

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.; abrogating  
8           the scheduled expiration of provisions authorizing the  
9           use of funds to pay for certain program deductibles,  
10          copayments, and assessment reports; renaming the "low-  
11          scored site initiative" under the Inland Protection  
12          Trust Fund as the "low-risk site initiative"; revising  
13          conditions for eligibility and methods for payment of  
14          costs for the low-risk site initiative; revising  
15          eligibility requirements for receiving rehabilitation  
16          funding; providing that a change in ownership does not  
17          preclude a site from entering into the Petroleum  
18          Cleanup Participation Program; amending s. 376.30713,  
19          F.S.; reducing the number of sites that may be  
20          proposed for certain advanced cleanup applications;  
21          increasing the total amount for which the department  
22          may contract for advanced cleanup work in a fiscal  
23          year; authorizing property owners and responsible  
24          parties to enter into voluntary cost-share agreements  
25          under certain circumstances; providing an effective  
26          date.

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

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 petroleum storage system" means a petroleum storage system that has not stored petroleum products for consumption, use, or sale since March 1, 1990. The department shall establish the Abandoned Tank Restoration Program to facilitate the restoration of sites contaminated by abandoned petroleum storage systems.

(a) To be included in the program:

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

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

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

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

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

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

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

- 74           1. Sites on property of the Federal Government;
- 75           2. Sites contaminated by pollutants that are not petroleum
- 76 products; or
- 77           3. Sites where the department has been denied site access;
- 78 ~~or~~

79           ~~4. Sites which are owned by a person who had knowledge of~~  
 80 ~~the polluting condition when title was acquired unless the~~  
 81 ~~person acquired title to the site after issuance of a notice of~~  
 82 ~~site eligibility by the department.~~

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

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

93           Section 2. Paragraph (q) of subsection (4) and subsections  
 94 (12) and (13) of section 376.3071, Florida Statutes, are amended  
 95 to read:

96           376.3071 Inland Protection Trust Fund; creation; purposes;  
 97 funding.—

98           (4) USES.—Whenever, in its determination, incidents of  
 99 inland contamination related to the storage of petroleum or  
 100 petroleum products may pose a threat to the public health,  
 101 safety, or welfare, water resources, or the environment, the  
 102 department shall obligate moneys available in the fund to  
 103 provide for:

104           (q) Payments for program deductibles, copayments, and

105 limited contamination assessment reports that otherwise would be  
106 paid by another state agency for state-funded petroleum  
107 contamination site rehabilitation. ~~This paragraph expires July~~  
108 ~~1, 2016.~~

109  
110 The Inland Protection Trust Fund may only be used to fund the  
111 activities in ss. 376.30-376.317 except ss. 376.3078 and  
112 376.3079. Amounts on deposit in the fund in each fiscal year  
113 shall first be applied or allocated for the payment of amounts  
114 payable by the department pursuant to paragraph (n) under a  
115 service contract entered into by the department pursuant to s.  
116 376.3075 and appropriated in each year by the Legislature before  
117 making or providing for other disbursements from the fund. This  
118 subsection does not authorize the use of the fund for cleanup of  
119 contamination caused primarily by a discharge of solvents as  
120 defined in s. 206.9925(6), or polychlorinated biphenyls when  
121 their presence causes them to be hazardous wastes, except  
122 solvent contamination which is the result of chemical or  
123 physical breakdown of petroleum products and is otherwise  
124 eligible. Facilities used primarily for the storage of motor or  
125 diesel fuels as defined in ss. 206.01 and 206.86 are not  
126 excluded from eligibility pursuant to this section.

127 (12) SITE CLEANUP.—

128 (a) Voluntary cleanup.—This section does not prohibit a  
129 person from conducting site rehabilitation through his or her  
130 own personnel or through responsible response action contractors

131 or subcontractors when such person is not seeking site  
132 rehabilitation funding from the fund. Such voluntary cleanups  
133 must meet all applicable environmental standards.

134 (b) Low-risk ~~Low-scored~~ site initiative.—Notwithstanding  
135 subsections (5) and (6), a site ~~with a priority ranking score of~~  
136 ~~29 points or less~~ may voluntarily participate in the low-risk  
137 ~~low-scored~~ site initiative regardless of whether the site is  
138 eligible for state restoration funding.

