CHAPTER 376
POLLUTANT DISCHARGE PREVENTION AND REMOVAL

376.011 Pollutant Discharge Prevention and Control Act; short title.—Sections 376.011-376.21 shall be known as the "Pollutant Discharge Prevention and Control Act."

History.—s. 1, ch. 70-244; s. 1, ch. 74-336; s. 79, ch. 83-310; s. 4, ch. 92-113; s. 25, ch. 2011-4; s. 79, ch. 2014-17.

376.021 Legislative intent with respect to pollution of coastal waters and lands.—

(1) The Legislature finds and declares that the highest and best use of the seacoast of the state is as a source of public and private recreation.

(2) The Legislature further finds and declares that the preservation of this use is a matter of the highest urgency and priority, and that such use can only be served effectively by maintaining the coastal waters, estuaries, tidal flats, beaches, and public lands adjoining the seacoast in as close to a pristine condition as possible, taking into account multiple use accommodations necessary to provide the broadest possible promotion of public and private interests.

(3) The Legislature further finds and declares that:

(a) The transfer of pollutants between vessels, between onshore facilities and vessels, between offshore facilities and vessels, and between terminal facilities within the jurisdiction of the state and state waters is a hazardous undertaking;

(b) Spills, discharges, and escapes of pollutants occurring as a result of procedures involved in the transfer, storage, and transportation of such products pose threats of great danger and damage to the environment of the state, to owners and users of shore front property, to public and private recreation, to citizens of the state and other interests deriving livelihood from marine-related activities, and to the beauty of the Florida coast;

(c) Such hazards have frequently occurred in the past, are occurring now, and present future threats of potentially catastrophic proportions, all of which are expressly declared to be inimical to the paramount interests of the state as herein set forth; and

(d) Such state interests outweigh any economic burdens imposed by the Legislature upon those engaged in transferring pollutants and related activities.

(4) The Legislature intends by the enactment of ss. 376.011-376.21 to exercise the police power of the state by conferring upon the Department of Environmental Protection power to:

(a) Deal with the hazards and threats of danger and damage posed by such transfers and related activities;

(b) Require the prompt containment and removal of pollution occasioned thereby; and

(c) Establish a fund to provide for the inspection and supervision of such activities and guarantee the prompt payment of reasonable damage claims resulting therefrom.

(5) The Legislature further finds and declares that the preservation of the public uses referred to herein is of grave public interest and concern to the state in promoting its general welfare, preventing diseases, promoting health, and providing for the public safety and that the state's interest in such preservation outweighs any burdens of liability imposed by the Legislature upon those engaged in transferring pollutants and related activities.

(6) The Legislature further declares that it is the intent of ss. 376.011-376.21 to support and complement applicable provisions of the Federal Water Pollution Control Act, as amended, specifically those provisions relating to the national contingency plan for removal of pollutants.

History.—s. 2, ch. 70-244; s. 2, ch. 74-336; s. 288, ch. 94-356.

376.031 Definitions; ss. 376.011-376.21.—When used in ss. 376.011-376.21, unless the context clearly requires otherwise, the term:

(1) "Barrel" means 42 U.S. gallons at 60 degrees Fahrenheit.

(2) "Board" means the board of arbitration.

(3) "Bulk product facility" means a waterfront location with at least one aboveground tank with a capacity greater than 30,000 gallons which is used for the storage of pollutants.

(4) "Coastline" means the line of mean low water along the portion of the coast that is in direct contact with the open sea and the line marking the seaward limit of inland waters, as determined under the Convention on Territorial Seas and the Contiguous Zone, 15 U.S.T. (Pt. 2) 1606.

(5) "Damage" means the documented extent of any destruction to or loss of any real or personal property, or the documented extent, pursuant to s. 376.121, of any destruction of the environment and natural resources, including all living things except human beings, as the direct result of the discharge of a pollutant.

(6) "Department" means the Department of Environmental Protection.

(7) "Discharge" includes, but is not limited to, any spilling, leaking, seeping, pouring, emitting, emptying, or dumping which occurs within the territorial limits of the state or outside the territorial limits of the state and affects

lands and waters within the territorial limits of the state.

(8) "Discharge cleanup organization" means any group, incorporated or unincorporated, of owners or operators of waterfront terminal facilities in any port or harbor of the state, and any other person who may elect to join, organized for the purpose of containing and cleaning up discharges of pollutants through cooperative efforts and shared equipment and facilities. For the purposes of ss. 376.011-376.21, any third-party cleanup contractor or any local government shall be recognized as a discharge cleanup organization, provided such contractor or local government is properly certified by the department.

(9) "Fund" means the Florida Coastal Protection Trust Fund.

(10) "Marine fueling facility" means a commercial or recreational coastal facility providing fuel to vessels, excluding a bulk product facility.

(11) "Operator" means any person operating a terminal facility or vessel, whether by lease, contract, or other form of agreement.

(12) "Other measurements" means measurements set by the department for products transferred at terminals which are other than fluid or which are not commonly measured by the barrel.

(13) "Owner" means any person owning a terminal facility or vessel.

(14) "Person" means any individual, partner, joint venture, corporation; any group of the foregoing, organized or united for a business purpose; or any governmental entity.

(15) "Person in charge" means the person on the scene who is in direct, responsible charge of a terminal facility or vessel from which pollutants are discharged, when the discharge occurs.

(16) "Pollutants" includes oil of any kind and in any form, gasoline, pesticides, ammonia, chlorine, and derivatives thereof, excluding liquefied petroleum gas.

(17) "Pollution" means the presence in the outdoor atmosphere or waters of the state of any one or more substances or pollutants in quantities which are or may be potentially harmful or injurious to human health or welfare, animal or plant life, or property or which may unreasonably interfere with the enjoyment of life or property, including outdoor recreation.

(18) "Remove" or "removal" means containment, cleanup, and removal of oil or a hazardous substance from water and shorelines or the taking of other actions as may be necessary to minimize or mitigate damage to the public health or welfare, including, but not limited to, fish, shellfish, and wildlife, and public and private property, shorelines, and beaches.

(19) "Removal costs" means the costs of removal that are incurred after a discharge of oil has occurred or, in any case in which there is a substantial threat of a discharge of oil, the costs to prevent, minimize, or mitigate oil pollution from such an incident.

(20) "Responsible party" means:

(a) *Vessels.*—In the case of a vessel, any person owning, operating, or demise-chartering the vessel.

(b) *Onshore facilities.*—In the case of an onshore facility, other than a pipeline, any person owning or operating the facility, except a federal agency, the state or a political subdivision of the state, a municipality, a commission, or any interstate body, that, as the owner of the facility, transfers possession and right to use the property to another person by lease, assignment, or permit.

(c) *Offshore facilities.*—In the case of an offshore facility, other than a pipeline or a deepwater port licensed under the Deepwater Port Act of 1974, 33 U.S.C. ss. 1501 et seq., the lessee or permittee of the area in which the facility is located or the holder of a right of use and easement granted under applicable state law or the Outer Continental Shelf Lands Act, 43 U.S.C. ss. 1301-1356, for the area in which the facility is located, if the holder is a different person than the lessee or permittee, except a federal agency, the state, a municipality, a commission, a political subdivision of any state, or any interstate body, that, as the owner of the facility, transfers possession and right to use the property to another person by lease, assignment, or permit.

(d) *Deepwater ports.*—In the case of a deepwater port licensed under the Deepwater Port Act of 1974, 33 U.S.C. ss. 1501-1524, the licensee.

(e) *Pipelines.*—In the case of a pipeline, any person owning or operating the pipeline.

(f) *Abandonment.*—In the case of an abandoned vessel, onshore facility, deepwater port, pipeline, or offshore facility, the persons who would have been responsible parties immediately prior to the abandonment of the vessel or facility.

(21) "Secretary" means the Secretary of Environmental Protection.

(22) "Technical feasibility" or "technically feasible" means that given available technology, a restoration project can be successfully completed.

(23) "Terminal facility" means any structure, group of structures, motor vehicle, rolling stock, pipeline, equipment, or related appurtenances which are used or capable of being used for one or more of the following purposes: pumping, refining, drilling for, producing, storing, handling, transferring, or processing pollutants, provided such pollutants are transferred over, under, or across any water, estuaries, tidal flats, beaches, or waterfront lands, including, but not limited to, any such facility and related appurtenances owned or operated by a public utility or a governmental or quasi-governmental body. In the event of a ship-to-ship transfer of pollutants, the vessel going to or coming from the place of transfer and a terminal facility shall also be considered a terminal facility. For the purposes of ss. 376.011-376.21, the term "terminal facility" shall not be construed to include spill response vessels engaged in response activities related to removal of pollutants, or temporary storage facilities created to temporarily store recovered pollutants and matter, or waterfront facilities owned and operated by governmental entities acting as agents of public convenience for persons engaged in the drilling for or pumping, storing, handling, transferring, processing, or refining of pollutants; however, each person engaged in the drilling for or pumping, storing, handling, transferring, processing, or refining of pollutants through a waterfront facility owned and operated by such a governmental entity shall be construed as a terminal facility.

(24) "Transfer" or "transferred" means onloading, offloading, fueling, bunkering, lightering, removal of waste pollutants, or other similar transfers, between terminal facility and vessel or vessel and vessel.

(25) "Vessel" includes every description of watercraft or other contrivance used, or capable of being used, as a means of transportation on water, whether self-propelled or otherwise, and includes barges and tugs.

History.—s. 3, ch. 70-244; s. 1, ch. 71-243; s. 3, ch. 74-336; s. 1, ch. 80-382; s. 80, ch. 83-310; s. 37, ch. 85-81; s. 10, ch. 90-54; s. 1, ch. 92-30; s. 1, ch. 92-113; s. 289, ch. 94-356; s. 1, ch. 96-263.

376.041 Pollution of waters and lands of the state prohibited.—The discharge of pollutants into or upon any coastal waters, estuaries, tidal flats, beaches, and lands adjoining the seacoast of the state in the manner defined by ss. 376.011-376.21 is prohibited.

History.—s. 4, ch. 70-244; s. 4, ch. 74-336.

376.051 Powers and duties of the Department of Environmental Protection.—

(1) The powers and duties conferred by ss. 376.011-376.21 shall be exercised by the department and shall be deemed to be an essential governmental function in the exercise of the police power of the state. The department may call upon any other state agency for consultative services and technical advice and the agencies are directed to cooperate in said request.

(2) The powers and duties of the department under ss. 376.011-376.21 shall extend to the boundaries of the state described in s. 1, Art. II of the State Constitution.

(3) Registration certificates and discharge prevention and response certificates required under ss. 376.011-376.21 shall be issued from the department subject to such terms and conditions as are set forth in ss. 376.011-376.21 and as set forth in rules adopted by the department as authorized herein.

(4) Whenever it becomes necessary for the state to protect the public interest under ss. 376.011-376.21, it shall be the duty of the department to keep an accurate record of costs and expenses incurred and thereafter diligently to pursue the recovery of any sums so incurred from the person responsible or from the Government of the United States under any applicable federal act.

(5) The department may bring an action on behalf of the state to enforce the liabilities imposed by s. 376.12. The Department of Legal Affairs shall represent the department in any such proceeding.

(6) The department is specifically authorized to utilize risk-based cleanup criteria as described in ss. 376.3071, 376.3078, and 376.81 in conducting cleanups on lands owned by the state university system.

History.—s. 5, ch. 70-244; s. 2, ch. 71-137; s. 5, ch. 74-336; s. 62, ch. 79-65; s. 81, ch. 83-310; s. 11, ch. 90-54; s. 5, ch. 92-113; s. 290, ch. 94-356; s. 6, ch. 2000-317.

376.065 Operation of terminal facility without discharge prevention and response certificate prohibited; penalty.—

(1) Every owner or operator of a terminal facility shall obtain a discharge prevention and response certificate issued by the department. Terminal facilities which are vessels, motor vehicles, rolling stock, pipelines, equipment, or other related appurtenances may, at the discretion of the owner or operator, be covered under the discharge prevention and response certificate of the terminal facility from which they are located or dispatched. A certificate shall be valid for 12 months after the date of issuance, subject to such terms and conditions as the department may determine are necessary to carry out the purposes of ss. 376.011-376.21.

(2) Each applicant for a discharge prevention and response certificate shall submit information, in a form satisfactory to the department, describing the following:

(a) The barrel or other measurement capacity of the terminal facility and the length of the largest vessel docking at or providing service from the terminal facility.

(b) All prevention, containment, and removal equipment, including, but not limited to, vehicles, vessels, pumps, skimmers, booms, chemicals, and communication devices to which the facility has access, whether through direct ownership or by contract or membership in an approved discharge cleanup organization.

(c) The terms of agreement and the operation plan of any discharge cleanup organization to which the owner or operator of the terminal facility belongs.

(3) No person shall operate or cause to be operated a terminal facility without access to minimum containment equipment measuring five times the length of the largest vessel docking at or the largest vessel providing service from the terminal facility, whichever is larger. The containment equipment and adequate numbers of trained personnel, as identified in the federal Oil Pollution Act of 1990 and related guidelines adopted thereunder, to operate the containment equipment shall be available to begin deployment on the water within 1 hour after discovery of the discharge. Within a reasonable time period, additional cleanup equipment and trained personnel shall be available, either through direct ownership or by contract or membership in an approved cleanup organization, to reasonably clean up 10,000 gallons of pollutants, unless the terminal facility does not have the capacity to store that quantity as fuel or cargo and does not service vessels having the capacity to carry that quantity as fuel or cargo. The department may impose less stringent requirements for marine fueling facilities. Cleanup or containment equipment purchased with state funds shall not count as required equipment under this section. The requirements of this section shall not apply to terminal facilities which store only motor fuel, ammonia, or chlorine, or service only motor fuel to vessels. For purposes of this subsection, "motor fuel" means gasoline, gasohol, and other mixtures of gasoline. The exemptions provided by this subsection do not eliminate any responsibilities arising from the discharge of a pollutant and for conducting remedial action as required by this chapter or chapter 403.

(4) Upon a showing of satisfactory containment and cleanup capability required by the department under this section, the applicant shall be issued a discharge prevention and response certificate covering the terminal facility and related appurtenances, including vessels as defined in s. 376.031.

(5)(a) A person who violates this section or the terms and requirements of such certification commits a noncriminal infraction. The civil penalty for any such infraction shall be $500, except as otherwise provided in this section.

(b) A person cited for an infraction under this section may:

1. Pay the civil penalty;
2. Post a bond equal to the amount of the applicable civil penalty; or
3. Sign and accept a citation indicating a promise to appear before the county court.

The department employee authorized to issue these citations may indicate on the citation the time and location of the scheduled hearing and shall indicate the applicable civil penalty.

(c) A person who willfully refuses to post bond or accept and sign a citation commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(d) After compliance with subparagraph (b)2. or subparagraph (b)3., a person charged with a noncriminal infraction under this section may:

1. Pay the civil penalty, either by mail or in person, within 30 days after the date of receiving the citation; or
2. If the person has posted bond, forfeit the bond by not appearing at the designated time and location.

A person cited for an infraction under this section who pays the civil penalty or forfeits the bond has admitted the infraction and waives the right to a hearing on the issue of commission of the infraction. Such admission may not be used as evidence in any other proceedings.

(e) A person who elects to appear before the county court or who is required to so appear waives the limitations of the civil penalty specified in paragraph (a). The court, after a hearing, shall make a determination as to whether an infraction has been committed. If the commission of the infraction is proved, the court shall impose a civil penalty of $500.

(f) At a hearing under this subsection, the commission of a charged infraction must be proved by the greater weight of the evidence.

(g) A person who is found by the hearing official to have committed an infraction may appeal that finding to the circuit court.

(h) A person who has not posted bond and who fails either to pay the fine specified in paragraph (a) within 30 days after receipt of the citation or to appear before the court commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 13, ch. 90-54; s. 6, ch. 92-113; s. 2, ch. 96-263; s. 15, ch. 2012-88.

376.07 Regulatory powers of department; penalties for inadequate booming by terminal facilities.—

(1) The department shall adopt rules pursuant to ss. 120.536(1) and 120.54 to implement ss. 376.011-376.21.

(2) The department shall adopt rules including, but not limited to, the following matters:

(a) Operation and inspection requirements for discharge prevention, abatement, and cleanup capabilities of terminal facilities and vessels, and other matters relating to certification under ss. 376.011-376.21.

(b) Procedures and methods of reporting discharges and other occurrences prohibited by ss. 376.011-376.21.

(c) Procedures, methods, means, and equipment to be used by persons subject to regulation by ss. 376.011-376.21 in the removal of pollutants.

(d) Development and implementation of criteria and plans to meet pollution occurrences of various degrees and kinds.

(e) Creation by contract or administrative action of a state response team which shall be responsible for creating and maintaining a contingency plan of response, organization, and equipment for handling emergency cleanup operations and wildlife rescue and rehabilitation operations. The state plans shall include detailed emergency operating procedures for the state as a whole, and the team shall from time to time conduct practice alerts. These plans shall be filed with the Governor and all Coast Guard stations in the state and Coast Guard captains of the port having responsibility for enforcement of federal pollution laws within the state. The contingency plan shall include all necessary information for the total containment and cleanup of pollution, including, but not limited to, an inventory of equipment and its location, a table of organization with the names, addresses, and telephone numbers of all persons responsible for implementing every phase of the plan, including a plan for wildlife rescue and rehabilitation operations, a list of available sources of supplies necessary for cleanup, and a designation of priority zones to determine the sequence and methods of cleanup. The state response team shall act independently of agencies of the Federal Government but is directed to cooperate with any federal cleanup operation.

(f) Requirements for minimum weather and sea conditions for permitting a vessel to enter port and for the safety and operation of vessels, barges, tugs, motor vehicles, motorized equipment, and other equipment relating to the use and operation of terminals, facilities, and refineries, the approach and departure from terminals, facilities, and refineries, and requirements that containment gear approved by the department be on hand and maintained by terminal facilities and refineries with adequate personnel trained in its use.

(g) Requirements that, prior to being granted entry into any port in this state, the master of a vessel shall report:

1. Any discharges of pollutants the vessel has had since leaving the last port.
2. Any mechanical problem on the vessel which creates the possibility of a discharge.
3. Any denial of entry into any port during the current cruise of the vessel.

(h) Requirements that any terminal facility be subject to a complete and thorough inspection whenever the terminal facility causes or permits the discharge of a pollutant in violation of the provisions of ss. 376.011-376.21, and at other reasonable times. If the department determines there are unsatisfactory preventive measures or containment and cleanup capabilities, it shall, within a reasonable time after notice and hearing in compliance with chapter 120, suspend the registration until such time as there is compliance with the department requirements.

(3) The department shall not require vessels to maintain discharge prevention gear, holding tanks, and containment gear which exceed federal requirements. However, a terminal facility transferring heavy oil to or from a vessel with a heavy oil storage capacity greater than 10,000 gallons shall be required, considering existing weather and tidal conditions, to adequately boom or seal off the transfer area during a transfer, including, but not limited to, a bunkering operation, to minimize the escape of such pollutants from the containment area. As used in this subsection, the term “adequate booming” means booming with proper containment equipment which is employed and located for the purpose of preventing, for the most likely discharge, as much of the pollutant as possible from escaping out of the containment area.

(a) The owner or operator of a terminal facility involved in the transfer of such pollutant to or from a vessel which is not adequately boomed commits a noncriminal infraction and shall be cited for such infraction. The civil penalty for such an infraction shall be $2,500, except as otherwise provided in this section.

(b) A person cited for an infraction under this section may:

1. Pay the civil penalty;
2. Post bond equal to the amount of the applicable civil penalty; or
3. Sign and accept a citation indicating a promise to appear before the county court.

The department employee authorized to issue these citations may indicate on the citation the time and location of the scheduled hearing and shall indicate the applicable civil penalty.

(c) A person who willfully refuses to post bond or accept and sign a citation commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(d) After compliance with subparagraph (b)2. or subparagraph (b)3., a person charged with a noncriminal infraction under this section may:

1. Pay the civil penalty, either by mail or in person, within 30 days after the date of receiving the citation; or
2. If the person has posted bond, forfeit the bond by not appearing at the designated time and location.

A person cited for an infraction under this section who pays the civil penalty or forfeits the bond has admitted the infraction and waives the right to a hearing on the issue of commission of the infraction. Such admission may not be used as evidence in any other proceedings.

(e) A person who elects to appear before the county court or who is required to appear waives the limitations of the civil penalty specified in paragraph (a). The issue of whether an infraction has been committed and the severity of the infraction shall be determined by a hearing official at a hearing. If the commission of the infraction is proved by the greater weight of the evidence, the court shall impose a civil penalty of $2,500. If the court determines that the owner or operator of the terminal facility failed to deploy any boom equipment during such a transfer, including, but not limited to, a bunkering operation, the civil penalty shall be $5,000.

(f) A person who is found by the hearing official to have committed an infraction may appeal that finding to the circuit court.

(g) A person who has not posted bond and who fails either to pay the civil penalty specified in paragraph (a) within 30 days after receipt of the citation or to appear before the court commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 7, ch. 70-244; s. 7, ch. 74-336; s. 1, ch. 77-174; s. 14, ch. 90-54; s. 7, ch. 92-113; s. 63, ch. 95-143; s. 3, ch. 96-263; s. 87, ch. 98-200; s. 16, ch. 2012-88.

376.0705 Development of training programs and educational materials.—The department shall encourage the development of training programs for personnel needed for pollutant discharge prevention and cleanup activities. The department shall work with accredited community colleges, career centers, state universities, and private institutions in developing educational materials, courses of study, and other such information to be made available for persons seeking to be trained for pollutant discharge prevention and cleanup activities.

History.—s. 29, ch. 90-54; s. 8, ch. 92-113; s. 291, ch. 94-356; s. 30, ch. 2004-357.

376.071 Discharge contingency plan for vessels.—

(1) Any vessel operating in state waters with a storage capacity to carry 10,000 gallons or more of pollutants as fuel or cargo shall maintain an adequate written ship-specific discharge prevention and control contingency plan. Any such vessel shall have on board a "discharge officer," designated by the contingency plan, who is responsible for training crew members to carry out discharge response efforts required in the contingency plan and coordinating all on-board response efforts in case of a discharge. An adequate plan shall include provisions for on-board response, including notification, verification, pollutant incident assessment, vessel stabilization, discharge mitigation, and on-board discharge containment, in accordance with this chapter, department rules, and the Florida Coastal Pollutant Discharge Contingency Plan. A plan in compliance with the federal requirement for a ship-specific discharge contingency plan shall satisfy the requirements for an adequate ship-specific discharge contingency plan required by this section.

(2)(a) A master of a vessel that violates subsection (1) commits a noncriminal infraction and shall be cited for such infraction. The civil penalty for such an infraction shall be $5,000, except as otherwise provided in this subsection.

(b) A person charged with a noncriminal infraction under this section may:

1. Pay the civil penalty;
2. Post bond equal to the amount of the applicable civil penalty; or
3. Sign and accept a citation indicating a promise to appear before the county court for the county in which the violation occurred or the county closest to the location at which the violation occurred.

The department employee authorized to issue these citations may indicate on the citation the time and location of the scheduled hearing and shall indicate the applicable civil penalty.

(c) A person who willfully refuses to post bond or accept and sign a citation commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(d) After complying with the provisions of subparagraph (b)2. or subparagraph (b)3., a person charged with a noncriminal infraction under this section may:

1. Pay the civil penalty, either by mail or in person, within 30 days after the date of receiving the citation; or
2. If the person has posted bond, forfeit the bond by not appearing at the designated time and location.

