

A bill to be entitled

An act relating to rehabilitation of petroleum contamination sites; amending s. 376.3071, F.S.; providing legislative findings and intent regarding the Petroleum Restoration Program and the rehabilitation of contamination sites; providing requirements for site rehabilitation contracts and procedures for payment of rehabilitation work under the Petroleum Restoration Program; providing applicability of funding under the Early Detection Incentive Program; deleting obsolete provisions relating to reimbursement for certain cleanup expenses; repealing s. 376.30711, F.S., relating to preapproved site rehabilitation; amending ss. 376.301, 376.302, 376.305, 376.30713, 376.30714, 376.3072, 376.3073, and 376.3075, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Section 376.3071, Florida Statutes, is amended to read:

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

(1) FINDINGS.—In addition to the legislative findings set forth in s. 376.30, the Legislature finds and declares:

27 (a) That significant quantities of petroleum and petroleum
28 products are being stored in storage systems in this state,
29 which is a hazardous undertaking.

30 (b) That spills, leaks, and other discharges from such
31 storage systems have occurred, are occurring, and will continue
32 to occur and that such discharges pose a significant threat to
33 the quality of the groundwaters and inland surface waters of
34 this state.

35 (c) That, where contamination of the ground or surface
36 water has occurred, remedial measures have often been delayed
37 for long periods while determinations as to liability and the
38 extent of liability are made and that such delays result in the
39 continuation and intensification of the threat to the public
40 health, safety, and welfare; in greater damage to water
41 resources and the environment; and in significantly higher costs
42 to contain and remove the contamination.

43 (d) That adequate financial resources must be readily
44 available to provide for the expeditious supply of safe and
45 reliable alternative sources of potable water to affected
46 persons and to provide a means for investigation and cleanup of
47 contamination sites without delay.

48 (e) That it is necessary to fulfill the intent and
49 purposes of ss. 376.30-376.317, and ~~further it is hereby~~
50 determined to be in the best interest of, and necessary for the
51 protection of the public health, safety, and ~~general~~ welfare of
52 the residents of this state, and therefore a paramount public

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53 purpose, to provide for the creation of a nonprofit public
54 benefit corporation as an instrumentality of the state to assist
55 in financing the functions provided in ss. 376.30-376.317 and to
56 authorize the department to enter into one or more service
57 contracts with such corporation for the purpose ~~provision~~ of
58 financing services related to such functions and to make
59 payments thereunder from the amount on deposit in the Inland
60 Protection Trust Fund, subject to annual appropriation by the
61 Legislature.

62 (f) That to achieve the purposes established in paragraph
63 (e) and in order to facilitate the expeditious handling and
64 rehabilitation of contamination sites and remedial measures with
65 respect to contamination sites ~~provided hereby~~ without delay, it
66 is in the best interests of the residents of this state to
67 authorize such corporation to issue evidences of indebtedness
68 payable from amounts paid by the department under any such
69 service contract entered into between the department and such
70 corporation.

71 (g) That the Petroleum Restoration Program must be
72 implemented in a manner that reduces costs and improves the
73 efficiency of rehabilitation activities to reduce the
74 significant backlog of contaminated sites eligible for state-
75 funded rehabilitation and the corresponding threat to the public
76 health, safety, and welfare, water resources, and the
77 environment.

78 (2) INTENT AND PURPOSE.—

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79 (a) It is the intent of the Legislature to establish the
80 Inland Protection Trust Fund to serve as a repository for funds
81 which will enable the department to respond without delay to
82 incidents of inland contamination related to the storage of
83 petroleum and petroleum products in order to protect the public
84 health, safety, and welfare and to minimize environmental
85 damage.

86 (b) It is the intent of the Legislature that the
87 department implement rules and procedures to improve the
88 efficiency of the Petroleum Restoration Program. The department
89 is directed to implement rules and policies to eliminate and
90 reduce duplication of site rehabilitation efforts, paperwork,
91 and documentation, and micromanagement of site rehabilitation
92 tasks.

93 (c) It is the intent of the Legislature that
94 rehabilitation of contamination sites be conducted with emphasis
95 on first addressing the sites that pose the greatest threat to
96 the public health, safety, and welfare, water resources, and the
97 environment, within the availability of funds in the Inland
98 Protection Trust Fund, recognizing that source removal, wherever
99 it is technologically feasible and cost-effective, will
100 significantly reduce contamination or eliminate the spread of
101 contamination and will protect the public health, safety, and
102 welfare, water resources, and the environment.

103 (d) ~~(e)~~ The department is directed to adopt and implement
104 uniform and standardized forms for ~~the requests for preapproval~~

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105 site rehabilitation work and for the submittal of reports to
106 ensure that information is submitted to the department in a
107 concise, standardized uniform format seeking only information
108 that is necessary.

109 (e)~~(d)~~ The department is directed to implement
110 computerized and electronic filing capabilities ~~of preapproval~~
111 ~~requests~~ and submittal of reports in order to expedite submittal
112 of the information and elimination of delay in paperwork. ~~The~~
113 ~~computerized, electronic filing system shall be implemented no~~
114 ~~later than January 1, 1997.~~

115 ~~(e) The department is directed to adopt uniform scopes of~~
116 ~~work with templated labor and equipment costs to provide~~
117 ~~definitive guidance as to the type of work and authorized~~
118 ~~expenditures that will be allowed for preapproved site~~
119 ~~rehabilitation tasks.~~

120 (f) The department is directed to establish guidelines for
121 consideration and acceptance of new and innovative technologies
122 for site rehabilitation work.

123 (3) CREATION.—There is ~~hereby~~ created the Inland
124 Protection Trust Fund, hereinafter referred to as the "fund," to
125 be administered by the department. This fund shall be used by
126 the department as a nonlapsing revolving fund for carrying out
127 the purposes of this section and s. 376.3073. To this fund shall
128 be credited all penalties, judgments, recoveries,
129 reimbursements, loans, and other fees and charges related to the
130 implementation of this section and s. 376.3073 and the excise

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131 tax revenues levied, collected, and credited pursuant to ss.
132 206.9935(3) and 206.9945(1)(c). Charges against the fund shall
133 be made pursuant to ~~in accordance with the provisions of this~~
134 section.

135 (4) USES.—Whenever, in its determination, incidents of
136 inland contamination related to the storage of petroleum or
137 petroleum products may pose a threat to ~~the environment or the~~
138 public health, safety, or welfare, water resources, or the
139 environment, the department shall obligate moneys available in
140 the fund to provide for:

141 (a) Prompt investigation and assessment of contamination
142 sites.

143 (b) Expeditious restoration or replacement of potable
144 water supplies as provided in s. 376.30(3)(c)1.

145 (c) Rehabilitation of contamination sites, which shall
146 consist of cleanup of affected soil, groundwater, and inland
147 surface waters, using the most cost-effective alternative that
148 is technologically feasible and reliable and that provides
149 adequate protection of the public health, safety, and welfare,
150 and water resources, and that minimizes environmental damage,
151 pursuant to ~~in accordance with~~ the site selection and cleanup
152 criteria established by the department under subsection (5),
153 except that this paragraph does not ~~nothing herein shall be~~
154 ~~construed to~~ authorize the department to obligate funds for
155 payment of costs which may be associated with, but are not
156 integral to, site rehabilitation, such as the cost for

157 retrofitting or replacing petroleum storage systems.

158 (d) Maintenance and monitoring of contamination sites.

159 (e) Inspection and supervision of activities described in
160 this subsection.

161 (f) Payment of expenses incurred by the department in its
162 efforts to obtain from responsible parties the payment or
163 recovery of reasonable costs resulting from the activities
164 described in this subsection.

165 (g) Payment of any other reasonable costs of
166 administration, including those administrative costs incurred by
167 the Department of Health in providing field and laboratory
168 services, toxicological risk assessment, and other assistance to
169 the department in the investigation of drinking water
170 contamination complaints and costs associated with public
171 information and education activities.

172 (h) Establishment and implementation of the compliance
173 verification program as authorized in s. 376.303(1)(a),
174 including contracting with local governments or state agencies
175 to provide for the administration of such program through
176 locally administered programs, to minimize the potential for
177 further contamination sites.

178 (i) Funding of the provisions of ss. 376.305(6) and
179 376.3072.

180 (j) Activities related to removal and replacement of
181 petroleum storage systems, exclusive of costs of any tank,
182 piping, dispensing unit, or related hardware, if soil removal is

183 approved ~~preapproved~~ as a component of site rehabilitation and
 184 requires removal of the tank where remediation is conducted
 185 under this section ~~s. 376.30711~~ or if such activities were
 186 justified in an approved remedial action plan ~~performed pursuant~~
 187 ~~to subsection (12)~~.

188 ~~(k) Activities related to reimbursement application~~
 189 ~~preparation and activities related to reimbursement application~~
 190 ~~examination by a certified public accountant pursuant to~~
 191 ~~subsection (12)~~.

192 (k) ~~(l)~~ Reasonable costs of restoring property as nearly as
 193 practicable to the conditions which existed before ~~prior to~~
 194 activities associated with contamination assessment or remedial
 195 action taken under s. 376.303(4).

196 (l) ~~(m)~~ Repayment of loans to the fund.

197 (m) ~~(n)~~ Expenditure of sums from the fund to cover
 198 ineligible sites or costs as set forth in subsection (13), if
 199 the department in its discretion deems it necessary to do so. In
 200 such cases, the department may seek recovery and reimbursement
 201 of costs in the same manner and pursuant to ~~in accordance with~~
 202 the same procedures ~~as are~~ established for recovery and
 203 reimbursement of sums otherwise owed to or expended from the
 204 fund.

205 (n) ~~(o)~~ Payment of amounts payable under any service
 206 contract entered into by the department pursuant to s. 376.3075,
 207 subject to annual appropriation by the Legislature.

208 (o) ~~(p)~~ Petroleum remediation pursuant to this section ~~s.~~

209 ~~376.30711~~ throughout a state fiscal year. The department shall
 210 establish a process to uniformly encumber appropriated funds
 211 throughout a state fiscal year and shall allow for emergencies
 212 and imminent threats to public ~~human~~ health, safety, and
 213 welfare, water resources, and the environment as provided in
 214 paragraph (5) (a). This paragraph does not apply to
 215 appropriations associated with the free product recovery
 216 initiative provided in ~~of~~ paragraph (5) (c) or the ~~preapproved~~
 217 advanced cleanup program provided in ~~of~~ s. 376.30713.

218 (p) ~~(q)~~ Enforcement of this section and ss. 376.30-376.317
 219 by the Fish and Wildlife Conservation Commission. The department
 220 shall disburse moneys to the commission for such purpose.

221
 222 The Inland Protection Trust Fund may only be used to fund the
 223 activities in ss. 376.30-376.317 except ss. 376.3078 and
 224 376.3079. Amounts on deposit in the ~~Inland Protection Trust~~ fund
 225 in each fiscal year shall first be applied or allocated for the
 226 payment of amounts payable by the department pursuant to
 227 paragraph (n) ~~(o)~~ under a service contract entered into by the
 228 department pursuant to s. 376.3075 and appropriated in each year
 229 by the Legislature before ~~prior to~~ making or providing for other
 230 disbursements from the fund. ~~Nothing in~~ This subsection does not
 231 ~~shall~~ authorize the use of the ~~Inland Protection Trust~~ fund for
 232 cleanup of contamination caused primarily by a discharge of
 233 solvents as defined in s. 206.9925(6), or polychlorinated
 234 biphenyls when their presence causes them to be hazardous

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235 wastes, except solvent contamination which is the result of
236 chemical or physical breakdown of petroleum products and is
237 otherwise eligible. Facilities used primarily for the storage of
238 motor or diesel fuels as defined in ss. 206.01 and 206.86 are
239 ~~shall be presumed not to be~~ excluded from eligibility pursuant
240 to this section.

241 (5) SITE SELECTION AND CLEANUP CRITERIA.—

242 (a) The department shall adopt rules to establish
243 priorities based upon a scoring system for state-conducted
244 cleanup at petroleum contamination sites based upon factors that
245 include, but need not be limited to:

246 1. The degree to which the public ~~human~~ health, safety, or
247 welfare may be affected by exposure to the contamination;

248 2. The size of the population or area affected by the
249 contamination;

250 3. The present and future uses of the affected aquifer or
251 surface waters, with particular consideration as to the
252 probability that the contamination is substantially affecting,
253 or will migrate to and substantially affect, a known public or
254 private source of potable water; and

255 4. The effect of the contamination on water resources and
256 the environment.

