



497664

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/08/2015	.	
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Appropriations Subcommittee on General Government (Simpson)  
recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

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



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11 systems. For purposes of this subsection, the term "abandoned  
12 petroleum storage system" means a petroleum storage system that  
13 has not stored petroleum products for consumption, use, or sale  
14 since March 1, 1990. The department shall establish the  
15 Abandoned Tank Restoration Program to facilitate the restoration  
16 of sites contaminated by abandoned petroleum storage systems.

17 (a) To be included in the program:

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

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

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

28 (b) In order to be eligible for the program, petroleum  
29 storage systems from which a discharge occurred must be closed  
30 pursuant to department rules before an eligibility  
31 determination. However, if the department determines that the  
32 owner of the facility cannot financially comply with the  
33 department's petroleum storage system closure requirements and  
34 all other eligibility requirements are met, the petroleum  
35 storage system closure requirements shall be waived. The  
36 department shall take into consideration the owner's net worth  
37 and the economic impact on the owner in making the determination  
38 of the owner's financial ability. ~~The June 30, 1996, application~~  
39 ~~deadline shall be waived for owners who cannot financially~~



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40 ~~comply.~~

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

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

44 1. Sites on property of the Federal Government;

45 2. Sites contaminated by pollutants that are not petroleum  
46 products;

47 3. Sites where the department has been denied site access;

48 or

49 4. Sites which are owned by a person who had knowledge of  
50 the polluting condition when title was acquired unless the  
51 person acquired title to the site after issuance of a notice of  
52 site eligibility by the department.

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

55

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

63 Section 2. Paragraph (b) of subsection (12), and subsection  
64 (13) of section 376.3071, Florida Statutes, are amended, and  
65 paragraph (c) is added to subsection (12) of that section, to  
66 read:

67 376.3071 Inland Protection Trust Fund; creation; purposes;  
68 funding.-



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69 (12) SITE CLEANUP.—

70 (b) Low-risk ~~Low-scored~~ site initiative.—Notwithstanding  
71 subsections (5) and (6), a site with a priority ranking score of  
72 ~~29 points or less~~ may voluntarily participate in the low-risk  
73 ~~low-scored~~ site initiative regardless of whether the site is  
74 eligible for state restoration funding.

75 1. To participate in the low-risk ~~low-scored~~ site  
76 initiative, the ~~responsible party or~~ property owner, or a  
77 responsible party that provides evidence of authorization from  
78 the property owner, must submit a “No Further Action” proposal  
79 and affirmatively demonstrate that the following conditions of  
80 paragraph (c) are met.÷

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

83 b. ~~Excessively contaminated soil, as defined by department~~  
84 ~~rule, does not exist onsite as a result of a release of~~  
85 ~~petroleum products.~~

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

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

91 e. ~~The area of groundwater containing the petroleum~~  
92 ~~products’ chemicals of concern is less than one-quarter acre and~~  
93 ~~is confined to the source property boundaries of the real~~  
94 ~~property on which the discharge originated.~~

95 f. ~~Soils onsite that are subject to human exposure found~~  
96 ~~between land surface and 2 feet below land surface meet the soil~~  
97 ~~cleanup target levels established by department rule or human~~



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98 ~~exposure is limited by appropriate institutional or engineering~~  
99 ~~controls.~~

100 2. Upon affirmative demonstration that ~~of~~ the conditions  
101 under paragraph (c) are met ~~subparagraph 1.~~, the department  
102 shall issue a site rehabilitation completion order incorporating  
103 the determination of "No Further Action." proposal submitted by  
104 the property owner or the responsible party that provides  
105 evidence of the authorization from the property owner. ~~Such~~  
106 ~~determination acknowledges that minimal contamination exists~~  
107 ~~onsite and that such contamination is not a threat to the public~~  
108 ~~health, safety, or welfare, water resources, or the environment.~~  
109 If no contamination is detected, the department may issue a site  
110 rehabilitation completion order.

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

114 a. ~~A responsible party or property owner, or responsible~~  
115 party that provides evidence of authorization from the property  
116 owner, may submit an assessment and limited remediation plan  
117 designed to affirmatively demonstrate that the site meets the  
118 conditions under paragraph (c) ~~subparagraph 1.~~ Notwithstanding  
119 the priority ranking score of the site, the department may  
120 approve the cost of the assessment and limited remediation,  
121 including up to 6 months of groundwater monitoring, in one or  
122 more task assignments, or modifications thereof, not to exceed  
123 the threshold amount provided in s. 287.017 for CATEGORY TWO,  
124 \$30,000 for each site where the department has determined that  
125 the assessment and limited remediation, if applicable, will  
126 likely result in a determination of "No Further Action". The



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127 department may not pay the costs associated with the  
128 establishment of institutional or engineering controls, with the  
129 exception of the costs associated with a professional land  
130 survey or specific purpose survey, if needed, and costs  
131 associated with obtaining a title report and recording fees.