A person cited for an infraction under this section who pays the civil penalty or forfeits the bond has admitted the infraction and waives the right to a hearing on the issue of commission of the infraction. Such admission may not be used as evidence in any other proceedings.

(e) A person who elects to appear before the county court or who is required to appear waives the limitations of the civil penalty specified in paragraph (a). The court, after a hearing, shall make a determination as to whether an

infraction has been committed. If the commission of the infraction is proved, the court shall impose a civil penalty of $5,000.

(f) At a hearing under this subsection, the commission of a charged infraction must be proved by the greater weight of the evidence.

(g) A person who is found by the hearing official to have committed an infraction may appeal that finding to the circuit court.

(h) A person who has not posted bond and who fails either to pay the civil penalty specified in paragraph (a) within 30 days after receipt of the citation or to appear before the court commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 15, ch. 90-54; s. 9, ch. 92-113; s. 4, ch. 96-263; s. 17, ch. 2012-88.

376.09 Removal of prohibited discharges.—

(1) Any person discharging pollutants as prohibited by s. 376.041 shall immediately undertake to contain, remove, and abate the discharge to the department's satisfaction. Notwithstanding the above requirement, the department may undertake the removal of the discharge and may contract and retain agents who shall operate under the direction of the department.

(2) If the person causing a discharge, or the person in charge of facilities at which a discharge has taken place, fails to act, the department may arrange for the removal of the pollutant, except that if the pollutant was discharged into or upon the navigable waters of the United States, the department shall act in accordance with the national contingency plan for removal of such pollutant as established pursuant to the Federal Water Pollution Control Act, as amended, or other federal law, and the costs of removal incurred by the department shall be paid in accordance with the applicable provisions of federal law. Federal funds shall be used to the maximum extent possible prior to the expenditure of state funds.

(3) In the event of discharge the source of which is unknown, any local discharge cleanup organization shall, upon the request of the department or its designee, immediately contain and remove the discharge. No action taken by any person to contain or remove a discharge, whether such action is taken voluntarily or at the request of the department or its designee, shall be construed as an admission of liability for the discharge.

(4) No person who, voluntarily or at the request of the department or its designee, renders assistance in containing or removing pollutants shall be liable for any civil damages to third parties resulting solely from acts or omissions of such person in rendering such assistance, except for acts or omissions amounting to gross negligence or willful misconduct.

(5) Notwithstanding the provisions in subsection (4), any person who is authorized by the department or the Federal Government or the person alleged to be responsible for the discharge, or by a designee thereof, to render assistance in containing or removing pollutants shall not be liable for costs, expenses, and damages, unless such costs, expenses, and damages are a proximate result of acts or omissions caused by gross negligence or willful misconduct of such authorized person.

(6) Nothing in ss. 376.011-376.21 shall affect the right of any person to render assistance in containing or removing any pollutant or any rights which that person may have against any third party whose acts or omissions in any way have caused or contributed to the discharge of the pollutant.

(7)(a) Any person, other than the responsible party, who renders assistance in containing or removing any pollutant may assert a claim against the fund, under s. 376.12, for reimbursement of the reasonable costs expended for containment, abatement, or removal, provided prior approval for such reimbursement is granted by the department. The department may, upon petition and for good cause shown, waive the prior-approval prerequisite.

(b) A responsible party may assert a claim against the fund only under the following circumstances:

1. A responsible party who complies with the requests of the state and federal on-scene coordinators and later pleads and proves a valid defense under s. 376.12 may assert a claim against the fund, pursuant to s. 376.123, for reimbursement of the reasonable costs expended for containment, abatement, or removal.

2. A responsible party who complies with the requests of the state and federal on-scene coordinators and later pleads and proves a valid limitation of liability under s. 376.12 may assert a claim against the fund, pursuant to s.

376.123, for reimbursement of the reasonable costs expended in excess of the applicable limitation of liability.

3. If the department has determined, pursuant to s. 376.12(3)(b)2., that a particular request by a state or federal on-scene coordinator for the responsible party's cooperation or assistance was unreasonable, the responsible party may assert a claim against the fund, pursuant to s. 376.123, for reimbursement of the costs expended in complying with the particular request.

(8) Notwithstanding any other provision of law, including provisions relating to discharge prohibitions or permit requirements, the federal on-scene coordinator or the department may authorize discharges in connection with activities related to removal of pollutants that have entered the waters of the state.

History.—s. 8, ch. 70-244; s. 1, ch. 70-439; s. 9, ch. 74-336; s. 2, ch. 80-382; s. 16, ch. 90-54; s. 5, ch. 96-263.

376.10 Personnel and equipment.—The department shall establish and maintain at such ports within the state and other places as it shall determine such employees and equipment as in its judgment may be necessary to carry out the provisions of ss. 376.011-376.21. The department may employ and prescribe the duties of such employees, subject to the rules and regulations of the Department of Management Services. The salaries of the employees and the cost of the equipment shall be paid from the Florida Coastal Protection Trust Fund established by ss. 376.011-376.21. The department shall periodically consult with other departments of the state relative to procedures for the prevention of discharges of pollutants into or affecting the coastal waters of the state from operations regulated by ss. 376.011-376.21.

History.—s. 9, ch. 70-244; s. 2, ch. 71-137; s. 1, ch. 73-326; s. 10, ch. 74-336; s. 63, ch. 79-65; s. 10, ch. 85-68; s. 38, ch. 85-81; s. 124, ch. 92-279; s. 55, ch. 92-326; s. 292, ch. 94-356; s. 6, ch. 96-263; s. 98, ch. 98-279.

376.11 Florida Coastal Protection Trust Fund.—

(1) The purpose of this section is to provide a mechanism to have financial resources immediately available for prevention of, and cleanup and rehabilitation after, a pollutant discharge, to prevent further damage by the pollutant, and to pay for damages. It is the legislative intent that this section be liberally construed to effect the purposes set forth, such interpretation being especially imperative in light of the danger to the environment and resources.

(2) The Florida Coastal Protection Trust Fund is established, to be used by the department and the Fish and Wildlife Conservation Commission as a nonlapsing revolving fund.

(3) The following funds shall be deposited into the Florida Coastal Protection Trust Fund:

(a) All registration fees, penalties, judgments, damages recovered pursuant to s. 376.121, other fees and charges related to ss. 376.011-376.21, and the excise tax revenues levied, collected, and credited pursuant to ss. 206.9935(1) and 206.9945(1)(a);

(b) Proceeds of fines and awards of damages pursuant to s. 161.054; and

(c) Funds from other sources otherwise specified by law.

(4) Charges against the fund shall be in accordance with this section.

(5) Moneys in the fund that are not needed currently to meet the obligations of the department in the exercise of its responsibilities under ss. 376.011-376.21 shall be deposited with the Chief Financial Officer to the credit of the fund and may be invested in such manner as is provided for by statute. Interest received on such investment shall be credited to the fund, except as otherwise specified herein.

(6) Moneys in the Florida Coastal Protection Trust Fund may be used for the following purposes:

(a) To carry out the purposes of ss. 376.011-376.21.

(b) To pay administrative expenses, personnel expenses, and equipment costs of the department and the Fish and Wildlife Conservation Commission related to the enforcement of ss. 376.011-376.21.

(c) All costs involved in the prevention and abatement of pollution related to the discharge of pollutants covered by ss. 376.011-376.21 and the abatement of other potential pollution hazards as authorized herein.

(d) All costs and expenses of the cleanup, restoration, and rehabilitation of waterfowl, wildlife, and all other natural resources damaged by the discharge of pollutants, including the costs of assessing and recovering damages to natural resources, whether performed or authorized by the department or any other state or local agency.

(e) All provable costs and damages which are the proximate results of the discharge of pollutants covered by ss. 376.011-376.21.

(f) Loans to the Inland Protection Trust Fund created in s. 376.3071.

(g) The interest earned from investments of the balance in the Florida Coastal Protection Trust Fund shall be used for funding the administrative expenses, personnel expenses, and equipment costs of the department relating to the enforcement of ss. 376.011-376.21.

(h) The funding of a grant program to local governments, pursuant to s. 376.15(3)(d) and (e), for the removal of derelict vessels from the public waters of the state.

(i) The department may spend up to $1 million per year from the principal of the fund to acquire, design, train, and maintain emergency cleanup response teams and equipment located at appropriate ports throughout the state for the purpose of cleaning oil and other toxic materials from coastal waters. When the teams and equipment are not needed for these purposes they may be used for any other valid purpose of the department.

(j) To provide a temporary transfer of funds in an amount not to exceed $10 million to the Minerals Trust Fund as set forth in s. 376.40.

(k) Funding for marine law enforcement.

(7) Any interest in lands acquired using moneys in the Florida Coastal Protection Trust Fund shall be held by the Trustees of the Internal Improvement Trust Fund, and such lands shall be acquired pursuant to the procedures set forth in s. 253.025.

(8) The department shall recover to the use of the fund from the person or persons causing the discharge or from the Federal Government, jointly and severally, all sums owed or expended from the fund, pursuant to s. 376.123(10), except that recoveries resulting from damage due to a discharge of a pollutant or other similar disaster shall be apportioned between the Florida Coastal Protection Trust Fund and the General Revenue Fund so as to repay the full costs to the General Revenue Fund of any sums disbursed therefrom as a result of such disaster. Requests for reimbursement to the fund for the above costs, if not paid within 30 days of demand, shall be turned over to the Department of Legal Affairs for collection.

History.—s. 11, ch. 70-244; s. 1, ch. 70-439; s. 2, ch. 71-137; s. 11, ch. 74-336; s. 3, ch. 80-382; s. 4, ch. 81-228; s. 82, ch. 83-310; s. 14, ch. 83-339; s. 1, ch. 83-353; s. 4, ch. 84-338; s. 6, ch. 85-252; ss. 3, 8, 34, ch. 86-159; s. 81, ch. 86-163; s. 30, ch. 87-225; s. 3, ch. 89-175; s. 5, ch. 89-358; s. 17, ch. 90-54; s. 16, ch. 90-243; s. 1, ch. 91-194; s. 7, ch. 96-263; s. 45, ch. 96-321; s. 28, ch. 97-153; s. 2, ch. 97-259; ss. 19, 38, ch. 98-46; s. 51, ch. 99-245; s. 18, ch. 2000-157; s. 5, ch. 2000-211; s. 389, ch. 2003-261; s. 6, ch. 2006-309; s. 4, ch. 2014-143; s. 54, ch. 2015-229.

376.12 Liabilities and defenses of responsible parties; liabilities of third parties; financial security requirements for vessels; liability of cargo owners; notification requirements.—

(1) LIABILITY FOR CLEANUP COSTS.—Because it is the intent of ss. 376.011-376.21 to provide the means for rapid and effective cleanup and to minimize cleanup costs and damages, any responsible party who permits or suffers a prohibited discharge or other polluting condition to take place within state boundaries shall be liable to the fund for all costs of removal, containment, and abatement of a prohibited discharge, unless the responsible party is entitled to a limitation or defense under this section.

(2) LIMITATION OF LIABILITY FOR CLEANUP COSTS.—Except as provided in subsection (3), a responsible party's liability to the fund for costs of removal, containment, and abatement shall be as follows:

(a) For a vessel transporting pollutants as cargo:

1. For any such vessel of 3,000 gross tons or more, $10 million or $1,200 per gross ton, whichever is greater.

2. For any such vessel of less than 3,000 gross tons, $2 million or $1,200 per gross ton, whichever is greater.

(b) For any other vessel: $500,000 or $600 per gross ton, whichever is greater.

(c) For a terminal facility: $150 million.

(3) EXCEPTIONS TO LIMITATION OF LIABILITY.—The provisions of subsection (2) shall not apply when:

(a) The department demonstrates that such discharge was the result of willful or gross negligence or willful misconduct of, or the violation of an applicable federal or state safety, construction, or operating regulation or rule by, the responsible party, an agent or employee of the responsible party, or a person acting pursuant to a contractual relationship with the responsible party, except where the sole contractual arrangement arises in connection with carriage by a common carrier by rail; or

(b) The responsible party fails or refuses:

1. To report the incident as required by law and the responsible party knows or has reason to know of the incident; or

2. To provide reasonable cooperation and assistance requested by a state or federal on-scene coordinator in connection with cleanup activities. The responsible party must file an objection with the department if such party deems that cooperation or assistance requested by a state or federal on-scene coordinator is unreasonable. Such an objection must be filed with the department within 2 working days after the request. If such request is determined by the department to be unreasonable, the responsible party may assert a claim against the fund, pursuant to s. 376.123, for reimbursement of expenses incurred in carrying out such request. The responsible party may not file an objection to a request based solely on the premise that the requested activity did not have satisfactory results, that the responsible party has exceeded the applicable limitation of liability, or that the responsible party has a defense to liability.

(4) LIABILITY FOR NATURAL RESOURCE DAMAGES.—Each responsible party is liable to the fund, pursuant to s. 376.121, for all natural resource damages that result from the discharge.

(5) LIABILITY FOR PROPERTY DAMAGES.—Each responsible party is liable to any affected person for all damages as defined in s. 376.031, excluding natural resource damages, suffered by that person as a result of the discharge.

[1](6) ADMINISTRATIVE REMEDIES OF RESPONSIBLE PARTIES.—A responsible party that disputes any claim by the department may request a hearing pursuant to s. 120.57.

(7) DEFENSES TO LIABILITY.—In any proceeding determining claims of the fund or any other claims by the state pursuant to ss. 376.011-376.21, it shall not be necessary for the department to plead or prove negligence in any form or manner. The department need only plead and prove that the prohibited discharge or other polluting condition occurred. The only defenses of a person alleged to be responsible for the discharge to an action or proceeding for damages or cleanup costs shall be to plead and prove that the occurrence was solely the result of any of the following or any combination of the following:

(a) An act of war.

(b) An act of government, either federal, state, county, or municipal.

(c) An act of God, which means only an unforeseeable act exclusively occasioned by the violence of nature without the interference of any human agency.

(d) An act or omission of a third party other than an employee or agent of the responsible party or a third party whose act or omission occurs in connection with any contractual relationship with the responsible party, except where the sole contractual arrangement arises in connection with carriage by rail,

provided that, to establish entitlement to any of the foregoing defenses, the responsible party shall plead and prove that the responsible party exercised due care with respect to the pollutant concerned, taking into consideration the characteristics of the pollutant and in light of all relevant facts and circumstances, and took precautions against foreseeable acts or omissions of others and the foreseeable consequences of those acts or omissions.

(8) EXCEPTIONS TO DEFENSES.—The defenses provided in subsection (7) shall not apply with respect to a responsible party who fails or refuses:

(a) To report the discharge as required by law, when the responsible party knows or has reason to know of the discharge; or

(b) To provide reasonable cooperation and assistance requested by a state or federal on-scene coordinator in connection with cleanup activities. The responsible party must file an objection with the department, pursuant to subsection (3), if such party deems that cooperation or assistance requested by a state or federal on-scene coordinator is unreasonable.

(9) LIABILITY OF THIRD PARTIES.—In any case in which a responsible party establishes that a discharge or threat of a discharge and the resulting cleanup costs and damages were caused solely by an act or omission of one or more third parties as described in paragraph (7)(d), or solely by such an act or omission in combination with an act of

war, an act of government, or an act of God, the third party or parties shall be treated as the responsible party or parties for all purposes of determining liability under ss. 376.011-376.21.

(10) LIABILITY OF CARGO OWNERS.—The owner of a pollutant transported as cargo on any vessel suffering a discharge within state waters is liable for all cleanup costs within the applicable vessel liability limits established under this section, not paid for by the owner or operator of the vessel. However, the cargo owner is not liable under this subsection if the vessel owner, operator, or master is found in compliance with the financial security requirements of this section at the time of the discharge or fails to provide certified notification of the cancellation or withdrawal of financial security to the department and the cargo owner at least 3 working days before the vessel entered state waters.

(11) NOTIFICATION REQUIREMENTS FOR VESSELS AND TERMINAL FACILITIES.—In addition to any civil penalties which may apply, any person responsible who fails to give immediate notification of a discharge to the department or the nearest Coast Guard Marine Safety Office or National Response Center commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. However, a discharge of 5 gallons or less of gasoline or diesel from a vessel shall not give rise to felony penalties for failure to comply with the state notification requirements in this subsection. After reporting a discharge, a vessel shall remain in the jurisdiction of the department until such time as the department is able to prove financial responsibility for the damages resulting from the discharge. The master of a vessel that fails to remain in the jurisdiction of the department for a reasonable time after notice of a discharge commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. The department shall not detain the vessel longer than 12 hours after receiving proof of financial responsibility. The department shall, by rule, require that the terminal facility designate a person at the terminal facility as the person in charge of that facility for the purposes specified by this section.

History.—s. 12, ch. 70-244; s. 326, ch. 71-136; s. 12, ch. 74-336; ss. 4, 5, ch. 80-382; s. 18, ch. 90-54; s. 1, ch. 91-135; s. 293, ch. 94-356; s. 1013, ch. 95-148; s. 8, ch. 96-263; s. 104, ch. 96-410.

[1]**Note.**— As amended and substantially reworded by s. 8, ch. 96-263. Former paragraph (5)(b), relating to administrative procedures, was amended by s. 104, ch. 96-410, and reads:

(b) If either the claimant or the person determined by the secretary to be responsible for the discharge disagrees with the amount of the damage award, such person may request a hearing pursuant to ss. 120.569 and 120.57.

376.121 Liability for damage to natural resources.—The Legislature finds that extensive damage to the state's natural resources is the likely result of a pollutant discharge and that it is essential that the state adequately assess and recover the cost of such damage from responsible parties. It is the state's goal to recover the costs of restoration from the responsible parties and to restore damaged natural resources to their predischarge condition. In many instances, however, restoration is not technically feasible. In such instances, the state has the responsibility to its citizens to recover the cost of all damage to natural resources. To ensure that the public does not bear a substantial loss as a result of the destruction of natural resources, the procedures set out in this section shall be used to assess the cost of damage to such resources. Natural resources include coastal waters, wetlands, estuaries, tidal flats, beaches, lands adjoining the seacoasts of the state, and all living things except human beings. The Legislature recognizes the difficulty historically encountered in calculating the value of damaged natural resources. The value of certain qualities of the state's natural resources is not readily quantifiable, yet the resources and their qualities have an intrinsic value to the residents of the state, and any damage to natural resources and their qualities should not be dismissed as nonrecoverable merely because of the difficulty in quantifying their value. In order to avoid unnecessary speculation and expenditure of limited resources to determine these values, the Legislature hereby establishes a schedule for compensation for damage to the state's natural resources and the quality of said resources. As an alternative to the compensation schedule described in subsections (4), (5), (6), and (9), the department, when no responsible party is identified, when a responsible party opts out of the formula pursuant to paragraph (10)(a), or when the department conducts a cooperative damage assessment with federal agencies, may use methods of calculating natural resources damages in accordance with federal rules implementing the Oil Pollution Act of 1990, as amended.

(1) The department shall assess and recover from responsible parties the compensation for the injury or destruction of natural resources, including, but not limited to, the death or injury of living things and damage to or

destruction of habitat, resulting from pollutant discharges prohibited by s. 376.041. The amount of compensation and any costs of assessing damage and recovering compensation received by the department shall be deposited into the Florida Coastal Protection Trust Fund pursuant to s. 376.12 and disbursed according to subsection (11). Whoever violates, or causes to be violated, s. 376.041 shall be liable to the state for damage to natural resources.

(2) The compensation schedule for damage to natural resources is based upon the cost of restoration and the loss of ecological, consumptive, intrinsic, recreational, scientific, economic, aesthetic, and educational values of such injured or destroyed resources. The compensation schedule takes into account:

(a) The volume of the discharge.

(b) The characteristics of the pollutant discharged. The toxicity, dispersibility, solubility, and persistence characteristics of a pollutant as affects the severity of the effects on the receiving environment, living things, and recreational and aesthetic resources. Pollutants have varying propensities to injure natural resources based upon their potential exposure and effects. Exposure to natural resources is determined by the dispersibility and degradability of the pollutant. Effects to natural resources result from mechanical injury and toxicity and include physical contamination, smothering, feeding prevention, immobilization, respiratory distress, direct mortality, lost recruitment of larvae and juveniles killed, changes in the food web, and chronic effects of sublethal levels of contaminates in tissues or the environment. For purposes of the compensation schedule, pollutants have been ranked for their propensity to cause injury to natural resources based upon a combination of their acute toxicity, mechanical injury, degradability, and dispersibility characteristics on a 1-to-3 relative scale with Category 1 containing the pollutants with the greatest propensity to cause injury to natural resources. The following pollutants are categorized:

1. Category 1: bunker and residual fuel.

2. Category 2: waste oils, crude oil, lubricating oil, asphalt, and tars.

3. Category 3: hydraulic fluids, numbers 1 and 2 diesel fuels, heating oil, jet aviation fuels, motor gasoline, including aviation gasoline, kerosene, stationary turbine fuels, ammonia and its derivatives, and chlorine and its derivatives.

(c) The type and sensitivity of natural resources affected by a discharge, determined by the following factors:

1. The location of a discharge. Inshore discharges are discharges that occur within waters under the jurisdiction of the department and within an area extending seaward from the coastline of the state to a point 1 statute mile seaward of the coastline. Nearshore discharges are discharges that occur more than 1 statute mile, but within 3 statute miles, seaward of the coastline. Offshore discharges are discharges that occur more than 3 statute miles seaward of the coastline.

2. The location of the discharge with respect to special management areas designated because of their unique habitats; living resources; recreational use; aesthetic importance; and other ecological, educational, consumptive, intrinsic, scientific, and economic values of the natural resources located therein. Special management areas are state parks; recreation areas; national parks, seashores, estuarine research reserves, marine sanctuaries, wildlife refuges, and national estuary program water bodies; state aquatic preserves and reserves; classified shellfish harvesting areas; areas of critical state concern; federally designated critical habitat for endangered or threatened species; and outstanding Florida waters.

3. The areal or linear extent of the natural resources impacted.

(3) Compensation for damage to natural resources for any discharge of less than 25 gallons of gasoline or diesel fuel shall be $50.

(4) Compensation schedule:

(a) The amount of compensation assessed under this schedule is calculated by: multiplying $1 per gallon or its equivalent measurement of pollutant discharged, by the number of gallons or its equivalent measurement, times the location of the discharge factor, times the special management area factor.

(b) Added to the amount obtained in paragraph (a) is the value of the observable natural resources damaged, which is calculated by multiplying the areal or linear coverage of impacted habitat by the corresponding habitat factor, times the special management area factor.

(c) The sum of paragraphs (a) and (b) is then multiplied by the pollutant category factor.

(d) The final damage assessment figure is the sum of the amount calculated in paragraph (c) plus the compensation for death of endangered or threatened species, plus the cost of conducting the damage assessment as determined by the department.

(5)(a) The factors used in calculating the damage assessment are:

1. Location of discharge factor:

a. Discharges that originate inshore have a factor of eight. Discharges that originate nearshore have a factor of five. Discharges that originate offshore have a factor of one.

b. Compensation for damage to natural resources resulting from discharges that originate outside of state waters but that traverse the state's boundaries and therefore have an impact upon the state's natural resources shall be calculated using a location factor of one.

c. Compensation for damage to natural resources resulting from discharges of less than 10,000 gallons of pollutants which originate within 100 yards of an established terminal facility or point of routine pollutant transfer in a designated port authority as defined in s. 315.02 shall be assessed a location factor of one.