257

258 Moneys in the fund shall then be obligated for activities
259 described in paragraphs (4) (a)-(e) at individual sites pursuant
260 to ~~in accordance with~~ such established criteria. However,

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261 ~~nothing in~~ this paragraph does not ~~shall be construed to~~
262 restrict the department from modifying the priority status of a
263 rehabilitation site where conditions warrant, taking into
264 consideration the actual distance between the contamination site
265 and groundwater or surface water receptors or other factors that
266 affect the risk of exposure to petroleum products' chemicals of
267 concern. The department may use the effective date of a
268 department final order granting eligibility pursuant to
269 subsections (10) ~~(9)~~ and (13) and ss. 376.305(6) and 376.3072 to
270 establish a prioritization system within a particular priority
271 scoring range.

272 (b) It is the intent of the Legislature to protect the
273 health of all people under actual circumstances of exposure. The
274 secretary shall establish criteria by rule for the purpose of
275 determining, on a site-specific basis, the rehabilitation
276 program tasks that comprise a site rehabilitation program and
277 the level at which a rehabilitation program task and a site
278 rehabilitation program are ~~may be deemed~~ completed. In
279 establishing the rule, the department shall incorporate, to the
280 maximum extent feasible, risk-based corrective action principles
281 to achieve protection of the public ~~human~~ health, and safety,
282 and welfare, water resources, and the environment in a cost-
283 effective manner as provided in this subsection. Criteria for
284 determining what constitutes a rehabilitation program task or
285 completion of site rehabilitation program tasks and site
286 rehabilitation programs shall be based upon the factors set

287 | forth in paragraph (a) and the following additional factors:

288 | 1. The current exposure and potential risk of exposure to
 289 | humans and the environment including multiple pathways of
 290 | exposure.

291 | 2. The appropriate point of compliance with cleanup target
 292 | levels for petroleum products' chemicals of concern. The point
 293 | of compliance shall be at the source of the petroleum
 294 | contamination. However, the department may ~~is authorized to~~
 295 | temporarily move the point of compliance to the boundary of the
 296 | property, or to the edge of the plume when the plume is within
 297 | the property boundary, while cleanup, including cleanup through
 298 | natural attenuation processes in conjunction with appropriate
 299 | monitoring, is proceeding. The department may also ~~is~~
 300 | ~~authorized,~~ pursuant to criteria provided for in this paragraph,
 301 | ~~to~~ temporarily extend the point of compliance beyond the
 302 | property boundary with appropriate monitoring, if such extension
 303 | is needed to facilitate natural attenuation or to address the
 304 | current conditions of the plume, if the public ~~provided human~~
 305 | health, ~~public~~ safety, and welfare, water resources, and the
 306 | environment are adequately protected. Temporary extension of the
 307 | point of compliance beyond the property boundary, as provided in
 308 | this subparagraph, must ~~shall~~ include notice to local
 309 | governments and owners of any property into which the point of
 310 | compliance is allowed to extend.

311 | 3. The appropriate site-specific cleanup goal. The site-
 312 | specific cleanup goal shall be that all petroleum contamination

313 sites ultimately achieve the applicable cleanup target levels
314 provided in this paragraph. However, the department may ~~is~~
315 ~~authorized to~~ allow concentrations of the petroleum products'
316 chemicals of concern to temporarily exceed the applicable
317 cleanup target levels while cleanup, including cleanup through
318 natural attenuation processes in conjunction with appropriate
319 monitoring, is proceeding, if the public ~~provided human~~ health,
320 ~~public~~ safety, and welfare, water resources, and the environment
321 are adequately protected.

322 4. The appropriateness of using institutional or
323 engineering controls. Site rehabilitation programs may include
324 the use of institutional or engineering controls to eliminate
325 the potential exposure to petroleum products' chemicals of
326 concern to humans or the environment. Use of such controls must
327 have prior department approval ~~be preapproved by the department,~~
328 and may ~~institutional controls shall~~ not be acquired with moneys
329 ~~funds~~ from the ~~Inland Protection Trust~~ fund. When institutional
330 or engineering controls are implemented to control exposure, the
331 removal of such controls must have prior department approval and
332 must be accompanied immediately by the resumption of active
333 cleanup, or other approved controls, unless cleanup target
334 levels pursuant to this paragraph have been achieved.

335 5. The additive effects of the petroleum products'
336 chemicals of concern. The synergistic effects of petroleum
337 products' chemicals of concern must ~~shall~~ also be considered
338 when the scientific data becomes available.

339 6. Individual site characteristics which must ~~shall~~
340 include, but not be limited to, the current and projected use of
341 the affected groundwater in the vicinity of the site, current
342 and projected land uses of the area affected by the
343 contamination, the exposed population, the degree and extent of
344 contamination, the rate of contaminant migration, the apparent
345 or potential rate of contaminant degradation through natural
346 attenuation processes, the location of the plume, and the
347 potential for further migration in relation to site property
348 boundaries.

349 7. Applicable state water quality standards.

350 a. Cleanup target levels for petroleum products' chemicals
351 of concern found in groundwater shall be the applicable state
352 water quality standards. Where such standards do not exist, the
353 cleanup target levels for groundwater shall be based on the
354 minimum criteria specified in department rule. The department
355 shall consider the following, as appropriate, in establishing
356 the applicable minimum criteria: calculations using a lifetime
357 cancer risk level of 1.0E-6; a hazard index of 1 or less; the
358 best achievable detection limit; the naturally occurring
359 background concentration; or nuisance, organoleptic, and
360 aesthetic considerations.

361 b. Where surface waters are exposed to petroleum
362 contaminated groundwater, the cleanup target levels for the
363 petroleum products' chemicals of concern shall be based on the
364 surface water standards as established by department rule. The

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365 point of measuring compliance with the surface water standards
366 shall be in the groundwater immediately adjacent to the surface
367 water body.

368 8. Whether deviation from state water quality standards or
369 from established criteria is appropriate. The department may
370 issue a "No Further Action Order" based upon the degree to which
371 the desired cleanup target level is achievable and can be
372 reasonably and cost-effectively implemented within available
373 technologies or engineering and institutional control
374 strategies. Where a state water quality standard is applicable,
375 a deviation may not result in the application of cleanup target
376 levels more stringent than the said standard. In determining
377 whether it is appropriate to establish alternate cleanup target
378 levels at a site, the department may consider the effectiveness
379 of source removal that has been completed at the site and the
380 practical likelihood of~~+~~ the use of low yield or poor quality
381 groundwater; the use of groundwater near marine surface water
382 bodies; the current and projected use of the affected
383 groundwater in the vicinity of the site; or the use of
384 groundwater in the immediate vicinity of the storage tank area,
385 where it has been demonstrated that the groundwater
386 contamination is not migrating away from such localized source,
387 if the public, ~~provided human~~ health, ~~public~~ safety, and
388 welfare, water resources, and the environment are adequately
389 protected.

390 9. Appropriate cleanup target levels for soils.

391 a. In establishing soil cleanup target levels for human
 392 exposure to petroleum products' chemicals of concern found in
 393 soils from the land surface to 2 feet below land surface, the
 394 department shall consider the following, as appropriate:
 395 calculations using a lifetime cancer risk level of 1.0E-6; a
 396 hazard index of 1 or less; the best achievable detection limit;
 397 or the naturally occurring background concentration.

398 b. Leachability-based soil target levels shall be based on
 399 protection of the groundwater cleanup target levels or the
 400 alternate cleanup target levels for groundwater established
 401 pursuant to this paragraph, as appropriate. Source removal and
 402 other cost-effective alternatives that are technologically
 403 feasible shall be considered in achieving the leachability soil
 404 target levels established by the department. The leachability
 405 goals do not apply ~~shall not be applicable~~ if the department
 406 determines, based upon individual site characteristics, that
 407 petroleum products' chemicals of concern will not leach into the
 408 groundwater at levels which pose a threat to public human
 409 health, and safety, and welfare, water resources, or the
 410 environment.

411
 412 ~~However, nothing in~~ This paragraph does not ~~shall be construed~~
 413 ~~to~~ restrict the department from temporarily postponing
 414 completion of any site rehabilitation program for which funds
 415 are being expended whenever such postponement is ~~deemed~~
 416 necessary in order to make funds available for rehabilitation of

417 a contamination site with a higher priority status.

418 (c) The department shall require source removal, if
419 warranted and cost-effective, at each site eligible for
420 restoration funding from the ~~Inland Protection Trust~~ fund.

421 1. Funding for free product recovery may be provided in
422 advance of the order established by the priority ranking system
423 under paragraph (a) for site cleanup activities. However, a
424 separate prioritization for free product recovery shall be
425 established consistent with paragraph (a). No more than \$5
426 million shall be encumbered from the ~~Inland Protection Trust~~
427 fund in any fiscal year for free product recovery conducted in
428 advance of the priority order under paragraph (a) established
429 for site cleanup activities.

430 2. Once free product removal and other source removal
431 identified in this paragraph are completed at a site, and
432 notwithstanding the order established by the priority ranking
433 system under paragraph (a) for site cleanup activities, the
434 department may reevaluate the site to determine the degree of
435 active cleanup needed to continue site rehabilitation. Further,
436 the department shall determine whether ~~if~~ the reevaluated site
437 qualifies for natural attenuation monitoring, long-term natural
438 attenuation monitoring, or no further action. If additional site
439 rehabilitation is necessary to reach no further action status,
440 the site rehabilitation shall be conducted in the order
441 established by the priority ranking system under paragraph (a).
442 The department shall use ~~utilize~~ natural attenuation monitoring

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443 strategies and, when cost-effective, transition sites eligible
444 for restoration funding assistance to long-term natural
445 attenuation monitoring where the plume is shrinking or stable
446 and confined to the source property boundaries and the petroleum
447 products' chemicals of concern meet the natural attenuation
448 default concentrations, as defined by department rule. If the
449 plume migrates beyond the source property boundaries, natural
450 attenuation monitoring may be conducted pursuant to ~~in~~
451 ~~accordance with~~ department rule, or if the site no longer
452 qualifies for natural attenuation monitoring, active remediation
453 may be resumed. For long-term natural attenuation monitoring, if
454 the petroleum products' chemicals of concern increase or are not
455 significantly reduced after 42 months of monitoring, or if the
456 plume migrates beyond the property boundaries, active
457 remediation shall be resumed as necessary. For sites undergoing
458 active remediation, the department shall evaluate ~~template~~ the
459 cost of natural attenuation monitoring ~~pursuant to s. 376.30711~~
460 to ensure that site mobilizations are performed in a cost-
461 effective manner. Sites that are not eligible for state
462 restoration funding may transition to long-term natural
463 attenuation monitoring using the criteria in this subparagraph.
464 ~~Nothing in~~ This subparagraph does not preclude ~~precludes~~ a site
465 from pursuing a "No Further Action" order with conditions.

466 3. The department shall evaluate whether higher natural
467 attenuation default concentrations for natural attenuation
468 monitoring or long-term natural attenuation monitoring are cost-

469 effective and would adequately protect the public health,
470 safety, and welfare, water resources, and the environment. The
471 department shall also evaluate site-specific characteristics
472 that would allow for higher natural attenuation or long-term
473 natural attenuation concentration levels.

474 4. A local government may not deny a building permit based
475 solely on the presence of petroleum contamination for any
476 construction, repairs, or renovations performed in conjunction
477 with tank upgrade activities to an existing retail fuel facility
478 if the facility was fully operational before the building permit
479 was requested and if the construction, repair, or renovation is
480 performed by a licensed contractor. All building permits and any
481 construction, repairs, or renovations performed in conjunction
482 with such permits must comply with the applicable provisions of
483 chapters 489 and 553.

484 (6) CONTRACTING AND CONTRACTOR SELECTION REQUIREMENTS.—

485 (a) Site rehabilitation work on sites which are eligible
486 for state-funded cleanup from the fund pursuant to this section
487 and ss. 376.305(6), 376.3072, and 376.3073 may only be funded
488 pursuant to this section. A facility operator shall abate the
489 source of discharge for a new release that occurred after March
490 29, 1995. If free product is present, the operator shall notify
491 the department, and the department may direct the removal of the
492 free product. The department shall grant approval to continue
493 site rehabilitation pursuant to this section.

494 (b) When contracting for site rehabilitation activities

495 performed under the Petroleum Restoration Program, the
496 department shall comply with competitive procurement
497 requirements provided in chapter 287 or rules adopted under this
498 section or s. 287.0595. A competitive solicitation issued
499 pursuant to this section is not subject to s. 287.055.