132 b. Following the assessment, the department may approve up  
133 to an additional \$35,000 for interim source removal pursuant to  
134 department rule to achieve a "No Further Action" order or a site  
135 rehabilitation completion order pursuant to subparagraph 2.

136 b. Following approval of initial site assessment results  
137 provided pursuant to state funding under sub-subparagraph a.,  
138 the department may approve up to an additional amount not to  
139 exceed the threshold amount provided in s. 287.017 for CATEGORY  
140 TWO, for limited remediation, where needed to achieve a  
141 determination of "No Further Action".

142 ~~c.b.~~ The assessment and limited remediation work shall be  
143 completed no later than 9 ~~6~~ months after the department  
144 authorizes the start of a state funded low-risk site initiative  
145 task ~~issues its approval~~. If groundwater monitoring is required  
146 after the assessment and limited remediation in order to satisfy  
147 the conditions of paragraph (c), the department may authorize an  
148 additional 6 months to complete the monitoring.

149 ~~d.e.~~ No more than \$15 ~~\$10~~ million for the low-risk ~~low-~~  
150 ~~scored~~ site initiative may be encumbered from the fund in any  
151 fiscal year. Funds shall be made available on a first-come,  
152 first-served basis and shall be limited to 10 sites in each  
153 fiscal year for each ~~responsible party or~~ property owner or each  
154 responsible party that provides evidence of authorization from  
155 the property owner.



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

159 (c) The department shall issue a site rehabilitation  
160 completion order incorporating the "No Further Action Proposal"  
161 submitted by a property owner or a responsible party that  
162 provides evidence of authorization from the property owner upon  
163 affirmative demonstration that all of the following conditions  
164 are met:

165 1. Soil saturated with petroleum or petroleum products, or  
166 soil that causes a total corrected hydrocarbon measurement of  
167 500 parts per million or higher for Gasoline Analytical Group or  
168 50 parts per million or higher for Kerosene Analytical Group, as  
169 defined by department rule, does not exist onsite as a result of  
170 a release of petroleum products.

171 2. A minimum of 6 months of groundwater monitoring  
172 indicates that the plume is shrinking or stable.

173 3. The release of petroleum products at the site does not  
174 adversely affect adjacent surface waters, including their  
175 effects on human health and the environment.

176 4. The area of groundwater containing the petroleum  
177 products' chemicals of concern is confined to the source  
178 property boundaries of the real property on which the discharge  
179 originated, or has migrated from the source property only to a  
180 transportation facility of the Department of Transportation.

181 5. The groundwater contamination containing the petroleum  
182 products chemicals of concern is not a threat to any permitted  
183 potable water supply well.

184 6. Soils onsite that are subject to human exposure found



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185 between land surface and 2 feet below land surface meet the soil  
186 cleanup target levels established pursuant to s.  
187 376.3071(5)(b)9., or human exposure is limited by appropriate  
188 institutional or engineering controls.

189  
190 Issuance of a site rehabilitation completion order under this  
191 paragraph acknowledges that minimal contamination exists onsite  
192 and that such contamination is not a threat to the public  
193 health, safety, or welfare, water resources, or the environment.  
194 If the department determines that a discharge for which a site  
195 rehabilitation completion order was issued pursuant to this  
196 subsection may pose a threat to the public health, safety, or  
197 welfare, water resources, or the environment, the issuance of  
198 the site rehabilitation completion order, with or without  
199 conditions, does not alter eligibility for state-funded  
200 rehabilitation that would otherwise be applicable under this  
201 section.

202 (13) PETROLEUM CLEANUP PARTICIPATION PROGRAM.—To encourage  
203 detection, reporting, and cleanup of contamination caused by  
204 discharges of petroleum or petroleum products, the department  
205 shall, within the guidelines established in this subsection,  
206 implement a cost-sharing cleanup program to provide  
207 rehabilitation funding assistance for all property contaminated  
208 by discharges of petroleum or petroleum products from a  
209 petroleum storage system occurring before January 1, 1995,  
210 subject to a copayment provided for in a Petroleum Cleanup  
211 Participation Program site rehabilitation agreement. Eligibility  
212 is subject to an annual appropriation from the fund.  
213 Additionally, funding for eligible sites is contingent upon





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214 annual appropriation in subsequent years. Such continued state  
215 funding is not an entitlement or a vested right under this  
216 subsection. Eligibility shall be determined in the program,  
217 notwithstanding any other provision of law, consent order,  
218 order, judgment, or ordinance to the contrary.

