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. 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.

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

2. Regardless of whether ownership has changed, owners or operators of property that is contaminated by petroleum or petroleum products from a petroleum storage system may apply for such program by filing a written report of the contamination incident, including evidence that such incident occurred before January 1, 1995, with the department. Incidents of petroleum contamination discovered after December 31, 1994, at sites which have not stored petroleum or petroleum products for consumption, use, or sale after such date shall be presumed to have occurred before January 1, 1995. An operator’s filed report shall be an application of the owner for all purposes.

(b) Subject to annual appropriation from the fund, sites meeting the criteria of this subsection are eligible for up to $400,000 of site rehabilitation funding assistance in priority order pursuant to subsections (5) and (6). Sites meeting the
criteria of this subsection for which a site rehabilitation completion order was issued before June 1, 2008, do not qualify for the 2008 increase in site rehabilitation funding assistance and are bound by the pre-June 1, 2008, limits. Sites meeting the criteria of this subsection for which a site rehabilitation completion order was not issued before June 1, 2008, regardless of whether they have previously transitioned to nonstate-funded cleanup status, may continue state-funded cleanup pursuant to this section until a site rehabilitation completion order is issued or the increased site rehabilitation funding assistance limit is reached, whichever occurs first. The department may not pay expenses incurred beyond the scope of an approved contract. (c) The department may also approve supplemental funding of up to $100,000 for additional remediation and monitoring if such remediation and monitoring is necessary to achieve a determination of “No Further Action.” (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, a copayment by the owner, operator, or person otherwise responsible for conducting site rehabilitation, or a combination of cost savings and a
copayment. Cost savings to the department may be demonstrated in
the form of reduced rates by the proposed agency term contractor
or the difference in cost associated with a Risk Management
Options Level I closure versus a Risk Management Options Level
II closure. For the purpose of this paragraph, the term:

1. “Risk Management Options Level I” means a “No Further
Action” closure without institutional controls or without
in institutional and engineering controls. This closure option
applies subject to conditions in department rules and
agreements.

2. “Risk Management Options Level II” means a “No Further
Action” closure where institutional controls and, if
appropriate, engineering controls apply if the controls are
protective of human health, public safety, and the environment.
This closure option applies subject to conditions in department
rules and agreements. 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.

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

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

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

(h) The following are excluded from participation in the
program:

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

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

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

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

Section 2. Subsection (2) of section 376.30713, Florida Statutes, 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
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.