500 (c) Each contractor performing site assessment and
501 remediation activities for state-funded sites under this section
502 shall certify to the department that the contractor meets all
503 certification and license requirements imposed by law. Each
504 contractor shall certify to the department that the contractor
505 meets the following minimum qualifications:

506 1. Complies with applicable Occupational Safety and Health
507 Administration regulations.

508 2. Maintains workers' compensation insurance for employees
509 as required by the Florida Workers' Compensation Law.

510 3. Maintains comprehensive general liability and
511 comprehensive automobile liability insurance with minimum limits
512 of at least \$1 million per occurrence and \$1 million annual
513 aggregate to pay claims for damage for personal injury,
514 including accidental death, as well as claims for property
515 damage that may arise from performance of work under the
516 program, which insurance designates the state as an additional
517 insured party.

518 4. Maintains professional liability insurance of at least
519 \$1 million per occurrence and \$1 million annual aggregate.

520 5. Has the capacity to perform or directly supervise the

521 majority of the rehabilitation work at a site pursuant to s.
522 489.113(9).

523 (d) The department rules implementing this section must
524 specify that only qualified vendors may submit responses on a
525 competitive solicitation. The department rules must also include
526 procedures for the rejection of vendors not meeting the minimum
527 qualifications on the opening of a competitive solicitation and
528 requirements for a vendor to maintain its qualifications in
529 order to enter contracts or perform rehabilitation work.

530 (e) A contractor that performs services pursuant to this
531 subsection may file invoices for payment with the department for
532 the services described in the approved contract. The invoices
533 for payment must be submitted to the department on forms
534 provided by the department, together with evidence documenting
535 that activities were conducted or completed pursuant to the
536 approved contract. If there are sufficient unencumbered funds
537 available in the fund which have been appropriated for
538 expenditure by the Legislature, and if all of the terms of the
539 approved contract have been met, invoices for payment must be
540 paid pursuant to s. 215.422. After a contractor has submitted
541 its invoices to the department, and before payment is made, the
542 contractor may assign its right to payment to another person
543 without recourse of the assignee or assignor to the state. In
544 such cases, the assignee must be paid pursuant to s. 215.422.
545 Prior notice of the assignment and assignment information must
546 be made to the department and must be signed and notarized by

547 the assigning party.

548 (f) The contractor shall submit an invoice to the
549 department within 30 days after the date of the department's
550 written acceptance of each interim deliverable or written
551 approval of the final deliverable specified in the approved
552 contract.

553 (g) The department shall make payments based on the terms
554 of an approved contract for site rehabilitation work. The
555 department may, based on its experience and the past performance
556 and concerns regarding a contractor, retain up to 25 percent of
557 the contracted amount or use performance bonds to ensure
558 performance. The amount of retainage and the amount of
559 performance bonds, as well as the terms and conditions for such,
560 must be included in the approved contract.

561 (h) The contractor or the person to which the contractor
562 has assigned its right to payment pursuant to paragraph (e)
563 shall make prompt payment to subcontractors and suppliers for
564 their costs associated with an approved contract pursuant to s.
565 287.0585(1).

566 (i) The exemption under s. 287.0585(2) does not apply to
567 payments associated with an approved contract.

568 (j) The department may withhold payment if the validity or
569 accuracy of a contractor's invoices or supporting documents is
570 in question.

571 (k) This section does not authorize payment to a person
572 for costs of contaminated soil treatment or disposal that does

573 not meet the applicable rules of this state for such treatment
 574 or disposal, including all general permitting, state air
 575 emission standards, monitoring, sampling, and reporting rules
 576 more specifically described in department rules.

577 (1) The department shall terminate or suspend a
 578 contractor's eligibility for participation in the program if the
 579 contractor fails to perform its contractual duties for site
 580 rehabilitation program tasks.

581 (m) A site owner or operator, or his or her designee, may
 582 not receive any remuneration, in cash or in kind, directly or
 583 indirectly, from a rehabilitation contractor performing site
 584 cleanup activities pursuant to this section.

585 (7) ~~(6)~~ FUNDING.—The Inland Protection Trust Fund shall be
 586 funded as follows:

587 (a) All excise taxes levied, collected, and credited to
 588 the fund in accordance with ~~the provisions of~~ ss. 206.9935(3)
 589 and 206.9945(1)(c).

590 (b) All penalties, judgments, recoveries, reimbursements,
 591 and other fees and charges credited to the fund pursuant to ~~in~~
 592 ~~accordance with the provisions of~~ subsection (3).

593 (8) ~~(7)~~ DEPARTMENTAL DUTY TO SEEK RECOVERY AND
 594 REIMBURSEMENT.—

595 (a) Except as provided in subsection (10) ~~(9)~~ and as
 596 otherwise provided by law, the department shall recover to the
 597 use of the fund from a person or persons at any time causing or
 598 having caused the discharge or from the Federal Government,

599 jointly and severally, all sums owed or expended from the fund,
 600 pursuant to s. 376.308, except that the department may decline
 601 to pursue such recovery if it finds the amount involved too
 602 small or the likelihood of recovery too uncertain. Sums
 603 recovered as a result of damage due to a discharge related to
 604 the storage of petroleum or petroleum products or other similar
 605 disaster shall be apportioned between the fund and the General
 606 Revenue Fund so as to repay the full costs to the General
 607 Revenue Fund of ~~any~~ sums disbursed therefrom as a result of such
 608 disaster. A ~~Any~~ request for reimbursement to the fund for such
 609 costs, if not paid within 30 days after ~~of~~ demand, shall be
 610 turned over to the department for collection.

611 (b) Except as provided in subsection (10) ~~(9)~~ and as
 612 otherwise provided by law, it is the duty of the department in
 613 administering the fund diligently to pursue the reimbursement to
 614 the fund of any sum expended from the fund for cleanup and
 615 abatement pursuant to ~~in accordance with the provisions of this~~
 616 section or s. 376.3073, unless the department finds the amount
 617 involved too small or the likelihood of recovery too uncertain.
 618 For the purposes of s. 95.11, the limitation period within which
 619 to institute an action to recover such sums shall begin ~~commence~~
 620 on the last date on which ~~any~~ such sums were expended, and not
 621 the date on which ~~that~~ the discharge occurred. The department's
 622 claim for recovery of payments or overpayments from the fund
 623 must be based on the law in existence at the time of the payment
 624 or overpayment.

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625 (c) If the department initiates an enforcement action to
626 clean up a contaminated site and determines that the responsible
627 party cannot ~~is~~ financially ~~unable to~~ undertake complete
628 restoration of the contaminated site, that the current property
629 owner was not responsible for the discharge when the
630 contamination first occurred, or that the state's interest can
631 best be served by conducting cleanup, the department may enter
632 into an agreement with the responsible party or property owner
633 whereby the department agrees to conduct site rehabilitation and
634 the responsible party or property owner agrees to pay for the
635 portion of the cleanup costs that are within such party's or
636 owner's financial capabilities as determined by the department,
637 taking into consideration the party's or owner's net worth and
638 the economic impact on the party or owner.

639 (9) ~~(8)~~ INVESTMENTS; INTEREST.—Moneys in the fund which are
640 not needed currently to meet the obligations of the department
641 in the exercise of its responsibilities under this section and
642 s. 376.3073 shall be deposited with the Chief Financial Officer
643 to the credit of the fund and may be invested in such manner as
644 ~~is~~ provided ~~for~~ by law ~~statute~~. The interest received on such
645 investment shall be credited to the fund. Any provisions of law
646 to the contrary notwithstanding, such interest may be freely
647 transferred between the ~~this~~ trust fund and the Water Quality
648 Assurance Trust Fund, in the discretion of the department.

649 (10) ~~(9)~~ EARLY DETECTION INCENTIVE PROGRAM.—To encourage
650 early detection, reporting, and cleanup of contamination from

651 | leaking petroleum storage systems, the department shall, within
652 | the guidelines established in this subsection, conduct an
653 | incentive program which provides ~~shall provide~~ for a 30-month
654 | grace period ending on December 31, 1988. ~~Pursuant thereto:~~

655 | (a) The department shall establish reasonable requirements
656 | for the written reporting of petroleum contamination incidents
657 | and shall distribute forms to registrants under s. 376.303(1)(b)
658 | and to other interested parties upon request to be used for such
659 | purpose. Until such forms are available for distribution, the
660 | department shall take reports of such incidents, however made,
661 | but shall notify any person making such a report that a complete
662 | written report of the incident will be required by the
663 | department at a later time, the form for which will be provided
664 | by the department.

665 | (b) When reporting forms become available for
666 | distribution, all sites involving incidents of contamination
667 | from petroleum storage systems initially reported to the
668 | department at any time from midnight on June 30, 1986, to
669 | midnight on December 31, 1988, shall be qualified sites if
670 | ~~provided that such~~ a complete written report is filed with
671 | respect thereto within a reasonable time. Subject to the delays
672 | which may occur as a result of the prioritization of sites under
673 | paragraph (5)(a) for any qualified site, costs for activities
674 | described in paragraphs (4)(a)-(e) shall be absorbed at the
675 | expense of the fund, without recourse to reimbursement or
676 | recovery, with the following exceptions:

677 1. ~~The provisions of~~ This subsection does ~~shall~~ not apply
678 to a ~~any~~ site where the department has been denied site access
679 to implement ~~the provisions of~~ this section.

680 2. ~~The provisions of~~ This subsection does ~~shall~~ not be
681 ~~construed to~~ authorize or require reimbursement from the fund
682 for costs expended before ~~prior to~~ the beginning of the grace
683 period, ~~except as provided in subsection (12)~~.

684 3.a. Upon discovery by the department that the owner or
685 operator of a petroleum storage system has been grossly
686 negligent in the maintenance of such petroleum storage system;
687 has, with willful intent to conceal the existence of a serious
688 discharge, falsified inventory or reconciliation records
689 maintained with respect to the site at which such system is
690 located; or has intentionally damaged such petroleum storage
691 system, the site at which such system is located shall be
692 ineligible for participation in the incentive program and the
693 owner shall be liable for all costs due to discharges from
694 petroleum storage systems at that site, any other provisions of
695 chapter 86-159, Laws of Florida, to the contrary
696 notwithstanding. For the purposes of this paragraph, willful
697 failure to maintain inventory and reconciliation records,
698 willful failure to make monthly monitoring system checks where
699 such systems are in place, and failure to meet monitoring and
700 retrofitting requirements within the schedules established under
701 chapter 62-761, Florida Administrative Code, or violation of
702 similar rules adopted by the department under this chapter,

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703 constitutes ~~shall be construed to be~~ gross negligence in the
704 maintenance of a petroleum storage system.

705 b. The department shall redetermine the eligibility of
706 petroleum storage systems for which a timely Early Detection
707 Incentive Program ~~EDI~~ application was filed, but which were
708 deemed ineligible by the department, under the following
709 conditions:

710 (I) The owner or operator, on or before March 31, 1991,
711 shall submit, in writing, notification that the storage system
712 is now in compliance with department rules adopted pursuant to
713 s. 376.303, and which requests the department to reevaluate the
714 storage system eligibility; and

715 (II) The department verifies the storage system compliance
716 based on a compliance inspection.

717
718 ~~Provided, however, that~~ A site may be determined eligible by the
719 department for good cause shown, including, but not limited to,
720 demonstration by the owner or operator that to achieve
721 compliance would cause an increase in the potential for the
722 spread of the contamination.

723 c. Redetermination of eligibility pursuant to sub-
724 subparagraph b. shall not be available to:

725 (I) Petroleum storage systems owned or operated by the
726 Federal Government.

727 (II) Facilities that denied site access to the department.

728 (III) Facilities where a discharge was intentionally

729 concealed.

730 (IV) Facilities that were denied eligibility due to:

731 (A) Absence of contamination, unless any such facility
 732 subsequently establishes that contamination did exist at that
 733 facility on or before December 31, 1988.

734 (B) Contamination from substances that were not petroleum
 735 or a petroleum product.

736 (C) Contamination that was not from a petroleum storage
 737 system.

738 d. ~~EDI~~ Applicants who demonstrate compliance for a site
 739 pursuant to sub-subparagraph b. are eligible for the Early
 740 Detection Incentive Program and site rehabilitation funding
 741 pursuant to subsections ~~subsection~~ (5) and (6) ~~s. 376.30711~~.

742
 743 If, in order to avoid prolonged delay, the department in its
 744 discretion deems it necessary to expend sums from the fund to
 745 cover ineligible sites or costs as set forth in this paragraph,
 746 the department may do so and seek recovery and reimbursement
 747 therefor in the same manner and pursuant to ~~in accordance with~~
 748 the same procedures ~~as are~~ established for recovery and
 749 reimbursement of sums otherwise owed to or expended from the
 750 fund.

