



153816

LEGISLATIVE ACTION

Senate

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House

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The Committee on Environment and Natural Resources (Albritton)  
recommended the following:

**Senate Amendment (with directory amendment)**

Delete lines 28 - 76

and insert:

implement a ~~cost-sharing~~ cleanup program to provide  
rehabilitation funding assistance for all property contaminated  
by discharges of petroleum or petroleum products from a  
petroleum storage system occurring before January 1, 1995,  
~~subject to a copayment provided for in a Petroleum Cleanup  
Participation Program site rehabilitation agreement.~~ Eligibility



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11 is subject to an annual appropriation from the fund.  
12 Additionally, funding for eligible sites is contingent upon  
13 annual appropriation in subsequent years. Such continued state  
14 funding is not an entitlement or a vested right under this  
15 subsection. Eligibility shall be determined in the program,  
16 notwithstanding any other provision of law, consent order,  
17 order, judgment, or ordinance to the contrary.

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

21 2. Regardless of whether ownership has changed, owners or  
22 operators of property that is contaminated by petroleum or  
23 petroleum products from a petroleum storage system may apply for  
24 such program by filing a written report of the contamination  
25 incident, including evidence that such incident occurred before  
26 January 1, 1995, with the department. Incidents of petroleum  
27 contamination discovered after December 31, 1994, at sites which  
28 have not stored petroleum or petroleum products for consumption,  
29 use, or sale after such date shall be presumed to have occurred  
30 before January 1, 1995. An operator's filed report shall be an  
31 application of the owner for all purposes.

32 (b) Subject to annual appropriation from the fund, sites  
33 meeting the criteria of this subsection are eligible for up to  
34 \$400,000 of site rehabilitation funding assistance in priority  
35 order pursuant to subsections (5) and (6). Sites meeting the  
36 criteria of this subsection for which a site rehabilitation  
37 completion order was issued before June 1, 2008, do not qualify  
38 for the 2008 increase in site rehabilitation funding assistance  
39 and are bound by the pre-June 1, 2008, limits. Sites meeting the



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40 criteria of this subsection for which a site rehabilitation  
41 completion order was not issued before June 1, 2008, regardless  
42 of whether they have previously transitioned to nonstate-funded  
43 cleanup status, may continue state-funded cleanup pursuant to  
44 this section until a site rehabilitation completion order is  
45 issued or the increased site rehabilitation funding assistance  
46 limit is reached, whichever occurs first. The department may not  
47 pay expenses incurred beyond the scope of an approved contract.

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

52 (d) Upon notification by the department that rehabilitation  
53 funding assistance is available for the site pursuant to  
54 subsections (5) and (6), the property owner, operator, or person  
55 otherwise responsible for site rehabilitation shall provide the  
56 department with a limited contamination assessment report and  
57 shall enter into a Petroleum Cleanup Participation Program site  
58 rehabilitation agreement with the department. The limited  
59 contamination assessment report must be sufficient to support  
60 the proposed course of action and to estimate the cost of the  
61 proposed course of action. The agreement must provide for a 25-  
62 percent cost savings to the department, a copayment by the  
63 owner, operator, or person otherwise responsible for conducting  
64 site rehabilitation, or a combination of cost savings and a  
65 copayment. Cost savings to the department may be demonstrated in  
66 the form of reduced rates by the proposed agency term contractor  
67 or the difference in cost associated with a Risk Management  
68 Options Level I closure versus a Risk Management Options Level



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69 II closure. For the purpose of this paragraph, the term:

70 1. "Risk Management Options Level I" means a "No Further  
71 Action" closure without institutional controls or without  
72 institutional and engineering controls. This closure option  
73 applies subject to conditions in department rules and  
74 agreements.

75 2. "Risk Management Options Level II" means a "No Further  
76 Action" closure where institutional controls and, if  
77 appropriate, engineering controls apply if the controls are  
78 protective of human health, public safety, and the environment.  
79 This closure option applies subject to conditions in department  
80 rules and agreements. ~~The owner, operator, or person otherwise~~  
81 ~~responsible for conducting site rehabilitation shall adequately~~  
82 ~~demonstrate the ability to meet the copayment obligation. The~~  
83 ~~limited contamination assessment report and the copayment costs~~  
84 ~~may be reduced or eliminated if the owner and all operators~~  
85 ~~responsible for restoration under s. 376.308 demonstrate that~~  
86 ~~they cannot financially comply with the copayment and limited~~  
87 ~~contamination assessment report requirements. The department~~  
88 ~~shall take into consideration the owner's and operator's net~~  
89 ~~worth in making the determination of financial ability. In the~~  
90 ~~event the department and the owner, operator, or person~~  
91 ~~otherwise responsible for site rehabilitation cannot complete~~  
92 ~~negotiation of the cost-sharing agreement within 120 days after~~  
93 ~~beginning negotiations, the department shall terminate~~  
94 ~~negotiations and the site shall be ineligible for state funding~~  
95 ~~under this subsection and all liability protections provided for~~  
96 ~~in this subsection shall be revoked.~~

97 (e) A report of a discharge made to the department by a



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98 person pursuant to this subsection or any rules adopted pursuant  
99 to this subsection may not be used directly as evidence of  
100 liability for such discharge in any civil or criminal trial  
101 arising out of the discharge.

102 (f) This subsection does not preclude the department from  
103 pursuing penalties under s. 403.141 for violations of any law or  
104 any rule, order, permit, registration, or certification adopted  
105 or issued by the department pursuant to its lawful authority.

106 (g) Upon the filing of a discharge reporting form under  
107 paragraph (a), the department or local government may not pursue  
108 any judicial or enforcement action to compel rehabilitation of  
109 the discharge. This paragraph does not prevent any such action  
110 with respect to discharges determined ineligible under this  
111 subsection or to sites for which rehabilitation funding  
112 assistance is available pursuant to subsections (5) and (6).

113 (h) The following are excluded from participation in the  
114 program:

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

117 2. Sites that were active facilities when owned or operated  
118 by the Federal Government.

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

126 4. Sites for which contamination is covered under the Early



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127 Detection Incentive Program, the Abandoned Tank Restoration  
128 Program, or the Petroleum Liability and Restoration Insurance  
129 Program, in which case site rehabilitation funding assistance  
130 shall continue under the respective program.

131 Section 2. Subsection (2) of section 376.30713, Florida  
132 Statutes, is amended to read:

133

134 ===== D I R E C T O R Y C L A U S E A M E N D M E N T =====

135 And the directory clause is amended as follows:

136 Delete line 20

137 and insert:

138 Section 1. Subsection (13) of section