2. Special management area factor: Discharges that originate in special management areas described in subparagraph (2)(c)2. have a factor of two. Discharges that originate outside a special management area described in subparagraph (2)(c)2. have a location factor of one. For discharges that originate outside of a special management area but impact the natural resources within a special management area, the value of the natural resources damaged within the area shall be multiplied by the special management area factor of two.

3. Pollutant category factor: Discharges of category 1 pollutants have a factor of eight. Discharges of category 2 pollutants have a factor of four. Discharges of category 3 pollutants have a factor of one.

4. Habitat factor: The amount of compensation for damage to the natural resources of the state is established as follows:

a. $10 per square foot of coral reef impacted.

b. $1 per square foot of mangrove or seagrass impacted.

c. $1 per linear foot of sandy beach impacted.

d. $0.50 per square foot of live bottom, oyster reefs, worm rock, perennial algae, saltmarsh, or freshwater tidal marsh impacted.

e. $0.05 per square foot of sand bottom or mud flats, or combination thereof, impacted.

(b) The areal and linear coverage of habitat impacted shall be determined by the department using a combination of field measurements, aerial photogrammetry, and satellite imagery. An area is impacted when the pollutant comes in contact with the habitat.

(6) It is understood that a pollutant will, by its very nature, result in damage to the flora and fauna of the waters of the state and the adjoining land. Therefore, compensation for such resources, which is difficult to calculate, is included in the compensation schedule. Not included, however, in this base figure is compensation for the death of endangered or threatened species directly attributable to the pollutant discharged. Compensation for the death of any animal designated by rule as endangered by the Fish and Wildlife Conservation Commission is $10,000. Compensation for the death of any animal designated by rule as threatened by the Fish and Wildlife Conservation Commission is $5,000. These amounts are not intended to reflect the actual value of said endangered or threatened species, but are included for the purposes of this section.

(7) The owner or operator of the vessel or facility responsible for a discharge may designate a representative or agent to work with the department in assessing the amount of damage to natural resources resulting from the discharge.

(8) When assessing the amount of damages to natural resources, the department shall be assisted, if requested by the department, by representatives of other state agencies and local governments that would enhance the department's damage assessment. The Fish and Wildlife Conservation Commission shall assist the department in the assessment of damages to wildlife impacted by a pollutant discharge and shall assist the department in recovering the costs of such damages.

(9) Compensation for damage resulting from the discharge of two or more pollutants shall be calculated for the volume of each pollutant discharged. If the separate volume for each pollutant discharged cannot be determined, the

highest multiplier for the pollutants discharged shall be applied to the entire volume of the spill. Compensation for commingled discharges that contact habitat shall be calculated on a proportional basis of discharged volumes. The highest multiplier for such commingled pollutants may only be applied if a reasonable proportionality of the commingled pollutants cannot be determined at the point of any contact with natural resources.

(10) For cases in which the department is authorized to use a method of natural resources damage assessment other than the compensation schedules described in subsections (4), (5), (6), and (9), the department may use the methods described in federal rules implementing the Oil Pollution Act of 1990, as amended.

(a) When a responsible party is identified and the department is not conducting a cooperative damage assessment with federal agencies, the person responsible has the option to pay the amount of compensation calculated pursuant to the compensation schedule established in subsection (4) or pay the amount determined by a damage assessment performed by the department. If the person responsible for the discharge elects to have a damage assessment performed, then such person shall notify the department in writing of such decision within 30 days after identification of the discharge by the department. The decision to have a damage assessment performed to determine compensation for a discharge shall be final; the person responsible for a discharge may not later elect to use the compensation schedule for computing compensation. Failure to make such notice shall result in the amount of compensation for the total damage to natural resources being calculated based on the compensation schedule. The compensation shall be paid within 90 days after receipt of a written request from the department.

(b) In the event the person responsible for a discharge elects to have a damage assessment performed, said person shall pay to the department an amount equal to the compensation calculated pursuant to subsection (4) for the discharge using the lesser of the volume of the discharge or a volume of 30,000 gallons. The payment shall be made within 90 days after receipt of a written request from the department.

(c) After completion of the damage assessment, the department shall advise the person responsible for the discharge of the amount of compensation due to the state. A credit shall be given for the amount paid pursuant to paragraph (b). Payment shall be made within 90 days after receipt of a written request from the department.

(11)(a) Moneys recovered by the department as compensation for damage to natural resources shall be expended only for the following purposes:

1. To the maximum extent practicable, the restoration of natural resources damaged by the discharge for which compensation is paid.
2. Restoration of damaged resources.
3. Developing restoration and enhancement techniques for natural resources.
4. Investigating methods for improving and refining techniques for containment, abatement, and removal of pollutants from the environment, especially from mangrove forests, corals, seagrasses, benthic communities, rookeries, nurseries, and other habitats which are unique to Florida's coastal environment.
5. Developing and updating the "Sensitivity of Coastal Environments and Wildlife to Spilled Oil in Florida" atlas.
6. Investigating the long-term effects of pollutant discharges on natural resources, including pelagic organisms, critical habitats, and marine ecosystems.
7. Developing an adequate wildlife rescue and rehabilitation program.
8. Expanding and enhancing the state's pollution prevention and control education program.
9. Restoring natural resources previously impacted by pollutant discharges, but never completely restored.
10. Funding alternative projects selected by the Board of Trustees of the Internal Improvement Trust Fund. Any such project shall be selected on the basis of its anticipated benefits to the marine natural resources available to the residents of this state who previously benefited from the injured or destroyed nonrestorable natural resources.

(b) All interest earned from investment of moneys recovered by the department for damage to natural resources shall be expended only for the activities described in paragraph (a).

(c) The person or parties responsible for a discharge for which the department has requested compensation for damage pursuant to this section shall pay the department, within 90 days after receipt of the request, the entire amount due to the state. In the event that payment is not made within the 90 days, the person or parties are liable for interest on the outstanding balance, which interest shall be calculated at the rate prescribed under s. 55.03.

(12) Any determination or assessment of damage to natural resources for the purposes of this section by the department in accordance with the compensation sections or in accordance with the rules adopted under subsection (10) shall have the force and effect of rebuttable presumption on behalf of the department in any administrative or judicial proceeding.

(13) There shall be no double recovery under this law for natural resource damage resulting from a discharge, including the costs of damage assessment or restoration, rehabilitation, replacement, or acquisition for the same incident and natural resource. The department shall meet with and develop memoranda of understanding with appropriate federal trustees as defined in Pub. L. No. 101-380 (Oil Pollution Act of 1990) to provide further assurances of no double recovery.

History.—s. 19, ch. 90-54; s. 2, ch. 92-113; s. 294, ch. 94-356; s. 9, ch. 96-263; s. 196, ch. 99-245; s. 3, ch. 2005-166; s. 84, ch. 2010-102; s. 35, ch. 2013-18.

376.123 Claims against the Florida Coastal Protection Trust Fund.—

(1) A person making a claim against the fund may not have such claim approved during the pendency of a judicial or other proceeding by the person to recover costs or damages which are the subject of the claim.

(2)(a) Whenever the department has designated a vessel or terminal facility as a source of a moderate or major discharge, all claims for cleanup costs or damages under ss. 376.011-376.21 shall be presented first to the responsible party for the designated source, pursuant to paragraph (b), before they may be presented to the fund.

(b) If a responsible party fails to inform the department, within 5 days after receiving notification of a designation under paragraph (a), of the party's denial of the designation, such party shall advertise the designation and the procedures by which claims may be presented, in accordance with department rules. Advertisement shall begin no later than 15 days after the date the department has made the designation. If advertisement is not otherwise made in accordance with this paragraph, the department shall promptly and at the expense of the responsible party advertise the designation and the procedures by which claims may be presented to the responsible party.

(c) If a claim is presented in accordance with paragraph (b) and:

1. Each party who has been alleged to be the responsible party and to whom the claim has been presented denies all liability for the claim; or

2. Full and adequate payment of the claim for cleanup costs and damages is not made by the responsible party within 90 days after the claim is presented or the advertisement is begun, whichever is later,

the claimant may present the claim to the fund.

(3) Any person who is eligible under s. 376.09 may assert a claim against the Florida Coastal Protection Trust Fund for reimbursement of cleanup costs, provided that:

(a) Such claim is presented within 180 days of completion of the person's assistance with cleanup. The secretary may, upon petition and for good cause shown, waive the prescribed time period for filing cleanup claims. The prescribed time period shall be tolled during pendency of the claimant's claim against a responsible party pursuant to subsection (2), until the time specified in paragraph (2)(c).

(b) The claimant shall provide the department with the required documentation concerning amounts expended for cleanup costs. The department shall prescribe appropriate forms and other requirements for such claims.

(4) Any person claiming to have suffered damages, as defined in s. 376.031, excluding natural resource damages, as a result of a discharge of pollutants prohibited by s. 376.041 may, within 180 days after the date of such discharge, apply to the department for reimbursement from the Florida Coastal Protection Trust Fund. It shall be the responsibility of the claimant to provide the department with the required documentation concerning the damages suffered as a direct result of the discharge. The department shall prescribe appropriate forms and requirements for such application, which application shall include a provision requiring the applicant to make a sworn verification of the damage claimed to the best of the applicant's knowledge. The secretary of the department may, upon petition and for good cause shown, waive the 180-day limitation for filing damage claims. The prescribed time period shall be tolled during pendency of the claimant's claim against a responsible party pursuant to subsection (2), until the time specified in paragraph (2)(c).

(5) The secretary shall establish the amount to be awarded and shall certify the amount of the award and the name of the claimant to the Chief Financial Officer, who shall pay the award from the fund, subject to the provisions of subsection (12). If the claimant agrees with the established amount of award, the settlement shall be binding upon both parties as to all issues and cannot be further attacked, collaterally or by separate action, in the future.

(6) If either the claimant or the responsible party disagrees with the amount of the damage award, such person may request a hearing pursuant to s. 120.57.

(7) Each person's damage claims arising from a single occurrence shall be stated in one application. Damages omitted from any claim at the time the award is made shall be deemed waived.

(8) If a person chooses to make a claim against the fund and accepts payment from, or a judgment against, the fund, then the department shall be subrogated to any cause of action that the claimant may have had, to the extent of such payment or judgment, and shall diligently pursue recovery on that cause of action pursuant to subsection (10) and s. 376.11(8). In any such action, the amount of damages shall be proved by the department by submitting to the court a written report of the amounts paid or owed from the fund to claimants. Such written report shall be admissible as evidence, and the amounts paid from or owed by the fund to the claimants stated therein shall be irrebuttably presumed to be the amount of damages.

(9) The department shall be a necessary party to all administrative hearings and court proceedings under this section.

(10) It shall be the duty of the department in administering the fund to pursue diligently the reimbursement to the fund of any sum expended from the fund for, and any other state moneys not budgeted for but expended for, cleanup, abatement, and damages in accordance with the provisions of ss. 376.011-376.21.

(11) In the event the total awards against the fund exceed the present balance of the fund, the claimants shall be paid from the future income of the fund.

(12) In the event the total awards for a specific occurrence exceed the current balance of the fund, the immediate award shall be paid on a prorated basis, and all claimants paid on a prorated basis shall be paid a pro rata share of all funds received by the fund, until the total amount of the proven damages is paid to the claimant or claimants. However, amounts collected by the fund from the prosecution of causes of action pursuant to subsections (8) and (10) shall be utilized to satisfy the claims as to which such prosecutions relate to the extent theretofore unsatisfied.

(13) Nothing contained in this section shall be construed to limit the liability of vessels, terminal facilities, or the fund for damages.

History.—s. 10, ch. 96-263; s. 390, ch. 2003-261; s. 55, ch. 2015-229.

376.13 Emergency proclamation; Governor's powers.—

(1) Whenever any emergency exists or appears imminent, arising from the discharge of oil, petroleum products or their byproducts, or any other pollutants, the Governor shall by proclamation declare the fact and that a state of emergency exists in any or all sections of the state. If the Governor is unavailable, the Lieutenant Governor shall, by proclamation, declare the fact and that a state of emergency exists in any or all sections of the state. A copy of such proclamation shall be filed with the Department of State.

(2) In performing his or her duties under this section, the Governor is authorized and directed to cooperate with all departments and agencies of the Federal Government, the offices and agencies of other states and foreign countries and the political subdivisions thereof, and private agencies in all matters pertaining to an emergency as described herein.

(3) In performing his or her duties under this section, the Governor is further authorized and empowered:

(a) To make, amend, and rescind the necessary orders, rules, and regulations to carry out this section within the limits of the authority conferred upon the Governor and not inconsistent with the rules, regulations, and directives of the President of the United States or of any federal department or agency having specifically authorized emergency functions.

(b) To delegate any authority vested in the Governor under this section and to provide for the subdelegation of any such authority.

(4) Whenever the Governor is satisfied that an emergency no longer exists, he or she may terminate the proclamation by another proclamation affecting the sections of the state covered by the original proclamation, or any part thereof. The proclamation shall be published in such newspapers of the state and posted in such places as the Governor, or any person acting in that capacity, deems appropriate.

History.—s. 13, ch. 70-244; s. 1, ch. 70-439; s. 39, ch. 83-334; s. 614, ch. 95-148.

376.14 Vessels; financial responsibility; claims against providers of financial responsibility; service of process against responsible parties.—

(1) Each owner or operator of a terminal facility or vessel, including any barge, using any port in Florida shall be required to establish and maintain evidence of financial responsibility pursuant to federal laws and regulations. Such evidence of financial responsibility shall be the only evidence required by the department that such registrant or vessel has the ability to meet the liabilities which may be incurred under ss. 376.011-376.21.

(2) Any claim brought pursuant to ss. 376.011-376.21 by the fund or any damaged party against a responsible party may be brought directly against the bond, the insurer, or any other person providing the responsible party with evidence of financial responsibility.

(3) Each owner or operator of a terminal facility or vessel subject to the provisions of ss. 376.011-376.21 shall designate a person in the state as the owner's or operator's legal agent for service of process under ss. 376.011-376.21, and such designation shall be filed with the Department of State. In the absence of such designation, the Secretary of State shall be the designated agent for purposes of service of process under ss. 376.011-376.21.

History.—s. 14, ch. 70-244; s. 1, ch. 70-439; s. 13, ch. 74-336; s. 615, ch. 95-148; s. 11, ch. 96-263.

376.15 Derelict vessels; relocation or removal from public waters.—

(1) As used in this section, the term:

(a) "Commission" means the Fish and Wildlife Conservation Commission.

(b) "Gross negligence" means conduct so reckless or wanting in care that it constitutes a conscious disregard or indifference to the safety of the property exposed to such conduct.

(c) "Willful misconduct" means conduct evidencing carelessness or negligence of such a degree or recurrence as to manifest culpability, wrongful intent, or evil design or to show an intentional and substantial disregard of the interests of the vessel owner.

(2) It is unlawful for any person, firm, or corporation to store, leave, or abandon any derelict vessel as defined in s. 823.11 in this state.

(3)(a) The commission, officers of the commission, and any law enforcement agency or officer specified in s. 327.70 are authorized and empowered to relocate, remove, or cause to be relocated or removed any derelict vessel as defined in s. 823.11 from public waters. All costs, including costs owed to a third party, incurred by the commission or other law enforcement agency in the relocation or removal of any abandoned or derelict vessel are recoverable against the owner of the vessel. The Department of Legal Affairs shall represent the commission in actions to recover such costs.

(b) The commission, officers of the commission, and any other law enforcement agency or officer specified in s. 327.70 acting under this section to relocate, remove, or cause to be relocated or removed a derelict vessel from public waters shall be held harmless for all damages to the derelict vessel resulting from such relocation or removal unless the damage results from gross negligence or willful misconduct.

(c) A contractor performing relocation or removal activities at the direction of the commission, officers of the commission, or a law enforcement agency or officer pursuant to this section must be licensed in accordance with applicable United States Coast Guard regulations where required; obtain and carry in full force and effect a policy from a licensed insurance carrier in this state to insure against any accident, loss, injury, property damage, or other casualty caused by or resulting from the contractor's actions; and be properly equipped to perform the services to be provided.

(d) The commission may establish a program to provide grants to local governments for the removal of derelict vessels from the public waters of the state. The program shall be funded from the Florida Coastal Protection Trust

Fund. Notwithstanding the provisions in s. 216.181(11), funds available for grants may only be authorized by appropriations acts of the Legislature.

(e) The commission shall adopt by rule procedures for submitting a grant application and criteria for allocating available funds. Such criteria shall include, but not be limited to, the following:

1. The number of derelict vessels within the jurisdiction of the applicant.

2. The threat posed by such vessels to public health or safety, the environment, navigation, or the aesthetic condition of the general vicinity.

3. The degree of commitment of the local government to maintain waters free of abandoned and derelict vessels and to seek legal action against those who abandon vessels in the waters of the state.

(f) This section constitutes the authority for such removal but is not intended to be in contravention of any applicable federal act.

History.—s. 15, ch. 70-244; s. 1, ch. 70-439; s. 6, ch. 80-382; s. 7, ch. 85-252; s. 64, ch. 95-143; s. 5, ch. 95-150; s. 257, ch. 99-245; s. 23, ch. 2001-56; s. 7, ch. 2006-309; s. 2, ch. 2014-143.

376.16 Enforcement and penalties.—

(1) It is unlawful for any person to violate any provision of ss. 376.011-376.21 or any rule or order of the department made pursuant to this act. Violation shall be punishable by a civil penalty of up to $50,000 per violation per day to be assessed by the department. Each day during any portion of which the violation occurs constitutes a separate offense. The penalty provisions of this subsection shall not apply to any discharge promptly reported and removed by a person responsible, in accordance with the rules and orders of the department, or to any discharge of pollutants equal to or less than 5 gallons.

(2) In addition to the penalty provisions which may apply under subsection (1), a person responsible for two or more discharges of any pollutant reported pursuant to s. 376.12 within a 12-month period at the same facility commits a noncriminal infraction and shall be cited by the department for such infraction.

(a) For discharges of gasoline or diesel over 5 gallons, the civil penalty for the second discharge shall be $500 and the civil penalty for each subsequent discharge within a 12-month period shall be $1,000, except as otherwise provided in this section.

(b) For discharges of any pollutant other than gasoline or diesel, the civil penalty for a second discharge shall be $2,500 and the civil penalty for each subsequent discharge within a 12-month period shall be $5,000, except as otherwise provided in this section.

(3) A person responsible for two or more discharges of any pollutant reported pursuant to s. 376.12 within a 12-month period at the same facility commits a noncriminal infraction and shall be cited by the department for such infraction.

(a) For discharges of gasoline or diesel equal to or less than 5 gallons, the civil penalty shall be $50 for each discharge subsequent to the first.

(b) For discharges of pollutants other than gasoline or diesel equal to or less than 5 gallons, the civil penalty shall be $100 for each discharge subsequent to the first.

(4) A person charged with a noncriminal infraction pursuant to subsection (2) or subsection (3) may:

(a) Pay the civil penalty;

(b) Post a bond equal to the amount of the applicable civil penalty; or

(c) Sign and accept a citation indicating a promise to appear before the county court.

The department employee authorized to issue these citations may indicate on the citation the time and location of the scheduled hearing and shall indicate the applicable civil penalty.

(5) Any person who willfully refuses to post bond or accept and sign a citation commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(6) After compliance with paragraph (4)(b) or paragraph (4)(c), any person charged with a noncriminal infraction under subsection (2) or subsection (3) may:

(a) Pay the civil penalty, either by mail or in person, within 30 days after the date of receiving the citation; or

(b) If the person has posted bond, forfeit the bond by not appearing at the designated time and location.

A person cited for an infraction under this section who pays the civil penalty or forfeits the bond has admitted the infraction and waives the right to a hearing on the issue of commission of the infraction. Such admission may not be used as evidence in any other proceeding.

(7) Any person who elects to appear before the county court or who is required to appear waives the limitations of the civil penalties specified in subsection (2). The court, after a hearing, shall make a determination as to whether an infraction has been committed. If the commission of an infraction is proved, the court may impose a civil penalty up to, but not exceeding, $500 for the second discharge of gasoline or diesel and a civil penalty up to, but not exceeding, $1,000 for each subsequent discharge of gasoline or diesel within a 12-month period.

(8) Any person who elects to appear before the county court or who is required to appear waives the limitations of the civil penalties specified in subsection (2) or subsection (3). The court, after a hearing, shall make a determination as to whether an infraction has been committed. If the commission of an infraction is proved, the court may impose a civil penalty up to, but not exceeding, $5,000 for the second discharge of pollutants other than gasoline or diesel and a civil penalty up to, but not exceeding, $10,000 for each subsequent discharge of pollutants other than gasoline or diesel within a 12-month period.

(9) At a hearing under this section, the commission of a charged offense must be proved by the greater weight of the evidence.

(10) A person who is found by a hearing official to have committed an infraction may appeal that finding to the circuit court.

(11) Any person who has not posted bond and who neither pays the applicable civil penalty, as specified in subsection (2) or subsection (3) within 30 days of receipt of the citation nor appears before the court commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(12) Any person who makes or causes to be made a false statement which the person does not believe to be true in response to requirements of the provisions of ss. 376.011-376.21 commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—ss. 10, 16, ch. 70-244; ss. 7, 14, ch. 74-336; s. 20, ch. 90-54; s. 12, ch. 96-263; s. 18, ch. 2012-88.

376.165 "Hold-harmless" agreements prohibited.—Any agreement entered into after July 1, 1974, to "hold-harmless" a vessel or terminal facility from liability for the occurrence of a discharge prohibited by ss. 376.011-376.21, agreed to by a governmental agency or political subdivision, is deemed contrary to public policy and is hereby prohibited.

History.—s. 14, ch. 74-336.

376.19 County and municipal ordinances; powers limited.—Nothing in ss. 376.011-376.21 shall be construed to deny any county or municipality authority to exercise police powers by ordinance or law under any general or special act, and laws and ordinances promulgated in furtherance of the intent of ss. 376.011-376.21 to promote the general welfare, public health, and public safety shall be valid unless in direct conflict with the provisions of ss. 376.011-376.21 or any rule, regulation, or order of the department adopted under authority of ss. 376.011-376.21. However, in order to avoid unnecessary duplication, no county, municipality, or other political subdivision of the state may adopt or establish a similar program of licensing and fees for the accomplishment of the purposes of ss. 376.011-376.21.

History.—s. 19, ch. 70-244.

376.20 Limitation on application.—Nothing in ss. 376.011-376.21 shall be deemed to apply to the storage or transportation of liquefied petroleum gas or to industrial effluents discharged into the waters or atmosphere of the state pursuant to either a federal or state permit.

History.—s. 20, ch. 70-244; s. 2, ch. 71-137; s. 17, ch. 74-336.

376.205 Individual cause of action for damages under ss. 376.011-376.21.—The remedies in this act shall be deemed to be cumulative and not exclusive. Nothing in this act shall require pursuit of any claim against the fund as a

condition precedent to any remedy against a responsible party. Notwithstanding any other provision of law, any person may bring a cause of action against a responsible party in a court of competent jurisdiction for damages, as defined in s. 376.031, resulting from a discharge or other condition of pollution covered by ss. 376.011-376.21. In any such suit, it shall not be necessary for the person to plead or prove negligence in any form or manner. Such person need only plead and prove the fact of the prohibited discharge or other pollutive condition and that it occurred. The only defenses to such cause of action shall be those specified in s. 376.12(7). The court, in issuing any final judgment in such action, may award costs of litigation, including reasonable attorney's and expert witness fees, to any party, whenever the court determines such an award is in the public interest.

History.—s. 18, ch. 74-336; s. 51, ch. 91-221; s. 13, ch. 96-263.