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

222 2. Owners or operators of property, regardless of whether  
223 ownership has changed, which is contaminated by petroleum or  
224 petroleum products from a petroleum storage system may apply for  
225 such program by filing a written report of the contamination  
226 incident, including evidence that such incident occurred before  
227 January 1, 1995, with the department. Incidents of petroleum  
228 contamination discovered after December 31, 1994, at sites which  
229 have not stored petroleum or petroleum products for consumption,  
230 use, or sale after such date shall be presumed to have occurred  
231 before January 1, 1995. An operator's filed report shall be an  
232 application of the owner for all purposes. Sites reported to the  
233 department after December 31, 1998, are not eligible for the  
234 program.

235 (b) Subject to annual appropriation from the fund, sites  
236 meeting the criteria of this subsection are eligible for up to  
237 \$400,000 of site rehabilitation funding assistance in priority  
238 order pursuant to subsections (5) and (6). Sites meeting the  
239 criteria of this subsection for which a site rehabilitation  
240 completion order was issued before June 1, 2008, do not qualify  
241 for the 2008 increase in site rehabilitation funding assistance  
242 and are bound by the pre-June 1, 2008, limits. Sites meeting the



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243 criteria of this subsection for which a site rehabilitation  
244 completion order was not issued before June 1, 2008, regardless  
245 of whether they have previously transitioned to nonstate-funded  
246 cleanup status, may continue state-funded cleanup pursuant to  
247 this section until a site rehabilitation completion order is  
248 issued or the increased site rehabilitation funding assistance  
249 limit is reached, whichever occurs first. The department may not  
250 pay expenses incurred beyond the scope of an approved contract.

251 (c) Upon notification by the department that rehabilitation  
252 funding assistance is available for the site pursuant to  
253 subsections (5) and (6), the owner, operator, or person  
254 otherwise responsible for site rehabilitation shall provide the  
255 department with a limited contamination assessment report and  
256 shall enter into a Petroleum Cleanup Participation Program site  
257 rehabilitation agreement with the department. The agreement must  
258 provide for a 25-percent copayment by the owner, operator, or  
259 person otherwise responsible for conducting site rehabilitation.  
260 The owner, operator, or person otherwise responsible for  
261 conducting site rehabilitation shall adequately demonstrate the  
262 ability to meet the copayment obligation. The limited  
263 contamination assessment report and the copayment costs may be  
264 reduced or eliminated if the owner and all operators responsible  
265 for restoration under s. 376.308 demonstrate that they cannot  
266 financially comply with the copayment and limited contamination  
267 assessment report requirements. The department shall take into  
268 consideration the owner's and operator's net worth in making the  
269 determination of financial ability. In the event the department  
270 and the owner, operator, or person otherwise responsible for  
271 site rehabilitation cannot complete negotiation of the cost-



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272 sharing agreement within 120 days after beginning negotiations,  
273 the department shall terminate negotiations and the site shall  
274 be ineligible for state funding under this subsection and all  
275 liability protections provided for in this subsection shall be  
276 revoked.

277 (d) A report of a discharge made to the department by a  
278 person pursuant to this subsection or any rules adopted pursuant  
279 to this subsection may not be used directly as evidence of  
280 liability for such discharge in any civil or criminal trial  
281 arising out of the discharge.

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

286 (f) Upon the filing of a discharge reporting form under  
287 paragraph (a), the department or local government may not pursue  
288 any judicial or enforcement action to compel rehabilitation of  
289 the discharge. This paragraph does not prevent any such action  
290 with respect to discharges determined ineligible under this  
291 subsection or to sites for which rehabilitation funding  
292 assistance is available pursuant to subsections (5) and (6).

293 (g) The following are excluded from participation in the  
294 program:

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

297 2. Sites that were active facilities when owned or operated  
298 by the Federal Government.

299 3. Sites that are identified by the United States  
300 Environmental Protection Agency to be on, or which qualify for



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301 listing on, the National Priorities List under Superfund. This  
302 exception does not apply to those sites for which eligibility  
303 has been requested or granted as of the effective date of this  
304 act under the Early Detection Incentive Program established  
305 pursuant to s. 15, chapter 86-159, Laws of Florida.