751 (c) A ~~No~~ report of a discharge made to the department by a
 752 any person pursuant to ~~in accordance with~~ this subsection, or
 753 any rules adopted promulgated pursuant to this subsection may
 754 not hereto, ~~shall~~ be used directly as evidence of liability for

755 such discharge in any civil or criminal trial arising out of the
 756 discharge.

757 (d) ~~The provisions of~~ This subsection does ~~shall~~ not apply
 758 to petroleum storage systems owned or operated by the Federal
 759 Government.

760 (11) ~~(10)~~ VIOLATIONS; PENALTY.—~~A It is unlawful for any~~
 761 person may not ~~to~~:

762 (a) Falsify inventory or reconciliation records maintained
 763 in compliance with chapters 62-761 and 62-762, Florida
 764 Administrative Code, with willful intent to conceal the
 765 existence of a serious leak; or

766 (b) Intentionally damage a petroleum storage system.

767
 768 A ~~Any~~ person convicted of such a violation is ~~shall be~~ guilty of
 769 a felony of the third degree, punishable as provided in s.
 770 775.082, s. 775.083, or s. 775.084.

771 (12) ~~(11)~~ SITE CLEANUP.—

772 (a) Voluntary cleanup.—This section does not prohibit a
 773 person from conducting site rehabilitation ~~either~~ through his or
 774 her own personnel or through responsible response action
 775 contractors or subcontractors when such person is not seeking
 776 site rehabilitation funding from the fund. Such voluntary
 777 cleanups must meet all applicable environmental standards.

778 (b) Low-scored site initiative.—Notwithstanding
 779 subsections (5) and (6) ~~s. 376.30711~~, a ~~any~~ site with a priority
 780 ranking score of 29 points or less may voluntarily participate

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781 in the low-scored site initiative regardless of~~7~~ whether ~~or not~~
782 the site is eligible for state restoration funding.

783 1. To participate in the low-scored site initiative, the
784 responsible party or property owner must affirmatively
785 demonstrate that the following conditions are met:

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

788 b. ~~No~~ Excessively contaminated soil, as defined by
789 department rule, does not exist ~~exists~~ onsite as a result of a
790 release of petroleum products.

791 c. A minimum of 6 months of groundwater monitoring
792 indicates that the plume is shrinking or stable.

793 d. The release of petroleum products at the site does not
794 adversely affect adjacent surface waters, including their
795 effects on human health and the environment.

796 e. The area of groundwater containing the petroleum
797 products' chemicals of concern is less than one-quarter acre and
798 is confined to the source property boundaries of the real
799 property on which the discharge originated.

800 f. Soils onsite that are subject to human exposure found
801 between land surface and 2 feet below land surface meet the soil
802 cleanup target levels established by department rule or human
803 exposure is limited by appropriate institutional or engineering
804 controls.

805 2. Upon affirmative demonstration of the conditions under
806 subparagraph 1., the department shall issue a determination of

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807 "No Further Action." Such determination acknowledges that
808 minimal contamination exists onsite and that such contamination
809 is not a threat to the public human health, safety, or welfare,
810 water resources, or the environment. If no contamination is
811 detected, the department may issue a site rehabilitation
812 completion order.

813 3. Sites that are eligible for state restoration funding
814 may receive payment of ~~preapproved~~ costs for the low-scored site
815 initiative as follows:

816 a. A responsible party or property owner may submit an
817 assessment plan designed to affirmatively demonstrate that the
818 site meets the conditions under subparagraph 1. Notwithstanding
819 the priority ranking score of the site, the department may
820 approve ~~preapprove~~ the cost of the assessment ~~pursuant to s.~~
821 ~~376.30711~~, including 6 months of groundwater monitoring, not to
822 exceed \$30,000 for each site. The department may not pay the
823 costs associated with the establishment of institutional or
824 engineering controls.

825 b. The assessment work shall be completed no later than 6
826 months after the department issues its approval.

827 c. No more than \$10 million for the low-scored site
828 initiative may be encumbered from the ~~Inland Protection Trust~~
829 fund in any fiscal year. Funds shall be made available on a
830 first-come, first-served basis and shall be limited to 10 sites
831 in each fiscal year for each responsible party or property
832 owner.

833 d. Program deductibles, copayments, and the limited
834 contamination assessment report requirements under paragraph
835 (13) (c) do not apply to expenditures under this paragraph.

836 ~~(12) REIMBURSEMENT FOR CLEANUP EXPENSES. Except as~~
837 ~~provided in s. 2(3), chapter 95-2, Laws of Florida, this~~
838 ~~subsection shall not apply to any site rehabilitation program~~
839 ~~task initiated after March 29, 1995. Effective August 1, 1996,~~
840 ~~no further site rehabilitation work on sites eligible for state-~~
841 ~~funded cleanup from the Inland Protection Trust Fund shall be~~
842 ~~eligible for reimbursement pursuant to this subsection. The~~
843 ~~person responsible for conducting site rehabilitation may seek~~
844 ~~reimbursement for site rehabilitation program task work~~
845 ~~conducted after March 28, 1995, in accordance with s. 2(2) and~~
846 ~~(3), chapter 95-2, Laws of Florida, regardless of whether the~~
847 ~~site rehabilitation program task is completed. A site~~
848 ~~rehabilitation program task shall be considered to be initiated~~
849 ~~when actual onsite work or engineering design, pursuant to~~
850 ~~chapter 62-770, Florida Administrative Code, which is integral~~
851 ~~to performing a site rehabilitation program task has begun and~~
852 ~~shall not include contract negotiation and execution, site~~
853 ~~research, or project planning. All reimbursement applications~~
854 ~~pursuant to this subsection must be submitted to the department~~
855 ~~by January 3, 1997. The department shall not accept any~~
856 ~~applications for reimbursement or pay any claims on applications~~
857 ~~for reimbursement received after that date; provided, however if~~
858 ~~an application filed on or prior to January 3, 1997, was~~

859 ~~returned by the department on the grounds of untimely filing, it~~
860 ~~shall be refiled within 30 days after the effective date of this~~
861 ~~act in order to be processed.~~

862 ~~(a) Legislative findings.—The Legislature finds and~~
863 ~~declares that rehabilitation of contamination sites should be~~
864 ~~conducted in a manner and to a level of completion which will~~
865 ~~protect the public health, safety, and welfare and will minimize~~
866 ~~damage to the environment.~~

867 ~~(b) Conditions.—~~

868 ~~1. The owner, operator, or his or her designee of a site~~
869 ~~which is eligible for restoration funding assistance in the EDI,~~
870 ~~PLRIP, or ATRP programs shall be reimbursed from the Inland~~
871 ~~Protection Trust Fund of allowable costs at reasonable rates~~
872 ~~incurred on or after January 1, 1985, for completed program~~
873 ~~tasks as identified in the department rule promulgated pursuant~~
874 ~~to paragraph (5) (b), or uncompleted program tasks pursuant to~~
875 ~~chapter 95-2, Laws of Florida, subject to the conditions in this~~
876 ~~section. It is unlawful for a site owner or operator, or his or~~
877 ~~her designee, to receive any remuneration, in cash or in kind,~~
878 ~~directly or indirectly from the rehabilitation contractor.~~

879 ~~2. Nothing in this subsection shall be construed to~~
880 ~~authorize reimbursement to any person for costs of contaminated~~
881 ~~soil treatment or disposal that does not meet the applicable~~
882 ~~rules of this state for such treatment or disposal, including~~
883 ~~all general permitting, state air emission standards,~~
884 ~~monitoring, sampling, and reporting rules more specifically~~

885 ~~described in department rules.~~

886 ~~(c) Legislative intent. Due to the value of the potable~~
887 ~~water of this state, it is the intent of the Legislature that~~
888 ~~the department initiate and facilitate as many cleanups as~~
889 ~~possible utilizing the resources of the state, local~~
890 ~~governments, and the private sector, recognizing that source~~
891 ~~removal, wherever it is technologically feasible and cost-~~
892 ~~effective, shall be considered the primary initial response to~~
893 ~~protect public health, safety, and the environment.~~

894 ~~(d) Amount of reimbursement. The department shall~~
895 ~~reimburse actual and reasonable costs for site rehabilitation.~~
896 ~~The department shall not reimburse interest on the amount of~~
897 ~~reimbursable costs for any reimbursement application. However,~~
898 ~~nothing herein shall affect the department's authority to pay~~
899 ~~interest authorized under prior law.~~

900 ~~(e) Records. The person responsible for conducting site~~
901 ~~rehabilitation, or his or her agent, shall keep and preserve~~
902 ~~suitable records as follows:~~

903 ~~1. Hydrological and other site investigations and~~
904 ~~assessments; site rehabilitation plans; contracts and contract~~
905 ~~negotiations; and accounts, invoices, sales tickets, or other~~
906 ~~payment records from purchases, sales, leases, or other~~
907 ~~transactions involving costs actually incurred related to site~~
908 ~~rehabilitation. Such records shall be made available upon~~
909 ~~request to agents and employees of the department during regular~~
910 ~~business hours and at other times upon written request of the~~

911 department.

912 ~~2. In addition, the department may from time to time~~
913 ~~request submission of such site specific information as it may~~
914 ~~require, unless a waiver or variance from such department~~
915 ~~request is granted pursuant to paragraph (k).~~

916 ~~3. All records of costs actually incurred for cleanup~~
917 ~~shall be certified by affidavit to the department as being true~~
918 ~~and correct.~~

919 ~~(f) Application for reimbursement. Any eligible person who~~
920 ~~performs a site rehabilitation program or performs site~~
921 ~~rehabilitation program tasks such as preparation of site~~
922 ~~rehabilitation plans or assessments; product recovery; cleanup~~
923 ~~of groundwater or inland surface water; soil treatment or~~
924 ~~removal; or any other tasks identified by department rule~~
925 ~~developed pursuant to subsection (5), may apply for~~
926 ~~reimbursement. Such applications for reimbursement must be~~
927 ~~submitted to the department on forms provided by the department,~~
928 ~~together with evidence documenting that site rehabilitation~~
929 ~~program tasks were conducted or completed in accordance with~~
930 ~~department rule developed pursuant to subsection (5), and other~~
931 ~~such records or information as the department requires. The~~
932 ~~reimbursement application and supporting documentation shall be~~
933 ~~examined by a certified public accountant in accordance with~~
934 ~~standards established by the American Institute of Certified~~
935 ~~Public Accountants. A copy of the accountant's report shall be~~
936 ~~submitted with the reimbursement application. Applications for~~

937 ~~reimbursement shall not be approved for site rehabilitation~~
938 ~~program tasks which have not been completed, except for the task~~
939 ~~of remedial action and except for uncompleted program tasks~~
940 ~~pursuant to chapter 95-2, Laws of Florida, and this subsection.~~
941 ~~Applications for remedial action may be submitted semiannually~~
942 ~~at the discretion of the person responsible for cleanup. After~~
943 ~~an applicant has filed an application with the department and~~
944 ~~before payment is made, the applicant may assign the right to~~
945 ~~payment to any other person, without recourse of the assignee or~~
946 ~~assignor to the state, without affecting the order in which~~
947 ~~payment is made. Information necessary to process the~~
948 ~~application shall be requested from and provided by the~~
949 ~~assigning applicant. Proper notice of the assignment and~~
950 ~~assignment information shall be made to the department which~~
951 ~~notice shall be signed and notarized by the assigning applicant.~~

952 ~~(g) Review.—~~

953 ~~1. Provided there are sufficient unencumbered funds~~
954 ~~available in the Inland Protection Trust Fund, or to the extent~~
955 ~~proceeds of debt obligations are available for the payment of~~
956 ~~existing reimbursement obligations pursuant to s. 376.3075, the~~
957 ~~department shall have 60 days to determine if the applicant has~~
958 ~~provided sufficient information for processing the application~~
959 ~~and shall request submission of any additional information that~~
960 ~~the department may require within such 60-day period. If the~~
961 ~~applicant believes any request for additional information is not~~
962 ~~authorized, the applicant may request a hearing pursuant to ss.~~

963 ~~120.569 and 120.57. Once the department requests additional~~
964 ~~information, the department may request only that information~~
965 ~~needed to clarify such additional information or to answer new~~
966 ~~questions raised by or directly related to such additional~~
967 ~~information.~~