376.207 Traps impregnated with pollutants prohibited.—No person shall, within the territorial limits of the state, impregnate with a pollutant any lobster trap or other trap used to take saltwater products. After July 31, 1996, no person shall deposit into the waters of the state any trap that has been impregnated with a pollutant.

History.—s. 14, ch. 96-263.

376.21 Construction of ss. 376.011-376.21.—Sections 376.011-376.21, being necessary for the general welfare and the public health and safety of the state and its inhabitants, shall be liberally construed to effect the purposes set forth under ss. 376.011-376.21 and the Federal Water Pollution Control Act, as amended.

History.—s. 21, ch. 70-244; s. 19, ch. 74-336.

376.25 Gambling vessels; registration; required and prohibited releases.—

(1) SHORT TITLE.—This section may be cited as the "Clean Ocean Act."

(2) DEFINITIONS.—As used in this section, the term:

(a) "Berth" means a site in this state where a gambling vessel moors to embark or disembark its passengers.

(b) "Coastline" has the same meaning as in the Submerged Lands Act, 43 U.S.C. ss. 1301 et seq.

(c) "Coastal waters" means waters of the Atlantic Ocean within 3 nautical miles of the coastline of the state and waters of the Gulf of Mexico within 9 nautical miles of the coastline of the state.

(d) "Department" means the Department of Environmental Protection.

(e) "Gambling vessel" means a boat, ship, casino boat, watercraft, or barge that is kept, operated, or maintained for the purpose of gambling and that carries or operates gambling devices for the use of its passengers or otherwise provides facilities for the purpose of gambling, whether within or without the jurisdiction of this state, and whether the vessel is at berth, lying to, or navigating, and the sailing, voyaging, or cruising, or any segment of the sailing, voyaging, or cruising, begins and ends within this state. The term does not include a cruise ship as defined in 33 C.F.R. s. 101.105.

(f) "Hazardous waste" has the same meaning as in s. 403.703.

(g) "Oily bilge water" means liquid from the bilge of a gambling vessel which contains used lubrication oils, oil sludge and slops, fuel and oil sludge, used oil, used fuel and fuel filters, and oily waste.

(h) "Release" means any discharge of liquids or solids, however caused, from a gambling vessel and includes any escape, disposal, spilling, leaking, pumping, emitting, or emptying.

(i) "Sewage" means human body waste and the waste from toilets and other receptacles intended to receive or retain human body waste and includes any material that has been collected or treated through a marine sanitation device, as that term is used in s. 312 of the Clean Water Act, 33 U.S.C. s. 1322, or that is a byproduct of sewage treatment.

(j) "Treated blackwater" means that part of treated sewage carried off by toilets, urinals, and kitchen drains.

(k) "Treated graywater" means that part of treated sewage that is not blackwater, including waste from the bath, lavatory, laundry, and sink, except kitchen sink waste.

(l) "Untreated blackwater" means that part of untreated sewage carried off by toilets, urinals, and kitchen drains.

(m) "Untreated graywater" means that part of untreated sewage that is not blackwater, including waste from bath, lavatory, laundry, and sink, except kitchen sink waste.

(n) "Waste" means sewage, oily bilge water, treated graywater, untreated graywater, treated blackwater, untreated blackwater, or hazardous waste.

(3) REGISTRATION REQUIREMENTS.—

(a) For each calendar year in which the owner or operator of a gambling vessel intends to operate, or cause or allow to be operated, a gambling vessel in coastal waters, the owner or operator of the vessel shall register with the department. The registration shall be completed before the gambling vessel enters the coastal waters of the state in that calendar year. The registration shall include the following information:

1. The vessel owner's business name and, if different, the vessel operator's business name for each gambling vessel of the owner or operator which is scheduled to be in coastal waters during the calendar year.

2. The postal address, e-mail address, telephone number, and facsimile number of the principal place of each business identified under subparagraph 1.

3. The name and address of an agent for service of process for each business identified under subparagraph 1. The owner and operator shall continuously maintain a designated agent for service of process whenever a gambling vessel of the owner or operator is in coastal waters, and the agent must be an individual resident of this state, a domestic corporation, or a foreign corporation having a place of business in and authorized to do business in this state.

4. The name or call sign, port of registry, berth location, passenger and crew capacity, and weekly schedule of when passengers are to be onboard for each of the owner's or operator's vessels scheduled to be in coastal waters during the calendar year and after the date of registration. If passengers embark or disembark a gambling vessel from another vessel while the gambling vessel is in coastal waters but not moored to a waterfront landing, a waterfront-landing facility in this state where the other vessel moors while such passengers embark or disembark for the gambling-vessel voyage must also be registered as a berth location of the gambling vessel.

5. A description of all waste management systems, including systems for the treatment, storage, or disposal of waste for each gambling vessel identified under subparagraph 4., including, but not limited to, system type, design, operation, location, and capacity of all discharge pipes and valves, and the number and capacity of all storage areas and holding tanks.

(b) Registration under paragraph (a) shall be executed under oath by the owner or operator or designated representative thereof.

(c) Upon request of the department, the registrant shall submit registration information required under this subsection electronically.

(d) The registrant shall promptly advise the department of a change in the information provided by the registrant under paragraph (a) during the period that a registration is valid.

(4) RELEASE PROCEDURES; DISPOSAL FEE.—

(a) The owner of each waterfront-landing facility that is registered as a gambling vessel's berth location shall:

1. Establish procedures for the release of waste from gambling vessels at the facility.

2. Make available a waste-management service that has the capability, at minimum, of handling and disposing of the facility's minimum waste-service demand as calculated by the department under paragraph (b).

3. Collect a fee not to exceed the costs associated with making such waste-management service available from each gambling vessel for which the waterfront-landing facility is a registered berth.

(b) The department shall maintain on its website a current estimate of the minimum waste-service demand for each waterfront-landing facility that is a registered berth for a gambling vessel. The minimum waste-service demand is the volume of waste that is reasonably expected to be released at the facility over a calendar year from gambling vessels that have a registered berth at the facility. In estimating a facility's minimum waste-service demand, the department shall consider, for each gambling vessel that has a registered berth at the facility:

1. The registered capacity of the vessel's systems for treating, holding, or disposing of waste; and

2. Other appropriate information, including, but not limited to, other information provided during registration of the vessel.

(5) NOTIFICATION OF RELEASES.—If a gambling vessel releases any waste into coastal waters, the owner or operator shall immediately, but no later than 24 hours after the release, notify the department of the release. The owner or operator shall include all of the following information in the notification:

(a) Date of the release.

(b) Time of the release.

(c) Location of the release.

(d) Volume of the release.

(e) Source of the release.

(f) Remedial actions taken to prevent future releases.

(6) PENALTIES.—

(a) A person who violates this section is subject to a civil penalty of not more than $50,000 for each violation.

(b) The civil penalty imposed for each separate violation of this section is separate from, and in addition to, any other civil penalty imposed for a separate violation under this subsection or any other law.

(c) In determining the amount of a civil penalty imposed under this subsection, the department shall consider all relevant circumstances, including, but not limited to, the nature, circumstances, extent, and gravity of the violation. In making this determination, the department shall consider the degree of toxicity and volume of the release, the extent of harm caused by the violation, whether the effects of the violation can be reversed or mitigated, and, with respect to the defendant, the ability to pay, the effect of a civil penalty on the ability to continue in business, all voluntary cleanup efforts undertaken in the past, the prior history of violations, the gravity of the behavior, the economic benefit, if any, resulting from the violation, and all other matters the department determines justice may require.

(7) FEES.—The department shall establish and collect fees that are adequate to cover the entire cost to the department of developing and implementing its responsibilities, as required or authorized under this section, which concern registration of gambling vessels, tracking of releases, compliance with this section, and enforcement of this section.

(8) APPLICABILITY.—This section:

(a) Does not apply to releases made for the purpose of securing the safety of the gambling vessel or saving life at sea if all reasonable precautions have been taken for the purpose of preventing or minimizing the release.

(b) Is intended to supplement and not conflict with federal law.

(c) Does not apply to vessels of any branch of the United States Armed Services.

(d) Does not require a person who holds a valid NPDES permit governing releases from a gambling vessel to violate such permit. As used in this paragraph, the term "NPDES permit" means a permit issued by the United States Environmental Protection Agency under s. 402 of the Clean Water Act, Pub. L. No. 92-500, as amended, 33 U.S.C. ss. 1251 et seq., or by the department under s. 403.0885.

(e) Does not apply to any gambling vessel that annually verifies to the department that it operates a marine waste treatment system that produces sterile, clear, and odorless reuse water without generating solid waste and that eliminates the need to pump out or dump wastewater.

(9) RULES.—The department shall adopt rules pursuant to ss. 120.536(1) and 120.54 to administer this section.

(10) FEDERAL ACTIVITIES.—

(a) The department shall submit a request to United States Secretary of Commerce proposing that Florida's Coastal Zone Management Program be amended to include this section.

1. The request must be submitted by August 1, 2008, and must comply with the federal Coastal Zone Management Act and implementing regulations, including, but not limited to, the procedures in 16 U.S.C. s. 1455(c).

2. If the Secretary of Commerce approves the amendment of Florida's Coastal Zone Management Program to include this section, the department shall request the appropriate federal agencies to prohibit the release of waste from any gambling vessel in any waters which could affect the coastal waters of this state in accordance with 16 U.S.C. s. 1456(c)(1).

(b) Independent of the process to amend Florida's Coastal Zone Management Program under paragraph (a), the department shall request the appropriate federal agencies to prohibit the release of waste from any gambling vessel within the federal territorial waters off the shores of this state.

History.—s. 1, ch. 2008-231.

376.30 Legislative intent with respect to pollution of surface and ground waters.—

(1) The Legislature finds and declares:

(a) That certain lands and waters of Florida constitute unique and delicately balanced resources and that the protection of these resources is vital to the economy of this state;

(b) That the preservation of surface and ground waters is a matter of the highest urgency and priority, as these waters provide the primary source for potable water in this state; and

(c) That such use can only be served effectively by maintaining the quality of state waters in as close to a pristine condition as possible, taking into account multiple-use accommodations necessary to provide the broadest possible promotion of public and private interests.

(2) The Legislature further finds and declares that:

(a) The storage, transportation, and disposal of pollutants, drycleaning solvents, and hazardous substances within the jurisdiction of the state and state waters is a hazardous undertaking;

(b) Spills, discharges, and escapes of pollutants, drycleaning solvents, and hazardous substances that occur as a result of procedures taken by private and governmental entities involving the storage, transportation, and disposal of such products pose threats of great danger and damage to the environment of the state, to citizens of the state, and to other interests deriving livelihood from the state;

(c) Such hazards have occurred in the past, are occurring now, and present future threats of potentially catastrophic proportions, all of which are expressly declared to be inimical to the paramount interests of the state as set forth in this section; and

(d) Such state interests outweigh any economic burdens imposed by the Legislature upon those engaged in storing, transporting, or disposing of pollutants, drycleaning solvents, and hazardous substances and related activities.

(3) The Legislature intends by the enactment of ss. 376.30-376.317 to exercise the police power of the state by conferring upon the Department of Environmental Protection the power to:

(a) Deal with the environmental and health hazards and threats of danger and damage posed by such storage, transportation, disposal, and related activities;

(b) Require the prompt containment and removal of products occasioned thereby; and

(c) Establish a program which will enable the department to:

1. Provide for expeditious restoration or replacement of potable water systems or potable private wells of affected persons where health hazards exist due to contamination from pollutants (which may include provision of bottled water on a temporary basis, after which a more stable and convenient source of potable water shall be provided) and hazardous substances, subject to the following conditions:

a. For the purposes of this subparagraph, the term “restoration” means restoration of a contaminated potable water supply to a level which meets applicable water quality standards or applicable water quality criteria, as adopted by rule, for the contaminant or contaminants present in the water supply, or, where no such standards or criteria have been adopted, to a level that is determined to be a safe, potable level by the State Health Officer in the Department of Health, through the installation of a filtration system and provision of replacement filters as necessary or through employment of repairs or another treatment method or methods designed to remove or filter out contamination from the water supply; and the term “replacement” means replacement of a well or well field or connection to an alternative source of safe, potable water.

b. For the purposes of the Inland Protection Trust Fund and the drycleaning facility restoration funds in the Water Quality Assurance Trust Fund as provided in s. 376.3078, such restoration or replacement shall take precedence over other uses of the unobligated moneys within the fund after payment of amounts appropriated annually from the Inland Protection Trust Fund for payments under any service contract entered into by the department pursuant to s. 376.3075.

c. Funding for activities described in this subparagraph shall not exceed $10 million for any one county for any one year, other than for the provision of bottled water.

d. Funding for activities described in this subparagraph shall not be available to fund any increase in the capacity of a potable water system or potable private well over the capacity which existed prior to such restoration or

replacement, unless such increase is the result of the use of a more cost-effective alternative than other alternatives available.

2. Provide for the inspection and supervision of activities described in this subsection.

3. Guarantee the prompt payment of reasonable costs resulting therefrom, including those administrative costs incurred by the Department of Health in providing field and laboratory services, toxicological risk assessment, and other services to the department in the investigation of drinking water contamination complaints.

(4) The Legislature further finds and declares that the preservation of the quality of surface and ground waters is of prime public interest and concern to the state in promoting its general welfare, preventing disease, promoting health, and providing for the public safety and that the interest of the state in such preservation outweighs any burdens of liability imposed by the Legislature upon those persons engaged in storing pollutants and hazardous substances and related activities.

(5) The Legislature further declares that it is the intent of ss. 376.30-376.317 to support and complement applicable provisions of the Federal Water Pollution Control Act, as amended, specifically those provisions relating to the national contingency plan for removal of pollutants.

History.—s. 84, ch. 83-310; s. 5, ch. 84-338; s. 10, ch. 86-159; s. 1, ch. 89-188; s. 2, ch. 92-30; s. 2, ch. 94-355; s. 296, ch. 94-356; s. 1, ch. 96-277; s. 46, ch. 96-321; s. 7, ch. 98-189; s. 68, ch. 99-8; s. 57, ch. 2007-5.

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

(1) "Aboveground hazardous substance tank" means any stationary aboveground storage tank and onsite integral piping that contains hazardous substances which are liquid at standard temperature and pressure and has an individual storage capacity greater than 110 gallons.

(2) "Additive effects" means a scientific principle that the toxicity that occurs as a result of exposure is the sum of the toxicities of the individual chemicals to which the individual is exposed.

(3) "Antagonistic effects" means a scientific principle that the toxicity that occurs as a result of exposure is less than the sum of the toxicities of the individual chemicals to which the individual is exposed.

(4) "Background concentration" means the concentration of contaminants naturally occurring or resulting from anthropogenic impacts unrelated to the discharge of pollutants or hazardous substances at a contaminated site undergoing site rehabilitation.

(5) "Barrel" means 42 U.S. gallons at 60 degrees Fahrenheit.

(6) "Bulk product facility" means a waterfront location with at least one aboveground tank with a capacity greater than 30,000 gallons which is used for the storage of pollutants.

(7) "Cattle-dipping vat" means any structure, excavation, or other facility constructed by any person, or the site where such structure, excavation, or other facility once existed, for the purpose of treating cattle or other livestock with a chemical solution pursuant to or in compliance with any local, state, or federal governmental program for the prevention, suppression, control, or eradication of any dangerous, contagious, or infectious diseases.

(8) "Cleanup target level" means the concentration for each contaminant identified by an applicable analytical test method, in the medium of concern, at which a site rehabilitation program is deemed complete.

(9) "Compression vessel" means any stationary container, tank, or onsite integral piping system, or combination thereof, which has a capacity of greater than 110 gallons, that is primarily used to store pollutants or hazardous substances above atmospheric pressure or at a reduced temperature in order to lower the vapor pressure of the contents. Manifold compression vessels that function as a single vessel shall be considered as one vessel.

(10) "Contaminant" means any physical, chemical, biological, or radiological substance present in any medium which may result in adverse effects to human health or the environment or which creates an adverse nuisance, organoleptic, or aesthetic condition in groundwater.

(11) "Contaminated site" means any contiguous land, sediment, surface water, or groundwater areas that contain contaminants that may be harmful to human health or the environment.

(12) "Department" means the Department of Environmental Protection.

(13) "Discharge" includes, but is not limited to, any spilling, leaking, seeping, pouring, misapplying, emitting, emptying, releasing, or dumping of any pollutant or hazardous substance which occurs and which affects lands and the surface and ground waters of the state not regulated by ss. 376.011-376.21.

(14) "Drycleaning facility" means a commercial establishment that operates or has at some time in the past operated for the primary purpose of drycleaning clothing and other fabrics utilizing a process that involves any use of drycleaning solvents. The term "drycleaning facility" includes laundry facilities that use drycleaning solvents as part of their cleaning process. The term does not include a facility that operates or has at some time in the past operated as a uniform rental company or a linen supply company regardless of whether the facility operates as or was previously operated as a drycleaning facility.

(15) "Drycleaning solvents" means any and all nonaqueous solvents used in the cleaning of clothing and other fabrics and includes perchloroethylene (also known as tetrachloroethylene) and petroleum-based solvents, and their breakdown products. For purposes of this definition, "drycleaning solvents" only includes those drycleaning solvents originating from use at a drycleaning facility or by a wholesale supply facility.

(16) "Dry drop-off facility" means any commercial retail store that receives from customers clothing and other fabrics for drycleaning or laundering at an offsite drycleaning facility and that does not clean the clothing or fabrics at the store utilizing drycleaning solvents.

(17) "Engineering controls" means modifications to a site to reduce or eliminate the potential for exposure to petroleum products' chemicals of concern, drycleaning solvents, or other contaminants. Such modifications may include, but are not limited to, physical or hydraulic control measures, capping, point of use treatments, or slurry walls.

(18) "Wholesale supply facility" means a commercial establishment that supplies drycleaning solvents to drycleaning facilities.

(19) "Facility" means a nonresidential location containing, or which contained, any underground stationary tank or tanks which contain hazardous substances or pollutants and have individual storage capacities greater than 110 gallons, or any aboveground stationary tank or tanks which contain pollutants which are liquids at standard ambient temperature and pressure and have individual storage capacities greater than 550 gallons. This subsection shall not apply to facilities covered by chapter 377, or containers storing solid or gaseous pollutants, and agricultural tanks having storage capacities of less than 550 gallons.

(20) "Flow-through process tank" means an aboveground tank that contains hazardous substances or specified mineral acids as defined in s. 376.321 and that forms an integral part of a production process through which there is a steady, variable, recurring, or intermittent flow of materials during the operation of the process. Flow-through process tanks include, but are not limited to, seal tanks, vapor recovery units, surge tanks, blend tanks, feed tanks, check and delay tanks, batch tanks, oil-water separators, or tanks in which mechanical, physical, or chemical change of a material is accomplished.

(21) "Hazardous substances" means those substances defined as hazardous substances in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, Pub. L. No. 96-510, 94 Stat. 2767, as amended by the Superfund Amendments and Reauthorization Act of 1986.

(22) "Institutional controls" means the restriction on use or access to a site to eliminate or minimize exposure to petroleum products' chemicals of concern, drycleaning solvents, or other contaminants. Such restrictions may include, but are not limited to, deed restrictions, restrictive covenants, or conservation easements.

(23) "Laundering on a wash, dry, and fold basis" means the service provided by the owner or operator of a coin-operated laundry to its customers whereby an employee of the laundry washes, dries, and folds laundry for its customers.

(24) "Long-term natural attenuation" means natural attenuation approved by the department as a site rehabilitation program task for a period of more than 5 years.

(25) "Marine fueling facility" means a commercial or recreational coastal facility, excluding a bulk product facility, providing fuel to vessels.

(26) "Natural attenuation" means a verifiable approach to site rehabilitation that allows natural processes to contain the spread of contamination and reduce the concentrations of contaminants in contaminated groundwater and

soil. Natural attenuation processes may include the following: sorption, biodegradation, chemical reactions with subsurface materials, diffusion, dispersion, and volatilization.

(27) "Operator" means any person operating a facility, whether by lease, contract, or other form of agreement.

(28) "Owner" means any person owning a facility.

(29) "Person" means any individual, partner, joint venture, or corporation; any group of the foregoing, organized or united for a business purpose; or any governmental entity.

(30) "Person in charge" means the person on the scene who is in direct, responsible charge of a facility from which pollutants are discharged, when the discharge occurs.

(31) "Person responsible for site rehabilitation" means the person performing site rehabilitation pursuant to s. 376.3071(5), s. 376.3078(4), s. 376.81, or s. 376.30701. Such person may include, but is not limited to, any person who has legal responsibility for site rehabilitation pursuant to this chapter or chapter 403, the department when it conducts site rehabilitation, a real property owner, a facility owner or operator, any person responsible for brownfield site rehabilitation, or any person who voluntarily rehabilitates a site and seeks acknowledgment from the department for approval of site rehabilitation program tasks.

(32) "Petroleum" includes:

(a) Oil, including crude petroleum oil and other hydrocarbons, regardless of gravity, which are produced at the well in liquid form by ordinary methods and which are not the result of condensation of gas after it leaves the reservoir; and

(b) All natural gas, including casinghead gas, and all other hydrocarbons not defined as oil in paragraph (a).

(33) "Petroleum product" means any liquid fuel commodity made from petroleum, including, but not limited to, all forms of fuel known or sold as diesel fuel, kerosene, all forms of fuel known or sold as gasoline, and fuels containing a mixture of gasoline and other products, excluding liquefied petroleum gas and American Society for Testing and Materials (ASTM) grades no. 5 and no. 6 residual oils, bunker C residual oils, intermediate fuel oils (IFO) used for marine bunkering with a viscosity of 30 and higher, asphalt oils, and petrochemical feedstocks.

(34) "Petroleum products' chemicals of concern" means the constituents of petroleum products, including, but not limited to, xylene, benzene, toluene, ethylbenzene, naphthalene, and similar chemicals, and constituents in petroleum products, including, but not limited to, methyl tert-butyl ether (MTBE), lead, and similar chemicals found in additives, provided the chemicals of concern are present as a result of a discharge of petroleum products.

(35) "Petroleum storage system" means a stationary tank not covered under the provisions of chapter 377, together with any onsite integral piping or dispensing system associated therewith, which is used, or intended to be used, for the storage or supply of any petroleum product. Petroleum storage systems may also include oil/water separators, and other pollution control devices installed at petroleum product terminals as defined in this chapter and bulk product facilities pursuant to, or required by, permits or best management practices in an effort to control surface discharge of pollutants. Nothing herein shall be construed to allow a continuing discharge in violation of department rules.

(36) "Pollutants" includes any "product" as defined in s. 377.19, pesticides, ammonia, chlorine, and derivatives thereof, excluding liquefied petroleum gas.

(37) "Pollution" means the presence on the land or in the waters of the state of pollutants in quantities which are or may be potentially harmful or injurious to human health or welfare, animal or plant life, or property or which may unreasonably interfere with the enjoyment of life or property, including outdoor recreation.

(38) "Real property owner" means the individual or entity that is vested with ownership, dominion, or legal or rightful title to the real property, or which has a ground lease interest in the real property, on which a drycleaning facility or wholesale supply facility is or has ever been located.

(39) "Response action" means any activity, including evaluation, planning, design, engineering, construction, and ancillary services, which is carried out in response to any discharge, release, or threatened release of a hazardous substance, pollutant, or other contaminant from a facility or site identified by the department under the provisions of ss. 376.30-376.317.

(40) "Response action contractor" means a person who is carrying out any response action, including a person retained or hired by such person to provide services relating to a response action.