306 4. Sites for which contamination is covered under the Early  
307 Detection Incentive Program, the Abandoned Tank Restoration  
308 Program, or the Petroleum Liability and Restoration Insurance  
309 Program, in which case site rehabilitation funding assistance  
310 shall continue under the respective program.

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

313 376.30713 Advanced cleanup.—

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

320 (a) Advanced cleanup applications may be submitted between  
321 May 1 and June 30 and between November 1 and December 31 of each  
322 fiscal year. Applications submitted between May 1 and June 30  
323 shall be for the fiscal year beginning July 1. An application  
324 must consist of:

325 1. A commitment to pay 25 percent or more of the total  
326 cleanup cost deemed recoverable under this section along with  
327 proof of the ability to pay the cost share. An application  
328 proposing that the department enter into a performance-based  
329 contract for the cleanup of 10 ~~20~~ or more sites may use a



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330 commitment to pay, a demonstrated cost savings to the  
331 department, or both to meet the cost-share requirement. For an  
332 application relying on a demonstrated cost savings to the  
333 department, the applicant shall, in conjunction with the  
334 proposed agency term contractor, establish and provide in the  
335 application the percentage of cost savings in the aggregate that  
336 is being provided to the department for cleanup of the sites  
337 under the application compared to the cost of cleanup of those  
338 same sites using the current rates provided to the department by  
339 the proposed agency term contractor. The department shall  
340 determine whether the cost savings demonstration is acceptable.  
341 Such determination is not subject to chapter 120.

342 2. A nonrefundable review fee of \$250 to cover the  
343 administrative costs associated with the department's review of  
344 the application.

345 3. A limited contamination assessment report.

346 4. A proposed course of action.

347  
348 The limited contamination assessment report must be sufficient  
349 to support the proposed course of action and to estimate the  
350 cost of the proposed course of action. Costs incurred related to  
351 conducting the limited contamination assessment report are not  
352 refundable from the Inland Protection Trust Fund. Site  
353 eligibility under this subsection or any other provision of this  
354 section is not an entitlement to advanced cleanup or continued  
355 restoration funding. The applicant shall certify to the  
356 department that the applicant has the prerequisite authority to  
357 enter into an advanced cleanup contract with the department. The  
358 certification must be submitted with the application.



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359 (4) The department may enter into contracts for a total of  
360 up to ~~\$25~~ ~~\$15~~ million of advanced cleanup work in each fiscal  
361 year. However, a facility or an applicant who bundles multiple  
362 sites as specified in subparagraph (2)(a)1. may not be approved  
363 for more than \$5 million of cleanup activity in each fiscal  
364 year. A property owner or responsible party may enter into a  
365 voluntary cost-share agreement in which the property owner or  
366 responsible party commits to bundle multiple sites and lists the  
367 facilities that will be included in those future bundles. The  
368 facilities listed are not subject to agency term contractor  
369 assignment pursuant to department rule. The department reserves  
370 the right to terminate the voluntary cost-share agreement if the  
371 property owner or responsible party fails to submit an  
372 application to bundle multiple sites within an open application  
373 period in which it is eligible to participate. For the purposes  
374 of this section, the term "facility" includes, but is not  
375 limited to, multiple site facilities such as airports, port  
376 facilities, and terminal facilities even though such enterprises  
377 may be treated as separate facilities for other purposes under  
378 this chapter.

379 Section 4. This act shall take effect July 1, 2015.

380  
381 ===== T I T L E A M E N D M E N T =====

382 And the title is amended as follows:

383 Delete everything before the enacting clause  
384 and insert:

385 A bill to be entitled  
386 An act relating to the Petroleum Restoration Program;  
387 amending s. 376.305, F.S.; removing the requirement



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388 that applications for the Abandoned Tank Restoration  
389 Program must have been submitted to the Department of  
390 Environmental Protection by a certain time; deleting  
391 provisions prohibiting the relief of liability for  
392 persons who acquired title after a certain date;  
393 amending s. 376.3071, F.S.; revising the conditions  
394 for eligibility and methods for payment of costs for  
395 the low-risk site initiative; clarifying that a change  
396 in ownership does not preclude a site from entering  
397 into the program; amending s. 376.30713, F.S.;  
398 reducing the number of sites that may be proposed for  
399 certain advanced cleanup applications; increasing the  
400 total amount for which the department may contract for  
401 advanced cleanup work in a fiscal year; authorizing  
402 property owners and responsible parties to enter into  
403 voluntary cost-share agreements under certain  
404 circumstances; providing an effective date.