968 ~~2. The department shall deny or approve the application~~
969 ~~for reimbursement within 90 days after receipt of the last item~~
970 ~~of timely requested additional material, or, if no additional~~
971 ~~material is requested, within 90 days of the close of the 60-day~~
972 ~~period described in subparagraph 1., unless the total review~~
973 ~~period is otherwise extended by written mutual agreement of the~~
974 ~~applicant and the department.~~

975 ~~3. Final disposition of an application shall be provided~~
976 ~~to the applicant in writing, accompanied by a written~~
977 ~~explanation setting forth in detail the reason or reasons for~~
978 ~~the approval or denial. If the department fails to make a~~
979 ~~determination on an application within the time provided in~~
980 ~~subparagraph 2., or denies an application, or if a dispute~~
981 ~~otherwise arises with regard to reimbursement, the applicant may~~
982 ~~request a hearing pursuant to ss. 120.569 and 120.57.~~

983 ~~(h) Reimbursement. Upon approval of an application for~~
984 ~~reimbursement, reimbursement for reasonable expenditures of a~~
985 ~~site rehabilitation program or site rehabilitation program tasks~~
986 ~~documented therein shall be made in the order in which the~~
987 ~~department receives completed applications. Effective January 1,~~
988 ~~1997, all unpaid reimbursement applications are subject to~~

989 ~~payment on the following terms: The department shall develop a~~
990 ~~schedule of the anticipated dates of reimbursement of~~
991 ~~applications submitted to the department pursuant to this~~
992 ~~subsection. The schedule shall specify the projected date of~~
993 ~~payment based on equal monthly payments and projected annual~~
994 ~~revenue of \$100 million. Based on the schedule, the department~~
995 ~~shall notify all reimbursement applicants of the projected date~~
996 ~~of payment of their applications. The department shall direct~~
997 ~~the Inland Protection Financing Corporation to pay applicants~~
998 ~~the present value of their applications as soon as practicable~~
999 ~~after approval by the department, subject to the availability of~~
1000 ~~funds within the Inland Protection Financing Corporation. The~~
1001 ~~present value of an application shall be based on the date on~~
1002 ~~which the department anticipates the Inland Protection Financing~~
1003 ~~Corporation will settle the reimbursement application and the~~
1004 ~~schedule's projected date of payment and shall use 3.5 percent~~
1005 ~~as the annual discount rate. The determination of the amount of~~
1006 ~~the claim and the projected date of payment shall be subject to~~
1007 ~~s. 120.57.~~

1008 ~~(i) Liberal construction. With respect to site~~
1009 ~~rehabilitation initiated prior to July 1, 1986, the provisions~~
1010 ~~of this subsection shall be given such liberal construction by~~
1011 ~~the department as will accomplish the purposes set forth in this~~
1012 ~~subsection. With regard to the keeping of particular records or~~
1013 ~~the giving of certain notice, the department may accept as~~
1014 ~~compliance action by a person which meets the intent of the~~

1015 ~~requirements set forth in this subsection.~~

1016 ~~(j) Reimbursement review contracts. The department may~~
1017 ~~contract with entities capable of processing or assisting in the~~
1018 ~~review of reimbursement applications. Any purchase of such~~
1019 ~~services shall not be subject to chapter 287.~~

1020 ~~(k) Audits.—~~

1021 ~~1. The department is authorized to perform financial and~~
1022 ~~technical audits in order to certify site restoration costs and~~
1023 ~~ensure compliance with this chapter. The department shall seek~~
1024 ~~recovery of any overpayments based on the findings of these~~
1025 ~~audits. The department must commence any audit within 5 years~~
1026 ~~after the date of reimbursement, except in cases where the~~
1027 ~~department alleges specific facts indicating fraud.~~

1028 ~~2. Upon determination by the department that any portion~~
1029 ~~of costs which have been reimbursed are disallowed, the~~
1030 ~~department shall give written notice to the applicant setting~~
1031 ~~forth with specificity the allegations of fact which justify the~~
1032 ~~department's proposed action and ordering repayment of~~
1033 ~~disallowed costs within 60 days of notification of the~~
1034 ~~applicant.~~

1035 ~~3. In the event the applicant does not make payment to the~~
1036 ~~department within 60 days of receipt of such notice, the~~
1037 ~~department shall seek recovery in a court of competent~~
1038 ~~jurisdiction to recover reimbursement overpayments made to the~~
1039 ~~person responsible for conducting site rehabilitation, unless~~
1040 ~~the department finds the amount involved too small or the~~

1041 ~~likelihood of recovery too uncertain.~~

1042 ~~4. In addition to the amount of any overpayment, the~~
1043 ~~applicant shall be liable to the department for interest of 1~~
1044 ~~percent per month or the prime rate, whichever is less, on the~~
1045 ~~amount of overpayment, from the date of overpayment by the~~
1046 ~~department until the applicant satisfies the department's~~
1047 ~~request for repayment pursuant to this paragraph. The~~
1048 ~~calculation of interest shall be tolled during the pendency of~~
1049 ~~any litigation.~~

1050 ~~5. Financial and technical audits frequently are conducted~~
1051 ~~under this section many years after the site rehabilitation~~
1052 ~~activities were performed and the costs examined in the course~~
1053 ~~of the audit were incurred by the person responsible for site~~
1054 ~~rehabilitation. During the intervening span of years, the~~
1055 ~~department's rule requirements and its related guidance and~~
1056 ~~other nonrule policy directives may have changed significantly.~~
1057 ~~The Legislature finds that it may be appropriate for the~~
1058 ~~department to provide relief to persons subject to such~~
1059 ~~requirements in financial and technical audits conducted~~
1060 ~~pursuant to this section.~~

1061 ~~a. The department is authorized to grant variances and~~
1062 ~~waivers from the documentation requirements of subparagraph~~
1063 ~~(c)2. and from the requirements of rules applicable in technical~~
1064 ~~and financial audits conducted under this section. Variances and~~
1065 ~~waivers shall be granted when the person responsible for site~~
1066 ~~rehabilitation demonstrates to the department that application~~

1067 ~~of a financial or technical auditing requirement would create a~~
 1068 ~~substantial hardship or would violate principles of fairness.~~
 1069 ~~For purposes of this subsection, "substantial hardship" means a~~
 1070 ~~demonstrated economic, technological, legal, or other type of~~
 1071 ~~hardship to the person requesting the variance or waiver. For~~
 1072 ~~purposes of this subsection, "principles of fairness" are~~
 1073 ~~violated when the application of a requirement affects a~~
 1074 ~~particular person in a manner significantly different from the~~
 1075 ~~way it affects other similarly situated persons who are affected~~
 1076 ~~by the requirement or when the requirement is being applied~~
 1077 ~~retroactively without due notice to the affected parties.~~

1078 ~~b. A person whose reimbursed costs are subject to a~~
 1079 ~~financial and technical audit under this section may file a~~
 1080 ~~written request to the department for grant of a variance or~~
 1081 ~~waiver. The request shall specify:~~

1082 ~~(I) The requirement from which a variance or waiver is~~
 1083 ~~requested.~~

1084 ~~(II) The type of action requested.~~

1085 ~~(III) The specific facts which would justify a waiver or~~
 1086 ~~variance.~~

1087 ~~(IV) The reason or reasons why the requested variance or~~
 1088 ~~waiver would serve the purposes of this section.~~

1089 ~~e. Within 90 days after receipt of a written request for~~
 1090 ~~variance or waiver under this subsection, the department shall~~
 1091 ~~grant or deny the request. If the request is not granted or~~
 1092 ~~denied within 90 days of receipt, the request shall be deemed~~

1093 ~~approved. An order granting or denying the request shall be in~~
1094 ~~writing and shall contain a statement of the relevant facts and~~
1095 ~~reasons supporting the department's action. The department's~~
1096 ~~decision to grant or deny the petition shall be supported by~~
1097 ~~competent substantial evidence and is subject to ss. 120.569 and~~
1098 ~~120.57. Once adopted, model rules promulgated by the~~
1099 ~~Administration Commission under s. 120.542 shall govern the~~
1100 ~~processing of requests under this provision.~~

1101 ~~6. The Chief Financial Officer may audit the records of~~
1102 ~~persons who receive or who have received payments pursuant to~~
1103 ~~this chapter in order to verify site restoration costs, ensure~~
1104 ~~compliance with this chapter, and verify the accuracy and~~
1105 ~~completeness of audits performed by the department pursuant to~~
1106 ~~this paragraph. The Chief Financial Officer may contract with~~
1107 ~~entities or persons to perform audits pursuant to this~~
1108 ~~subparagraph. The Chief Financial Officer shall commence any~~
1109 ~~audit within 1 year after the department's completion of an~~
1110 ~~audit conducted pursuant to this paragraph, except in cases~~
1111 ~~where the department or the Chief Financial Officer alleges~~
1112 ~~specific facts indicating fraud.~~

1113 (13) PETROLEUM CLEANUP PARTICIPATION PROGRAM.—To encourage
1114 detection, reporting, and cleanup of contamination caused by
1115 discharges of petroleum or petroleum products, the department
1116 shall, within the guidelines established in this subsection,
1117 implement a cost-sharing cleanup program to provide
1118 rehabilitation funding assistance for all property contaminated

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1119 by discharges of petroleum or petroleum products occurring
1120 before January 1, 1995, subject to a copayment provided for in a
1121 Petroleum Cleanup Participation Program ~~preapproved~~ site
1122 rehabilitation agreement. Eligibility is ~~shall be~~ subject to an
1123 annual appropriation from the ~~Inland Protection Trust~~ fund.
1124 Additionally, funding for eligible sites is ~~shall be~~ contingent
1125 upon annual appropriation in subsequent years. Such continued
1126 state funding is ~~shall not be deemed~~ an entitlement or a vested
1127 right under this subsection. Eligibility shall be determined in
1128 the program, ~~shall be~~ notwithstanding any other provision of
1129 law, consent order, order, judgment, or ordinance to the
1130 contrary.

1131 (a)1. The department shall accept any discharge reporting
1132 form received before ~~prior to~~ January 1, 1995, as an application
1133 for this program, and the facility owner or operator need not
1134 reapply.

1135 2. Owners or operators of property contaminated by
1136 petroleum or petroleum products from a petroleum storage system
1137 may apply for such program by filing a written report of the
1138 contamination incident, including evidence that such incident
1139 occurred before ~~prior to~~ January 1, 1995, with the department.
1140 Incidents of petroleum contamination discovered after December
1141 31, 1994, at sites which have not stored petroleum or petroleum
1142 products for consumption, use, or sale after such date shall be
1143 presumed to have occurred before ~~prior to~~ January 1, 1995. An
1144 operator's filed report shall be ~~deemed~~ an application of the

1145 owner for all purposes. Sites reported to the department after
 1146 December 31, 1998, are ~~shall~~ not be eligible for the ~~this~~
 1147 program.

1148 (b) Subject to annual appropriation from the ~~Inland~~
 1149 ~~Protection Trust~~ fund, sites meeting the criteria of this
 1150 subsection are eligible for up to \$400,000 of site
 1151 rehabilitation funding assistance in priority order pursuant to
 1152 subsections ~~subsection~~ (5) and (6) ~~s. 376.30711~~. Sites meeting
 1153 the criteria of this subsection for which a site rehabilitation
 1154 completion order was issued before ~~prior to~~ June 1, 2008, do not
 1155 qualify for the 2008 increase in site rehabilitation funding
 1156 assistance and are bound by the pre-June 1, 2008, limits. Sites
 1157 meeting the criteria of this subsection for which a site
 1158 rehabilitation completion order was not issued before ~~prior to~~
 1159 June 1, 2008, regardless of whether ~~or not~~ they have previously
 1160 transitioned to nonstate-funded cleanup status, may continue
 1161 state-funded cleanup pursuant to this section ~~s. 376.30711~~ until
 1162 a site rehabilitation completion order is issued or the
 1163 increased site rehabilitation funding assistance limit is
 1164 reached, whichever occurs first. The department may not pay ~~At~~
 1165 ~~no time shall~~ expenses incurred beyond ~~outside~~ the scope of an
 1166 approved contract ~~preapproved site rehabilitation program under~~
 1167 ~~s. 376.30711~~ be reimbursable.