(41) "Risk reduction" means the lowering or elimination of the level of risk posed to human health or the environment through interim remedial actions, remedial action, or institutional and, if appropriate, engineering controls.

(42) "Secretary" means the Secretary of Environmental Protection.

(43) "Site rehabilitation" means the assessment of site contamination and the remediation activities that reduce the levels of contaminants at a site through accepted treatment methods to meet the cleanup target levels established for that site. For purposes of sites subject to the Resource Conservation and Recovery Act, as amended, the term includes removal, decontamination, and corrective action of releases of hazardous substances.

(44) "Source removal" means the removal of free product, or the removal of contaminants from soil or sediment that has been contaminated to the extent that leaching to groundwater or surface water has occurred or is occurring.

(45) "Storage system" means a stationary tank not covered under the provisions of chapter 377, together with any onsite integral piping or dispensing system associated therewith, which is or has been used for the storage or supply of any petroleum product, pollutant, or hazardous substance as defined herein, and which is registered with the Department of Environmental Protection under this chapter or any rule adopted pursuant hereto.

(46) "Synergistic effects" means a scientific principle that the toxicity that occurs as a result of exposure is more than the sum of the toxicities of the individual chemicals to which the individual is exposed.

(47) "Temporary point of compliance" means the boundary represented by one or more designated monitoring wells at which groundwater cleanup target levels may not be exceeded while site rehabilitation is proceeding.

(48) "Terminal facility" means any structure, group of structures, motor vehicle, rolling stock, pipeline, equipment, or related appurtenances which are used or capable of being used for one or more of the following purposes: pumping, refining, drilling for, producing, storing, handling, transferring, or processing pollutants, provided such pollutants are transferred over, under, or across any water, estuaries, tidal flats, beaches, or waterfront lands, including, but not limited to, any such facility and related appurtenances owned or operated by a public utility or a governmental or quasi-governmental body. In the event of a ship-to-ship transfer of pollutants, the vessel going to or coming from the place of transfer and a terminal facility shall also be considered a terminal facility. For the purposes of ss. 376.30-376.317, the term "terminal facility" shall not be construed to include spill response vessels engaged in response activities related to removal of pollutants, or temporary storage facilities created to temporarily store recovered pollutants and matter, or waterfront facilities owned and operated by governmental entities acting as agents of public convenience for persons engaged in the drilling for or pumping, storing, handling, transferring, processing, or refining of pollutants. However, each person engaged in the drilling for or pumping, storing, handling, transferring, processing, or refining of pollutants through a waterfront facility owned and operated by such a governmental entity shall be construed as a terminal facility.

(49) "Transfer" or "transferred" includes onloading, offloading, fueling, bunkering, lightering, removal of waste pollutants, or other similar transfers, between terminal facility and vessel or vessel and vessel.

(50) "Nearby real property owner" means the individual or entity that is vested with ownership, dominion, or legal or rightful title to real property, or that has a ground lease in real property, onto which drycleaning solvent has migrated through soil or groundwater from a drycleaning facility or wholesale supply facility eligible for site rehabilitation under s. 376.3078(3) or from a drycleaning facility or wholesale supply facility that is approved by the department for voluntary cleanup under s. 376.3078(11).

History.—s. 84, ch. 83-310; s. 6, ch. 84-338; s. 11, ch. 86-159; s. 2, ch. 89-188; s. 22, ch. 90-54; s. 9, ch. 90-98; s. 12, ch. 91-305; s. 3, ch. 92-30; s. 3, ch. 94-355; s. 297, ch. 94-356; s. 1, ch. 95-239; s. 1, ch. 95-349; s. 15, ch. 96-263; s. 2, ch. 96-277; s. 8, ch. 98-189; s. 7, ch. 2000-317; s. 1, ch. 2003-276; s. 1, ch. 2005-50; s. 58, ch. 2007-5; s. 4, ch. 2013-205; s. 5, ch. 2014-151; s. 1, ch. 2016-184.

376.302 Prohibited acts; penalties.—

(1) It shall be a violation of this chapter and it shall be prohibited for any reason:

(a) To discharge pollutants or hazardous substances into or upon the surface or ground waters of the state or lands, which discharge violates any departmental "standard" as defined in s. 403.803(13).

(b) To fail to obtain any permit or registration required by this chapter or by rule, or to violate or fail to comply with any statute, rule, order, permit, registration, or certification adopted or issued by the department pursuant to its

lawful authority.

(c) To knowingly make any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter, or to falsify, tamper with, or knowingly render inaccurate any monitoring device or method required to be maintained under this chapter or by any permit, registration, rule, or order issued under this chapter.

(2) Except as provided in s. 376.311, any person who commits a violation specified in subsection (1) is liable to the state for any damage caused and for civil penalties as provided in s. 403.141.

(3) Any person who willfully commits a violation specified in paragraph (1)(a) or paragraph (1)(b) shall be guilty of a misdemeanor of the first degree punishable as provided in ss. 775.082(4)(a) and 775.083(1)(g), by a fine of not less than $2,500 or more than $25,000, or punishable by 1 year in jail, or by both for each offense. Each day during any portion of which such violation occurs constitutes a separate offense.

(4) Any person who commits a violation specified in paragraph (1)(c) shall be guilty of a misdemeanor of the first degree punishable as provided in ss. 775.082(4)(a) and 775.083(1)(g), by a fine of not more than $10,000, or by 6 months in jail, or by both for each offense.

(5) A person who commits fraud in representing his or her qualifications as a contractor or in submitting a payment invoice pursuant to s. 376.3071 commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(6) It is the legislative intent that the civil penalties and criminal fines imposed by the court be of such amount as to ensure immediate and continued compliance with this act.

History.—s. 84, ch. 83-310; s. 8, ch. 84-338; s. 4, ch. 92-30; s. 1, ch. 94-311; s. 4, ch. 94-355; s. 6, ch. 2014-151.

376.303 Powers and duties of the Department of Environmental Protection.—

(1) The department has the power and the duty to:

(a) Establish rules, including, but not limited to, construction standards, permitting or registration of tanks, maintenance and installation standards, and removal or disposal standards, to implement the intent of ss. 376.30-376.317 and to regulate underground and aboveground facilities and their onsite integral piping systems. Such rules may establish standards for underground facilities which store hazardous substances or pollutants, and marine fueling facilities and aboveground facilities, not covered by chapter 377, which store pollutants. The department shall register bulk product facilities and shall issue annual renewals of such registrations. Requirements for facilities with underground storage tanks having storage capacities over 110 gallons that store hazardous substances became effective on January 1, 1991. The department shall maintain a compliance verification program for this section, which may include investigations or inspections to locate improperly abandoned tanks. The department may contract with other governmental agencies or private consultants to perform compliance verification activities. The contracts may provide for an advance of working capital to local governments to expedite the implementation of the compliance verification program. Counties with permit or registration fees for storage tanks or storage tank systems are not eligible for advance funding for the compliance verification program.

(b) Establish by rule a registration fee schedule for all storage systems regulated under this act sufficient to cover all costs associated with registration.

1. Revenues derived from fees imposed upon petroleum storage systems shall be deposited in the Inland Protection Trust Fund. All other revenues derived from such fees shall be deposited into the Water Quality Assurance Trust Fund.

2. The fee schedule shall provide as follows:

a. For new facilities, an initial registration fee of $50 per tank is due and payable within 30 days after receipt of notification by the department.

b. For facilities at which tanks are replaced, a tank replacement fee of $25 per tank is due and payable within 30 days after receipt of notification by the department.

c. An annual renewal fee of $25 per tank is due and payable by July 1 of each year, except that stationary tanks of 110 gallons or less at nonresidential locations and agricultural tanks of 550 gallons or less shall not be assessed the fee.

d. Any payment made more than 30 days after the date it is due is delinquent and the registrant must pay an additional fee of $20 for each tank with respect to which any payment is delinquent.

e. Bulk product facilities shall be assessed a registration fee and an annual renewal fee not to exceed $1,000 per tank.

3. The department may also assess fees retroactively against late registrants for tanks for which a registration fee should have been paid beginning on or after July 1, 1986. Annual registration fees for all regulated tanks shall continue to accrue forward from the date of registration until tank removal or closure. Payment is due within 30 days of receipt of notification by the department.

4. The department shall notify each registrant of the annual fee requirement no later than June 1 of each year. Fees are due and payable by July 1. For each regulated facility registered with the department under this section, a registration placard shall be issued to the tank's owner listing the number of tanks registered and the amount of registration fees paid, to be displayed in plain view at the office, kiosk, or other suitable location at the facility where the tanks are located.

(c) Establish a registration program for aboveground hazardous substance tanks and compression vessels.

1. Owners or operators shall register their tanks and vessels with the department by December 31, 1992, pay initial registration fees by July 1, 1993, and pay annual renewal registration fees by July 1, 1994, in accordance with the requirements of this subsection. Flow-through process tanks, liquefied petroleum gas tanks, hydraulic lift tanks, electrical equipment tanks, storage tanks containing sodium hypochlorite, storage tanks containing hazardous wastes as defined under Subtitle C of the Resource Recovery and Conservation Act, stormwater tanks, wastewater collection or discharge systems, or storage tanks located entirely within a building or portion of a building with an impervious floor that contains no valves or drains that would allow a discharge from the system are not required to register. Pollutant tanks required to be registered under paragraph (b) or s. 376.323 shall not be required to be registered under this paragraph. The department shall, whenever possible, accept electronically transmitted registration data.

2. Registration fees.—

a. Owners of tanks or vessels shall submit to the department an initial registration fee of $50 per tank or vessel. The fee shall be paid within 30 days after receipt of billing by the department.

b. Owners of tanks or vessels shall submit an annual renewal registration fee of $25 per tank or vessel within 30 days after receipt of billing from the department.

c. Total annual registration fees for initial fees or renewals shall not exceed $2,500 per facility.

d. Revenues derived from such fees shall be deposited into the Water Quality Assurance Trust Fund.

(d) Establish a registration program for drycleaning facilities and wholesale supply facilities.

1. Owners or operators of drycleaning facilities and wholesale supply facilities and real property owners shall jointly register each facility owned and in operation with the department by June 30, 1995, pay initial registration fees by December 31, 1995, and pay annual renewal registration fees by December 31, 1996, and each year thereafter, in accordance with this subsection. If the registration form cannot be jointly submitted, then the applicant shall provide notice of the registration to other interested parties. The department shall establish reasonable requirements for the registration of such facilities. The department shall use reasonable efforts to identify and notify drycleaning facilities and wholesale supply facilities of the registration requirements by certified mail, return receipt requested. The department shall provide to the Department of Revenue a copy of each applicant's registration materials, within 30 working days of the receipt of the materials. This copy may be in such electronic format as the two agencies mutually designate.

2.a. The department shall issue an invoice for annual registration fees to each registered drycleaning facility or wholesale supply facility by December 31 of each year. Owners of drycleaning facilities and wholesale supply facilities shall submit to the department an initial fee of $100 and an annual renewal registration fee of $100 for each drycleaning facility or wholesale supply facility owned and in operation. The fee shall be paid within 30 days after receipt of billing by the department. Facilities that fail to pay their renewal fee within 30 days after receipt of billing are subject to a late fee of $75.

b. Revenues derived from registration, renewal, and late fees shall be deposited into the Water Quality Assurance Trust Fund to be used as provided in s. 376.3078.

3. A registered drycleaning facility shall display in the vicinity of its drycleaning machines the original or a copy of a valid and current certificate evidencing registration with the department pursuant to this paragraph. A person may not sell or transfer any drycleaning solvents to an owner or operator of a drycleaning facility unless the owner or operator of the drycleaning facility displays the certificate issued by the department. Violators of this subparagraph are subject to the remedies available to the department pursuant to s. 376.302.

(e) Provide for the development and implementation of criteria and plans to prevent and meet occurrences of pollution of various kinds and degrees.

(f) Establish a requirement that any facility or terminal facility covered by this act be subject to complete and thorough inspections at reasonable times. Any facility or terminal facility which has discharged a pollutant in violation of the provisions of ss. 376.30-376.317 shall be fully and carefully monitored by the department to ensure that such discharge does not continue to occur.

(g) Require terminal facilities to have discharge prevention and response certificates pursuant to s. 376.065.

(h) Establish discharge prevention and response requirements for bulk product facilities in addition to the requirements in s. 376.065.

(i) Keep an accurate record of the costs and expenses incurred for the removal of prohibited discharges and, except as otherwise provided by law, thereafter diligently pursue the recovery of any sums so incurred from the person responsible or from the United States Government under any applicable federal act, unless the department finds the amount involved too small or the likelihood of recovery too uncertain.

(j) Bring an action on behalf of the state to enforce the liabilities imposed by ss. 376.30-376.317. The provisions of ss. 403.121, 403.131, 403.141, and 403.161 apply to enforcement under ss. 376.30-376.317.

(2) The powers and duties of the department under ss. 376.30-376.317 shall extend to the boundaries of the state described in s. 1, Art. II of the State Constitution.

(3)(a) The department may inspect the installation of any pollutant storage tank. Any person installing a pollutant storage tank, as defined in s. 489.105(17), shall certify that such installation is in accordance with the standards adopted pursuant to this section. The department shall promulgate a form for such certification which shall at a minimum include:

1. A signed statement by the certified pollutant storage systems contractor, as defined in s. 489.105(3)(p), that such installation is in accordance with standards adopted pursuant to this section; and

2. Signed statements by the onsite persons performing or supervising the installation of a pollutant storage tank, which statements shall be required of tasks that are necessary for the proper installation of such tank.

(b)1. The department shall, to the greatest extent possible, contract with local governments to provide for the administration of its responsibilities under this subsection. Such contracts may allow for administration outside the jurisdictional boundaries of a local government. However, no such contract shall be entered into unless the local government is deemed capable of carrying out such responsibilities to the satisfaction of the department.

2. To this end, the department shall inform local governments as to the provisions of this section and as to their options hereunder. At its option, any local government may apply to the department for such purpose on forms to be provided by the department and shall supply such information as the department may require.

(c) The department may enjoin the installation or use of any pollutant storage tank that has been or is being installed in violation of this section or chapter 489.

(d) No new or replaced tanks at bulk product facilities may be put into service or filled with pollutants until the facility has been inspected by the department and determined to be in compliance with department rules adopted pursuant to this chapter.

(4) The department may require a property owner to provide site access for activities associated with contamination assessment or remedial action. Nothing herein shall be construed to prohibit an action by the property owner to compel restoration of his or her property or to recover damages from the person responsible for the polluting condition requiring assessment or remedial action activities.

(5) MAPPING.—If an institutional control is implemented at any contaminated site in a brownfield area designated pursuant to s. 376.80, the property owner must provide information regarding the institutional control to the local government for mapping purposes. The local government must then note the existence of the institutional

control on any relevant local land use and zoning maps with a cross-reference to the department's site registry developed pursuant to subsection (6). If the type of institutional control used requires recording with the local government, then the map notation shall also provide a cross-reference to the book and page number where recorded. When a local government is provided with evidence that the department has subsequently issued a no further action order without institutional controls for a site currently noted on such maps, the local government shall remove the notation.

(6) REGISTRY.—The department shall prepare and maintain a registry of all contaminated sites located in a brownfield area designated pursuant to s. 376.80, which are subject to institutional and engineering controls, in order to provide a mechanism for the public and local governments to monitor the status of these controls, monitor the department's short-term and long-term protection of human health and the environment in relation to these sites, and evaluate economic revitalization efforts in these areas. At a minimum, the registry shall include the type of institutional or engineering controls employed at a particular site, types of contaminants and affected media, land use limitations, and the county in which the site is located. Sites listed on the registry at which the department has subsequently issued a no further action order without institutional controls shall be removed from the registry. The department shall make the registry available to the public and local governments within 1 year after the effective date of this act. The department shall provide local governments with actual notice when the registry becomes available. Local zoning and planning offices shall post information on how to access the registry in public view.

History.—s. 84, ch. 83-310; s. 9, ch. 84-338; s. 12, ch. 86-159; s. 2, ch. 87-374; s. 17, ch. 88-156; s. 1, ch. 88-331; s. 6, ch. 89-143; s. 3, ch. 89-188; s. 23, ch. 90-54; s. 5, ch. 92-30; s. 27, ch. 93-166; s. 5, ch. 94-355; s. 298, ch. 94-356; s. 1015, ch. 95-148; s. 2, ch. 95-239; s. 16, ch. 96-263; s. 3, ch. 96-277; s. 47, ch. 96-321; s. 9, ch. 98-189; s. 6, ch. 2000-211; s. 8, ch. 2000-317; s. 59, ch. 2007-5; s. 14, ch. 2008-150; s. 41, ch. 2018-110.

376.304 Review and analysis of disposal materials or byproducts; disposal at designated local government solid waste disposal facilities.—

(1) The Legislature finds and declares that it is in the public interest to facilitate the activities necessary and essential to clean up the release of pollutants which threaten Florida's unique and fragile environment. The Legislature finds that it is in the public interest to authorize appropriate actions to manage and control the costs associated with activities integrally involved with cleanup of sites contaminated with pollutants.

(2) The department is authorized to review and analyze the disposal materials or byproducts used or resulting from the cleanup of the release of pollutants in the waters of the state. Such materials that are determined by the department not to require extraordinary handling or disposal requirements may be designated for disposal in nearby existing local government solid waste disposal facilities where such facilities are determined to be designed and operated in a manner where disposal of such materials would not constitute an unreasonable risk to public health and the environment. Such designation by the department shall not be disallowed by actions of the local government responsible for operating the solid waste disposal facility. The designation by the department of a local government's solid waste facility as the location for disposing of materials and byproducts resulting from the activities essential to the cleanup of pollutants in the waters of the state shall constitute final agency action subject to review pursuant to chapter 120.

History.—s. 27, ch. 90-54; s. 299, ch. 94-356.

376.305 Removal of prohibited discharges.—

(1) Any person discharging a pollutant as prohibited by ss. 376.30-376.317 shall immediately undertake to contain, remove, and abate the discharge to the satisfaction of the department. However, such an undertaking to contain, remove, or abate a discharge shall not be deemed an admission of responsibility for the discharge by the person taking such action. Notwithstanding this requirement, the department may undertake the removal of the discharge and may contract and retain agents who shall operate under the direction of the department.

(2) If the person causing the discharge, or the person in charge of facilities at which the discharge has taken place, fails to act immediately, the department may arrange for the removal of the pollutant; except that, if the pollutant was discharged into or upon the navigable waters of the United States, the department shall act in accordance with the national contingency plan for removal of such pollutant as established pursuant to the Federal Water Pollution Control

Act, as amended, and the costs of removal incurred by the department shall be paid in accordance with the applicable provisions of that law. Federal funds provided under that act shall be used to the maximum extent possible prior to the expenditure of state funds.

(3) No action taken by any person to contain or remove a discharge, whether such action is taken voluntarily or at the request of the department or its designee, shall be construed as an admission of liability for the discharge.

(4) No person who, voluntarily or at the request of the department or its designee, renders assistance in containing or removing any pollutant shall be liable for any civil damages to third parties resulting solely from the acts or omissions of such person in rendering such assistance, except for acts or omissions amounting to gross negligence or willful misconduct.

(5) Nothing in ss. 376.30-376.317 shall affect the right of any person to render assistance in containing or removing any pollutant or any rights which that person may have against any third party whose acts or omissions in any way have caused or contributed to the discharge of the pollutant.

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

(a) To be included in the program:

1. An application must be submitted to the department certifying that the system has not stored petroleum products for consumption, use, or sale at the facility since March 1, 1990.

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

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

4. The site is not otherwise eligible for the Petroleum Cleanup Participation Program under s. 376.3071(13) based on any discharge reporting form received by the department before January 1, 1995, or a written report of contamination submitted to the department on or before December 31, 1998.

(b) In order to be eligible for the program, petroleum storage systems from which a discharge occurred must be closed pursuant to department rules before an eligibility determination. However, if the department determines that the owner of the facility cannot financially comply with the department's petroleum storage system closure requirements and all other eligibility requirements are met, the petroleum storage system closure requirements shall be waived. The department shall take into consideration the owner's net worth and the economic impact on the owner in making the determination of the owner's financial ability.

(c) Sites accepted in the program are eligible for site rehabilitation funding as provided in s. 376.3071.

(d) The following sites are excluded from eligibility:

1. Sites on property of the Federal Government;

2. Sites contaminated by pollutants that are not petroleum products; or

3. Sites where the department has been denied site access.

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

History.—s. 84, ch. 83-310; s. 13, ch. 86-159; s. 12, ch. 90-98; s. 13, ch. 91-305; s. 6, ch. 92-30; s. 2, ch. 94-311; s. 1016, ch. 95-148; s. 4, ch. 96-277; s. 60, ch. 2007-5; s. 7, ch. 2014-151; s. 8, ch. 2016-184.

376.306 Cattle-dipping vats; legislative findings; liability.—

(1) The Legislature finds that:

(a) In excess of 3,200 cattle-dipping vats were constructed in the state as a result of local, state, and federal programs, conducted from 1906 through 1961, for the prevention, suppression, control, or eradication of the disease commonly known as tick fever by eradicating the cattle fever tick, the arthropod vector organism responsible for transmission of the disease.

(b) Most cattle-dipping vats were constructed with public funds and operated under local, state, and Federal Government supervision and control.

(c) Most vats were used to dip cattle and other livestock owned by several different persons, irrespective of ownership of the property on which the vat was located.

(d) Throughout most of the tick eradication program, the state established criteria for chemical solutions to be used in the vats; annually bid, purchased, and distributed materials to be used in said chemical solutions; and expressly authorized use of chemicals, including, but not limited to, various arsenicals, DDT, and Toxaphene.

(e) Cattle-dipping vats are located on lands presently both privately and publicly owned.

(f) Participation in the cattle fever tick eradication program was mandated by state law. Livestock owners who failed to participate were subjected to criminal penalties, including fines and imprisonment, and civil penalties, including, but not limited to, condemnation and killing of their livestock, payment of costs for the killing and disposal of carcasses by the sheriff or her or his deputies, and payment of fees for dipping performed by the state.

(g) Private owners of property upon which cattle-dipping vats are located should not be held liable for any costs, damages, or penalties arising or resulting from participation in the cattle fever tick eradication program.

(2) Any private owner of property in this state upon which cattle-dipping vats are located shall not be liable to the state under any state law, or to any other person seeking to enforce state law, for any costs, damages, or penalties associated with the discharge, evaluation, contamination, assessment, or remediation of any substances or derivatives thereof that were used in the vat for the eradication of the cattle fever tick. This provision shall be broadly construed to the benefit of said private owner.

History.—s. 1, ch. 96-351; s. 48, ch. 97-96.

376.307 Water Quality Assurance Trust Fund.—

(1) The Water Quality Assurance Trust Fund is intended to serve as a broad-based fund for use in responding to incidents of contamination that pose a serious danger to the quality of groundwater and surface water resources or otherwise pose a serious danger to the public health, safety, or welfare. Moneys in this fund may be used:

(a) To carry out the provisions of ss. 376.30-376.317, relating to assessment, cleanup, restoration, monitoring, and maintenance of any site involving spills, discharges, or escapes of pollutants or hazardous substances which occur as a result of procedures taken by private and governmental entities involving the storage, transportation, and disposal of such products.

(b) To carry out the provisions of s. 376.3078, relating to assessment, cleanup, restoration, monitoring, and maintenance of sites involving drycleaning products.

(c) For activities to expeditiously restore or replace potable water supplies as provided in s. 376.30(3)(c)1.

(d) For response actions under the Comprehensive Environmental Response, Compensation, and Liability Act.

