201 transportation facility of the Department of Transportation.

202 5. The groundwater contamination containing the petroleum  
203 products chemicals of concern is not a threat to any permitted

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204 potable water supply well.

205 6. Soils onsite which are subject to human exposure found  
206 between land surface and 2 feet below land surface meet the soil  
207 cleanup target levels established pursuant to subparagraph  
208 (5)(b)9., or human exposure is limited by appropriate  
209 institutional or engineering controls.

210

211 Issuance of a site rehabilitation completion order under this  
212 paragraph acknowledges that minimal contamination exists onsite  
213 and that such contamination is not a threat to the public  
214 health, safety, or welfare, water resources, or the environment.

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

223 (13) PETROLEUM CLEANUP PARTICIPATION PROGRAM.—To encourage  
224 detection, reporting, and cleanup of contamination caused by  
225 discharges of petroleum or petroleum products, the department  
226 shall, within the guidelines established in this subsection,  
227 implement a cost-sharing cleanup program to provide  
228 rehabilitation funding assistance for all property contaminated  
229 by discharges of petroleum or petroleum products from a  
230 petroleum storage system occurring before January 1, 1995,  
231 subject to a copayment provided for in a Petroleum Cleanup  
232 Participation Program site rehabilitation agreement. Eligibility



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233 is subject to an annual appropriation from the fund.  
234 Additionally, funding for eligible sites is contingent upon  
235 annual appropriation in subsequent years. Such continued state  
236 funding is not an entitlement or a vested right under this  
237 subsection. Eligibility shall be determined in the program,  
238 notwithstanding any other provision of law, consent order,  
239 order, judgment, or ordinance to the contrary.

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

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

256 (b) Subject to annual appropriation from the fund, sites  
257 meeting the criteria of this subsection are eligible for up to  
258 \$400,000 of site rehabilitation funding assistance in priority  
259 order pursuant to subsections (5) and (6). Sites meeting the  
260 criteria of this subsection for which a site rehabilitation  
261 completion order was issued before June 1, 2008, do not qualify

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262 for the 2008 increase in site rehabilitation funding assistance  
263 and are bound by the pre-June 1, 2008, limits. Sites meeting the  
264 criteria of this subsection for which a site rehabilitation  
265 completion order was not issued before June 1, 2008, regardless  
266 of whether they have previously transitioned to nonstate-funded  
267 cleanup status, may continue state-funded cleanup pursuant to  
268 this section until a site rehabilitation completion order is  
269 issued or the increased site rehabilitation funding assistance  
270 limit is reached, whichever occurs first. The department may not  
271 pay expenses incurred beyond the scope of an approved contract.

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

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291 and the owner, operator, or person otherwise responsible for  
292 site rehabilitation cannot complete negotiation of the cost-  
293 sharing agreement within 120 days after beginning negotiations,  
294 the department shall terminate negotiations and the site shall  
295 be ineligible for state funding under this subsection and all  
296 liability protections provided for in this subsection shall be  
297 revoked.

298 (d) A report of a discharge made to the department by a  
299 person pursuant to this subsection or any rules adopted pursuant  
300 to this subsection may not be used directly as evidence of  
301 liability for such discharge in any civil or criminal trial  
302 arising out of the discharge.

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

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

314 (g) The following are excluded from participation in the  
315 program:

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

318 2. Sites that were active facilities when owned or operated  
319 by the Federal Government.

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320 3. Sites that are identified by the United States  
321 Environmental Protection Agency to be on, or which qualify for  
322 listing on, the National Priorities List under Superfund. This  
323 exception does not apply to those sites for which eligibility  
324 has been requested or granted as of the effective date of this  
325 act under the Early Detection Incentive Program established  
326 pursuant to s. 15, chapter 86-159, Laws of Florida.

327 4. Sites for which contamination is covered under the Early  
328 Detection Incentive Program, the Abandoned Tank Restoration  
329 Program, or the Petroleum Liability and Restoration Insurance  
330 Program, in which case site rehabilitation funding assistance  
331 shall continue under the respective program.

332 Section 3. Paragraph (a) of subsection (2) and subsection  
333 (4) of section 376.30713, Florida Statutes, are amended to read:  
334 376.30713 Advanced cleanup.—

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

341 (a) Advanced cleanup applications may be submitted between  
342 May 1 and June 30 and between November 1 and December 31 of each  
343 fiscal year. Applications submitted between May 1 and June 30  
344 shall be for the fiscal year beginning July 1. An application  
345 must consist of:

346 1. A commitment to pay 25 percent or more of the total  
347 cleanup cost deemed recoverable under this section along with  
348 proof of the ability to pay the cost share. An application

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349 proposing that the department enter into a performance-based  
350 contract for the cleanup of 10 ~~20~~ or more sites may use a  
351 commitment to pay, a demonstrated cost savings to the  
352 department, or both to meet the cost-share requirement. For an  
353 application relying on a demonstrated cost savings to the  
354 department, the applicant shall, in conjunction with the  
355 proposed agency term contractor, establish and provide in the  
356 application the percentage of cost savings in the aggregate that  
357 is being provided to the department for cleanup of the sites  
358 under the application compared to the cost of cleanup of those  
359 same sites using the current rates provided to the department by  
360 the proposed agency term contractor. The department shall  
361 determine whether the cost savings demonstration is acceptable.  
362 Such determination is not subject to chapter 120.

363 2. A nonrefundable review fee of \$250 to cover the  
364 administrative costs associated with the department's review of  
365 the application.

366 3. A limited contamination assessment report.

367 4. A proposed course of action.

368

369 The limited contamination assessment report must be sufficient  
370 to support the proposed course of action and to estimate the  
371 cost of the proposed course of action. Costs incurred related to  
372 conducting the limited contamination assessment report are not  
373 refundable from the Inland Protection Trust Fund. Site  
374 eligibility under this subsection or any other provision of this  
375 section is not an entitlement to advanced cleanup or continued  
376 restoration funding. The applicant shall certify to the  
377 department that the applicant has the prerequisite authority to

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378 enter into an advanced cleanup contract with the department. The  
379 certification must be submitted with the application.

380 (4) The department may enter into contracts for a total of  
381 up to \$25 ~~\$15~~ million of advanced cleanup work in each fiscal  
382 year. However, a facility or an applicant who bundles multiple  
383 sites as specified in subparagraph (2)(a)1. may not be approved  
384 for more than \$5 million of cleanup activity in each fiscal  
385 year. A property owner or responsible party may enter into a  
386 voluntary cost-share agreement in which the property owner or  
387 responsible party commits to bundle multiple sites and lists the  
388 facilities that will be included in those future bundles. The  
389 facilities listed are not subject to agency term contractor  
390 assignment pursuant to department rule. The department reserves  
391 the right to terminate the voluntary cost-share agreement if the  
392 property owner or responsible party fails to submit an  
393 application to bundle multiple sites within an open application  
394 period in which it is eligible to participate. For the purposes  
395 of this section, the term "facility" includes, but is not  
396 limited to, multiple site facilities such as airports, port  
397 facilities, and terminal facilities even though such enterprises  
398 may be treated as separate facilities for other purposes under  
399 this chapter.

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