1168 (c) Upon notification by the department that
 1169 rehabilitation funding assistance is available for the site
 1170 pursuant to subsections ~~subsection~~ (5) and (6) ~~s. 376.30711~~, the

1171 owner, operator, or person otherwise responsible for site
 1172 rehabilitation shall provide the department with a limited
 1173 contamination assessment report and shall enter into a Petroleum
 1174 Cleanup Participation Program ~~preapproved~~ site rehabilitation
 1175 agreement with the department ~~and a contractor qualified under~~
 1176 ~~s. 376.30711(2)(b)~~. The agreement must ~~shall~~ provide for a 25-
 1177 percent copayment by the owner, operator, or person otherwise
 1178 responsible for conducting site rehabilitation. The owner,
 1179 operator, or person otherwise responsible for conducting site
 1180 rehabilitation shall adequately demonstrate the ability to meet
 1181 the copayment obligation. The limited contamination assessment
 1182 report and the copayment costs may be reduced or eliminated if
 1183 the owner and all operators responsible for restoration under s.
 1184 376.308 demonstrate that they cannot ~~are~~ financially ~~unable to~~
 1185 comply with the copayment and limited contamination assessment
 1186 report requirements. The department shall take into
 1187 consideration the owner's and operator's net worth in making the
 1188 determination of financial ability. In the event the department
 1189 and the owner, operator, or person otherwise responsible for
 1190 site rehabilitation cannot ~~are unable to~~ complete negotiation of
 1191 the cost-sharing agreement within 120 days after beginning
 1192 ~~commencing~~ negotiations, the department shall terminate
 1193 negotiations and the site shall be ~~deemed~~ ineligible for state
 1194 funding under this subsection and all liability protections
 1195 provided for in this subsection shall be revoked.

1196 (d) A ~~No~~ report of a discharge made to the department by a

1197 ~~any person pursuant to in accordance with~~ this subsection, or
 1198 any rules adopted pursuant to this subsection may not ~~hereto,~~
 1199 ~~shall~~ be used directly as evidence of liability for such
 1200 discharge in any civil or criminal trial arising out of the
 1201 discharge.

1202 (e) ~~Nothing in~~ This subsection does not ~~shall be construed~~
 1203 ~~to~~ preclude the department from pursuing penalties under ~~in~~
 1204 ~~accordance with~~ s. 403.141 for violations of any law or any
 1205 rule, order, permit, registration, or certification adopted or
 1206 issued by the department pursuant to its lawful authority.

1207 (f) Upon the filing of a discharge reporting form under
 1208 paragraph (a), ~~neither~~ the department or ~~nor any~~ local
 1209 government may not ~~shall~~ pursue any judicial or enforcement
 1210 action to compel rehabilitation of the discharge. This paragraph
 1211 does ~~shall~~ not prevent any such action with respect to
 1212 discharges determined ineligible under this subsection or to
 1213 sites for which rehabilitation funding assistance is available
 1214 pursuant to subsections ~~in accordance with subsection~~ (5) and
 1215 (6) ~~s. 376.30711~~.

1216 (g) The following are ~~shall be~~ excluded from participation
 1217 in the program:

1218 1. Sites at which the department has been denied
 1219 reasonable site access to implement ~~the provisions of this~~
 1220 section.

1221 2. Sites that were active facilities when owned or
 1222 operated by the Federal Government.

1223 3. Sites that are identified by the United States
 1224 Environmental Protection Agency to be on, or which qualify for
 1225 listing on, the National Priorities List under Superfund. This
 1226 exception does not apply to those sites for which eligibility
 1227 has been requested or granted as of the effective date of this
 1228 act under the Early Detection Incentive Program established
 1229 pursuant to s. 15, chapter 86-159, Laws of Florida.

1230 4. Sites for which ~~The~~ contamination is covered under the
 1231 Early Detection Incentive Program, the Abandoned Tank
 1232 Restoration Program, or the Petroleum Liability and Restoration
 1233 Insurance Program, in which case site rehabilitation funding
 1234 assistance shall continue under the respective program.

1235 (14) LEGISLATIVE APPROVAL AND AUTHORIZATION.—Before ~~Prior~~
 1236 ~~to~~ the department enters ~~entering~~ into a service contract with
 1237 the Inland Protection Financing Corporation which includes
 1238 payments by the department to support any existing or planned
 1239 note, bond, certificate of indebtedness, or other obligation or
 1240 evidence of indebtedness of the corporation pursuant to s.
 1241 376.3075, the Legislature, by law, must specifically authorize
 1242 the department to enter into such a contract. The corporation
 1243 may issue bonds in an amount not to exceed \$104 million, with a
 1244 term up to 15 years, and annual payments not in excess of \$10.4
 1245 million. The department may enter into a service contract in
 1246 conjunction with the issuance of such bonds which provides for
 1247 annual payments for debt service payments or other amounts
 1248 payable with respect to bonds, plus any administrative expenses

1249 of the corporation to finance the rehabilitation of petroleum
 1250 contamination sites pursuant to ss. 376.30-376.317.

1251 Section 2. Section 376.30711, Florida Statutes, is
 1252 repealed.

1253 Section 3. Subsections (4) and (30) of section 376.301,
 1254 Florida Statutes, are amended to read:

1255 376.301 Definitions of terms used in ss. 376.30-376.317,
 1256 376.70, and 376.75.—When used in ss. 376.30-376.317, 376.70, and
 1257 376.75, unless the context clearly requires otherwise, the term:

1258 ~~(4) "Backlog" means reimbursement obligations incurred~~
 1259 ~~pursuant to s. 376.3071(12), prior to March 29, 1995, or~~
 1260 ~~authorized for reimbursement under the provisions of s.~~
 1261 ~~376.3071(12), pursuant to chapter 95-2, Laws of Florida. Claims~~
 1262 ~~within the backlog are subject to adjustment, where appropriate.~~

1263 ~~(30) "Person responsible for conducting site~~
 1264 ~~rehabilitation" means the site owner, operator, or the person~~
 1265 ~~designated by the site owner or operator on the reimbursement~~
 1266 ~~application. Mortgage holders and trust holders may be eligible~~
 1267 ~~to participate in the reimbursement program pursuant to s.~~
 1268 ~~376.3071(12).~~

1269 Section 4. Subsection (5) of section 376.302, Florida
 1270 Statutes, is amended to read:

1271 376.302 Prohibited acts; penalties.—

1272 (5) A ~~Any~~ person who commits fraud in representing his or
 1273 her ~~their~~ qualifications as a contractor for reimbursement or in
 1274 submitting a payment invoice reimbursement request pursuant to

1275 s. 376.3071 ~~376.3071(12)~~ commits a felony of the third degree,
 1276 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

1277 Section 5. Subsection (6) of section 376.305, Florida
 1278 Statutes, is amended to read:

1279 376.305 Removal of prohibited discharges.—

1280 (6) The Legislature created the Abandoned Tank Restoration
 1281 Program in response to the need to provide financial assistance
 1282 for cleanup of sites that have abandoned petroleum storage
 1283 systems. For purposes of this subsection, the term "abandoned
 1284 petroleum storage system" means a ~~shall mean any~~ petroleum
 1285 storage system that has not stored petroleum products for
 1286 consumption, use, or sale since March 1, 1990. The department
 1287 shall establish the Abandoned Tank Restoration Program to
 1288 facilitate the restoration of sites contaminated by abandoned
 1289 petroleum storage systems.

1290 (a) To be included in the program:

1291 1. An application must be submitted to the department by
 1292 June 30, 1996, certifying that the system has not stored
 1293 petroleum products for consumption, use, or sale at the facility
 1294 since March 1, 1990.

1295 2. The owner or operator of the petroleum storage system
 1296 when it was in service must have ceased conducting business
 1297 involving consumption, use, or sale of petroleum products at
 1298 that facility on or before March 1, 1990.

1299 3. The site is not otherwise eligible for the cleanup
 1300 programs pursuant to s. 376.3071 or s. 376.3072.

1301 (b) In order to be eligible for the program, petroleum
 1302 storage systems from which a discharge occurred must be closed
 1303 pursuant to ~~in accordance with~~ department rules before ~~prior to~~
 1304 an eligibility determination. However, if the department
 1305 determines that the owner of the facility cannot ~~is~~ financially
 1306 ~~unable to~~ comply with the department's petroleum storage system
 1307 closure requirements and all other eligibility requirements are
 1308 met, the petroleum storage system closure requirements shall be
 1309 waived. The department shall take into consideration the owner's
 1310 net worth and the economic impact on the owner in making the
 1311 determination of the owner's financial ability. The June 30,
 1312 1996, application deadline shall be waived for owners who cannot
 1313 ~~are~~ financially ~~unable to~~ comply.

1314 (c) Sites accepted in the program are ~~will be~~ eligible for
 1315 site rehabilitation funding as provided in s. 376.3071
 1316 ~~376.3071(12) or s. 376.30711, as appropriate.~~

1317 (d) The following sites are excluded from eligibility:
 1318 1. Sites on property of the Federal Government;
 1319 2. Sites contaminated by pollutants that are not petroleum
 1320 products;
 1321 3. Sites where the department has been denied site access;
 1322 or
 1323 4. Sites which are owned by a ~~any~~ person who had knowledge
 1324 of the polluting condition when title was acquired unless the
 1325 ~~that~~ person acquired title to the site after issuance of a
 1326 notice of site eligibility by the department.

1327 (e) Participating sites are subject to a deductible as
 1328 determined by rule, not to exceed \$10,000.

1329
 1330 ~~The provisions of~~ This subsection does ~~de~~ not relieve a ~~any~~
 1331 person who has acquired title after ~~subsequent to~~ July 1, 1992,
 1332 from the duty to establish by a preponderance of the evidence
 1333 that he or she undertook, at the time of acquisition, all
 1334 appropriate inquiry into the previous ownership and use of the
 1335 property consistent with good commercial or customary practice
 1336 in an effort to minimize liability, as required by s.
 1337 376.308(1)(c).

1338 Section 6. Section 376.30713, Florida Statutes, is amended
 1339 to read:

1340 376.30713 ~~Preapproved~~ Advanced cleanup.—

1341 (1) In addition to the legislative findings provided in s.
 1342 376.3071 ~~376.30711~~, the Legislature finds and declares:

1343 (a) That the inability to conduct site rehabilitation in
 1344 advance of a site's priority ranking pursuant to s.
 1345 376.3071(5)(a) may substantially impede or prohibit property
 1346 transactions or the proper completion of public works projects.

1347 (b) While the first priority of the state is to provide
 1348 for protection of the public health, safety, and welfare, ~~the~~
 1349 water resources ~~of the state, human health,~~ and the environment,
 1350 the viability of commerce is of equal importance to the state.

1351 (c) It is in the public interest and of substantial
 1352 economic benefit to the state to provide an opportunity for site

1353 rehabilitation to be conducted on a limited basis at
 1354 contaminated sites, in advance of the site's priority ranking,
 1355 to facilitate property transactions or public works projects.

1356 (d) It is appropriate for a person who is ~~persons~~
 1357 responsible for site rehabilitation to share the costs
 1358 associated with managing and conducting ~~preapproved~~ advanced
 1359 cleanup, to facilitate the opportunity for ~~preapproved~~ advanced
 1360 cleanup, and to mitigate the additional costs that will be
 1361 incurred by the state in conducting site rehabilitation in
 1362 advance of the site's priority ranking. Such cost sharing will
 1363 result in more contaminated sites being cleaned up and greater
 1364 environmental benefits to the state. ~~The provisions of This~~
 1365 section is ~~shall~~ only be available for sites eligible for
 1366 restoration funding under EDI, ATRP, or PLRIP ~~PLIRP~~. This
 1367 section is available for discharges eligible for restoration
 1368 funding under the petroleum cleanup participation program for
 1369 the state's cost share of site rehabilitation. Applications must
 1370 ~~shall~~ include a cost-sharing commitment for this section in
 1371 addition to the 25-percent-copayment requirement of the
 1372 petroleum cleanup participation program. This section is not
 1373 available for any discharge under a petroleum cleanup
 1374 participation program where the 25-percent-copayment requirement
 1375 of the petroleum cleanup participation program has been reduced
 1376 or eliminated pursuant to s. 376.3071(13)(c).

1377 (2) The department may ~~is authorized to~~ approve an
 1378 application for ~~preapproved~~ advanced cleanup at eligible sites,

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1379 before ~~prior to~~ funding based on the site's priority ranking
1380 established pursuant to s. 376.3071(5) (a), pursuant to ~~in~~
1381 ~~accordance with the provisions of~~ this section. Only the
1382 facility owner or operator or the person otherwise responsible
1383 for site rehabilitation qualifies ~~Persons who qualify~~ as an
1384 applicant under ~~the provisions of~~ this section ~~shall only~~
1385 ~~include the facility owner or operator or the person otherwise~~
1386 ~~responsible for site rehabilitation.~~

1387 (a) ~~Preapproved~~ Advanced cleanup applications may be
1388 submitted between May 1 and June 30 and between November 1 and
1389 December 31 of each fiscal year. Applications submitted between
1390 May 1 and June 30 shall be for the fiscal year beginning July 1.
1391 An application must ~~shall~~ consist of:

1392 1. A commitment to pay ~~no less than~~ 25 percent or more of
1393 the total cleanup cost deemed recoverable under ~~the provisions~~
1394 ~~of~~ this section along with proof of the ability to pay the cost
1395 share.