(e) To restore or replace contaminated private potable water wells or water systems. However, funds used as provided in this paragraph must be expended for water supply systems or filters for contaminated potable water wells only as follows:

1. Persons who have contaminated potable water wells that were permitted and constructed after January 1, 1989, in accordance with standards adopted under s. 373.309 are eligible for:

a. Subsidies to connect to existing water supply systems or extensions thereof. However, the subsidy may not exceed the present worth of the 10-year cost of providing and maintaining filters for residents served by the connections; or

b. Filters and filter maintenance to provide treatment for water from contaminated wells sufficient to ensure its potability. However, a filter may not be provided for a potable water well designed to provide water to a household that is part of a subdivision or development of a size that would, according to the department, be more effectively served by a water supply system, if the subdivision or development received its development order after January 1, 1989.

2. Subsidies to develop new water supply systems to be permitted and constructed after January 1, 1989, in accordance with standards adopted pursuant to s. 373.309 because of actual or potential contamination of potable water wells. However, a subsidy may not exceed one-half of the present worth of the 10-year cost of providing and maintaining filters for the residents to be served by the system.

3. The most cost-effective remedy, as determined by the department, for wells drilled before January 1, 1989.

4. Persons permitting and constructing potable water wells on or after July 1, 1997, in accordance with standards adopted pursuant to s. 373.309 because of actual or potential contamination, may be eligible for:

a. Subsidies or filters as identified in sub-subparagraphs 1.a. and b.; or

b. Subsidies for any increased costs associated with potable water well construction pursuant to s. 373.309(1)(e)4., provided that no such subsidy shall exceed one-half the cost of the well including testing, or one-half the present worth of the 10-year cost of providing and maintaining filters for the residents to be served by said well, whichever is less, provided that the household is not part of a subdivision or development of a size that would, according to the department, be more effectively served by a water supply system, if such subdivision or development received its development order on or after July 1, 1997.

(f) For activities by the department to administer brownfield sites.

(g) For detailed planning for and implementation of programs for the management and restoration of ecosystems.

(h) For development and implementation of surface water improvement and management plans and programs under ss. 373.451-373.4595.

(i) For activities to restore polluted areas of the state, as defined by the department, to their condition before pollution occurred or to otherwise enhance pollution control activities.

(j) For activities undertaken by the department to recover moneys as a result of actions against a person for a violation of chapter 373.

(k) For funding activities described in s. 403.086(9) which are authorized for implementation under the Leah Schad Memorial Ocean Outfall Program.

(l) For funding activities to restore or rehabilitate injured or destroyed coral reefs.

(2) Moneys in the fund may not be expended for sites eligible for funding under ss. 376.3071 and 376.3073, relating to the Inland Protection Trust Fund.

(3) Moneys in the fund may not be expended to clean up hazardous waste that a federal agency is removing from navigable waters in accordance with the National Oil and Hazardous Substances Pollution Contingency Plan, established pursuant to the Federal Water Pollution Control Act, Pub. L. No. 92-500, as amended, or that the department is removing from any coastal waters, estuaries, tidal flats, beaches, or lands adjoining the coastline of the state pursuant to this chapter.

(4) The trust fund shall be funded as follows:

(a) An annual transfer of interest funds from the Florida Coastal Protection Trust Fund pursuant to s. 376.11(6)(g).

(b) All excise taxes levied, collected, and credited to the Water Quality Assurance Trust Fund in accordance with the provisions of ss. 206.9935(2) and 206.9945(1)(b).

(c) All penalties, judgments, recoveries, reimbursements, and other fees and charges related to the enforcement of ss. 376.30-376.317, other than penalties, judgments, and other fees and charges related to the enforcement of ss. 376.3071 and 376.3073.

(d) The fee on the retail sale of lead-acid batteries credited to the Water Quality Assurance Trust Fund under s. 403.7185.

(e) All penalties, judgments, recoveries, reimbursements, loans, and other fees and charges collected under s. 376.3078; tax revenues levied, collected, and credited under ss. 376.70 and 376.75; and registration fees collected under s. 376.303(1)(d).

(f) All civil penalties recovered pursuant to s. 373.129(5)(a).

(g) Funds appropriated by the Legislature for the purposes of ss. 373.451-373.4595.

(h) Moneys collected pursuant to s. 403.121 and designated for deposit into the Water Quality Assurance Trust Fund.

(i) Moneys recovered by the state as a result of actions initiated by the department against a person for a violation of chapter 373 or chapter 403.

(j) Damages recovered pursuant to s. 403.93345 for coral reef protection.

(k) Funds available for the Leah Schad Memorial Ocean Outfall Program pursuant to s. 403.08601.

(l) Funds received by the state for injury to or destruction of coral reefs, which funds would otherwise be deposited into the General Revenue Fund or the Internal Improvement Trust Fund. The department may enter into

settlement agreements that require responsible parties to pay a third party to fund projects related to the restoration of a coral reef, to accomplish mitigation for injury to a coral reef, or to support the activities of law enforcement agencies related to coral reef injury response, investigation, and assessment. Participation of a law enforcement agency in the receipt of funds through this mechanism shall be at the law enforcement agency's discretion.

(m) Moneys from sources otherwise specified by law.

(5) Except as otherwise provided by law, the department shall recover to the use of the fund from a person or persons at any time causing or having caused the discharge or from the Federal Government, jointly and severally, all sums owed or expended from the fund, pursuant to s. 376.308, except that the department may decline to pursue such recovery if it finds the amount involved too small or the likelihood of recovery too uncertain. Sums recovered as a result of damage due to discharge of a pollutant or other similar disaster shall be apportioned between the fund and the General Revenue Fund so as to repay the full costs to the General Revenue Fund of any sums disbursed therefrom as a result of such disaster. Any request for reimbursement to the fund for such costs, if not paid within 30 days of demand, shall be turned over to the department for collection.

(6) Moneys in the fund which are not needed currently to meet the obligations of the department in the exercise of its responsibilities under this section shall be deposited with the Chief Financial Officer to the credit of the fund and may be invested in such manner as is provided for by statute. The interest received on such investment shall be credited to the fund. Any provisions of law to the contrary notwithstanding, such interest may be freely transferred between this trust fund and the Inland Protection Trust Fund, in the discretion of the department.

(7) Except as otherwise provided by law, the department, in administering the fund, shall diligently pursue the reimbursement to the fund of any sum expended from the fund in accordance with this section for cleanup and abatement, unless the department finds the amount involved too small or the likelihood of recovery too uncertain. For the purposes of s. 95.11, the limitation period within which to institute an action to recover such sums commences on the last date on which any such sums were expended, and not the date that the discharge occurred.

(8) A settlement entered into by the department may not limit the Legislature's authority to appropriate moneys from the trust fund; however, the department may enter into a settlement in which the department agrees to request that moneys received pursuant to the settlement will be included in its legislative budget request for purposes set out in the settlement; and further, the department may enter into a settlement in cases involving joint enforcement with the Hillsborough County pollution control program, as a program approved by the department pursuant to s. 403.182, in which the department agrees that moneys are to be deposited into that local program's pollution recovery fund and used for projects directed toward addressing the environmental damage that was the subject of the cause of action for which funds were received.

History.—s. 84, ch. 83-310; s. 3, ch. 83-353; s. 10, ch. 84-338; ss. 3, 14, 34, ch. 86-159; s. 82, ch. 86-163; s. 4, ch. 88-393; s. 9, ch. 89-171; s. 72, ch. 90-331; s. 14, ch. 91-305; s. 5, ch. 92-75; s. 300, ch. 94-356; s. 48, ch. 96-321; s. 31, ch. 97-160; s. 391, ch. 2003-261; s. 1, ch. 2005-57; s. 61, ch. 2007-5; s. 56, ch. 2015-229.

376.30701 Application of risk-based corrective action principles to contaminated sites; applicability; legislative intent; rulemaking authority; contamination cleanup criteria; limitations; reopeners.—

(1) APPLICABILITY.—

(a) This section shall not create or establish any new liability for site rehabilitation at contaminated sites. This section is intended to describe a risk-based corrective action process to be applied at sites where legal responsibility for site rehabilitation exists pursuant to other provisions of this chapter or chapter 403. An exceedance of any cleanup target level derived from the cleanup criteria established in subsection (2) shall not, at sites where legal responsibility for site rehabilitation does not exist pursuant to other provisions of this chapter or chapter 403, create liability for site rehabilitation. This section may also apply to other contaminated sites at which a person conducting site rehabilitation elects to have it apply, even where such person does not have legal responsibility for site rehabilitation pursuant to this chapter or chapter 403. This section and any rules adopted pursuant thereto, including the cleanup criteria described in subsection (2), shall not create additional authority to prohibit or limit the legal placement of materials or products on land.

(b) This section shall apply to all contaminated sites resulting from a discharge of pollutants or hazardous substances where legal responsibility for site rehabilitation exists pursuant to other provisions of this chapter or chapter 403, except for those contaminated sites subject to the risk-based corrective action cleanup criteria established for the petroleum, brownfields, and drycleaning programs pursuant to ss. 376.3071, 376.81, and 376.3078, respectively. This section does not apply to nonprogram petroleum-contaminated sites unless application of this section is requested by the person responsible for site rehabilitation.

(c) This section shall apply to a variety of site rehabilitation scenarios including, but not limited to, site rehabilitation conducted voluntarily, site rehabilitation conducted pursuant to the department's enforcement authority, or site rehabilitation conducted as a state-managed cleanup by the department.

(d) This section, and any rules adopted pursuant thereto, shall apply retroactively to all existing contaminated sites where legal responsibility for site rehabilitation exists pursuant to other provisions of this chapter or chapter 403, except those sites for which cleanup target levels have been accepted by the department in an approved technical document, current permit, or other written agreement and except at those sites that have received a "No Further Action" order or a "Site Rehabilitation Completion" order from the department. However, the person responsible for site rehabilitation can elect to have the provisions of this section, including cleanup target levels established pursuant thereto, apply in lieu of those in an approved technical document, current permit, or other written agreement.

(e) Nothing in this section shall be construed to prohibit or delay actions to respond to a discharge of pollutants or hazardous substances prior to any contact with the department. The risk-based corrective action process contemplates appropriate emergency response action or initial remedial action prior to any formal application of the risk-based corrective action process involving site assessment and, if required, subsequent remedial action. Any emergency response actions or initial remedial actions must be conducted in accordance with all applicable federal, state, and local laws and regulations.

(2) INTENT; RULEMAKING AUTHORITY; CLEANUP CRITERIA.—It is the intent of the Legislature to protect the health of all people under actual circumstances of exposure. By July 1, 2004, the secretary of the department shall establish criteria by rule for the purpose of determining, on a site-specific basis, the rehabilitation program tasks that comprise a site rehabilitation program, including a voluntary site rehabilitation program, and the level at which a rehabilitation program task and a site rehabilitation program may be deemed completed. In establishing these rules, the department shall apply, to the maximum extent feasible, a risk-based corrective action process to achieve protection of human health and safety and the environment in a cost-effective manner based on the principles set forth in this subsection. These rules shall prescribe a phased risk-based corrective action process that is iterative and that tailors site rehabilitation tasks to site-specific conditions and risks. The department and the person responsible for site rehabilitation are encouraged to establish decision points at which risk management decisions will be made. The department shall provide an early decision, when requested, regarding applicable exposure factors and a risk management approach based on the current and future land use at the site. These rules must include protocols for the use of natural attenuation, including long-term natural attenuation where site conditions warrant, the use of institutional and engineering controls, and the issuance of "No Further Action" orders. The criteria for determining what constitutes a rehabilitation program task or completion of a site rehabilitation program task or site rehabilitation program, including a voluntary site rehabilitation program, must:

(a) Consider the current exposure and potential risk of exposure to humans and the environment, including multiple pathways of exposure. The physical, chemical, and biological characteristics of each contaminant must be considered in order to determine the feasibility of a risk-based corrective action assessment.

(b) Establish the point of compliance at the source of the contamination. However, the department may temporarily move the point of compliance to the boundary of the property, or to the edge of the plume when the plume is within the property boundary, while cleanup, including cleanup through natural attenuation processes in conjunction with appropriate monitoring, is proceeding. The department may, pursuant to criteria provided in this section, temporarily extend the point of compliance beyond the property boundary with appropriate monitoring, if such extension is needed to facilitate natural attenuation or to address the current conditions of the plume, provided human health, public safety, and the environment are protected. When temporarily extending the point of compliance beyond the property boundary, it cannot be extended further than the lateral extent of the plume, if known, at the time

of execution of a cleanup agreement, if required, or the lateral extent of the plume as defined at the time of site assessment. Temporary extension of the point of compliance beyond the property boundary, as provided in this paragraph, must include actual notice by the person responsible for site rehabilitation to local governments and the owners of any property into which the point of compliance is allowed to extend and constructive notice to residents and business tenants of the property into which the point of compliance is allowed to extend. Persons receiving notice pursuant to this paragraph shall have the opportunity to comment within 30 days after receipt of the notice. Additional notice concerning the status of natural attenuation processes shall be similarly provided to persons receiving notice pursuant to this paragraph every 5 years.

(c) Ensure that the site-specific cleanup goal is that all contaminated sites being cleaned up pursuant to this section ultimately achieve the applicable cleanup target levels provided in this subsection. In the circumstances provided in this subsection, and after constructive notice and opportunity to comment within 30 days after receipt of the notice to local government, owners of any property into which the point of compliance is allowed to extend, and residents of any property into which the point of compliance is allowed to extend, the department may allow concentrations of contaminants to temporarily exceed the applicable cleanup target levels while cleanup, including cleanup through natural attenuation processes in conjunction with appropriate monitoring, is proceeding, if human health, public safety, and the environment are protected.

(d) Allow the use of institutional or engineering controls at contaminated sites being cleaned up pursuant to this section, where appropriate, to eliminate or control the potential exposure to contaminants of humans or the environment. The use of controls must be preapproved by the department and only after constructive notice and opportunity to comment within 30 days after receipt of notice is provided to local governments, owners of any property into which the point of compliance is allowed to extend, and residents on any property into which the point of compliance is allowed to extend. When institutional or engineering controls are implemented to control exposure, the removal of the controls must have prior department approval and must be accompanied by the resumption of active cleanup, or other approved controls, unless cleanup target levels under this section have been achieved.

(e) Consider the interactive effects of contaminants, including additive, synergistic, and antagonistic effects.

(f) Take into consideration individual site characteristics, which shall include, but not be limited to, the current and projected use of the affected groundwater and surface water in the vicinity of the site, current and projected land uses of the area affected by the contamination, the exposed population, the degree and extent of contamination, the rate of contaminant migration, the apparent or potential rate of contaminant degradation through natural attenuation processes, the location of the plume, and the potential for further migration in relation to site property boundaries.

(g) Apply state water quality standards as follows:

1. Cleanup target levels for each contaminant found in groundwater shall be the applicable state water quality standards. Where such standards do not exist, the cleanup target levels for groundwater shall be based on the minimum criteria specified in department rule. The department shall apply the following, as appropriate, in establishing the applicable cleanup target levels: calculations using a lifetime cancer risk level of 1.0E-6; a hazard index of 1 or less; the best achievable detection limit; and nuisance, organoleptic, and aesthetic considerations. However, the department may not require site rehabilitation to achieve a cleanup target level for any individual contaminant that is more stringent than the site-specific background concentration for that contaminant.

2. Where surface waters are exposed to contaminated groundwater, the cleanup target levels for the contaminants must be based on the more protective of the groundwater or surface water standards as established by department rule, unless it has been demonstrated that the contaminants do not cause or contribute to the exceedance of applicable surface water quality criteria. In such circumstance, the point of measuring compliance with the surface water standards shall be in the groundwater immediately adjacent to the surface water body.

3. Using risk-based corrective action principles, the department shall approve alternative cleanup target levels in conjunction with institutional and engineering controls, if needed, based upon an applicant's demonstration, using site-specific or other relevant data and information, risk assessment modeling results, including results from probabilistic risk assessment modeling, risk assessment studies, risk reduction techniques, or a combination thereof, that human health, public safety, and the environment are protected to the same degree as provided in subparagraphs 1. and 2. Where a state water quality standard is applicable, a deviation may not result in the application of cleanup

target levels more stringent than the standard. In determining whether it is appropriate to establish alternative cleanup target levels at a site, the department must consider the effectiveness of source removal, if any, that has been completed at the site and the practical likelihood of the use of low yield or poor quality groundwater, the use of groundwater near marine surface water bodies, the current and projected use of the affected groundwater in the vicinity of the site, or the use of groundwater in the immediate vicinity of the contaminated area, where it has been demonstrated that the groundwater contamination is not migrating away from such localized source, provided human health, public safety, and the environment are protected. Groundwater resource protection remains the ultimate goal of cleanup, particularly in light of the state's continued growth and consequent demands for drinking water resources. The Legislature recognizes the need for a protective yet flexible cleanup approach that risk-based corrective action provides. Only where it is appropriate on a site-specific basis, using the criteria in this paragraph and careful evaluation by the department, shall proposed alternative cleanup target levels be approved. If alternative cleanup target levels are used, institutional controls are not required if:

a. The only cleanup target levels exceeded are the groundwater cleanup target levels derived from nuisance, organoleptic, or aesthetic considerations;

b. Concentrations of all contaminants meet the state water quality standards or the minimum criteria, based on the protection of human health, public safety, and the environment, as provided in subparagraph 1.;

c. All of the groundwater cleanup target levels established pursuant to subparagraph 1. are met at the property boundary;

d. The person responsible for site rehabilitation has demonstrated that the contaminants will not migrate beyond the property boundary at concentrations that exceed the groundwater cleanup target levels established pursuant to subparagraph 1.;

e. The property has access to and is using an offsite water supply, and an unplugged private well is not used for domestic purposes; and

f. The real property owner does not object to the "No Further Action" proposal to the department or the local pollution control program.

(h) Provide for the department to issue a "No Further Action" order, with conditions, including, but not limited to, the use of institutional or engineering controls where appropriate, when alternative cleanup target levels established pursuant to subparagraph (g)3. have been achieved or when the person responsible for site rehabilitation can demonstrate that the cleanup target level is unachievable with the use of available technologies. Before issuing such an order, the department shall consider the feasibility of an alternative site rehabilitation technology at the contaminated site.

(i) Establish appropriate cleanup target levels for soils. Although there are existing state water quality standards, there are no existing state soil quality standards. The Legislature does not intend, through the adoption of this section, to create such soil quality standards. The specific rulemaking authority granted pursuant to this section merely authorizes the department to establish appropriate soil cleanup target levels. These soil cleanup target levels shall be applicable at sites only after a determination as to legal responsibility for site rehabilitation has been made pursuant to other provisions of this chapter or chapter 403.

1. In establishing soil cleanup target levels for human exposure to each contaminant found in soils from the land surface to 2 feet below land surface, the department shall apply the following, as appropriate: calculations using a lifetime cancer risk level of 1.0E-6; a hazard index of 1 or less; and the best achievable detection limit. However, the department may not require site rehabilitation to achieve a cleanup target level for an individual contaminant that is more stringent than the site-specific background concentration for that contaminant. Institutional controls or other methods shall be used to prevent human exposure to contaminated soils more than 2 feet below the land surface. Any removal of such institutional controls shall require such contaminated soils to be remediated.

2. Leachability-based soil cleanup target levels shall be based on protection of the groundwater cleanup target levels or the alternate cleanup target levels for groundwater established pursuant to this paragraph, as appropriate. Source removal and other cost-effective alternatives that are technologically feasible shall be considered in achieving the leachability soil cleanup target levels established by the department. The leachability goals are not applicable if the department determines, based upon individual site characteristics, and in conjunction with institutional and

engineering controls, if needed, that contaminants will not leach into the groundwater at levels that pose a threat to human health, public safety, and the environment.

3. Using risk-based corrective action principles, the department shall approve alternative cleanup target levels in conjunction with institutional and engineering controls, if needed, based upon an applicant's demonstration, using site-specific or other relevant data and information, risk assessment modeling results, including results from probabilistic risk assessment modeling, risk assessment studies, risk reduction techniques, or a combination thereof, that human health, public safety, and the environment are protected to the same degree as provided in subparagraphs 1. and 2.

The department shall require source removal as a risk reduction measure if warranted and cost-effective. Once source removal at a site is complete, the department shall reevaluate the site to determine the degree of active cleanup needed to continue. Further, the department shall determine if the reevaluated site qualifies for monitoring only or if no further action is required to rehabilitate the site. If additional site rehabilitation is necessary to reach "No Further Action" status, the department is encouraged to utilize natural attenuation monitoring, including long-term natural attenuation monitoring, where site conditions warrant.

(3) LIMITATIONS.—The cleanup criteria established pursuant to this section govern only site rehabilitation activities occurring at the contaminated site. Removal of contaminated media from a site for offsite relocation or treatment must be in accordance with all applicable federal, state, and local laws and regulations.

(4) REOPENERS.—Upon completion of site rehabilitation in compliance with subsection (2), additional site rehabilitation is not required unless it is demonstrated that:

(a) Fraud was committed in demonstrating site conditions or completion of site rehabilitation;

(b) New information confirms the existence of an area of previously unknown contamination which exceeds the site-specific rehabilitation levels established in accordance with subsection (2), or which otherwise poses the threat of real and substantial harm to public health, safety, or the environment;

(c) The remediation efforts failed to achieve the site rehabilitation criteria established under this section;

(d) The level of risk is increased beyond the acceptable risk established under subsection (2) due to substantial changes in exposure conditions, such as a change in land use from nonresidential to residential use. Any person who changes the land use of the site, thereby causing the level of risk to increase beyond the acceptable risk level, may be required by the department to undertake additional remediation measures to ensure that human health, public safety, and the environment are protected consistent with this section; or

(e) A new discharge of pollutants or hazardous substances occurs at the site subsequent to the issuance of a "No Further Action" order or a "Site Rehabilitation Completion" order associated with the original contamination being addressed pursuant to this section.

History.—s. 1, ch. 2003-173; s. 2, ch. 2016-184.

376.30702 Contamination notification.—

(1) FINDINGS; INTENT; APPLICABILITY.—The Legislature finds and declares that when contamination is discovered by any person as a result of site rehabilitation activities conducted pursuant to the risk-based corrective action provisions found in s. 376.3071(5), s. 376.3078(4), s. 376.81, or s. 376.30701, it is in the public's best interest that potentially affected persons be notified of the existence of such contamination. Therefore, persons discovering such contamination shall notify the department of such discovery in accordance with the requirements of this section, and the department shall be responsible for notifying the affected public. The Legislature intends for the provisions of this section to govern the notice requirements for early notification of the discovery of contamination.

(2) INITIAL NOTICE OF CONTAMINATION BEYOND PROPERTY BOUNDARIES.—If at any time during site rehabilitation conducted pursuant to s. 376.3071(5), s. 376.3078(4), s. 376.81, or s. 376.30701 the person responsible for site rehabilitation, the person's authorized agent, or another representative of the person discovers from laboratory analytical results that comply with appropriate quality assurance protocols specified in department rules that contamination as defined in applicable department rules exists in any medium beyond the boundaries of the property at which site rehabilitation was initiated pursuant to s. 376.3071(5), s. 376.3078(4), s. 376.81, or s. 376.30701, the person

responsible for site rehabilitation shall give actual notice as soon as possible, but no later than 10 days from such discovery, to the Division of Waste Management at the department's Tallahassee office. The actual notice shall be provided on a form adopted by department rule and mailed by certified mail, return receipt requested. The person responsible for site rehabilitation shall simultaneously mail a copy of such notice to the appropriate department district office, county health department, and all known lessees and tenants of the source property. The notice shall include the following information:

(a) The location of the property at which site rehabilitation was initiated pursuant to s. 376.3071(5), s. 376.3078(4), s. 376.81, or s. 376.30701 and contact information for the person responsible for site rehabilitation, the person's authorized agent, or another representative of the person.

