



222728

LEGISLATIVE ACTION

| Senate     | . | House |
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| Comm: RCS  | . |       |
| 02/03/2016 | . |       |
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The Committee on Appropriations (Hukill) recommended the following:

**Senate Amendment to Amendment (334112)**

Delete lines 331 - 610

and insert:

remediation, including up to 12 ~~6~~ months of groundwater monitoring and 12 months of limited remediation activities in one or more task assignments or modifications thereof, not to exceed the threshold amount provided in s. 287.017 for CATEGORY TWO, \$30,000 for each site where the department has determined that the assessment and limited remediation, if applicable, will



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11 likely result in a determination of "No Further Action." The  
12 department may not pay the costs associated with the  
13 establishment of institutional or engineering controls other  
14 than the costs associated with a professional land survey or a  
15 specific purpose survey, if such is needed, and the costs  
16 associated with obtaining a title report and paying recording  
17 fees.

18 b. After the approval of initial site assessment results  
19 provided pursuant to state funding under sub-subparagraph a.,  
20 the department may approve an additional amount not to exceed  
21 the threshold amount provided in s. 287.017 for CATEGORY TWO for  
22 limited remediation needed to achieve a determination of "No  
23 Further Action."

24 c.~~b.~~ The assessment and limited remediation work shall be  
25 completed no later than 15 ~~6~~ months after the department  
26 authorizes the start of a state-funded, low-score site  
27 initiative task. If groundwater monitoring is required after the  
28 assessment and limited remediation in order to satisfy the  
29 conditions under subparagraph 4., the department may authorize  
30 an additional 12 months to complete the monitoring ~~issues its~~  
31 approval.

32 d.~~e.~~ No more than \$15 ~~\$10~~ million for the low-scored site  
33 initiative may be encumbered from the fund in any fiscal year.  
34 Funds shall be made available on a first-come, first-served  
35 basis and shall be limited to 10 sites in each fiscal year for  
36 each ~~responsible party or~~ property owner or each responsible  
37 party who provides evidence of authorization from the property  
38 owner.

39 e.~~d.~~ Program deductibles, copayments, and the limited



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40 contamination assessment report requirements under paragraph  
41 (13) (d) ~~(13) (e)~~ do not apply to expenditures under this  
42 paragraph.

43 4. The department shall issue an order incorporating the  
44 "No Further Action" proposal submitted by a property owner or a  
45 responsible party who provides evidence of authorization from  
46 the property owner upon affirmative demonstration that all of  
47 the following conditions are met:

48 a. Soil saturated with petroleum or petroleum products, or  
49 soil that causes a total corrected hydrocarbon measurement of  
50 500 parts per million or higher for the Gasoline Analytical  
51 Group or 50 parts per million or higher for the Kerosene  
52 Analytical Group, as defined by department rule, does not exist  
53 onsite as a result of a release of petroleum products.

54 b. A minimum of 12 months of groundwater monitoring  
55 indicates that the plume is shrinking or stable.

56 c. The release of petroleum products at the site does not  
57 adversely affect adjacent surface waters, including their  
58 effects on human health and the environment.

59 d. The area containing the petroleum products' chemicals of  
60 concern:

61 (I) Is confined to the source property boundaries of the  
62 real property on which the discharge originated; or

63 (II) Has migrated from the source property onto or beneath  
64 a transportation facility as defined s. 334.03(30) for which the  
65 department has approved, and governmental entity owning the  
66 transportation facility has agreed to institutional controls as  
67 defined in s. 376.301(21). This sub-sub-subparagraph does not,  
68 however, impose any legal liability on the transportation



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69 facility owner, obligate such owner to engage in remediation, or  
70 waive such owner's right to recover costs for damages.

71 e. The groundwater contamination containing the petroleum  
72 products' chemicals of concern is not a threat to any permitted  
73 potable water supply well.

74 f. Soils onsite found between land surface and 2 feet below  
75 land surface which are subject to human exposure meet the soil  
76 cleanup target levels established in subparagraph (5)(b)9., or  
77 human exposure is limited by appropriate institutional or  
78 engineering controls.

79  
80 Issuance of a site rehabilitation completion order under this  
81 paragraph acknowledges that minimal contamination exists onsite  
82 and that such contamination is not a threat to the public  
83 health, safety, or welfare; water resources; or the environment.

84 Pursuant to subsection (4), the issuance of the site  
85 rehabilitation completion order, with or without conditions,  
86 does not alter eligibility for state-funded rehabilitation that  
87 would otherwise be applicable under this section.

