

1 A bill to be entitled
2 An act relating to petroleum restoration; amending s.
3 376.3071, F.S.; requiring limited contamination
4 assessment reports and Petroleum Cleanup Participation
5 Program site rehabilitation agreements to include
6 certain cost savings; removing requirements for
7 demonstration and determination of financial ability
8 to comply with certain copayment and assessment report
9 requirements; amending s. 376.30713, F.S.; requiring
10 advanced cleanup applications to include certain
11 agreements for continued program participation and
12 conceptual proposed courses of actions; removing
13 provisions prohibiting the refund of certain
14 contamination assessment report costs from the Inland
15 Protection Trust Fund; requiring selected agency term
16 contractors to submit scopes of work for limited
17 contamination assessments to the Department of
18 Environmental Protection; directing the department,
19 upon agreement of such scopes of work, to issue
20 specified purchase orders; conforming cross-
21 references; providing an effective date.

22
23 Be It Enacted by the Legislature of the State of Florida:

24
25 Section 1. Paragraph (d) of subsection (13) of section

26 | 376.3071, Florida Statutes, is amended to read:

27 | 376.3071 Inland Protection Trust Fund; creation; purposes;
28 | funding.—

29 | (13) PETROLEUM CLEANUP PARTICIPATION PROGRAM.—To encourage
30 | detection, reporting, and cleanup of contamination caused by
31 | discharges of petroleum or petroleum products, the department
32 | shall, within the guidelines established in this subsection,
33 | implement a cost-sharing cleanup program to provide
34 | rehabilitation funding assistance for all property contaminated
35 | by discharges of petroleum or petroleum products from a
36 | petroleum storage system occurring before January 1, 1995,
37 | subject to a copayment provided for in a Petroleum Cleanup
38 | Participation Program site rehabilitation agreement. Eligibility
39 | is subject to an annual appropriation from the fund.

40 | Additionally, funding for eligible sites is contingent upon
41 | annual appropriation in subsequent years. Such continued state
42 | funding is not an entitlement or a vested right under this
43 | subsection. Eligibility shall be determined in the program,
44 | notwithstanding any other provision of law, consent order,
45 | order, judgment, or ordinance to the contrary.

46 | (d) Upon notification by the department that
47 | rehabilitation funding assistance is available for the site
48 | pursuant to subsections (5) and (6), the property owner,
49 | operator, or person otherwise responsible for site
50 | rehabilitation shall provide the department with a limited

51 | contamination assessment report and shall enter into a Petroleum
52 | Cleanup Participation Program site rehabilitation agreement with
53 | the department. The limited contamination assessment report must
54 | be sufficient to support the proposed course of action and to
55 | estimate the cost of the proposed course of action. The
56 | agreement must provide for a 25-percent cost savings and may use
57 | a copayment by the owner, operator, or person otherwise
58 | responsible for conducting site rehabilitation or a demonstrated
59 | cost savings to the department in the form of reduced rates by
60 | the proposed agency term contractor or the difference in cost
61 | associated with a Risk Management Options Level I closure versus
62 | a Risk Management Options Level II conditional closure, or both,
63 | to meet the requirement. ~~The owner, operator, or person~~
64 | ~~otherwise responsible for conducting site rehabilitation shall~~
65 | ~~adequately demonstrate the ability to meet the copayment~~
66 | ~~obligation. The limited contamination assessment report and the~~
67 | ~~copayment costs may be reduced or eliminated if the owner and~~
68 | ~~all operators responsible for restoration under s. 376.308~~
69 | ~~demonstrate that they cannot financially comply with the~~
70 | ~~copayment and limited contamination assessment report~~
71 | ~~requirements. The department shall take into consideration the~~
72 | ~~owner's and operator's net worth in making the determination of~~
73 | ~~financial ability. In the event the department and the owner,~~
74 | ~~operator, or person otherwise responsible for site~~
75 | ~~rehabilitation cannot complete negotiation of the cost-sharing~~

76 | ~~agreement within 120 days after beginning negotiations, the~~
77 | ~~department shall terminate negotiations and the site shall be~~
78 | ~~ineligible for state funding under this subsection and all~~
79 | ~~liability protections provided for in this subsection shall be~~
80 | ~~revoked.~~

81 | Section 2. Subsections (2) and (4) of section 376.30713,
82 | Florida Statutes, are amended to read:

83 | 376.30713 Advanced cleanup.—

84 | (2) The department may approve an application for advanced
85 | cleanup at eligible sites, including applications submitted
86 | pursuant to paragraph (d) ~~(e)~~, notwithstanding the site's
87 | priority ranking established pursuant to s. 376.3071(5)(a),
88 | pursuant to this section. Only the facility owner or operator or
89 | the person otherwise responsible for site rehabilitation
90 | qualifies as an applicant under this section.

