



773672

LEGISLATIVE ACTION

Senate

.

House

.

.

Floor: PD/2R

.

04/28/2015 01:13 PM

.

.

---

Senator Simpson moved 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  
systems. For purposes of this subsection, the term "abandoned



773672

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

33 (b) In order to be eligible for the program, petroleum  
34 storage systems from which a discharge occurred must be closed  
35 pursuant to department rules before an eligibility  
36 determination. However, if the department determines that the  
37 owner of the facility cannot financially comply with the  
38 department's petroleum storage system closure requirements and  
39 all other eligibility requirements are met, the petroleum  
40 storage system closure requirements shall be waived. The



773672

41 department shall take into consideration the owner's net worth  
42 and the economic impact on the owner in making the determination  
43 of the owner's financial ability. ~~The June 30, 1996, application~~  
44 ~~deadline shall be waived for owners who cannot financially~~  
45 ~~comply.~~

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

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

49 1. Sites on property of the Federal Government;  
50 2. Sites contaminated by pollutants that are not petroleum  
51 products; or

52 3. Sites where the department has been denied site access;  
53 ~~or~~

54 ~~4. Sites which are owned by a person who had knowledge of~~  
55 ~~the polluting condition when title was acquired unless the~~  
56 ~~person acquired title to the site after issuance of a notice of~~  
57 ~~site eligibility by the department.~~

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

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

68 Section 2. Paragraph (b) of subsection (12), and subsection  
69 (13) of section 376.3071, Florida Statutes, are amended, and



773672

70 paragraph (c) is added to subsection (12) of that section, to  
71 read:

72 376.3071 Inland Protection Trust Fund; creation; purposes;  
73 funding.-

74 (12) SITE CLEANUP.-

75 (b) Low-risk ~~Low-scored site initiative.~~ Notwithstanding  
76 subsections (5) and (6), a site with a ~~priority ranking score of~~  
77 ~~29 points or less~~ may voluntarily participate in the low-risk  
78 ~~low-scored~~ site initiative regardless of whether the site is  
79 eligible for state restoration funding.

80 1. To participate in the low-risk ~~low-scored~~ site  
81 initiative, the ~~responsible party or~~ property owner, or a  
82 responsible party that provides evidence of authorization from  
83 the property owner, must submit a "No Further Action" proposal  
84 and affirmatively demonstrate that the following conditions  
85 under paragraph (c) are met.

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

88 b. ~~Excessively contaminated soil, as defined by department~~  
89 ~~rule, does not exist onsite as a result of a release of~~  
90 ~~petroleum products.~~

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

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

96 e. ~~The area of groundwater containing the petroleum~~  
97 ~~products' chemicals of concern is less than one-quarter acre and~~  
98 ~~is confined to the source property boundaries of the real~~



773672

99 ~~property on which the discharge originated.~~

100 ~~f. Soils onsite that are subject to human exposure found~~  
101 ~~between land surface and 2 feet below land surface meet the soil~~  
102 ~~cleanup target levels established by department rule or human~~  
103 ~~exposure is limited by appropriate institutional or engineering~~  
104 ~~controls.~~

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

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

119 a. A responsible party or property owner, or a responsible  
120 party that provides evidence of authorization from the property  
121 owner, may submit an assessment and limited remediation plan  
122 designed to affirmatively demonstrate that the site meets the  
123 conditions under paragraph (c) subparagraph 1. Notwithstanding  
124 the priority ranking score of the site, the department may  
125 approve the cost of the assessment and limited remediation,  
126 including up to 6 months of groundwater monitoring, in one or  
127 more task assignments, or modifications thereof, not to exceed



773672

128 the threshold amount provided in s. 287.017 for CATEGORY TWO,  
129 \$30,000 for each site where the department has determined that  
130 the assessment and limited remediation, if applicable, will  
131 likely result in a determination of "No Further Action." The  
132 department may not pay the costs associated with the  
133 establishment of institutional or engineering controls, with the  
134 exception of the costs associated with a professional land  
135 survey or specific purpose survey, if needed, and costs  
136 associated with obtaining a title report and recording fees.

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

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

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



773672

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

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

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

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

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

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

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

185 6. Soils onsite which are subject to human exposure found



773672

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

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

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





773672

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

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

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

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



773672

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

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



773672

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

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

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

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

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

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

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

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



773672

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

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

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

314 376.30713 Advanced cleanup.—

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

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

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



773672

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

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

346 3. A limited contamination assessment report.

347 4. A proposed course of action.

348

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



773672

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

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

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

383 And the title is amended as follows:

384 Delete everything before the enacting clause  
385 and insert:

386 A bill to be entitled  
387 An act relating to the Petroleum Restoration Program;  
388 amending s. 376.305, F.S.; revising the eligibility



773672

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