(b) A listing of all record owners of any real property, other than the property at which site rehabilitation was initiated pursuant to s. 376.3071(5), s. 376.3078(4), s. 376.81, or s. 376.30701, at which contamination has been discovered; the parcel identification number for any such real property; the owner's address listed in the current county property tax office records; and the owner's telephone number. The requirements of this paragraph do not apply to the notice to known tenants and lessees of the source property.

(c) Separate tables by medium, such as groundwater, soil, surface water, or sediment, that list sampling locations; sampling dates; names of contaminants detected above cleanup target levels; their corresponding cleanup target levels; the contaminant concentrations; and whether the cleanup target level is based on health, nuisance, organoleptic, or aesthetic concerns.

(d) A vicinity map that shows each sampling location with corresponding laboratory analytical results and the date on which the sample was collected and that identifies the property boundaries of the property at which site rehabilitation was initiated pursuant to s. 376.3071(5), s. 376.3078(4), s. 376.81, or s. 376.30701 and the other properties at which contamination has been discovered during such site rehabilitation.

(3) DEPARTMENT'S NOTICE RESPONSIBILITIES.—Within 30 days after receiving the actual notice required pursuant to subsection (2), or within 30 days of the effective date of this act if the department already possesses information equivalent to that required by the notice, the department shall send a copy of such notice, or an equivalent notification, to all record owners of any real property, other than the property at which site rehabilitation was initiated pursuant to s. 376.3071(5), s. 376.3078(4), s. 376.81, or s. 376.30701, at which contamination has been discovered. If the property at which contamination has been discovered is the site of a school as defined in s. 1003.01, the department shall also send a copy of the notice to the chair of the school board of the district in which the property is located and direct said school board to provide actual notice to teachers and parents or guardians of students attending the school during the period of site rehabilitation. Along with the copy of the notice or its equivalent, the department shall include a letter identifying sources of additional information about the contamination and a telephone number to which further inquiries should be directed. The department may collaborate with the Department of Health to develop such sources of information and to establish procedures for responding to public inquiries about health risks associated with contaminated sites.

(4) RULEMAKING AUTHORITY.—The department shall adopt rules and forms pursuant to ss. 120.536(1) and 120.54 to implement the requirements of this section.

History.—s. 2, ch. 2005-50.

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:

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

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

(c) That, where contamination of the ground or surface water has occurred, remedial measures have often been delayed for long periods while determinations as to liability and the extent of liability are made and that such delays

result in the continuation and intensification of the threat to the public health, safety, and welfare; in greater damage to water resources and the environment; and in significantly higher costs to contain and remove the contamination.

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

(e) That it is necessary to fulfill the intent and purposes of ss. 376.30-376.317 and determined to be in the best interest of, and necessary for the protection of the public health, safety, and welfare of the residents of this state, and therefore a paramount public purpose, to provide for the creation of a nonprofit public benefit corporation as an instrumentality of the state to assist in financing the functions provided in ss. 376.30-376.317 and to authorize the department to enter into one or more service contracts with such corporation for the purpose of financing services related to such functions and to make payments thereunder from the amount on deposit in the Inland Protection Trust Fund, subject to annual appropriation by the Legislature.

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

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

(2) INTENT AND PURPOSE.—

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

(b) It is the intent of the Legislature that the department implement rules and procedures to improve the efficiency and productivity of the Petroleum Restoration Program. The department is directed to implement rules and policies to eliminate and reduce duplication of site rehabilitation efforts, paperwork, and documentation, and micromanagement of site rehabilitation tasks. The department shall make efficiency and productivity a priority in the administration of the Petroleum Restoration Program and to this end, when necessary, shall use petroleum program contracted services to improve the efficiency and productivity of the program. Furthermore, when implementing rules and procedures to improve such efficiency and productivity, the department shall recognize and consider the potential value of utilizing contracted inspection and professional resources to efficiently and productively administer the program.

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

(d) The department is directed to adopt and implement uniform and standardized forms for site rehabilitation work and for the submittal of reports to ensure that information is submitted to the department in a concise, standardized uniform format seeking only information that is necessary.

(e) The department is directed to implement computerized and electronic filing capabilities and submittal of reports in order to expedite submittal of the information and elimination of delay in paperwork.

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

(3) CREATION.—There is created the Inland Protection Trust Fund, hereinafter referred to as the “fund,” to be administered by the department. This fund shall be used by the department as a nonlapsing revolving fund for carrying out the purposes of this section and s. 376.3073. To this fund shall be credited all penalties, judgments,

recoveries, reimbursements, loans, and other fees and charges related to the implementation of this section and s. 376.3073 and the excise tax revenues levied, collected, and credited pursuant to ss. 206.9935(3) and 206.9945(1)(c). Charges against the fund shall be made pursuant to this section.

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

(a) Prompt investigation and assessment of contamination sites.

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

(c) Rehabilitation of contamination sites, which shall consist of cleanup of affected soil, groundwater, and inland surface waters, using the most cost-effective alternative that is technologically feasible and reliable and that provides adequate protection of the public health, safety, and welfare, and water resources, and that minimizes environmental damage, pursuant to the site selection and cleanup criteria established by the department under subsection (5), except that this paragraph does not authorize the department to obligate funds for payment of costs which may be associated with, but are not integral to, site rehabilitation, such as the cost for retrofitting or replacing petroleum storage systems.

(d) Maintenance and monitoring of contamination sites.

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

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

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

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

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

(j) Activities related to removal and replacement of petroleum storage systems, exclusive of costs of any tank, piping, dispensing unit, or related hardware, if soil removal is approved as a component of site rehabilitation and requires removal of the tank where remediation is conducted under this section or if such activities were justified in an approved remedial action plan.

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

(l) Repayment of loans to the fund.

(m) Expenditure of sums from the fund to cover ineligible sites or costs as set forth in subsection (13), if the department in its discretion deems it necessary to do so. In such cases, the department may seek recovery and reimbursement of costs in the same manner and pursuant to the same procedures established for recovery and reimbursement of sums otherwise owed to or expended from the fund.

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

(o) Petroleum remediation pursuant to this section throughout a state fiscal year. The department shall establish a process to uniformly encumber appropriated funds throughout a state fiscal year and shall allow for emergencies and imminent threats to public health, safety, and welfare, water resources, and the environment as provided in paragraph (5)(a). This paragraph does not apply to appropriations associated with the free product recovery initiative provided in paragraph (5)(c) or the advanced cleanup program provided in s. 376.30713.

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

(q) Payments for program deductibles, copayments, and limited contamination assessment reports that otherwise would be paid by another state agency for state-funded petroleum contamination site rehabilitation.

The issuance of a site rehabilitation completion order pursuant to subsection (5) or paragraph (12)(b) for contamination eligible for programs funded by this section does not alter the project's eligibility for state-funded remediation if the department determines that site conditions are not protective of human health under actual or proposed circumstances of exposure under subsection (5). The Inland Protection Trust Fund may be used only to fund the activities in ss. 376.30-376.317 except ss. 376.3078 and 376.3079. Amounts on deposit in the fund in each fiscal year must first be applied or allocated for the payment of amounts payable by the department pursuant to paragraph (n) under a service contract entered into by the department pursuant to s. 376.3075 and appropriated in each year by the Legislature before making or providing for other disbursements from the fund. This subsection does not authorize the use of the fund for cleanup of contamination caused primarily by a discharge of solvents as defined in s. 206.9925(6), or polychlorinated biphenyls when their presence causes them to be hazardous wastes, except solvent contamination which is the result of chemical or physical breakdown of petroleum products and is otherwise eligible. Facilities used primarily for the storage of motor or diesel fuels as defined in ss. 206.01 and 206.86 are not excluded from eligibility pursuant to this section.

(5) SITE SELECTION AND CLEANUP CRITERIA.—

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

1. The degree to which the public health, safety, or welfare may be affected by exposure to the contamination;
2. The size of the population or area affected by the contamination;
3. The present and future uses of the affected aquifer or surface waters, with particular consideration as to the probability that the contamination is substantially affecting, or will migrate to and substantially affect, a known public or private source of potable water; and
4. The effect of the contamination on water resources and the environment.

Moneys in the fund shall then be obligated for activities described in paragraphs (4)(a)-(e) at individual sites pursuant to such established criteria. However, this paragraph does not restrict the department from modifying the priority status of a rehabilitation site where conditions warrant, taking into consideration the actual distance between the contamination site and groundwater or surface water receptors or other factors that affect the risk of exposure to petroleum products' chemicals of concern. The department may use the effective date of a department final order granting eligibility pursuant to subsections (10) and (13) and ss. 376.305(6) and 376.3072 to establish a prioritization system within a particular priority scoring range.

(b) It is the intent of the Legislature to protect the health of all people under actual circumstances of exposure. The secretary shall establish criteria by rule for the purpose of determining, on a site-specific basis, the rehabilitation program tasks that comprise a site rehabilitation program and the level at which a rehabilitation program task and a site rehabilitation program are completed. In establishing the rule, the department shall incorporate, to the maximum extent feasible, risk-based corrective action principles to achieve protection of the public health, safety, and welfare, water resources, and the environment in a cost-effective manner as provided in this subsection. Criteria for determining what constitutes a rehabilitation program task or completion of site rehabilitation program tasks and site rehabilitation programs shall be based upon the factors set forth in paragraph (a) and the following additional factors:

1. The current exposure and potential risk of exposure to humans and the environment including multiple pathways of exposure.
2. The appropriate point of compliance with cleanup target levels for petroleum products' chemicals of concern. The point of compliance shall be at the source of the petroleum contamination. However, the department may temporarily move the point of compliance to the boundary of the property, or to the edge of the plume when the plume is within the property boundary, while cleanup, including cleanup through natural attenuation processes in conjunction with appropriate monitoring, is proceeding. The department may also, pursuant to criteria provided for in this paragraph, temporarily extend the point of compliance beyond the property boundary with appropriate monitoring, if such extension is needed to facilitate natural attenuation or to address the current conditions of the plume, if the public health, safety, and welfare, water resources, and the environment are adequately protected.

Temporary extension of the point of compliance beyond the property boundary, as provided in this subparagraph, must include notice to local governments and owners of any property into which the point of compliance is allowed to extend.

3. The appropriate site-specific cleanup goal. The site-specific cleanup goal shall be that all petroleum contamination sites ultimately achieve the applicable cleanup target levels provided in this paragraph. However, the department may allow concentrations of the petroleum products' chemicals of concern to temporarily exceed the applicable cleanup target levels while cleanup, including cleanup through natural attenuation processes in conjunction with appropriate monitoring, is proceeding, if the public health, safety, and welfare, water resources, and the environment are adequately protected.

4. The appropriateness of using institutional or engineering controls. Site rehabilitation programs may include the use of institutional or engineering controls to eliminate the potential exposure to petroleum products' chemicals of concern to humans or the environment. Use of such controls must have prior department approval, and institutional controls may not be acquired with moneys from the fund other than the costs associated with a professional land survey or a specific purpose survey, if such is needed, and costs associated with obtaining a title report and recording fees. When institutional or engineering controls are implemented to control exposure, the removal of such controls must have prior department approval and must be accompanied immediately by the resumption of active cleanup or other approved controls unless cleanup target levels pursuant to this paragraph have been achieved.

5. The additive effects of the petroleum products' chemicals of concern. The synergistic effects of petroleum products' chemicals of concern must also be considered when the scientific data becomes available.

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

7. Applicable state water quality standards.

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

b. Where surface waters are exposed to petroleum contaminated groundwater, the cleanup target levels for the petroleum products' chemicals of concern shall be based on the surface water standards as established by department rule. The point of measuring compliance with the surface water standards shall be in the groundwater immediately adjacent to the surface water body.

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

9. Appropriate cleanup target levels for soils.

a. In establishing soil cleanup target levels for human exposure to petroleum products' chemicals of concern found in soils from the land surface to 2 feet below land surface, the department shall consider the following, as appropriate:

calculations using a lifetime cancer risk level of 1.0E-6; a hazard index of 1 or less; the best achievable detection limit; or the naturally occurring background concentration.

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

This paragraph does not restrict the department from temporarily postponing completion of any site rehabilitation program for which funds are being expended whenever such postponement is necessary in order to make funds available for rehabilitation of a contamination site with a higher priority status.

(c) The department shall require source removal, if warranted and cost-effective, at each site eligible for restoration funding from the fund.

1. Funding for free product recovery may be provided in advance of the order established by the priority ranking system under paragraph (a) for site cleanup activities. However, a separate prioritization for free product recovery shall be established consistent with paragraph (a). No more than $5 million shall be encumbered from the fund in any fiscal year for free product recovery conducted in advance of the priority order under paragraph (a) established for site cleanup activities.

2. Once free product removal and other source removal identified in this paragraph are completed at a site, and notwithstanding the order established by the priority ranking system under paragraph (a) for site cleanup activities, the department may reevaluate the site to determine the degree of active cleanup needed to continue site rehabilitation. Further, the department shall determine whether the reevaluated site qualifies for natural attenuation monitoring, long-term natural attenuation monitoring, or no further action. If additional site rehabilitation is necessary to reach no further action status, the site rehabilitation shall be conducted in the order established by the priority ranking system under paragraph (a). The department shall use natural attenuation monitoring strategies and, when cost-effective, transition sites eligible for restoration funding assistance to long-term natural attenuation monitoring where the plume is shrinking or stable and confined to the source property boundaries and the petroleum products' chemicals of concern meet the natural attenuation default concentrations, as defined by department rule. If the plume migrates beyond the source property boundaries, natural attenuation monitoring may be conducted pursuant to department rule, or if the site no longer qualifies for natural attenuation monitoring, active remediation may be resumed. For long-term natural attenuation monitoring, if the petroleum products' chemicals of concern increase or are not significantly reduced after 42 months of monitoring, or if the plume migrates beyond the property boundaries, active remediation shall be resumed as necessary. For sites undergoing active remediation, the department shall evaluate the cost of natural attenuation monitoring to ensure that site mobilizations are performed in a cost-effective manner. Sites that are not eligible for state restoration funding may transition to long-term natural attenuation monitoring using the criteria in this subparagraph. This subparagraph does not preclude a site from pursuing a "No Further Action" order with conditions.

3. The department shall evaluate whether higher natural attenuation default concentrations for natural attenuation monitoring or long-term natural attenuation monitoring are cost-effective and would adequately protect the public health, safety, and welfare, water resources, and the environment. The department shall also evaluate site-specific characteristics that would allow for higher natural attenuation or long-term natural attenuation concentration levels.

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

(6) CONTRACTING AND CONTRACTOR SELECTION REQUIREMENTS.—

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

(b) When contracting for site rehabilitation activities performed under the Petroleum Restoration Program, the department shall comply with competitive procurement requirements provided in chapter 287 or rules adopted under this section or s. 287.0595.

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

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

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

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

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

5. Has the capacity to perform or directly supervise the majority of the rehabilitation work at a site pursuant to s. 489.113(9).

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

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

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

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

(h) The contractor, or the person to whom the contractor has assigned its right to payment pursuant to paragraph (e), shall make prompt payment to subcontractors and suppliers for their costs associated with an approved contract pursuant to s. 287.0585, except that the contractor, or the person to whom the contractor has assigned its right to payment pursuant to paragraph (e), may remit payments to subcontractors and suppliers within 30 working days after the contractor's receipt of payment by the department before the penalties required by s. 287.0585(1) are applicable.

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

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

(k) This section does not authorize payment to a person for costs of contaminated soil treatment or disposal that does not meet the applicable rules of this state for such treatment or disposal, including all general permitting, state air emission standards, monitoring, sampling, and reporting rules more specifically described in department rules.

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

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

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

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

(b) All penalties, judgments, recoveries, reimbursements, and other fees and charges credited to the fund pursuant to subsection (3).

(8) DEPARTMENTAL DUTY TO SEEK RECOVERY AND REIMBURSEMENT.—

(a) Except as provided in subsection (10) and as otherwise provided by law, the department shall recover to the use of the fund from a person or persons at any time causing or having caused the discharge or from the Federal Government, jointly and severally, all sums owed or expended from the fund pursuant to s. 376.308, except that the department may decline to pursue such recovery if it finds the amount involved too small or the likelihood of recovery too uncertain. Sums recovered as a result of damage due to a discharge related to the storage of petroleum or petroleum products or other similar disaster shall be apportioned between the fund and the General Revenue Fund so as to repay the full costs to the General Revenue Fund of sums disbursed therefrom as a result of such disaster. A request for reimbursement to the fund for such costs, if not paid within 30 days after demand, shall be turned over to the department for collection.

(b) Except as provided in subsection (10) and as otherwise provided by law, it is the duty of the department in administering the fund diligently to pursue the reimbursement to the fund of any sum expended from the fund for cleanup and abatement pursuant to this section or s. 376.3073, unless the department finds the amount involved too small or the likelihood of recovery too uncertain. For the purposes of s. 95.11, the limitation period within which to institute an action to recover such sums shall begin on the last date on which such sums were expended and not the date on which the discharge occurred.

(c)1. The department may perform financial and technical audits in order to verify site restoration costs and ensure compliance with this chapter. The department shall seek recovery of any overpayment based on the findings of the audits. The department must begin an audit within 5 years after the date of payment for costs incurred at a facility, except in cases where the department alleges specific facts indicating fraud.

2. Upon determination by the department that any portion of costs that have been paid from the fund is disallowed, the department shall provide written notice to the recipient of the payment specifying the allegations of fact that justify the department's proposed action and ordering repayment of disallowed costs within 60 days after receipt of such notice.

3. If the recipient does not make payment to the department within 60 days after receipt of such notice, the department shall seek recovery in a court of competent jurisdiction to recover the overpayment, unless the department finds the amount involved too small or the likelihood of recovery too uncertain.

4. In addition to the amount of the overpayment, the recipient is liable to the department for interest of 1 percent per month or the prime rate, whichever is less, on the amount of the overpayment from the date of the overpayment by the department until the recipient satisfies the department's request for repayment pursuant to this paragraph. The accrual of interest shall be tolled during the pendency of any litigation.

(d) Claims that accrued under former reimbursement or preapproval programs are expressly preserved.

(e) If the department initiates an enforcement action to clean up a contaminated site and determines that the responsible party cannot financially undertake complete restoration of the contaminated site, that the current property owner was not responsible for the discharge when the contamination first occurred, or that the state's interest can best

be served by conducting cleanup, the department may enter into an agreement with the responsible party or property owner whereby the department agrees to conduct site rehabilitation and the responsible party or property owner agrees to pay for the portion of the cleanup costs that are within such party's or owner's financial capabilities as determined by the department, taking into consideration the party's or owner's net worth and the economic impact on the party or owner.

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

(10) EARLY DETECTION INCENTIVE PROGRAM.—To encourage early detection, reporting, and cleanup of contamination from leaking petroleum storage systems, the department shall, within the guidelines established in this subsection, conduct an incentive program which provides for a 30-month grace period ending on December 31, 1988.

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

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

1. This subsection does not apply to a site where the department has been denied site access to implement this section.

2. This subsection does not authorize or require reimbursement from the fund for costs expended before the beginning of the grace period.

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

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

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

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

A site may be determined eligible by the department for good cause shown, including, but not limited to, demonstration by the owner or operator that to achieve compliance would cause an increase in the potential for the spread of the contamination.

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

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

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

(III) Facilities where a discharge was intentionally concealed.

(IV) Facilities that were denied eligibility due to:

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

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

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

d. Applicants who demonstrate compliance for a site pursuant to sub-subparagraph b. are eligible for the Early Detection Incentive Program and site rehabilitation funding pursuant to subsections (5) and (6).

If, in order to avoid prolonged delay, the department in its discretion deems it necessary to expend sums from the fund to cover ineligible sites or costs as set forth in this paragraph, the department may do so and seek recovery and reimbursement therefor in the same manner and pursuant to the same procedures established for recovery and reimbursement of sums otherwise owed to or expended from the fund.

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

(d) This subsection does not apply to petroleum storage systems owned or operated by the Federal Government.

(11) VIOLATIONS; PENALTY.—A person may not:

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

(b) Intentionally damage a petroleum storage system.

A person convicted of such a violation is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(12) SITE CLEANUP.—

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

(b) *Low-scored site initiative.*—Notwithstanding subsections (5) and (6), a site with a priority ranking score of 29 points or less may voluntarily participate in the low-scored site initiative regardless of whether the site is eligible for state restoration funding.

1. To participate in the low-scored site initiative, the property owner, or a responsible party who provides evidence of authorization from the property owner, must submit a "No Further Action" proposal and affirmatively demonstrate that the conditions imposed under subparagraph 4. are met.

2. Upon affirmative demonstration that the conditions imposed under subparagraph 4. are met, the department shall issue a site rehabilitation completion order incorporating the "No Further Action" proposal submitted by the property owner or the responsible party, who must provide evidence of authorization from the property owner. If no contamination is detected, the department may issue a site rehabilitation completion order.

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

a. A property owner, or a responsible party who provides evidence of authorization from the property owner, may submit an assessment and limited remediation plan designed to affirmatively demonstrate that the site meets the conditions imposed under subparagraph 4. Notwithstanding the priority ranking score of the site, the department may approve the cost of the assessment and limited remediation, including up to 12 months of groundwater monitoring and 12 months of limited remediation activities in one or more task assignments or modifications thereof, not to exceed the threshold amount provided in s. 287.017 for CATEGORY TWO, for each site where the department has determined that the assessment and limited remediation, if applicable, will likely result in a determination of "No Further Action." The department may not pay the costs associated with the establishment of institutional or engineering controls other than the costs associated with a professional land survey or a specific purpose survey, if such is needed, and the costs associated with obtaining a title report and paying recording fees.

b. After the approval of initial site assessment results provided pursuant to state funding under sub-subparagraph a., the department may approve an additional amount not to exceed the threshold amount provided in s. 287.017 for CATEGORY TWO for limited remediation needed to achieve a determination of "No Further Action."

c. The assessment and limited remediation work shall be completed no later than 15 months after the department authorizes the start of a state-funded, low-score site initiative task. If groundwater monitoring is required after the assessment and limited remediation in order to satisfy the conditions under subparagraph 4., the department may authorize an additional 12 months to complete the monitoring.

d. No more than $15 million for the low-scored site initiative may be encumbered from the fund in any fiscal year. Funds shall be made available on a first-come, first-served basis and shall be limited to 10 sites in each fiscal year for each property owner or each responsible party who provides evidence of authorization from the property owner.

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

4. The department shall issue an order incorporating the "No Further Action" proposal submitted by a property owner or a responsible party who provides evidence of authorization from the property owner upon affirmative demonstration that all of the following conditions are met:

a. Soil saturated with petroleum or petroleum products, or soil that causes a total corrected hydrocarbon measurement of 500 parts per million or higher for the Gasoline Analytical Group or 50 parts per million or higher for the Kerosene Analytical Group, as defined by department rule, does not exist onsite as a result of a release of petroleum products.

b. A minimum of 12 months of groundwater monitoring indicates that the plume is shrinking or stable.

