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A bill to be entitled

An act relating to the Petroleum Restoration Program; amending s. 376.305, F.S.; revising the eligibility requirements of the Abandoned Tank Restoration Program; deleting provisions prohibiting the relief of liability for persons who acquired title after a certain date; amending s. 376.3071, F.S.; renaming "the low-scored site initiative" as "the low-risk site initiative"; revising the conditions for eligibility and methods for payment of costs for the low-risk site initiative; revising the eligibility requirements for receiving rehabilitation funding; clarifying that a change in ownership does not preclude a site from entering into the program; amending s. 376.30713, F.S.; reducing the number of sites that may be proposed for certain advanced cleanup applications; increasing the total amount for which the department may contract for advanced cleanup work in a fiscal year; authorizing property owners and responsible parties to enter into voluntary cost-share agreements under certain circumstances; providing an effective date.

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

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. Paragraph (b) of subsection (12) and subsection  
 91 (13) of section 376.3071, Florida Statutes, are amended, and  
 92 paragraph (c) is added to subsection (12) of that section, to  
 93 read:

94 376.3071 Inland Protection Trust Fund; creation; purposes;  
 95 funding.—

96 (12) SITE CLEANUP.—

97 (b) Low-risk ~~Low-scored site initiative.~~—Notwithstanding  
 98 subsections (5) and (6), a site with a priority ranking score of  
 99 ~~29 points or less~~ may voluntarily participate in the low-risk  
 100 ~~low-scored~~ site initiative regardless of whether the site is  
 101 eligible for state restoration funding.

102 1. To participate in the low-risk ~~low-scored~~ site  
 103 initiative, the ~~responsible party or~~ property owner, or a  
 104 responsible party that provides evidence of authorization from

105 the property owner, must submit a "No Further Action" proposal  
 106 and affirmatively demonstrate that the following conditions  
 107 under subparagraph 4. are met.÷

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

110 b. ~~Excessively contaminated soil, as defined by department~~  
 111 ~~rule, does not exist onsite as a result of a release of~~  
 112 ~~petroleum products.~~

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

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

118 e. ~~The area of groundwater containing the petroleum~~  
 119 ~~products' chemicals of concern is less than one quarter acre and~~  
 120 ~~is confined to the source property boundaries of the real~~  
 121 ~~property on which the discharge originated.~~

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

127 2. Upon affirmative demonstration that ~~of~~ the conditions  
 128 under subparagraph 4. are met ~~subparagraph 1.~~, the department  
 129 shall issue a site rehabilitation completion order incorporating  
 130 the determination of "No Further Action." proposal submitted by

131 the property owner or the responsible party that provides  
 132 evidence of authorization from the property owner ~~Such~~  
 133 ~~determination acknowledges that minimal contamination exists~~  
 134 ~~onsite and that such contamination is not a threat to the public~~  
 135 ~~health, safety, or welfare, water resources, or the environment.~~  
 136 If no contamination is detected, the department may issue a site  
 137 rehabilitation completion order.

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

141 a. ~~A responsible party or~~ property owner, or a responsible  
 142 party that provides evidence of authorization from the property  
 143 owner, may submit an assessment and limited remediation plan  
 144 designed to affirmatively demonstrate that the site meets the  
 145 conditions under subparagraph 4 ~~subparagraph 1~~. Notwithstanding  
 146 the priority ranking score of the site, the department may  
 147 approve the cost of the assessment and limited remediation,  
 148 including up to 6 months of groundwater monitoring, in one or  
 149 more task assignments, or modifications thereof, not to exceed  
 150 the threshold amount provided in s. 287.017 for CATEGORY TWO,  
 151 \$30,000 for each site where the department has determined that  
 152 the assessment and limited remediation, if applicable, will  
 153 likely result in a determination of "No Further Action." ~~The~~  
 154 department may not pay the costs associated with the  
 155 establishment of institutional or engineering controls, with the  
 156 exception of the costs associated with a professional land

157 survey or specific purpose survey, if needed, and the costs  
158 associated with obtaining a title report and paying recording  
159 fees.

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

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

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

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

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

189        a. Soil saturated with petroleum or petroleum products, or  
190 soil that causes a total corrected hydrocarbon measurement of  
191 500 parts per million or higher for Gasoline Analytical Group or  
192 50 parts per million or higher for Kerosene Analytical Group, as  
193 defined by department rule, does not exist onsite as a result of  
194 a release of petroleum products.