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

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

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

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

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

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

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

124 (II) For an individual application relying on a
125 demonstrated cost savings to the department, the applicant

126 shall, in conjunction with the proposed agency term contractor,
127 establish and provide in the application a 25-percent cost
128 savings to the department for cleanup of the site under the
129 application compared to the cost of cleanup of the same site
130 using the current rates provided to the department by the
131 proposed agency term contractor.

132 2. A nonrefundable review fee of \$250 to cover the
133 administrative costs associated with the department's review of
134 the application.

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

140 4. A conceptual proposed course of action.

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

149
150 ~~The limited contamination assessment report must be sufficient~~

151 ~~to support the proposed course of action and to estimate the~~
152 ~~cost of the proposed course of action. Costs incurred related to~~
153 ~~conducting the limited contamination assessment report are not~~
154 ~~refundable from the Inland Protection Trust Fund. Site~~
155 eligibility under this subsection or any other provision of this
156 section is not an entitlement to advanced cleanup or continued
157 restoration funding. The applicant shall certify to the
158 department that the applicant has the prerequisite authority to
159 enter into an advanced cleanup contract with the department. The
160 certification must be submitted with the application.

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

175 (c) Upon acceptance of an application, the applicant's

176 selected agency term contractor must submit a scope of work for
177 the limited contamination assessment to the department. Once the
178 scope of work is negotiated and agreed upon, the department must
179 issue a purchase order or purchase orders for the limited
180 contamination assessment in an amount not to exceed \$35,000 per
181 purchase order. The limited contamination assessment must be
182 sufficient to support the proposed course of action and to
183 estimate the cost of the proposed course of action.

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

193 1. A nonrefundable review fee of \$250 to cover the
194 administrative costs associated with the department's review of
195 the application.

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

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

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

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

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

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

223
 224 Site eligibility under this section is not an entitlement to
 225 advanced cleanup funding or continued restoration funding.

226 (4) The department may enter into contracts for a total of
227 up to \$30 million of advanced cleanup work in each fiscal year.
228 Up to \$5 million of these funds may be designated by the
229 department for advanced cleanup of individual sites scheduled
230 for redevelopment under paragraph (2) (d) ~~(2) (e)~~.

231 (a) A facility or an applicant who bundles multiple sites
232 as specified in subparagraph (2) (a)1. may not be approved for
233 more than \$5 million of cleanup activity in each fiscal year.

234 (b) A facility or an applicant applying for advanced
235 cleanup of individual sites scheduled for redevelopment pursuant
236 to paragraph (2) (d) ~~(2) (e)~~ may not be approved for more than \$1
237 million of cleanup activity in any one fiscal year.

238 (c) A property owner or responsible party may enter into a
239 voluntary cost-share agreement in which the property owner or
240 responsible party commits to bundle multiple sites and lists the
241 facilities that will be included in those future bundles. The
242 facilities listed are not subject to agency term contractor
243 assignment pursuant to department rule. The department must
244 reserve the right to terminate or amend the voluntary cost-share
245 agreement for any identified site under the voluntary cost-share
246 agreement if the property owner or responsible party fails to
247 submit an application to bundle any site, not already covered by
248 an advance cleanup contract, under such voluntary cost-share
249 agreement within three subsequent open application periods or 18
250 months, whichever period is shorter, during which it is eligible

251 | to participate. The property owner or responsible party must
252 | agree to conduct limited site assessments on the identified
253 | sites within 12 months after the execution of the voluntary
254 | cost-share agreement. For the purposes of this section, the term
255 | "facility" includes, but is not limited to, multiple site
256 | facilities such as airports, port facilities, and terminal
257 | facilities even though such enterprises may be treated as
258 | separate facilities for other purposes under this chapter.

259 | Section 3. This act shall take effect July 1, 2019.