A bill to be entitled
An act relating to petroleum cleanup; amending s. 376.3071, F.S.; revising requirements for a limited contamination assessment report required to be provided by a property owner, operator, or person otherwise responsible for site rehabilitation to the Department of Environmental Protection under the Petroleum Cleanup Participation Program; amending s. 376.30713, F.S.; revising the contents of an advanced cleanup application to include a specified property owner or responsible party agreement; requiring an applicant to submit a scope of work after the department has accepted the applicant’s advanced cleanup application; requiring the department to issue a purchase order for a certain contamination assessment; providing an effective date.

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

Section 1. Paragraph (d) of subsection (13) of section 376.3071, Florida Statutes, is amended to read:

376.3071 Inland Protection Trust Fund; creation; purposes; funding.—
(13) PETROLEUM CLEANUP PARTICIPATION PROGRAM.—To encourage detection, reporting, and cleanup of contamination caused by discharges of petroleum or petroleum products, the department shall, within the guidelines established in this subsection, 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 is subject to an annual appropriation from the fund. Additionally, funding for eligible sites is contingent upon annual appropriation in subsequent years. Such continued state funding is not an entitlement or a vested right under this subsection. Eligibility shall be determined in the program, notwithstanding any other provision of law, consent order, order, judgment, or ordinance to the contrary.

(d) Upon notification by the department that rehabilitation funding assistance is available for the site pursuant to subsections (5) and (6), the property owner, operator, or person otherwise responsible for site rehabilitation shall provide the department with a limited contamination assessment report and shall enter into a Petroleum Cleanup Participation Program site rehabilitation agreement with the department. The limited contamination assessment report must be sufficient to support the proposed course of action and to estimate the cost of the proposed course of action. The agreement must provide for a 25-percent cost savings to the department and may use a copayment by the owner, operator, or person otherwise responsible for conducting site rehabilitation or a demonstrated savings to the department, in the form of reduced rates by the proposed agency term contractor or the difference in cost associated with an RMO-I closure versus an RMO-II closure, or both the copayment and demonstrated cost savings. The owner, operator, or person otherwise responsible for conducting site rehabilitation shall
adequately demonstrate the ability to meet the copayment obligation. The limited contamination assessment report and the copayment costs may be reduced or eliminated if the owner and all operators responsible for restoration under s. 376.308 demonstrate that they cannot financially comply with the copayment and limited contamination assessment report requirements. The department shall take into consideration the owner’s and operator’s net worth in making the determination of financial ability. In the event the department and the owner, operator, or person otherwise responsible for site rehabilitation cannot complete negotiation of the cost-sharing agreement within 120 days after beginning negotiations, the department shall terminate negotiations and the site shall be ineligible for state funding under this subsection and all liability protections provided for in this subsection shall be revoked.

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

376.30713 Advanced cleanup.—

(2) The department may approve an application for advanced cleanup at eligible sites, including applications submitted pursuant to paragraph (c), notwithstanding the site’s priority ranking established pursuant to s. 376.3071(5)(a), pursuant to this section. Only the facility owner or operator or the person otherwise responsible for site rehabilitation qualifies as an applicant under this section.

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

1. A commitment to pay 25 percent or more of the total cleanup cost deemed recoverable under this section along with proof of the ability to pay the cost share. The department shall determine whether the cost savings demonstration is acceptable. Such determination is not subject to chapter 120.

a. Applications for the aggregate cleanup of five or more sites may be submitted in one of two formats to meet the cost-share requirement:

   (I) For an aggregate application proposing that the department enter into a performance-based contract, the applicant may use a commitment to pay, a demonstrated cost savings to the department, or both to meet the requirement.

   (II) For an aggregate application relying on a demonstrated cost savings to the department, the applicant shall, in conjunction with the proposed agency term contractor, establish and provide in the application the percentage of cost savings in the aggregate that is being provided to the department for cleanup of the sites under the application compared to the cost of cleanup of those same sites using the current rates provided to the department by the proposed agency term contractor.

b. Applications for the cleanup of individual sites may be submitted in one of two formats to meet the cost-share requirement:

   (I) For an individual application proposing that the department enter into a performance-based contract, the applicant may use a commitment to pay, a demonstrated cost savings to the department, or both to meet the requirement.
(II) For an individual application relying on a demonstrated cost savings to the department, the applicant shall, in conjunction with the proposed agency term contractor, establish and provide in the application a 25-percent cost savings to the department for cleanup of the site under the application compared to the cost of cleanup of the same site using the current rates provided to the department by the proposed agency term contractor.