1396 2. A nonrefundable review fee of \$250 to cover the
1397 administrative costs associated with the department's review of
1398 the application.

1399 3. A limited contamination assessment report.

1400 4. A proposed course of action.

1401
1402 The limited contamination assessment report must ~~shall~~ be
1403 sufficient to support the proposed course of action and to
1404 estimate the cost of the proposed course of action. ~~Any~~ Costs

1405 incurred related to conducting the limited contamination
1406 assessment report are not refundable from the Inland Protection
1407 Trust Fund. Site eligibility under this subsection, or any other
1408 provision of this section is, ~~shall~~ not constitute an
1409 entitlement to ~~preapproved~~ advanced cleanup or continued
1410 restoration funding. The applicant shall certify to the
1411 department that the applicant has the prerequisite authority to
1412 enter into an ~~a preapproved~~ advanced cleanup contract with the
1413 department. The ~~This~~ certification must ~~shall~~ be submitted with
1414 the application.

1415 (b) The department shall rank the applications based on
1416 the percentage of cost-sharing commitment proposed by the
1417 applicant, with the highest ranking given to the applicant who
1418 ~~that~~ proposes the highest percentage of cost sharing. If the
1419 department receives applications that propose identical cost-
1420 sharing commitments and that ~~which~~ exceed the funds available to
1421 commit to all such proposals during the ~~preapproved~~ advanced
1422 cleanup application period, the department shall proceed to
1423 rerank those applicants. Those applicants submitting identical
1424 cost-sharing proposals which exceed funding availability must
1425 ~~shall~~ be so notified by the department and ~~shall be~~ offered the
1426 opportunity to raise their individual cost-share commitments, in
1427 a period ~~of time~~ specified in the notice. At the close of the
1428 period, the department shall proceed to rerank the applications
1429 pursuant to ~~in accordance with~~ this paragraph.

1430 (3) (a) Based on the ranking established under paragraph

1431 (2) (b) ~~and the funding limitations provided in subsection (4),~~
1432 the department shall begin ~~commence~~ negotiation with such
1433 applicants. If the department and the applicant agree on the
1434 course of action, the department may enter into a contract with
1435 the applicant. The department may ~~is authorized to~~ negotiate the
1436 terms and conditions of the contract.

1437 (b) ~~Preapproved~~ Advanced cleanup must ~~shall~~ be conducted
1438 pursuant to s. 376.3071(5) (b) and (6) and rules adopted under
1439 ss. 287.0595 and 376.3071 ~~under the provisions of ss.~~
1440 ~~376.3071(5) (b) and 376.30711.~~ If the terms of the ~~preapproved~~
1441 advanced cleanup contract are not fulfilled, the applicant
1442 forfeits any right to future payment for any site rehabilitation
1443 work conducted under the contract.

1444 (c) The department's decision not to enter into an a
1445 ~~preapproved~~ advanced cleanup contract with the applicant is
1446 ~~shall not be~~ subject to ~~the provisions of~~ chapter 120. If the
1447 department cannot ~~is not able to~~ complete negotiation of the
1448 course of action and the terms of the contract within 60 days
1449 after beginning ~~commencing~~ negotiations, the department shall
1450 terminate negotiations with that applicant.

1451 (4) The department may ~~is authorized to~~ enter into
1452 contracts for a total of up to \$15 million of ~~preapproved~~
1453 advanced cleanup work in each fiscal year. However, a facility
1454 may not be approved ~~preapproved~~ for more than \$5 million of
1455 cleanup activity in each fiscal year. For the purposes of this
1456 section, the term "facility" includes ~~shall include~~, but is not

1457 ~~be~~ limited to, multiple site facilities such as airports, port
 1458 facilities, and terminal facilities even though such enterprises
 1459 may be treated as separate facilities for other purposes under
 1460 this chapter.

1461 (5) All funds collected by the department pursuant to this
 1462 section shall be deposited into the Inland Protection Trust Fund
 1463 to be used as provided in this section.

1464 Section 7. Paragraph (a) of subsection (1) and subsections
 1465 (3), (4), and (9) of section 376.30714, Florida Statutes, are
 1466 amended to read:

1467 376.30714 Site rehabilitation agreements.-

1468 (1) In addition to the legislative findings provided in s.
 1469 376.3071, the Legislature finds and declares:

1470 (a) The provisions of s. ss. 376.3071(5) (a) ~~and 376.30711~~
 1471 have delayed cleanup of low-priority sites determined to be
 1472 eligible for state funding under that section and ss. 376.305~~7~~,
 1473 ~~376.3071~~, and 376.3072.

1474 (3) Free product attributable to a new discharge shall be
 1475 removed to the extent practicable and pursuant to ~~in accordance~~
 1476 ~~with~~ department rules adopted pursuant to s. 376.3071(5) at the
 1477 expense of the owner, operator, or other responsible party. Free
 1478 product attributable to existing contamination shall be removed
 1479 pursuant to ~~in accordance with~~ s. 376.3071(5) and (6), ~~or s.~~
 1480 ~~376.30711(1)(b)~~, and department rules adopted pursuant thereto.

1481 (4) Beginning January 1, 1999, the department may ~~is~~
 1482 ~~authorized to~~ negotiate and enter into site rehabilitation

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1483 agreements with applicants at sites with eligible existing
1484 contamination at which a new discharge occurs. The site
1485 rehabilitation agreement must ~~shall~~ include, but is not ~~be~~
1486 limited to, allocation of the funding responsibilities of the
1487 department and the applicant for cleanup of the qualified site,
1488 establishment of a mechanism to guarantee the applicant's
1489 commitment to pay its agreed amount of site rehabilitation as
1490 set forth in the agreement, and establishment of the priority in
1491 which cleanup of the qualified site will occur. Under ~~any~~ such a
1492 negotiated site rehabilitation agreement, the applicant may not
1493 ~~shall~~ be responsible for ~~no~~ more than the cleanup costs that are
1494 attributable to the new discharge. However, the payment of ~~any~~
1495 applicable deductibles, copayments, or other program eligibility
1496 requirements under ss. 376.305, 376.3071, and 376.3072 shall
1497 continue to apply to the existing contamination and must be
1498 accounted for in the negotiated site rehabilitation agreement.
1499 The department may ~~is further authorized~~, pursuant to this
1500 section, ~~to preapprove or~~ conduct additional assessment
1501 activities at the site.

1502 (9) Site rehabilitation conducted at qualified sites shall
1503 be conducted pursuant to ~~under the provisions of~~ ss.
1504 376.3071(5) (b) and (6) ~~376.30711~~. If the terms of the agreement
1505 are not fulfilled by the applicant, the applicant forfeits the
1506 ~~any~~ right to continued funding for ~~any~~ site rehabilitation work
1507 under the agreement and is ~~shall be~~ subject to enforcement
1508 action by the department or local government to compel cleanup

1509 of the new discharge.

1510 Section 8. Subsection (2) of section 376.3072, Florida
 1511 Statutes, is amended to read:

1512 376.3072 Florida Petroleum Liability and Restoration
 1513 Insurance Program.—

1514 (2) (a) An ~~Any~~ owner or operator of a petroleum storage
 1515 system may become an insured in the restoration insurance
 1516 program at a facility if provided:

1517 1. A site at which an incident has occurred is ~~shall be~~
 1518 eligible for restoration if the insured is a participant in the
 1519 third-party liability insurance program or otherwise meets
 1520 applicable financial responsibility requirements. After July 1,
 1521 1993, the insured must also provide the required excess
 1522 insurance coverage or self-insurance for restoration to achieve
 1523 the financial responsibility requirements of 40 C.F.R. s.
 1524 280.97, subpart H, not covered by paragraph (d).

1525 2. A site which had a discharge reported before ~~prior to~~
 1526 January 1, 1989, for which notice was given pursuant to s.
 1527 376.3071(10) ~~376.3071(9) or (12)~~, and which is ineligible for
 1528 the third-party liability insurance program solely due to that
 1529 discharge is ~~shall be~~ eligible for participation in the
 1530 restoration program for an ~~any~~ incident occurring on or after
 1531 January 1, 1989, pursuant to ~~in accordance with~~ subsection (3).
 1532 Restoration funding for an eligible contaminated site will be
 1533 provided without participation in the third-party liability
 1534 insurance program until the site is restored as required by the

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1535 department or until the department determines that the site does
1536 not require restoration.

1537 3. Notwithstanding paragraph (b), a site where an
1538 application is filed with the department before ~~prior to~~ January
1539 1, 1995, where the owner is a small business under s.
1540 288.703(6), a state community college with less than 2,500 FTE,
1541 a religious institution as defined by s. 212.08(7)(m), a
1542 charitable institution as defined by s. 212.08(7)(p), or a
1543 county or municipality with a population of less than 50,000, is
1544 ~~shall be~~ eligible for up to \$400,000 of eligible restoration
1545 costs, less a deductible of \$10,000 for small businesses,
1546 eligible community colleges, and religious or charitable
1547 institutions, and \$30,000 for eligible counties and
1548 municipalities, if ~~provided that~~:

1549 a. Except as provided in sub-subparagraph e., the facility
1550 was in compliance with department rules at the time of the
1551 discharge.

1552 b. The owner or operator has, upon discovery of a
1553 discharge, promptly reported the discharge to the department,
1554 and drained and removed the system from service, if necessary.

1555 c. The owner or operator has not intentionally caused or
1556 concealed a discharge or disabled leak detection equipment.

1557 d. The owner or operator proceeds to complete initial
1558 remedial action as specified in ~~defined by~~ department rules.

1559 e. The owner or operator, if required and if it has not
1560 already done so, applies for third-party liability coverage for

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1561 the facility within 30 days after ~~of~~ receipt of an eligibility
1562 order issued by the department pursuant to this subparagraph
1563 ~~provision~~.

1564
1565 However, the department may consider in-kind services from
1566 eligible counties and municipalities in lieu of the \$30,000
1567 deductible. The cost of conducting initial remedial action as
1568 defined by department rules is ~~shall be~~ an eligible restoration
1569 cost pursuant to this subparagraph ~~provision~~.

1570 4.a. By January 1, 1997, facilities at sites with existing
1571 contamination must ~~shall be required to~~ have methods of release
1572 detection to be eligible for restoration insurance coverage for
1573 new discharges subject to department rules for secondary
1574 containment. Annual storage system testing, in conjunction with
1575 inventory control, shall be considered to be a method of release
1576 detection until the later of December 22, 1998, or 10 years
1577 after the date of installation or the last upgrade. Other
1578 methods of release detection for storage tanks which meet such
1579 requirement are:

1580 (I) Interstitial monitoring of tank and integral piping
1581 secondary containment systems;

1582 (II) Automatic tank gauging systems; or

1583 (III) A statistical inventory reconciliation system with a
1584 tank test every 3 years.

1585 b. For pressurized integral piping systems, the owner or
1586 operator must use:

1587 (I) An automatic in-line leak detector with flow
 1588 restriction meeting the requirements of department rules used in
 1589 conjunction with an annual tightness or pressure test; or

1590 (II) An automatic in-line leak detector with electronic
 1591 flow shut-off meeting the requirements of department rules.

1592 c. For suction integral piping systems, the owner or
 1593 operator must use:

1594 (I) A single check valve installed directly below the
 1595 suction pump if, ~~provided~~ there are no other valves between the
 1596 dispenser and the tank; or

1597 (II) An annual tightness test or other approved test.

1598 d. Owners of facilities with existing contamination that
 1599 install internal release detection systems pursuant to ~~in~~
 1600 ~~accordance with~~ sub-subparagraph a. shall permanently close
 1601 their external groundwater and vapor monitoring wells pursuant
 1602 to ~~in accordance with~~ department rules by December 31, 1998.
 1603 Upon installation of the internal release detection system, such
 1604 ~~these wells~~ must ~~shall~~ be secured and taken out of service until
 1605 permanent closure.

1606 e. Facilities with vapor levels of contamination meeting
 1607 the requirements of or below the concentrations specified in the
 1608 performance standards for release detection methods specified in
 1609 department rules may continue to use vapor monitoring wells for
 1610 release detection.