88 (13) PETROLEUM CLEANUP PARTICIPATION PROGRAM.—To encourage  
89 detection, reporting, and cleanup of contamination caused by  
90 discharges of petroleum or petroleum products, the department  
91 shall, within the guidelines established in this subsection,  
92 implement a cost-sharing cleanup program to provide  
93 rehabilitation funding assistance for all property contaminated  
94 by discharges of petroleum or petroleum products from a  
95 petroleum storage system occurring before January 1, 1995,  
96 subject to a copayment provided for in a Petroleum Cleanup  
97 Participation Program site rehabilitation agreement. Eligibility



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98 is subject to an annual appropriation from the fund.  
99 Additionally, funding for eligible sites is contingent upon  
100 annual appropriation in subsequent years. Such continued state  
101 funding is not an entitlement or a vested right under this  
102 subsection. Eligibility shall be determined in the program,  
103 notwithstanding any other provision of law, consent order,  
104 order, judgment, or ordinance to the contrary.

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

108 2. Regardless of whether ownership has changed, owners or  
109 operators of property that is contaminated by petroleum or  
110 petroleum products from a petroleum storage system may apply for  
111 such program by filing a written report of the contamination  
112 incident, including evidence that such incident occurred before  
113 January 1, 1995, with the department. Incidents of petroleum  
114 contamination discovered after December 31, 1994, at sites which  
115 have not stored petroleum or petroleum products for consumption,  
116 use, or sale after such date shall be presumed to have occurred  
117 before January 1, 1995. An operator's filed report shall be an  
118 application of the owner for all purposes. ~~Sites reported to the~~  
119 ~~department after December 31, 1998, are not eligible for the~~  
120 ~~program.~~

121 (b) Subject to annual appropriation from the fund, sites  
122 meeting the criteria of this subsection are eligible for up to  
123 \$400,000 of site rehabilitation funding assistance in priority  
124 order pursuant to subsections (5) and (6). Sites meeting the  
125 criteria of this subsection for which a site rehabilitation  
126 completion order was issued before June 1, 2008, do not qualify



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127 for the 2008 increase in site rehabilitation funding assistance  
128 and are bound by the pre-June 1, 2008, limits. Sites meeting the  
129 criteria of this subsection for which a site rehabilitation  
130 completion order was not issued before June 1, 2008, regardless  
131 of whether they have previously transitioned to nonstate-funded  
132 cleanup status, may continue state-funded cleanup pursuant to  
133 this section until a site rehabilitation completion order is  
134 issued or the increased site rehabilitation funding assistance  
135 limit is reached, whichever occurs first. The department may not  
136 pay expenses incurred beyond the scope of an approved contract.

137 (c) The department may also approve supplemental funding of  
138 up to \$100,000 for additional remediation and monitoring if such  
139 remediation and monitoring is necessary to achieve a  
140 determination of "No Further Action."

141 (d) Upon notification by the department that rehabilitation  
142 funding assistance is available for the site pursuant to  
143 subsections (5) and (6), the property owner, operator, or person  
144 otherwise responsible for site rehabilitation shall provide the  
145 department with a limited contamination assessment report and  
146 shall enter into a Petroleum Cleanup Participation Program site  
147 rehabilitation agreement with the department. The agreement must  
148 provide for a 25-percent copayment by the owner, operator, or  
149 person otherwise responsible for conducting site rehabilitation.  
150 The owner, operator, or person otherwise responsible for  
151 conducting site rehabilitation shall adequately demonstrate the  
152 ability to meet the copayment obligation. The limited  
153 contamination assessment report and the copayment costs may be  
154 reduced or eliminated if the owner and all operators responsible  
155 for restoration under s. 376.308 demonstrate that they cannot



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156 financially comply with the copayment and limited contamination  
157 assessment report requirements. The department shall take into  
158 consideration the owner's and operator's net worth in making the  
159 determination of financial ability. In the event the department  
160 and the owner, operator, or person otherwise responsible for  
161 site rehabilitation cannot complete negotiation of the cost-  
162 sharing agreement within 120 days after beginning negotiations,  
163 the department shall terminate negotiations and the site shall  
164 be ineligible for state funding under this subsection and all  
165 liability protections provided for in this subsection shall be  
166 revoked.

167 (e)~~(d)~~ A report of a discharge made to the department by a  
168 person pursuant to this subsection or any rules adopted pursuant  
169 to this subsection may not be used directly as evidence of  
170 liability for such discharge in any civil or criminal trial  
171 arising out of the discharge.

172 (f)~~(e)~~ This subsection does not preclude the department  
173 from pursuing penalties under s. 403.141 for violations of any  
174 law or any rule, order, permit, registration, or certification  
175 adopted or issued by the department pursuant to its lawful  
176 authority.

177 (g)~~(f)~~ Upon the filing of a discharge reporting form under  
178 paragraph (a), the department or local government may not pursue  
179 any judicial or enforcement action to compel rehabilitation of  
180 the discharge. This paragraph does not prevent any such action  
181 with respect to discharges determined ineligible under this  
182 subsection or to sites for which rehabilitation funding  
183 assistance is available pursuant to subsections (5) and (6).

184 (h)~~(g)~~ The following are excluded from participation in the



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185 program:

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

188 2. Sites that were active facilities when owned or operated  
189 by the Federal Government.

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

197 4. Sites for which contamination is covered under the Early  
198 Detection Incentive Program, the Abandoned Tank Restoration  
199 Program, or the Petroleum Liability and Restoration Insurance  
200 Program, in which case site rehabilitation funding assistance  
201 shall continue under the respective program.

202 Section 3. Paragraph (d) of subsection (1), paragraph (a)  
203 of subsection (2), and subsection (4) of section 376.30713,  
204 Florida Statutes, are amended to read:

205 376.30713 Advanced cleanup.—

206 (1) In addition to the legislative findings provided in s.  
207 376.3071, the Legislature finds and declares:

208 (d) It is appropriate for a person who is responsible for  
209 site rehabilitation to share the costs associated with managing  
210 and conducting advanced cleanup, to facilitate the opportunity  
211 for advanced cleanup, and to mitigate the additional costs that  
212 will be incurred by the state in conducting site rehabilitation  
213 in advance of the site's priority ranking. Such cost sharing





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214 will result in more contaminated sites being cleaned up and  
215 greater environmental benefits to the state. This section is  
216 only available for sites eligible for restoration funding under  
217 EDI, ATRP, or PLRIP. This section is available for discharges  
218 eligible for restoration funding under the petroleum cleanup  
219 participation program for the state's cost share of site  
220 rehabilitation. Applications must include a cost-sharing  
221 commitment for this section in addition to the 25-percent-  
222 copayment requirement of the petroleum cleanup participation  
223 program. This section is not available for any discharge under a  
224 petroleum cleanup participation program where the 25-percent-  
225 copayment requirement of the petroleum cleanup participation  
226 program has been reduced or eliminated pursuant to s.  
227 376.3071(13)(d) ~~s. 376.3071(13)(e)~~.

228 (2) The department may approve an application for advanced  
229 cleanup at eligible sites, notwithstanding ~~before funding based~~  
230 ~~on~~ the site's priority ranking established pursuant to s.  
231 376.3071(5)(a), pursuant to this section. Only the facility  
232 owner or operator or the person otherwise responsible for site  
233 rehabilitation qualifies as an applicant under this section.

234 (a) Advanced cleanup applications may be submitted between  
235 May 1 and June 30 and between November 1 and December 31 of each  
236 fiscal year. Applications submitted between May 1 and June 30  
237 shall be for the fiscal year beginning July 1. An application  
238 must consist of:

239 1. A commitment to pay 25 percent or more of the total  
240 cleanup cost deemed recoverable under this section along with  
241 proof of the ability to pay the cost share. The department shall  
242 determine whether the cost savings demonstration is acceptable.



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243 Such determination is not subject to chapter 120.

244 a. Applications for the aggregate cleanup of 5 or more  
245 sites may be submitted in one of two formats to meet the cost-  
246 share requirement:

247 (I) For an aggregate application proposing that the  
248 department enter into a performance-based contract ~~for the~~  
249 ~~cleanup of 20 or more sites~~ may use a commitment to pay, a  
250 demonstrated cost savings to the department, or both to meet the  
251 ~~cost-share~~ requirement.

252 (II) For an aggregate application relying on a demonstrated  
253 cost savings to the department, the applicant shall, in  
254 conjunction with the proposed agency term contractor, establish  
255 and provide in the application the percentage of cost savings in  
256 the aggregate that is being provided to the department for  
257 cleanup of the sites under the application compared to the cost  
258 of cleanup of those same sites using the current rates provided  
259 to the department by the proposed agency term contractor. ~~The~~  
260 ~~department shall determine whether the cost savings~~  
261 ~~demonstration is acceptable. Such determination is not subject~~  
262 ~~to chapter 120.~~

263 b. Applications for the cleanup of individual sites may be  
264 submitted in one of two formats to meet the cost-share  
265 requirement:

266 (I) For an individual application proposing that the  
267 department enter into a performance-based contract may use a  
268 commitment to pay, a demonstrated cost savings to the  
269 department, or both to meet the requirement.

270 (II) For an individual application relying on a  
271 demonstrated cost savings to the department, the applicant



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272 shall, in conjunction with the proposed agency term contractor,  
273 establish and provide in the application a 25-percent cost  
274 savings to the department for cleanup of the site under the  
275 application compared to the cost of cleanup of the same site  
276 using the current rates provided to the department by the  
277 proposed agency term contractor.

278         2. A nonrefundable review fee of \$250 to cover the  
279 administrative costs associated with the department's review of  
280 the application.

281         3. A limited contamination assessment report.

282         4. A proposed course of action.

283         5. A department site access agreement, or similar  
284 agreements approved by the department that do not violate state  
285 law, entered into with the property owner or owners, as  
286 applicable, and evidence of authorization from such