

By Senator Albritton

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1 A bill to be entitled
2 An act relating to petroleum cleanup; amending s.
3 376.3071, F.S.; revising requirements for a limited
4 contamination assessment report required to be
5 provided by a property owner, operator, or person
6 otherwise responsible for site rehabilitation to the
7 Department of Environmental Protection under the
8 Petroleum Cleanup Participation Program; amending s.
9 376.30713, F.S.; revising the contents of an advanced
10 cleanup application to include a specified property
11 owner or responsible party agreement; requiring an
12 applicant to submit a scope of work after the
13 department has accepted the applicant's advanced
14 cleanup application; requiring the department to issue
15 a purchase order for a certain contamination
16 assessment; providing an effective date.

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

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20 Section 1. Paragraph (d) of subsection (13) of section
21 376.3071, Florida Statutes, is amended to read:

22 376.3071 Inland Protection Trust Fund; creation; purposes;
23 funding.—

24 (13) PETROLEUM CLEANUP PARTICIPATION PROGRAM.—To encourage
25 detection, reporting, and cleanup of contamination caused by
26 discharges of petroleum or petroleum products, the department
27 shall, within the guidelines established in this subsection,
28 implement a cost-sharing cleanup program to provide
29 rehabilitation funding assistance for all property contaminated

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30 by discharges of petroleum or petroleum products from a
31 petroleum storage system occurring before January 1, 1995,
32 subject to a copayment provided for in a Petroleum Cleanup
33 Participation Program site rehabilitation agreement. Eligibility
34 is subject to an annual appropriation from the fund.
35 Additionally, funding for eligible sites is contingent upon
36 annual appropriation in subsequent years. Such continued state
37 funding is not an entitlement or a vested right under this
38 subsection. Eligibility shall be determined in the program,
39 notwithstanding any other provision of law, consent order,
40 order, judgment, or ordinance to the contrary.

41 (d) Upon notification by the department that rehabilitation
42 funding assistance is available for the site pursuant to
43 subsections (5) and (6), the property owner, operator, or person
44 otherwise responsible for site rehabilitation shall provide the
45 department with a limited contamination assessment report and
46 shall enter into a Petroleum Cleanup Participation Program site
47 rehabilitation agreement with the department. The limited
48 contamination assessment report must be sufficient to support
49 the proposed course of action and to estimate the cost of the
50 proposed course of action. The agreement must provide for a 25-
51 percent cost savings to the department and may use a copayment
52 by the owner, operator, or person otherwise responsible for
53 conducting site rehabilitation or a demonstrated savings to the
54 department, in the form of reduced rates by the proposed agency
55 term contractor or the difference in cost associated with an
56 RMO-I closure versus an RMO-II closure, or both the copayment
57 and demonstrated cost savings. ~~The owner, operator, or person~~
58 ~~otherwise responsible for conducting site rehabilitation shall~~

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59 ~~adequately demonstrate the ability to meet the copayment~~
60 ~~obligation. The limited contamination assessment report and the~~
61 ~~copayment costs may be reduced or eliminated if the owner and~~
62 ~~all operators responsible for restoration under s. 376.308~~
63 ~~demonstrate that they cannot financially comply with the~~
64 ~~copayment and limited contamination assessment report~~
65 ~~requirements. The department shall take into consideration the~~
66 ~~owner's and operator's net worth in making the determination of~~
67 ~~financial ability. In the event the department and the owner,~~
68 ~~operator, or person otherwise responsible for site~~
69 ~~rehabilitation cannot complete negotiation of the cost sharing~~
70 ~~agreement within 120 days after beginning negotiations, the~~
71 ~~department shall terminate negotiations and the site shall be~~
72 ~~ineligible for state funding under this subsection and all~~
73 ~~liability protections provided for in this subsection shall be~~
74 ~~revoked.~~

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

77 376.30713 Advanced cleanup.—

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

85 (a) Advanced cleanup applications may be submitted between
86 May 1 and June 30 and between November 1 and December 31 of each
87 fiscal year. Applications submitted between May 1 and June 30

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88 shall be for the fiscal year beginning July 1. An application
89 must consist of:

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

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

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

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

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

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

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117 (II) For an individual application relying on a
118 demonstrated cost savings to the department, the applicant
119 shall, in conjunction with the proposed agency term contractor,
120 establish and provide in the application a 25-percent cost
121 savings to the department for cleanup of the site under the
122 application compared to the cost of cleanup of the same site
123 using the current rates provided to the department by the
124 proposed agency term contractor.

125 2. A nonrefundable review fee of \$250 to cover the
126 administrative costs associated with the department's review of
127 the application.

128 3. A property owner or responsible party agreement in which
129 the property owner or responsible party commits to continue to
130 participate in the advanced cleanup program upon completion of
131 the limited contamination assessment and finalization of the
132 proposed course of action ~~limited contamination assessment~~
133 ~~report~~.

134 4. A conceptual proposed course of action.

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

143

144 ~~The limited contamination assessment report must be sufficient~~
145 ~~to support the proposed course of action and to estimate the~~

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146 ~~cost of the proposed course of action. Costs incurred related to~~
147 ~~conducting the limited contamination assessment report are not~~
148 ~~refundable from the Inland Protection Trust Fund. Site~~
149 ~~eligibility under this subsection or any other provision of this~~
150 ~~section is not an entitlement to advanced cleanup or continued~~
151 ~~restoration funding.~~

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

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

170 (c) Applications for the advanced cleanup of individual
171 sites scheduled for redevelopment are not subject to the
172 application period limitations or the requirement to pay 25
173 percent of the total cleanup cost specified in paragraph (a) or
174 to the cost-sharing commitment specified in paragraph (1) (d).

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175 Applications must be accepted on a first-come, first-served
176 basis and are not subject to the ranking provisions of paragraph
177 (b). Applications for the advanced cleanup of individual sites
178 scheduled for redevelopment must include:

179 1. A nonrefundable review fee of \$250 to cover the
180 administrative costs associated with the department's review of
181 the application.

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

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

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

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

200 6. Documentation, in the form of a letter from the local
201 government having jurisdiction over the area where the site is
202 located, which states that the local government is in agreement
203 with or approves the proposed redevelopment and that the

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204 proposed redevelopment complies with applicable law and
205 requirements for such redevelopment.

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

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

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

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