1611 f. The department may approve other methods of release
 1612 detection for storage tanks and integral piping which have at

1613 | least the same capability to detect a new release as the methods
 1614 | specified in this subparagraph.

1615 | (b)1. To be eligible to be certified as an insured
 1616 | facility, for discharges reported after January 1, 1989, the
 1617 | owner or operator must ~~shall~~ file an affidavit upon enrollment
 1618 | in the program. The affidavit must ~~shall~~ state that the owner or
 1619 | operator has read and is familiar with this chapter and the
 1620 | rules relating to petroleum storage systems and petroleum
 1621 | contamination site cleanup adopted pursuant to ss. 376.303 and
 1622 | 376.3071 and that the facility is in compliance with this
 1623 | chapter and applicable rules adopted pursuant to s. 376.303.
 1624 | Thereafter, the facility's annual inspection report shall serve
 1625 | as evidence of the facility's compliance with department rules.
 1626 | The facility's certificate as an insured facility may be revoked
 1627 | only if the insured fails to correct a violation identified in
 1628 | an inspection report before a discharge occurs. The facility's
 1629 | certification may be restored when the violation is corrected as
 1630 | verified by a reinspection.

1631 | 2. Except as provided in paragraph (a), to be eligible to
 1632 | be certified as an insured facility, the applicant must
 1633 | demonstrate to the department that the applicant has financial
 1634 | responsibility for third-party claims and excess coverage, as
 1635 | required by this section and 40 C.F.R. s. 280.97(h), and that
 1636 | the applicant maintains such insurance during the applicant's
 1637 | participation as an insured facility.

1638 | 3. Should a reinspection of the facility be necessary to

1639 demonstrate compliance, the insured shall pay an inspection fee
 1640 not to exceed \$500 per facility to be deposited in the Inland
 1641 Protection Trust Fund.

1642 4. Upon report of a discharge, the department shall issue
 1643 an order stating that the site is eligible for restoration
 1644 coverage unless the insured has intentionally caused or
 1645 concealed a discharge or disabled leak detection equipment, has
 1646 misrepresented facts in the affidavit filed pursuant to
 1647 subparagraph 1., or cannot demonstrate that he or she has
 1648 obtained and maintained the financial responsibility for third-
 1649 party claims and excess coverage as required in subparagraph 2.

1650
 1651 This paragraph does not ~~Nothing contained herein shall~~ prevent
 1652 the department from assessing civil penalties for noncompliance
 1653 pursuant to this subsection ~~as provided herein.~~

1654 (c) A lender that has loaned money to a participant in the
 1655 Florida Petroleum Liability and Restoration Insurance Program
 1656 and has held a mortgage lien, security interest, or ~~any~~ lien
 1657 rights on the site primarily to protect the lender's right to
 1658 convert or liquidate the collateral in satisfaction of the debt
 1659 secured, or a financial institution which serves as a trustee
 1660 for an insured in the program for the purpose of site
 1661 rehabilitation, is ~~shall be~~ eligible for a state-funded cleanup
 1662 of the site, if the lender forecloses the lien or accepts a deed
 1663 in lieu of foreclosure on that property and acquires title, and
 1664 as long as the following has occurred, as applicable:

1665 1. The owner or operator provided the lender with proof
 1666 that the facility is eligible for the restoration insurance
 1667 program at the time of the loan or before the discharge
 1668 occurred.

1669 2. The financial institution or lender ~~completes site~~
 1670 ~~rehabilitation and seeks reimbursement pursuant to s.~~
 1671 ~~376.3071(12) or~~ conducts ~~preapproved~~ site rehabilitation
 1672 pursuant to s. 376.3071 ~~376.30711~~, as appropriate.

1673 3. The financial institution or lender did not engage in
 1674 management activities at the site before ~~prior to~~ foreclosure
 1675 and does not operate the site or otherwise engage in management
 1676 activities after foreclosure, except to comply with
 1677 environmental statutes or rules or to prevent, abate, or
 1678 remediate a discharge.

1679 (d)1. With respect to eligible incidents reported to the
 1680 department before ~~prior to~~ July 1, 1992, the restoration
 1681 insurance program shall provide up to \$1.2 million of
 1682 restoration for each incident and shall have an annual aggregate
 1683 limit of \$2 million of restoration per facility.

1684 2. For any site at which a discharge is reported on or
 1685 after July 1, 1992, and for which restoration coverage is
 1686 requested, the department shall pay for restoration in
 1687 accordance with the following schedule:

1688 a. For discharges reported to the department from July 1,
 1689 1992, to June 30, 1993, the department shall pay up to \$1.2
 1690 million of eligible restoration costs, less a \$1,000 deductible

1691 per incident.

1692 b. For discharges reported to the department from July 1,
 1693 1993, to December 31, 1993, the department shall pay up to \$1.2
 1694 million of eligible restoration costs, less a \$5,000 deductible
 1695 per incident. However, if, before ~~prior to~~ the date the
 1696 discharge is reported and by September 1, 1993, the owner or
 1697 operator can demonstrate financial responsibility in effect in
 1698 accordance with 40 C.F.R. s. 280.97, subpart H, for coverage
 1699 under sub-subparagraph c., the deductible will be \$500. The \$500
 1700 deductible shall apply for a period of 1 year from the effective
 1701 date of a policy or other form of financial responsibility
 1702 obtained and in effect by September 1, 1993.

1703 c. For discharges reported to the department from January
 1704 1, 1994, to December 31, 1996, the department shall pay up to
 1705 \$400,000 of eligible restoration costs, less a deductible of
 1706 \$10,000.

1707 d. For discharges reported to the department from January
 1708 1, 1997, to December 31, 1998, the department shall pay up to
 1709 \$300,000 of eligible restoration costs, less a deductible of
 1710 \$10,000.

1711 e. Beginning January 1, 1999, ~~no~~ restoration coverage may
 1712 not ~~shall~~ be provided.

1713 f. In addition, a supplemental deductible shall be added
 1714 as follows:

1715 (I) A supplemental deductible of \$5,000 if the owner or
 1716 operator fails to report a suspected release within 1 working

1717 day after discovery.

1718 (II) A supplemental deductible of \$10,000 if the owner or
 1719 operator, within 3 days after discovery of an actual new
 1720 discharge, fails to take steps to test or empty the storage
 1721 system and complete such activity within 7 days.

1722 (III) A supplemental deductible of \$25,000 if the owner or
 1723 operator, after testing or emptying the storage system, fails to
 1724 proceed within 24 hours thereafter to abate the known source of
 1725 the discharge or to begin free product removal relating to an
 1726 actual new discharge and fails to complete abatement within 72
 1727 hours, although free product recovery may be ongoing.

1728 (e) The following are not eligible to participate in the
 1729 Petroleum Liability and Restoration Insurance Program:

1730 1. Sites owned or operated by the Federal Government
 1731 during the time the facility was in operation.

1732 2. Sites where the owner or operator has denied the
 1733 department reasonable site access.

1734 3. Any third-party claims relating to damages caused by
 1735 discharges discovered before ~~prior to~~ January 1, 1989.

1736 4. Any incidents discovered before ~~prior to~~ January 1,
 1737 1989, ~~are not eligible to participate in the restoration~~
 1738 ~~insurance program~~. However, this exclusion does ~~shall~~ not be
 1739 ~~construed to~~ prevent a new incident at the same location from
 1740 participation in the restoration insurance program if the owner
 1741 or operator is otherwise eligible. This exclusion does ~~shall~~ not
 1742 affect eligibility for participation in the Early Detection

1743 Incentive ~~EDI~~ Program.

1744

1745 Sites meeting the criteria of this subsection for which a site
 1746 rehabilitation completion order was issued before ~~prior to~~ June
 1747 1, 2008, do not qualify for the 2008 increase in site
 1748 rehabilitation funding assistance and are bound by the pre-June
 1749 1, 2008, limits. Sites meeting the criteria of this subsection
 1750 for which a site rehabilitation completion order was not issued
 1751 before ~~prior to~~ June 1, 2008, regardless of whether ~~or not~~ they
 1752 have previously transitioned to nonstate-funded cleanup status,
 1753 may continue state-funded cleanup pursuant to s. 376.3071(6)
 1754 ~~376.30711~~ until a site rehabilitation completion order is issued
 1755 or the increased site rehabilitation funding assistance limit is
 1756 reached, whichever occurs first. ~~At no time shall expenses~~
 1757 ~~incurred outside the preapproved site rehabilitation program~~
 1758 ~~under s. 376.30711 be reimbursable.~~

1759 Section 9. Subsections (1) and (4) of section 376.3073,
 1760 Florida Statutes, are amended to read:

1761 376.3073 Local programs and state agency programs for
 1762 control of contamination.—

1763 (1) The department shall, to the greatest extent possible
 1764 and cost-effective, contract with local governments to provide
 1765 for the administration of its departmental responsibilities
 1766 under ss. 376.305, 376.3071(4)(a)-(e), (h), (k), and (m) and (6)
 1767 ~~(l), (n), 376.30711~~, 376.3072, and 376.3077 through locally
 1768 administered programs. The department may also contract with

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1769 state agencies to carry out the restoration activities
1770 authorized pursuant to ss. 376.3071, 376.3072, and 376.305,~~and~~
1771 ~~376.30711~~. However, ~~no~~ such a contract may not ~~shall~~ be entered
1772 into unless the local government or state agency is deemed
1773 capable of carrying out such responsibilities to the
1774 department's satisfaction.

1775 (4) Under no circumstances shall the cleanup criteria
1776 employed in locally administered programs or state agency
1777 programs or pursuant to local ordinance be more stringent than
1778 the criteria established by the department pursuant to s.
1779 376.3071(5) or (6) ~~s. 376.30711~~.

1780 Section 10. Subsections (4) and (5) of section 376.3075,
1781 Florida Statutes, are amended to read:

1782 376.3075 Inland Protection Financing Corporation.—

1783 (4) The corporation may enter into one or more service
1784 contracts with the department to provide services to the
1785 department in connection with financing the functions and
1786 activities provided in ss. 376.30-376.317. The department may
1787 enter into one or more such service contracts with the
1788 corporation and provide for payments under such contracts
1789 pursuant to s. 376.3071(4)(n) ~~376.3071(4)(o)~~, subject to annual
1790 appropriation by the Legislature. The proceeds from such service
1791 contracts may be used for the corporation's administrative costs
1792 and expenses after payments as set forth in subsection (5). Each
1793 service contract may have a term of up to 20 years. Amounts
1794 annually appropriated and applied to make payments under such

1795 service contracts may not include any funds derived from
 1796 penalties or other payments received from any property owner or
 1797 private party, including payments received under s.
 1798 376.3071(7)(b) ~~376.3071(6)(b)~~. In compliance with s. 287.0641
 1799 and other applicable provisions of law, the obligations of the
 1800 department under such service contracts do not constitute a
 1801 general obligation of the state or a pledge of the faith and
 1802 credit or taxing power of the state and ~~nor may~~ such obligations
 1803 are not be construed in any manner as an obligation of the State
 1804 Board of Administration or entities for which it invests funds,
 1805 other than the department as provided in this section, but are
 1806 payable solely from amounts available in the Inland Protection
 1807 Trust Fund, subject to annual appropriation. In compliance with
 1808 this subsection and s. 287.0582, the service contract must
 1809 expressly include the following statement: "The State of
 1810 Florida's performance and obligation to pay under this contract
 1811 is contingent upon an annual appropriation by the Legislature."
 1812 (5) The corporation may issue and incur notes, bonds,
 1813 certificates of indebtedness, or other obligations or evidences
 1814 of indebtedness payable from and secured by amounts payable to
 1815 the corporation by the department under a service contract
 1816 entered into pursuant to subsection (4) for the purpose of
 1817 financing the rehabilitation of petroleum contamination sites
 1818 pursuant to ss. 376.30-376.317. The term of any such note, bond,
 1819 certificate of indebtedness, or other obligation or evidence of
 1820 indebtedness may not have a financing term that exceeds 15

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1821 | years. The corporation may select its financing team and issue
1822 | its obligations through competitive bidding or negotiated
1823 | contracts, whichever is most cost-effective. ~~Any~~ Indebtedness of
1824 | the corporation does not constitute a debt or obligation of the
1825 | state or a pledge of the faith and credit or taxing power of the
1826 | state, but is payable from and secured by payments made by the
1827 | department under the service contract pursuant to s.
1828 | 376.3071(4)(n) ~~376.3071(4)(o)~~.

1829 | Section 11. This act shall take effect July 1, 2014.