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

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

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

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

208        f. Soils onsite found between land surface and 2 feet



209 below land surface which are subject to human exposure meet the  
 210 soil cleanup target levels established in subparagraph (5)(b)9.,  
 211 or human exposure is limited by appropriate institutional or  
 212 engineering controls.

213  
 214 Issuance of a site rehabilitation completion order under this  
 215 paragraph acknowledges that minimal contamination exists onsite  
 216 and that such contamination is not a threat to the public  
 217 health, safety, or welfare, water resources, or the environment.  
 218 If the department determines that a discharge for which a site  
 219 rehabilitation completion order was issued pursuant to this  
 220 paragraph may pose a threat to the public health, safety, or  
 221 welfare, water resources, or the environment, the issuance of  
 222 the site rehabilitation completion order, with or without  
 223 conditions, does not alter eligibility for state-funded  
 224 rehabilitation that would otherwise be applicable under this  
 225 section.

226 (13) PETROLEUM CLEANUP PARTICIPATION PROGRAM.—To encourage  
 227 detection, reporting, and cleanup of contamination caused by  
 228 discharges of petroleum or petroleum products, the department  
 229 shall, within the guidelines established in this subsection,  
 230 implement a cost-sharing cleanup program to provide  
 231 rehabilitation funding assistance for all property contaminated  
 232 by discharges of petroleum or petroleum products from a  
 233 petroleum storage system occurring before January 1, 1995,  
 234 subject to a copayment provided for in a Petroleum Cleanup

235 Participation Program site rehabilitation agreement. Eligibility  
 236 is subject to an annual appropriation from the fund.  
 237 Additionally, funding for eligible sites is contingent upon  
 238 annual appropriation in subsequent years. Such continued state  
 239 funding is not an entitlement or a vested right under this  
 240 subsection. Eligibility shall be determined in the program,  
 241 notwithstanding any other provision of law, consent order,  
 242 order, judgment, or ordinance to the contrary.

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

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

259 (b) Subject to annual appropriation from the fund, sites  
 260 meeting the criteria of this subsection are eligible for up to

261 \$400,000 of site rehabilitation funding assistance in priority  
262 order pursuant to subsections (5) and (6). Sites meeting the  
263 criteria of this subsection for which a site rehabilitation  
264 completion order was issued before June 1, 2008, do not qualify  
265 for the 2008 increase in site rehabilitation funding assistance  
266 and are bound by the pre-June 1, 2008, limits. Sites meeting the  
267 criteria of this subsection for which a site rehabilitation  
268 completion order was not issued before June 1, 2008, regardless  
269 of whether they have previously transitioned to nonstate-funded  
270 cleanup status, may continue state-funded cleanup pursuant to  
271 this section until a site rehabilitation completion order is  
272 issued or the increased site rehabilitation funding assistance  
273 limit is reached, whichever occurs first. The department may not  
274 pay expenses incurred beyond the scope of an approved contract.

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

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

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

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

310 (f) Upon the filing of a discharge reporting form under  
311 paragraph (a), the department or local government may not pursue  
312 any judicial or enforcement action to compel rehabilitation of

313 the discharge. This paragraph does not prevent any such action  
 314 with respect to discharges determined ineligible under this  
 315 subsection or to sites for which rehabilitation funding  
 316 assistance is available pursuant to subsections (5) and (6).

317 (g) The following are excluded from participation in the  
 318 program:

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

321 2. Sites that were active facilities when owned or  
 322 operated by the Federal Government.

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

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

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

337 376.30713 Advanced cleanup.—

338 (2) The department may approve an application for advanced

339 cleanup at eligible sites, before funding based on the site's  
340 priority ranking established pursuant to s. 376.3071(5)(a),  
341 pursuant to this section. Only the facility owner or operator or  
342 the person otherwise responsible for site rehabilitation  
343 qualifies as an applicant under this section.

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

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

365 Such determination is not subject to chapter 120.

366 2. A nonrefundable review fee of \$250 to cover the  
 367 administrative costs associated with the department's review of  
 368 the application.

369 3. A limited contamination assessment report.

370 4. A proposed course of action.

371

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

383 (4) The department may enter into contracts for a total of  
 384 up to \$25 ~~\$15~~ million of advanced cleanup work in each fiscal  
 385 year. However, a facility or an applicant who bundles multiple  
 386 sites as specified in subparagraph (2)(a)1. may not be approved  
 387 for more than \$5 million of cleanup activity in each fiscal  
 388 year. A property owner or responsible party may enter into a  
 389 voluntary cost-share agreement in which the property owner or  
 390 responsible party commits to bundle multiple sites and lists the

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

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