2. A nonrefundable review fee of $250 to cover the administrative costs associated with the department’s review of the application.

3. A property owner or responsible party agreement in which the property owner or responsible party commits to continue to participate in the advanced cleanup program upon completion of the limited contamination assessment and finalization of the proposed course of action.

4. A conceptual proposed course of action.

5. A department site access agreement, or similar agreements approved by the department that do not violate state law, entered into with the property owner or owners, as applicable, and evidence of authorization from such owner or owners for petroleum site rehabilitation program tasks consistent with the proposed course of action where the applicant is not the property owner for any of the sites contained in the application.

The limited contamination assessment report must be sufficient to support the proposed course of action and to estimate the...
cost of the proposed course of action. Costs incurred related to 
conducting the limited contamination assessment report are not 
refundable from the Inland Protection Trust Fund. Site 
eligibility under this subsection or any other provision of this 
section is not an entitlement to advanced cleanup or continued 
restoration funding.

6. A certification The applicant shall certify to the 
department that the applicant has the prerequisite authority to 
enter into an advanced cleanup contract with the department. The 
certification must be submitted with the application.

(b) The department shall rank the applications based on the 
percentage of cost-sharing commitment proposed by the applicant, 
with the highest ranking given to the applicant who proposes the 
highest percentage of cost sharing. If the department receives 
applications that propose identical cost-sharing commitments and 
that exceed the funds available to commit to all such proposals 
during the advanced cleanup application period, the department 
shall proceed to rerank those applicants. Those applicants 
submitting identical cost-sharing proposals that exceed funding 
availability must be so notified by the department and offered 
the opportunity to raise their individual cost-share 
commitments, in a period specified in the notice. At the close 
of the period, the department shall proceed to rerank the 
applications pursuant to this paragraph.

(c) Applications for the advanced cleanup of individual 
sites scheduled for redevelopment are not subject to the 
application period limitations or the requirement to pay 25 
percent of the total cleanup cost specified in paragraph (a) or 
to the cost-sharing commitment specified in paragraph (1)(d).
Applications must be accepted on a first-come, first-served basis and are not subject to the ranking provisions of paragraph (b). Applications for the advanced cleanup of individual sites scheduled for redevelopment must include:

1. A nonrefundable review fee of $250 to cover the administrative costs associated with the department’s review of the application.

2. A limited contamination assessment report. The report must be sufficient to support the proposed course of action and to estimate the cost of the proposed course of action. Costs incurred related to conducting and preparing the report are not refundable from the Inland Protection Trust Fund.

3. A proposed course of action for cleanup of the site.

4. If the applicant is not the property owner for any of the sites contained in the application, a department site access agreement, or a similar agreement approved by the department and not in violation of state law, entered into with the property owner or owners, as applicable, and evidence of authorization from such owner or owners for petroleum site rehabilitation program tasks consistent with the proposed course of action.

5. A certification to the department stating that the applicant has the prerequisite authority to enter into an advanced cleanup contract with the department. The advanced cleanup contract must include redevelopment and site rehabilitation milestones.

6. Documentation, in the form of a letter from the local government having jurisdiction over the area where the site is located, which states that the local government is in agreement with or approves the proposed redevelopment and that the
proposed redevelopment complies with applicable law and
requirements for such redevelopment.

7. A demonstrated reasonable assurance that the applicant
has sufficient financial resources to implement and complete the
redevelopment project.

(d) Upon acceptance of an advanced cleanup application, the
applicant’s selected agency term contractor shall submit to the
department a scope of work for a limited contamination
assessment. When the scope of work is negotiated and agreed
upon, the department shall issue one or more purchase orders of
up to $35,000 each for the limited contamination assessment. The
limited contamination assessment report must be sufficient to
support the proposed course of action and to estimate the cost
of the proposed course of action.

(e) Site eligibility under this section is not an
entitlement to advanced cleanup funding or continued restoration
funding.

Section 3. This act shall take effect July 1, 2020.