139 1. To participate in the low-risk ~~low-scored~~ site  
140 initiative, the ~~responsible party or~~ property owner or a  
141 responsible party that provides evidence of authorization from  
142 the property owner must submit a "No Further Action" proposal  
143 and affirmatively demonstrate that the following conditions  
144 under subparagraph 4. are met.:

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

147 b. ~~Excessively contaminated soil, as defined by department~~  
148 ~~rule, does not exist onsite as a result of a release of~~  
149 ~~petroleum products.~~

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

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

155 e. ~~The area of groundwater containing the petroleum~~  
156 ~~products' chemicals of concern is less than one-quarter acre and~~

157 ~~is confined to the source property boundaries of the real~~  
158 ~~property on which the discharge originated.~~

159 ~~f. Soils onsite that are subject to human exposure found~~  
160 ~~between land surface and 2 feet below land surface meet the soil~~  
161 ~~cleanup target levels established by department rule or human~~  
162 ~~exposure is limited by appropriate institutional or engineering~~  
163 ~~controls.~~

164 2. Upon affirmative demonstration that ~~of~~ the conditions  
165 under subparagraph 4. ~~are met~~ ~~1.~~, the department shall issue a  
166 site rehabilitation completion order incorporating the  
167 determination of "No Further Action." proposal submitted by the  
168 property owner or the responsible party that provides evidence  
169 of authorization from the property owner ~~Such determination~~  
170 ~~acknowledges that minimal contamination exists onsite and that~~  
171 ~~such contamination is not a threat to the public health, safety,~~  
172 ~~or welfare, water resources, or the environment.~~ If no  
173 contamination is detected, the department may issue a site  
174 rehabilitation completion order.

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

178 a. A ~~responsible party or~~ property owner or a responsible  
179 party that provides evidence of authorization from the property  
180 owner may submit an assessment and limited remediation plan  
181 designed to affirmatively demonstrate that the site meets the  
182 conditions under subparagraph 4. ~~1.~~ Notwithstanding the priority

183 ranking score of the site, the department may approve the cost  
 184 of the assessment and limited remediation, including up to 6  
 185 months of groundwater monitoring, in one or more task  
 186 assignments, or modifications thereof, not to exceed the  
 187 threshold amount provided in s. 287.017 for CATEGORY TWO,  
 188 \$30,000 for each site where the department has determined that  
 189 the assessment and limited remediation, if applicable, will  
 190 likely result in a determination of "No Further Action." The  
 191 department may not pay the costs associated with the  
 192 establishment of institutional or engineering controls, except  
 193 the costs associated with a professional land survey or specific  
 194 purpose survey, if needed, and the costs associated with  
 195 obtaining a title report and paying recording fees.

196 b. After the approval of initial site assessment results  
 197 provided pursuant to state funding under sub-subparagraph a.,  
 198 the department may approve an additional amount not to exceed  
 199 the threshold amount provided in s. 287.017 for CATEGORY TWO for  
 200 limited remediation where needed to achieve a determination of  
 201 "No Further Action."

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



209 d.e. No more than \$15 ~~\$10~~ million for the low-risk low-  
210 ~~secured~~ site initiative may be encumbered from the fund in any  
211 fiscal year. Funds shall be made available on a first-come,  
212 first-served basis and shall be limited to 10 sites in each  
213 fiscal year for each ~~responsible party or~~ property owner or each  
214 responsible party that provides evidence of authorization from  
215 the property owner.

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

219 4. The department shall issue a site rehabilitation  
220 completion order incorporating the "No Further Action" proposal  
221 submitted by a property owner or a responsible party that  
222 provides evidence of authorization from the property owner upon  
223 affirmative demonstration that all of the following conditions  
224 are met:

225 a. Soil saturated with petroleum or petroleum products, or  
226 soil that causes a total corrected hydrocarbon measurement of  
227 500 parts per million or more for the gasoline analytical group  
228 or 50 parts per million or more for the kerosene analytical  
229 group, as defined by department rule, does not exist onsite as a  
230 result of a release of petroleum products.

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

233 c. The release of petroleum products at the site does not  
234 adversely affect adjacent surface waters, including their

235 effects on human health and the environment.

236 d. The area of groundwater containing the petroleum  
237 products' chemicals of concern is confined to the source  
238 property boundaries of the real property on which the discharge  
239 originated or has migrated from the source property to only a  
240 transportation facility of the Department of Transportation.

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

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

249  
250 Issuance of a site rehabilitation completion order under this  
251 paragraph acknowledges that minimal contamination exists onsite  
252 and that such contamination is not a threat to the public  
253 health, safety, or welfare, water resources, or the environment.  
254 If the department determines that a discharge for which a site  
255 rehabilitation completion order was issued pursuant to this  
256 paragraph may pose a threat to the public health, safety, or  
257 welfare, water resources, or the environment, the issuance of  
258 the site rehabilitation completion order, with or without  
259 conditions, does not alter eligibility for state-funded  
260 rehabilitation that would otherwise be applicable under this

261 section.

262 (13) PETROLEUM CLEANUP PARTICIPATION PROGRAM.—To encourage  
263 detection, reporting, and cleanup of contamination caused by  
264 discharges of petroleum or petroleum products, the department  
265 shall, within the guidelines established in this subsection,  
266 implement a cost-sharing cleanup program to provide  
267 rehabilitation funding assistance for all property contaminated  
268 by discharges of petroleum or petroleum products from a  
269 petroleum storage system occurring before January 1, 1995,  
270 subject to a copayment provided for in a Petroleum Cleanup  
271 Participation Program site rehabilitation agreement. Eligibility  
272 is subject to an annual appropriation from the fund. In addition  
273 ~~Additionally~~, funding for eligible sites is contingent upon  
274 annual appropriation in subsequent years. Such continued state  
275 funding is not an entitlement or a vested right under this  
276 subsection. Eligibility shall be determined in the program,  
277 notwithstanding any other provision of law, consent order,  
278 order, judgment, or ordinance to the contrary.

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

282 2. Owners or operators of property, regardless of whether  
283 ownership has changed, which is contaminated by petroleum or  
284 petroleum products from a petroleum storage system may apply for  
285 such program by filing a written report of the contamination  
286 incident, including evidence that such incident occurred before

287 January 1, 1995, with the department. Incidents of petroleum  
288 contamination discovered after December 31, 1994, at sites which  
289 have not stored petroleum or petroleum products for consumption,  
290 use, or sale after such date shall be presumed to have occurred  
291 before January 1, 1995. An operator's filed report shall be an  
292 application of the owner for all purposes. ~~Sites reported to the~~  
293 ~~department after December 31, 1998, are not eligible for the~~  
294 ~~program.~~

295 (b) Subject to annual appropriation from the fund, sites  
296 meeting the criteria of this subsection are eligible for up to  
297 \$400,000 of site rehabilitation funding assistance in priority  
298 order pursuant to subsections (5) and (6). Sites meeting the  
299 criteria of this subsection for which a site rehabilitation  
300 completion order was issued before June 1, 2008, do not qualify  
301 for the 2008 increase in site rehabilitation funding assistance  
302 and are bound by the pre-June 1, 2008, limits. Sites meeting the  
303 criteria of this subsection for which a site rehabilitation  
304 completion order was not issued before June 1, 2008, regardless  
305 of whether they have previously transitioned to nonstate-funded  
306 cleanup status, may continue state-funded cleanup pursuant to  
307 this section until a site rehabilitation completion order is  
308 issued or the increased site rehabilitation funding assistance  
309 limit is reached, whichever occurs first. The department may not  
310 pay expenses incurred beyond the scope of an approved contract.

311 (c) Upon notification by the department that  
312 rehabilitation funding assistance is available for the site

313 pursuant to subsections (5) and (6), the owner, operator, or  
314 person otherwise responsible for site rehabilitation shall  
315 provide the department with a limited contamination assessment  
316 report and shall enter into a Petroleum Cleanup Participation  
317 Program site rehabilitation agreement with the department. The  
318 agreement must provide for a 25-percent copayment by the owner,  
319 operator, or person otherwise responsible for conducting site  
320 rehabilitation. The owner, operator, or person otherwise  
321 responsible for conducting site rehabilitation shall adequately  
322 demonstrate the ability to meet the copayment obligation. The  
323 limited contamination assessment report and the copayment costs  
324 may be reduced or eliminated if the owner and all operators  
325 responsible for restoration under s. 376.308 demonstrate that  
326 they cannot financially comply with the copayment and limited  
327 contamination assessment report requirements. The department  
328 shall take into consideration the owner's and operator's net  
329 worth in making the determination of financial ability. In the  
330 event the department and the owner, operator, or person  
331 otherwise responsible for site rehabilitation cannot complete  
332 negotiation of the cost-sharing agreement within 120 days after  
333 beginning negotiations, the department shall terminate  
334 negotiations and the site shall be ineligible for state funding  
335 under this subsection and all liability protections provided for  
336 in this subsection shall be revoked.

337 (d) A report of a discharge made to the department by a  
338 person pursuant to this subsection or any rules adopted pursuant

339 to this subsection may not be used directly as evidence of  
340 liability for such discharge in any civil or criminal trial  
341 arising out of the discharge.

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

346 (f) Upon the filing of a discharge reporting form under  
347 paragraph (a), the department or local government may not pursue  
348 any judicial or enforcement action to compel rehabilitation of  
349 the discharge. This paragraph does not prevent any such action  
350 with respect to discharges determined ineligible under this  
351 subsection or to sites for which rehabilitation funding  
352 assistance is available pursuant to subsections (5) and (6).

353 (g) The following are excluded from participation in the  
354 program:

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

357 2. Sites that were active facilities when owned or  
358 operated by the Federal Government.

359 3. Sites that are identified by the United States  
360 Environmental Protection Agency to be on, or which qualify for  
361 listing on, the National Priorities List under Superfund. This  
362 exception does not apply to those sites for which eligibility  
363 has been requested or granted as of the effective date of this  
364 act under the Early Detection Incentive Program established

365 pursuant to s. 15, chapter 86-159, Laws of Florida.

366 4. Sites for which contamination is covered under the  
367 Early Detection Incentive Program, the Abandoned Tank  
368 Restoration Program, or the Petroleum Liability and Restoration  
369 Insurance Program, in which case site rehabilitation funding  
370 assistance shall continue under the respective program.

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

373 376.30713 Advanced cleanup.—

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

380 (a) Advanced cleanup applications may be submitted between  
381 May 1 and June 30 and between November 1 and December 31 of each  
382 fiscal year. Applications submitted between May 1 and June 30  
383 shall be for the fiscal year beginning July 1. An application  
384 must consist of:

385 1. A commitment to pay 25 percent or more of the total  
386 cleanup cost deemed recoverable under this section along with  
387 proof of the ability to pay the cost share. An application  
388 proposing that the department enter into a performance-based  
389 contract for the cleanup of 10 ~~20~~ or more sites may use a  
390 commitment to pay, a demonstrated cost savings to the

391 department, or both to meet the cost-share requirement. For an  
392 application relying on a demonstrated cost savings to the  
393 department, the applicant shall, in conjunction with the  
394 proposed agency term contractor, establish and provide in the  
395 application the percentage of cost savings in the aggregate that  
396 is being provided to the department for cleanup of the sites  
397 under the application compared to the cost of cleanup of those  
398 same sites using the current rates provided to the department by  
399 the proposed agency term contractor. The department shall  
400 determine whether the cost savings demonstration is acceptable.  
401 Such determination is not subject to chapter 120.

402 2. A nonrefundable review fee of \$250 to cover the  
403 administrative costs associated with the department's review of  
404 the application.

405 3. A limited contamination assessment report.

406 4. A proposed course of action.

407

408 The limited contamination assessment report must be sufficient  
409 to support the proposed course of action and to estimate the  
410 cost of the proposed course of action. Costs incurred related to  
411 conducting the limited contamination assessment report are not  
412 refundable from the Inland Protection Trust Fund. Site  
413 eligibility under this subsection or any other provision of this  
414 section is not an entitlement to advanced cleanup or continued  
415 restoration funding. The applicant shall certify to the  
416 department that the applicant has the prerequisite authority to



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

419 (4) The department may enter into contracts for a total of  
420 up to \$25 ~~\$15~~ million of advanced cleanup work in each fiscal  
421 year. However, a facility or an applicant who bundles multiple  
422 sites as specified in subparagraph (2)(a)1. may not be approved  
423 for more than \$5 million of cleanup activity in each fiscal  
424 year. A property owner or responsible party may enter into a  
425 voluntary cost-share agreement in which the property owner or  
426 responsible party commits to bundle multiple sites and lists the  
427 facilities that will be included in those future bundles. The  
428 facilities listed are not subject to agency term contractor  
429 assignment pursuant to department rule. The department reserves  
430 the right to terminate the voluntary cost-share agreement if the  
431 property owner or responsible party fails to submit an  
432 application to bundle multiple sites within an open application  
433 period during which it is eligible to participate. For the  
434 purposes of this section, the term "facility" includes, but is  
435 not limited to, multiple site facilities such as airports, port  
436 facilities, and terminal facilities even though such enterprises  
437 may be treated as separate facilities for other purposes under  
438 this chapter.

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