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

d. The area containing the petroleum products' chemicals of concern:

(I) Is confined to the source property boundaries of the real property on which the discharge originated, unless the property owner has requested or authorized a more limited area in the "No Further Action" proposal submitted under this subsection; or

(II) Has migrated from the source property onto or beneath a transportation facility as defined in s. 334.03(30) for which the department has approved, and the governmental entity owning the transportation facility has agreed to institutional controls as defined in s. 376.301(22). This sub-sub-subparagraph does not, however, impose any legal liability on the transportation facility owner, obligate such owner to engage in remediation, or waive such owner's right to recover costs for damages.

e. The groundwater contamination containing the petroleum products' chemicals of concern is not a threat to any permitted potable water supply well.

f. Soils onsite found between land surface and 2 feet below land surface which are subject to human exposure meet the soil cleanup target levels established in subparagraph (5)(b)9., or human exposure is limited by appropriate institutional or engineering controls.

Issuance of a site rehabilitation completion order under this paragraph acknowledges that minimal contamination exists onsite and that such contamination is not a threat to the public health, safety, or welfare; water resources; or the

environment. Pursuant to subsection (4), the issuance of the site rehabilitation completion order, with or without conditions, does not alter eligibility for state-funded rehabilitation that would otherwise be applicable under this section.

(13) PETROLEUM CLEANUP PARTICIPATION PROGRAM.—To encourage detection, reporting, and cleanup of contamination caused by discharges of petroleum or petroleum products, the department shall, within the guidelines established in this subsection, implement a cost-sharing cleanup program to provide rehabilitation funding assistance for all property contaminated by discharges of petroleum or petroleum products from a petroleum storage system occurring before January 1, 1995, subject to a copayment provided for in a Petroleum Cleanup Participation Program site rehabilitation agreement. Eligibility is subject to an annual appropriation from the fund. Additionally, funding for eligible sites is contingent upon annual appropriation in subsequent years. Such continued state funding is not an entitlement or a vested right under this subsection. Eligibility shall be determined in the program, notwithstanding any other provision of law, consent order, order, judgment, or ordinance to the contrary.

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

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

(b) Subject to annual appropriation from the fund, sites meeting the criteria of this subsection are eligible for up to $400,000 of site rehabilitation funding assistance in priority order pursuant to subsections (5) and (6). Sites meeting the criteria of this subsection for which a site rehabilitation completion order was issued before June 1, 2008, do not qualify for the 2008 increase in site rehabilitation funding assistance and are bound by the pre-June 1, 2008, limits. Sites meeting the criteria of this subsection for which a site rehabilitation completion order was not issued before June 1, 2008, regardless of whether they have previously transitioned to nonstate-funded cleanup status, may continue state-funded cleanup pursuant to this section until a site rehabilitation completion order is issued or the increased site rehabilitation funding assistance limit is reached, whichever occurs first. The department may not pay expenses incurred beyond the scope of an approved contract.

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

(d) Upon notification by the department that rehabilitation funding assistance is available for the site pursuant to subsections (5) and (6), the property owner, operator, or person otherwise responsible for site rehabilitation shall provide the department with a limited contamination assessment report and shall enter into a Petroleum Cleanup Participation Program site rehabilitation agreement with the department. The agreement must provide for a 25-percent copayment by the owner, operator, or person otherwise responsible for conducting site rehabilitation. The owner, operator, or person otherwise responsible for conducting site rehabilitation shall adequately demonstrate the ability to meet the copayment obligation. The limited contamination assessment report and the copayment costs may be reduced or eliminated if the owner and all operators responsible for restoration under s. 376.308 demonstrate that they cannot financially comply with the copayment and limited contamination assessment report requirements. The department shall take into consideration the owner's and operator's net worth in making the determination of financial ability. In the event the department and the owner, operator, or person otherwise responsible for site rehabilitation cannot complete negotiation of the cost-sharing agreement within 120 days after beginning negotiations, the department shall terminate negotiations and the site shall be ineligible for state funding under this subsection and all liability protections provided for in this subsection shall be revoked.

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

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

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

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

1. Sites at which the department has been denied reasonable site access to implement this section.
2. Sites that were active facilities when owned or operated by the Federal Government.
3. Sites that are identified by the United States Environmental Protection Agency to be on, or which qualify for listing on, the National Priorities List under Superfund. This exception does not apply to those sites for which eligibility has been requested or granted as of the effective date of this act under the Early Detection Incentive Program established pursuant to s. 15, chapter 86-159, Laws of Florida.
4. Sites for which contamination is covered under the Early Detection Incentive Program, the Abandoned Tank Restoration Program, or the Petroleum Liability and Restoration Insurance Program, in which case site rehabilitation funding assistance shall continue under the respective program.

(14) LEGISLATIVE APPROVAL AND AUTHORIZATION.—Before the department enters into a service contract with the Inland Protection Financing Corporation which includes payments by the department to support any existing or planned note, bond, certificate of indebtedness, or other obligation or evidence of indebtedness of the corporation pursuant to s. 376.3075, the Legislature, by law, must specifically authorize the department to enter into such a contract. The corporation may issue bonds in an amount not to exceed $104 million, with a term up to 15 years, and annual payments not in excess of $10.4 million. The department may enter into a service contract in conjunction with the issuance of such bonds which provides for annual payments for debt service payments or other amounts payable with respect to bonds, plus any administrative expenses of the corporation to finance the rehabilitation of petroleum contamination sites pursuant to ss. 376.30-376.317.

History.—ss. 15, 16, ch. 86-159; s. 3, ch. 87-374; s. 2, ch. 88-331; s. 4, ch. 89-188; s. 10, ch. 90-98; s. 81, ch. 90-132; s. 15, ch. 91-305; s. 5, ch. 91-429; s. 7, ch. 92-30; s. 67, ch. 93-207; s. 301, ch. 94-356; s. 1017, ch. 95-148; s. 15, ch. 95-396; s. 134, ch. 95-417; s. 5, ch. 96-277; s. 105, ch. 96-410; s. 14, ch. 97-277; s. 69, ch. 99-8; s. 177, ch. 99-13; s. 1, ch. 99-376; s. 8, ch. 2000-211; s. 392, ch. 2003-261; ss. 29, 54, ch. 2005-71; s. 1, ch. 2005-180; s. 62, ch. 2007-5; s. 1, ch. 2008-127; s. 44, ch. 2008-153; s. 3, ch. 2009-68; s. 31, ch. 2009-82; ss. 1, 3, ch. 2010-278; HJR 7-A, 2010 Special Session A; s. 19, ch. 2012-88; s. 9, ch. 2012-205; s. 61, ch. 2013-15; s. 2, ch. 2014-151; s. 49, ch. 2015-222; ss. 92, 93, 95, 126, ch. 2016-62; s. 9, ch. 2016-184; s. 20, ch. 2017-3; s. 6, ch. 2017-95.

376.30713 Advanced cleanup.—

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

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

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

(c) It is in the public interest and of substantial economic benefit to the state to provide an opportunity for site rehabilitation to be conducted on a limited basis at contaminated sites, in advance of the site's priority ranking, to encourage redevelopment and facilitate property transactions or public works projects.

(d) It is appropriate for a person who is responsible for site rehabilitation to share the costs associated with managing and conducting advanced cleanup, to facilitate the opportunity for advanced cleanup, and to mitigate the additional costs that will be incurred by the state in conducting site rehabilitation in advance of the site's priority ranking. Such cost sharing will result in more contaminated sites being cleaned up and greater environmental benefits to the state. This section is only available for sites eligible for restoration funding under EDI, ATRP, or PLRIP. This section is available for discharges eligible for restoration funding under the petroleum cleanup participation program

for the state's cost share of site rehabilitation. Applications must include a cost-sharing commitment for this section in addition to the 25-percent-copayment requirement of the petroleum cleanup participation program. This section is not available for any discharge under a petroleum cleanup participation program where the 25-percent-copayment requirement of the petroleum cleanup participation program has been reduced or eliminated pursuant to s. 376.3071(13)(d).

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

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

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

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

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

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

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

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

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

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

3. A limited contamination assessment report.

4. A proposed course of action.

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

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

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

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

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

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

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

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

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

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

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

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

(3)(a) Based on the ranking established under paragraph (2)(b), the department shall begin negotiation with such applicants. If the department and the applicant agree on the course of action, the department may enter into a contract with the applicant. The department may negotiate the terms and conditions of the contract.

(b) Advanced cleanup shall be conducted pursuant to s. 376.3071(5)(b) and (6) and rules adopted under ss. 287.0595 and 376.3071. If the terms of the advanced cleanup contract are not fulfilled, the applicant forfeits any right to future payment for any site rehabilitation work conducted under the contract.

(c) The department's decision not to enter into an advanced cleanup contract with the applicant is not subject to chapter 120. If the department cannot complete negotiation of the course of action and the terms of the contract within 60 days after beginning negotiations, the department shall terminate negotiations with that applicant.

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

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

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

(c) A property owner or responsible party may enter into a voluntary cost-share agreement in which the property owner or responsible party commits to bundle multiple sites and lists the facilities that will be included in those future bundles. The facilities listed are not subject to agency term contractor assignment pursuant to department rule. The department must reserve the right to terminate or amend the voluntary cost-share agreement for any identified site under the voluntary cost-share agreement if the property owner or responsible party fails to submit an application to bundle any site, not already covered by an advance cleanup contract, under such voluntary cost-share agreement within three subsequent open application periods or 18 months, whichever period is shorter, during which it is eligible to participate. The property owner or responsible party must agree to conduct limited site assessments on the identified sites within 12 months after the execution of the voluntary cost-share agreement. For the purposes of this section, the term "facility" includes, but is not limited to, multiple site facilities such as airports, port facilities, and terminal facilities even though such enterprises may be treated as separate facilities for other purposes under this chapter.

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

History.—s. 7, ch. 96-277; ss. 3, 5, ch. 99-376; s. 12, ch. 2001-62; s. 2, ch. 2005-180; s. 71, ch. 2010-5; s. 86, ch. 2010-102; s. 15, ch. 2013-92; s. 4, ch. 2014-151; s. 10, ch. 2016-184; s. 7, ch. 2017-95.

376.30714 Site rehabilitation agreements.—

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

(a) The provisions of s. 376.3071(5)(a) have delayed cleanup of low-priority sites determined to be eligible for state funding under that section and ss. 376.305 and 376.3072.

(b) While compliance with the department's rules pertaining to storage tank systems is expected to significantly diminish the occurrence and extent of discharges of petroleum products from petroleum storage systems, discharges from these systems and discharges at sites with existing contamination which have been determined to be eligible for state-funded cleanup may still occur. In some cases, it may be difficult to distinguish between discharges that have been determined to be eligible for state funding and those discharges reported after December 31, 1998, which are not eligible for state funding.

(c) Restoration coverage under s. 376.3072(2)(d) is no longer provided for discharges of petroleum products from petroleum storage systems that are reported to the department after December 31, 1998. This situation may result in discharges that are not eligible for state-funded cleanup occurring on sites with existing contamination determined to be eligible for state-funded cleanup.

(d) It is necessary for the discharger, and may be desirable for the department, to address the cleanup of discharges of petroleum products reported to the department after December 31, 1998, including discharges that occur at sites with existing contamination determined to be eligible under ss. 376.305, 376.3071, and 376.3072.

(e) It is appropriate for persons assuming responsibility for cleanup of such discharges occurring after December 31, 1998, at sites with existing contamination determined to be eligible for state-funded cleanup, to share the costs associated with managing and conducting cleanup of those discharges upon application to the department and in accordance with a priority established for such cleanup in a negotiated site rehabilitation agreement.

(2) For the purposes of this section only, the term:

(a) "Applicant" means a facility owner, operator, discharger, or entity who accepts responsibility for cleanup of a new discharge on a qualified site and who applies for and enters into a site rehabilitation agreement with the department. Application for or execution of the site rehabilitation agreement shall not constitute an admission of liability for the new discharge by the applicant.

(b) "Existing contamination" means contamination that has been determined by the department to be eligible for state-funded cleanup under s. 376.305, s. 376.3071, or s. 376.3072 prior to the new discharge.

(c) "New discharge" means a discharge of petroleum products reported after December 31, 1998, occurring at a site with existing contamination.

(d) "Qualified site" means a site with a new discharge and for which the applicant has entered into a site rehabilitation agreement with the department.

(3) Free product attributable to a new discharge shall be removed to the extent practicable and pursuant to department rules adopted pursuant to s. 376.3071(5) at the expense of the owner, operator, or other responsible party. Free product attributable to existing contamination shall be removed pursuant to s. 376.3071(5) and (6) and department rules adopted pursuant thereto.

(4) Beginning January 1, 1999, the department may negotiate and enter into site rehabilitation agreements with applicants at sites with eligible existing contamination at which a new discharge occurs. The site rehabilitation agreement must include, but is not limited to, allocation of the funding responsibilities of the department and the applicant for cleanup of the qualified site, establishment of a mechanism to guarantee the applicant's commitment to pay its agreed amount of site rehabilitation as set forth in the agreement, and establishment of the priority in which cleanup of the qualified site will occur. Under such a negotiated site rehabilitation agreement, the applicant may not be responsible for more than the cleanup costs that are attributable to the new discharge. However, the payment of applicable deductibles, copayments, or other program eligibility requirements under ss. 376.305, 376.3071, and 376.3072 shall continue to apply to the existing contamination and must be accounted for in the negotiated site rehabilitation agreement. The department may, pursuant to this section, conduct additional assessment activities at the site.

(5)(a) Applications for such site rehabilitation agreements may be submitted to the department not later than 120 days after discovery of the new discharge, on forms and instructions provided by the department, and shall include, but not be limited to:

1. A limited contamination assessment report, which shall be sufficient to demonstrate the extent of the new discharge and which may include any other evidence relevant to establish the extent or volume of the new discharge, or the impact of the new discharge relative to the existing contamination, in order to allocate the appropriate funding responsibilities of the applicant and the department. The limited contamination assessment report shall be used as a basis for establishing the respective site rehabilitation funding responsibilities of the applicant and the department for the new discharge and the existing contamination and for establishing the priority in which cleanup of the new discharge and the existing contamination will occur, based on the provisions of s. 376.3071(5)(a) and taking into consideration the cost-effectiveness associated with the timing of site rehabilitation activities.

2. Certification by the applicant that the applicant has the prerequisite authority to enter into the site rehabilitation agreement.

(b) Any costs incurred by the applicant to comply with this subsection are not refundable from the Inland Protection Trust Fund.

(c) Only one application may be submitted for any new discharge under this section.

(d) The application forms and instructions, and the terms and conditions of the site rehabilitation agreement, except as set forth in subsection (6), shall not be subject to the provisions of chapter 120.

(6) In the event the department and the applicant are unable to agree on the apportionment of the funding responsibilities and on the establishment of priority of cleanup for a site otherwise qualified under this section, the provisions of ss. 120.569 and 120.57 shall apply. The administrative law judge shall, in making any determinations or recommendations about the apportionment of the funding responsibilities of the department and the applicant for the new discharge and the existing contamination, consider any admissible evidence relating to apportionment of the discharges.

(7) The following shall be excluded from participation under this section:

(a) New discharges from storage systems owned or operated by the Federal Government when the new discharge occurred.

(b) New discharges at facilities which failed to correct a violation cited at a previous compliance inspection and at which the failure to correct the violation contributed to or caused the new discharge.

(c) New discharges intentionally caused by the owner, operator, responsible party, or applicant.

(d) Sites at which the department has been denied site access.

(e) New discharges at sites that are identified by the United States Environmental Protection Agency to be on, or which qualify for listing on, the National Priorities List under Superfund. This exception does not apply to those sites for which eligibility has been requested or granted as of the effective date of this act under the Early Detection Incentive Program.

(f) New discharges at sites where the person or entity required to report the new discharge upon its discovery as required by department rule, or where the person or entity required to initiate free product recovery upon discovery as required by department rule, adopted pursuant to ss. 376.303 and 376.3071(5), failed to do so.

(8) If the department, at its discretion, determines that it is not able to complete negotiation of the agreement within 90 days after commencing negotiations, except as set forth in subsection (6), the department shall terminate negotiations with the applicant and the site shall receive no further consideration under this section. However, if the parties are negotiating in good faith and require additional time in which to continue negotiations, then the parties may mutually agree to continue negotiations.

(9) Site rehabilitation conducted at qualified sites shall be conducted pursuant to s. 376.3071(5)(b) and (6). If the terms of the agreement are not fulfilled by the applicant, the applicant forfeits the right to continued funding for site rehabilitation work under the agreement and is subject to enforcement action by the department or local government to compel cleanup of the new discharge.

(10) New discharges otherwise meeting the criteria of this section, or any site rehabilitation agreement made under this section, shall not constitute an independent entitlement to continued restoration funding or to cleanup of the existing contamination in advance of its previous priority order.

(11) Upon execution of the site rehabilitation agreement, retroactive to the date of discovery of the new discharge, the provisions of s. 376.308(5) shall extend to contamination covered by a site rehabilitation agreement as long as the applicant remains in compliance with the terms and conditions of the agreement. However, if state funding of any agreement entered into under this section is discontinued, the provisions of this subsection shall no longer apply to the new discharge. For purposes of chapter 95, a cause of action to compel cleanup of the new discharge or to compel payment of costs of the new discharge shall not accrue during the time that the site rehabilitation agreement is in effect.

(12) Nothing in this section shall be construed to preclude the department from pursuing penalties in accordance with ss. 376.303(1)(j) and 376.311 for violations of any law or any rule, order, permit, registration, or certification adopted or issued by the department pursuant to its lawful authority.

(13) The provisions of this section shall be retroactive to January 1, 1999, except as provided by subsection (11).

History.—s. 4, ch. 99-376; s. 6, ch. 2000-153; s. 7, ch. 2000-211; s. 8, ch. 2014-151.

376.30715 Innocent victim petroleum storage system restoration.— A contaminated site acquired by the current owner prior to July 1, 1990, which has ceased operating as a petroleum storage or retail business prior to January 1, 1985, is eligible for financial assistance pursuant to s. 376.305(6), notwithstanding s. 376.305(6)(a). For purposes of this section, the term "acquired" means the acquisition of title to the property; however, a subsequent transfer of the property to a spouse or child of the owner, a surviving spouse or child of the owner in trust or free of trust, a revocable trust created for the benefit of the settlor, or a corporate entity created by the owner to hold title to the site does not disqualify the site from financial assistance pursuant to s. 376.305(6), and applicants previously denied coverage may reapply. Eligible sites shall be ranked in accordance with s. 376.3071(5).

History.—ss. 28, 54, 55, ch. 2005-71; s. 4, ch. 2005-180; s. 1, ch. 2008-239; s. 10, ch. 2012-205.

376.30716 Cleanup of certain sites.—

(1) As used in this section, the term:

(a) "Exclusion zone" means the subsurface area within 10 feet of an underground storage tank, integral piping, and dispenser, and the area between the underground storage tank and dispenser.

(b) "Subsequently discovered discharge" means a discharge or suspected discharge that is discovered on or after July 1, 2005, at a site eligible for state funding under s. 376.305, s. 376.3071, or s. 376.3072.

(2) As noted in s. 376.30714, it may be difficult to distinguish between a discharge of petroleum products from a petroleum storage system which is eligible for state funding and a discharge reported after December 31, 1998, which is not eligible for state funding. Until the secondary containment upgrade of underground storage tanks, as required under rule 62-761, Florida Administrative Code, is complete at a site, a subsequently discovered discharge at the site is presumed to be part of the original discharge that qualifies for state funding. However, this presumption does not apply:

(a) If the department presents competent and substantial evidence demonstrating that the subsequently discovered discharge occurred from a source that is independent and separate from the discharge that qualifies for state funding.

(b) To a site where petroleum storage systems have been upgraded, prior to July 1, 2005, to secondary containment in accordance with rule 62-761, Florida Administrative Code.

(c) To a site having newly discovered free product outside the exclusion zone.

(d) To a site having an increase in the concentration of existing petroleum contamination outside the exclusion zone of 1,000 percent or greater.

(e) To a site for which the department has, by a current valid order, determined that the discharge that is eligible for state funding has been cleaned up or no further action is necessary.

(3) Section 376.30714 does not apply to a subsequently discovered discharge. The department shall not, as part of a closure report or assessment for a site that is eligible for state funding under s. 376.305, s. 376.3071, or s. 376.3072, require soil or groundwater sampling.

(4) Regardless of whether the presumption specified in subsection (2) applies, a facility owner or operator shall:

(a) Report all incidents or discharges in accordance with rules of the department.

(b) Provide to the department a copy of all test results of storage tank and piping tightness regardless of the results.

History.—s. 1, ch. 2006-104.

376.3072 Florida Petroleum Liability and Restoration Insurance Program.—

(1) There is hereby created the Florida Petroleum Liability and Restoration Insurance Program to be administered by the department. The program shall provide restoration funding assistance to facilities regulated by the department's petroleum storage tank rules. To implement the program, the department may contract with an insurance company, a reinsurance company, or other insurance consultant to issue third-party liability policies that meet the federal financial responsibility requirements of 40 C.F.R. s. 280.97, subpart H.

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

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

2. A site which had a discharge reported before January 1, 1989, for which notice was given pursuant to s. 376.3071(10) and which is ineligible for the third-party liability insurance program solely due to that discharge is eligible for participation in the restoration program for an incident occurring on or after January 1, 1989, pursuant to subsection (3). Restoration funding for an eligible contaminated site will be provided without participation in the third-party liability insurance program until the site is restored as required by the department or until the department determines that the site does not require restoration.

3. Notwithstanding paragraph (b), a site where an application is filed with the department before January 1, 1995, where the owner is a small business under s. 288.703(6), a Florida College System institution with less than 2,500 FTE, a religious institution as defined by s. 212.08(7)(m), a charitable institution as defined by s. 212.08(7)(p), or a county or municipality with a population of less than 50,000, is eligible for up to $400,000 of eligible restoration costs, less a deductible of $10,000 for small businesses, eligible Florida College System institutions, and religious or charitable institutions, and $30,000 for eligible counties and municipalities, if:

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

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

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

d. The owner or operator proceeds to complete initial remedial action as specified in department rules.

e. The owner or operator, if required and if it has not already done so, applies for third-party liability coverage for the facility within 30 days after receipt of an eligibility order issued by the department pursuant to this subparagraph.

However, the department may consider in-kind services from eligible counties and municipalities in lieu of the $30,000 deductible. The cost of conducting initial remedial action as defined by department rules is an eligible restoration cost pursuant to this subparagraph.

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

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

(II) Automatic tank gauging systems; or

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

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

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

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

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

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

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

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

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

f. The department may approve other methods of release detection for storage tanks and integral piping which have at least the same capability to detect a new release as the methods specified in this subparagraph.

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

2. Except as provided in paragraph (a), to be eligible to be certified as an insured facility, the applicant must demonstrate to the department that the applicant has financial responsibility for third-party claims and excess

coverage, as required by this section and 40 C.F.R. s. 280.97(h), and that the applicant maintains such insurance during the applicant's participation as an insured facility.

3. Should a reinspection of the facility be necessary to demonstrate compliance, the insured shall pay an inspection fee not to exceed $500 per facility to be deposited in the Inland Protection Trust Fund.

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

This paragraph does not prevent the department from assessing civil penalties for noncompliance pursuant to this subsection.

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

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

2. The financial institution or lender conducts site rehabilitation pursuant to s. 376.3071.

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

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

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

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

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

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

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

e. Beginning January 1, 1999, restoration coverage may not be provided.

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

(I) A supplemental deductible of $5,000 if the owner or operator fails to report a suspected release within 1 working day after discovery.

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

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

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

1. Sites owned or operated by the Federal Government during the time the facility was in operation.
2. Sites where the owner or operator has denied the department reasonable site access.
3. Any third-party claims relating to damages caused by discharges discovered before January 1, 1989.
4. