

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

24  
25   Be It Enacted by the Legislature of the State of Florida:  
26

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

29 376.305 Removal of prohibited discharges.—

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

39 (a) To be included in the program:

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

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

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

50 4. The site is not otherwise eligible for the Petroleum  
 51 Cleanup Participation Program under s. 376.3071(13) based on any  
 52 discharge reporting form received by the department before

53 January 1, 1995, or a written report of contamination submitted  
 54 to the department on or before December 31, 1998.

55 (b) In order to be eligible for the program, petroleum  
 56 storage systems from which a discharge occurred must be closed  
 57 pursuant to department rules before an eligibility  
 58 determination. However, if the department determines that the  
 59 owner of the facility cannot financially comply with the  
 60 department's petroleum storage system closure requirements and  
 61 all other eligibility requirements are met, the petroleum  
 62 storage system closure requirements shall be waived. The  
 63 department shall take into consideration the owner's net worth  
 64 and the economic impact on the owner in making the determination  
 65 of the owner's financial ability. ~~The June 30, 1996, application~~  
 66 ~~deadline shall be waived for owners who cannot financially~~  
 67 ~~comply.~~

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

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

- 71 1. Sites on property of the Federal Government;
- 72 2. Sites contaminated by pollutants that are not petroleum  
 73 products; or
- 74 3. Sites where the department has been denied site access;  
 75 ~~or~~
- 76 4. ~~Sites which are owned by a person who had knowledge of~~  
 77 ~~the polluting condition when title was acquired unless the~~  
 78 ~~person acquired title to the site after issuance of a notice of~~

79 | ~~site eligibility by the department.~~

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

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

90 | Section 2. Subsections (12) and (13) of section 376.3071,  
91 | Florida Statutes, are amended to read:

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

94 | (12) SITE CLEANUP.—

95 | (a) Voluntary cleanup.—This section does not prohibit a  
96 | person from conducting site rehabilitation through his or her  
97 | own personnel or through responsible response action contractors  
98 | or subcontractors when such person is not seeking site  
99 | rehabilitation funding from the fund. Such voluntary cleanups  
100 | must meet all applicable environmental standards.

101 | (b) Low-risk ~~Low-scored~~ site initiative.—Notwithstanding  
102 | subsections (5) and (6), a site ~~with a priority ranking score of~~  
103 | ~~29 points or less~~ may voluntarily participate in the low-risk  
104 | ~~low-scored~~ site initiative regardless of whether the site is

105 eligible for state restoration funding.

106 1. To participate in the low-risk ~~low-scored~~ site  
107 initiative, the ~~responsible party or~~ property owner or a  
108 responsible party that provides evidence of authorization from  
109 the property owner must submit a "No Further Action" proposal  
110 and affirmatively demonstrate that the ~~following~~ conditions  
111 under subparagraph 4. are met.÷

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

114 b. ~~Excessively contaminated soil, as defined by department~~  
115 ~~rule, does not exist onsite as a result of a release of~~  
116 ~~petroleum products.~~

117 e. ~~A minimum of 6 months of groundwater monitoring~~  
118 ~~indicates that the plume is shrinking or stable.~~

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

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

126 f. ~~Soils onsite that are subject to human exposure found~~  
127 ~~between land surface and 2 feet below land surface meet the soil~~  
128 ~~cleanup target levels established by department rule or human~~  
129 ~~exposure is limited by appropriate institutional or engineering~~  
130 ~~controls.~~

131           2. Upon affirmative demonstration that ~~of~~ the conditions  
 132 under subparagraph 4. ~~are met~~ ~~1.~~, the department shall issue a  
 133 site rehabilitation completion order incorporating the  
 134 determination of "No Further Action-" proposal submitted by the  
 135 property owner or the responsible party that provides evidence  
 136 of authorization from the property owner ~~Such determination~~  
 137 ~~acknowledges that minimal contamination exists onsite and that~~  
 138 ~~such contamination is not a threat to the public health, safety,~~  
 139 ~~or welfare, water resources, or the environment.~~ If no  
 140 contamination is detected, the department may issue a site  
 141 rehabilitation completion order.

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

145           a. A ~~responsible party or~~ property owner or a responsible  
 146 party that provides evidence of authorization from the property  
 147 owner may submit an assessment and limited remediation plan  
 148 designed to affirmatively demonstrate that the site meets the  
 149 conditions under subparagraph 4. ~~1.~~ Notwithstanding the priority  
 150 ranking score of the site, the department may approve the cost  
 151 of the assessment and limited remediation, including up to 6  
 152 months of groundwater monitoring, in one or more task  
 153 assignments, or modifications thereof, not to exceed the  
 154 threshold amount provided in s. 287.017 for CATEGORY TWO,  
 155 ~~\$30,000~~ for each site where the department has determined that  
 156 the assessment and limited remediation, if applicable, will

157 likely result in a determination of "No Further Action." The  
 158 department may not pay the costs associated with the  
 159 establishment of institutional or engineering controls, except  
 160 the costs associated with a professional land survey or specific  
 161 purpose survey, if needed, and the costs associated with  
 162 obtaining a title report and paying recording fees.

163 b. After the approval of initial site assessment results  
 164 provided pursuant to state funding under sub-subparagraph a.,  
 165 the department may approve an additional amount not to exceed  
 166 the threshold amount provided in s. 287.017 for CATEGORY TWO for  
 167 limited remediation where needed to achieve a determination of  
 168 "No Further Action."

169 c.~~b.~~ The assessment and limited remediation work shall be  
 170 completed no later than 9 ~~6~~ months after the department  
 171 authorizes the start of a state-funded, low-risk site initiative  
 172 task issues its approval. If groundwater monitoring is required  
 173 after the assessment and limited remediation in order to satisfy  
 174 the conditions under subparagraph 4., the department may  
 175 authorize an additional 6 months to complete the monitoring.

176 d.~~e.~~ No more than \$15 ~~\$10~~ million for the low-risk ~~low-~~  
 177 scored site initiative may be encumbered from the fund in any  
 178 fiscal year. Funds shall be made available on a first-come,  
 179 first-served basis and shall be limited to 10 sites in each  
 180 fiscal year for each ~~responsible party or~~ property owner or each  
 181 responsible party that provides evidence of authorization from  
 182 the property owner.

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

186 4. The department shall issue a site rehabilitation  
 187 completion order incorporating the "No Further Action" proposal  
 188 submitted by a property owner or a responsible party that  
 189 provides evidence of authorization from the property owner upon  
 190 affirmative demonstration that all of the following conditions  
 191 are met:

192 a. Soil saturated with petroleum or petroleum products, or  
 193 soil that causes a total corrected hydrocarbon measurement of  
 194 500 parts per million or more for the gasoline analytical group  
 195 or 50 parts per million or more for the kerosene analytical  
 196 group, as defined by department rule, does not exist onsite as a  
 197 result of a release of petroleum products.

198 b. A minimum of 6 months of groundwater monitoring  
 199 indicates that the plume is shrinking or stable.

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

203 d. The area of groundwater containing the petroleum  
 204 products' chemicals of concern is confined to the source  
 205 property boundaries of the real property on which the discharge  
 206 originated or has migrated from the source property to only a  
 207 transportation facility of the Department of Transportation.

208 e. The groundwater contamination containing the petroleum



209 products' chemicals of concern is not a threat to any permitted  
210 potable water supply well.

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

216  
217 Issuance of a site rehabilitation completion order under this  
218 paragraph acknowledges that minimal contamination exists onsite  
219 and that such contamination is not a threat to the public  
220 health, safety, or welfare, water resources, or the environment.

221 If the department determines that a discharge for which a site  
222 rehabilitation completion order was issued pursuant to this  
223 paragraph may pose a threat to the public health, safety, or  
224 welfare, water resources, or the environment, the issuance of  
225 the site rehabilitation completion order, with or without  
226 conditions, does not alter eligibility for state-funded  
227 rehabilitation that would otherwise be applicable under this  
228 section.

229 (13) PETROLEUM CLEANUP PARTICIPATION PROGRAM.—To encourage  
230 detection, reporting, and cleanup of contamination caused by  
231 discharges of petroleum or petroleum products, the department  
232 shall, within the guidelines established in this subsection,  
233 implement a cost-sharing cleanup program to provide  
234 rehabilitation funding assistance for all property contaminated

235 by discharges of petroleum or petroleum products from a  
 236 petroleum storage system occurring before January 1, 1995,  
 237 subject to a copayment provided for in a Petroleum Cleanup  
 238 Participation Program site rehabilitation agreement. Eligibility  
 239 is subject to an annual appropriation from the fund. In addition  
 240 ~~Additionally,~~ funding for eligible sites is contingent upon  
 241 annual appropriation in subsequent years. Such continued state  
 242 funding is not an entitlement or a vested right under this  
 243 subsection. Eligibility shall be determined in the program,  
 244 notwithstanding any other provision of law, consent order,  
 245 order, judgment, or ordinance to the contrary.

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

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

261 ~~program.~~

262 (b) Subject to annual appropriation from the fund, sites  
263 meeting the criteria of this subsection are eligible for up to  
264 \$400,000 of site rehabilitation funding assistance in priority  
265 order pursuant to subsections (5) and (6). Sites meeting the  
266 criteria of this subsection for which a site rehabilitation  
267 completion order was issued before June 1, 2008, do not qualify  
268 for the 2008 increase in site rehabilitation funding assistance  
269 and are bound by the pre-June 1, 2008, limits. Sites meeting the  
270 criteria of this subsection for which a site rehabilitation  
271 completion order was not issued before June 1, 2008, regardless  
272 of whether they have previously transitioned to nonstate-funded  
273 cleanup status, may continue state-funded cleanup pursuant to  
274 this section until a site rehabilitation completion order is  
275 issued or the increased site rehabilitation funding assistance  
276 limit is reached, whichever occurs first. The department may not  
277 pay expenses incurred beyond the scope of an approved contract.

278 (c) Upon notification by the department that  
279 rehabilitation funding assistance is available for the site  
280 pursuant to subsections (5) and (6), the owner, operator, or  
281 person otherwise responsible for site rehabilitation shall  
282 provide the department with a limited contamination assessment  
283 report and shall enter into a Petroleum Cleanup Participation  
284 Program site rehabilitation agreement with the department. The  
285 agreement must provide for a 25-percent copayment by the owner,  
286 operator, or person otherwise responsible for conducting site

287 rehabilitation. The owner, operator, or person otherwise  
288 responsible for conducting site rehabilitation shall adequately  
289 demonstrate the ability to meet the copayment obligation. The  
290 limited contamination assessment report and the copayment costs  
291 may be reduced or eliminated if the owner and all operators  
292 responsible for restoration under s. 376.308 demonstrate that  
293 they cannot financially comply with the copayment and limited  
294 contamination assessment report requirements. The department  
295 shall take into consideration the owner's and operator's net  
296 worth in making the determination of financial ability. In the  
297 event the department and the owner, operator, or person  
298 otherwise responsible for site rehabilitation cannot complete  
299 negotiation of the cost-sharing agreement within 120 days after  
300 beginning negotiations, the department shall terminate  
301 negotiations and the site shall be ineligible for state funding  
302 under this subsection and all liability protections provided for  
303 in this subsection shall be revoked.

304 (d) A report of a discharge made to the department by a  
305 person pursuant to this subsection or any rules adopted pursuant  
306 to this subsection may not be used directly as evidence of  
307 liability for such discharge in any civil or criminal trial  
308 arising out of the discharge.

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

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

320 (g) The following are excluded from participation in the  
321 program:

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

324 2. Sites that were active facilities when owned or  
325 operated by the Federal Government.

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

333 4. Sites for which contamination is covered under the  
334 Early Detection Incentive Program, the Abandoned Tank  
335 Restoration Program, or the Petroleum Liability and Restoration  
336 Insurance Program, in which case site rehabilitation funding  
337 assistance shall continue under the respective program.

338 Section 3. Paragraph (a) of subsection (2) and subsection

339 (4) of section 376.30713, Florida Statutes, are amended to read:

340 376.30713 Advanced cleanup.—

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

347 (a) Advanced cleanup applications may be submitted between  
348 May 1 and June 30 and between November 1 and December 31 of each  
349 fiscal year. Applications submitted between May 1 and June 30  
350 shall be for the fiscal year beginning July 1. An application  
351 must consist of:

352 1. A commitment to pay 25 percent or more of the total  
353 cleanup cost deemed recoverable under this section along with  
354 proof of the ability to pay the cost share. An application  
355 proposing that the department enter into a performance-based  
356 contract for the cleanup of 10 ~~20~~ or more sites may use a  
357 commitment to pay, a demonstrated cost savings to the  
358 department, or both to meet the cost-share requirement. For an  
359 application relying on a demonstrated cost savings to the  
360 department, the applicant shall, in conjunction with the  
361 proposed agency term contractor, establish and provide in the  
362 application the percentage of cost savings in the aggregate that  
363 is being provided to the department for cleanup of the sites  
364 under the application compared to the cost of cleanup of those

365 same sites using the current rates provided to the department by  
366 the proposed agency term contractor. The department shall  
367 determine whether the cost savings demonstration is acceptable.  
368 Such determination is not subject to chapter 120.

369 2. A nonrefundable review fee of \$250 to cover the  
370 administrative costs associated with the department's review of  
371 the application.

372 3. A limited contamination assessment report.

373 4. A proposed course of action.

374

375 The limited contamination assessment report must be sufficient  
376 to support the proposed course of action and to estimate the  
377 cost of the proposed course of action. Costs incurred related to  
378 conducting the limited contamination assessment report are not  
379 refundable from the Inland Protection Trust Fund. Site  
380 eligibility under this subsection or any other provision of this  
381 section is not an entitlement to advanced cleanup or continued  
382 restoration funding. The applicant shall certify to the  
383 department that the applicant has the prerequisite authority to  
384 enter into an advanced cleanup contract with the department. The  
385 certification must be submitted with the application.

386 (4) The department may enter into contracts for a total of  
387 up to \$25 ~~\$15~~ million of advanced cleanup work in each fiscal  
388 year. However, a facility or an applicant who bundles multiple  
389 sites as specified in subparagraph (2)(a)1. may not be approved  
390 for more than \$5 million of cleanup activity in each fiscal

391 year. A property owner or responsible party may enter into a  
392 voluntary cost-share agreement in which the property owner or  
393 responsible party commits to bundle multiple sites and lists the  
394 facilities that will be included in those future bundles. The  
395 facilities listed are not subject to agency term contractor  
396 assignment pursuant to department rule. The department reserves  
397 the right to terminate the voluntary cost-share agreement if the  
398 property owner or responsible party fails to submit an  
399 application to bundle multiple sites within an open application  
400 period during which it is eligible to participate. For ~~the~~  
401 purposes of this section, the term "facility" includes, but is  
402 not limited to, multiple site facilities such as airports, port  
403 facilities, and terminal facilities even though such enterprises  
404 may be treated as separate facilities for other purposes under  
405 this chapter.

406 Section 4. This act shall take effect July 1, 2016.