

By the Committee on Environment and Natural Resources; and  
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.

17  
18 Be It Enacted by the Legislature of the State of Florida:

19  
20 Section 1. Subsection (13) of section 376.3071, Florida  
21 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 (a)1. The department shall accept any discharge reporting  
42 form received before January 1, 1995, as an application for this  
43 program, and the facility owner or operator need not reapply.

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

55 (b) Subject to annual appropriation from the fund, sites  
56 meeting the criteria of this subsection are eligible for up to  
57 \$400,000 of site rehabilitation funding assistance in priority  
58 order pursuant to subsections (5) and (6). Sites meeting the

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59 criteria of this subsection for which a site rehabilitation  
60 completion order was issued before June 1, 2008, do not qualify  
61 for the 2008 increase in site rehabilitation funding assistance  
62 and are bound by the pre-June 1, 2008, limits. Sites meeting the  
63 criteria of this subsection for which a site rehabilitation  
64 completion order was not issued before June 1, 2008, regardless  
65 of whether they have previously transitioned to nonstate-funded  
66 cleanup status, may continue state-funded cleanup pursuant to  
67 this section until a site rehabilitation completion order is  
68 issued or the increased site rehabilitation funding assistance  
69 limit is reached, whichever occurs first. The department may not  
70 pay expenses incurred beyond the scope of an approved contract.

71 (c) The department may also approve supplemental funding of  
72 up to \$100,000 for additional remediation and monitoring if such  
73 remediation and monitoring is necessary to achieve a  
74 determination of "No Further Action."

75 (d) Upon notification by the department that rehabilitation  
76 funding assistance is available for the site pursuant to  
77 subsections (5) and (6), the property owner, operator, or person  
78 otherwise responsible for site rehabilitation shall provide the  
79 department with a limited contamination assessment report and  
80 shall enter into a Petroleum Cleanup Participation Program site  
81 rehabilitation agreement with the department. The limited  
82 contamination assessment report must be sufficient to support  
83 the proposed course of action and to estimate the cost of the  
84 proposed course of action. The agreement must provide for a 25-  
85 percent cost savings to the department, a copayment by the  
86 owner, operator, or person otherwise responsible for conducting  
87 site rehabilitation, or a combination of cost savings and a

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88 copayment. Cost savings to the department may be demonstrated in  
89 the form of reduced rates by the proposed agency term contractor  
90 or the difference in cost associated with a Risk Management  
91 Options Level I closure versus a Risk Management Options Level  
92 II closure. For the purpose of this paragraph, the term:

93 1. "Risk Management Options Level I" means a "No Further  
94 Action" closure without institutional controls or without  
95 institutional and engineering controls. This closure option  
96 applies subject to conditions in department rules and  
97 agreements.

98 2. "Risk Management Options Level II" means a "No Further  
99 Action" closure where institutional controls and, if  
100 appropriate, engineering controls apply if the controls are  
101 protective of human health, public safety, and the environment.  
102 This closure option applies subject to conditions in department  
103 rules and agreements. ~~The owner, operator, or person otherwise~~  
104 ~~responsible for conducting site rehabilitation shall adequately~~  
105 ~~demonstrate the ability to meet the copayment obligation. The~~  
106 ~~limited contamination assessment report and the copayment costs~~  
107 ~~may be reduced or eliminated if the owner and all operators~~  
108 ~~responsible for restoration under s. 376.308 demonstrate that~~  
109 ~~they cannot financially comply with the copayment and limited~~  
110 ~~contamination assessment report requirements. The department~~  
111 ~~shall take into consideration the owner's and operator's net~~  
112 ~~worth in making the determination of financial ability. In the~~  
113 ~~event the department and the owner, operator, or person~~  
114 ~~otherwise responsible for site rehabilitation cannot complete~~  
115 ~~negotiation of the cost-sharing agreement within 120 days after~~  
116 ~~beginning negotiations, the department shall terminate~~

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117 ~~negotiations and the site shall be ineligible for state funding~~  
118 ~~under this subsection and all liability protections provided for~~  
119 ~~in this subsection shall be revoked.~~

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

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

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

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

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

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

142 3. Sites that are identified by the United States  
143 Environmental Protection Agency to be on, or which qualify for  
144 listing on, the National Priorities List under Superfund. This  
145 exception does not apply to those sites for which eligibility

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146 has been requested or granted as of the effective date of this  
147 act under the Early Detection Incentive Program established  
148 pursuant to s. 15, chapter 86-159, Laws of Florida.

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

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

156 376.30713 Advanced cleanup.—

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

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

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

174 a. Applications for the aggregate cleanup of five or more

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175 sites may be submitted in one of two formats to meet the cost-  
176 share requirement:

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

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

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

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

196 (II) For an individual application relying on a  
197 demonstrated cost savings to the department, the applicant  
198 shall, in conjunction with the proposed agency term contractor,  
199 establish and provide in the application a 25-percent cost  
200 savings to the department for cleanup of the site under the  
201 application compared to the cost of cleanup of the same site  
202 using the current rates provided to the department by the  
203 proposed agency term contractor.

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204           2. A nonrefundable review fee of \$250 to cover the  
205 administrative costs associated with the department's review of  
206 the application.

207           3. A property owner or responsible party agreement in which  
208 the property owner or responsible party commits to continue to  
209 participate in the advanced cleanup program upon completion of  
210 the limited contamination assessment and finalization of the  
211 proposed course of action ~~limited contamination assessment~~  
212 ~~report.~~

213           4. A conceptual proposed course of action.

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

222  
223 ~~The limited contamination assessment report must be sufficient~~  
224 ~~to support the proposed course of action and to estimate the~~  
225 ~~cost of the proposed course of action. Costs incurred related to~~  
226 ~~conducting the limited contamination assessment report are not~~  
227 ~~refundable from the Inland Protection Trust Fund. Site~~  
228 ~~eligibility under this subsection or any other provision of this~~  
229 ~~section is not an entitlement to advanced cleanup or continued~~  
230 ~~restoration funding.~~

231           6. A certification ~~The applicant shall certify to the~~  
232 ~~department~~ that the applicant has the prerequisite authority to



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233 enter into an advanced cleanup contract with the department. The  
234 certification must be submitted with the application.

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

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

258 1. A nonrefundable review fee of \$250 to cover the  
259 administrative costs associated with the department's review of  
260 the application.

261 2. A limited contamination assessment report. The report

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262 must be sufficient to support the proposed course of action and  
263 to estimate the cost of the proposed course of action. Costs  
264 incurred related to conducting and preparing the report are not  
265 refundable from the Inland Protection Trust Fund.

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

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

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

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

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

288 (d) Upon acceptance of an advanced cleanup application, the  
289 applicant's selected agency term contractor shall submit to the  
290 department a scope of work for a limited contamination

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291 assessment. When the scope of work is negotiated and agreed  
292 upon, the department shall issue one or more purchase orders of  
293 up to \$35,000 each for the limited contamination assessment. The  
294 limited contamination assessment report must be sufficient to  
295 support the proposed course of action and to estimate the cost  
296 of the proposed course of action.

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

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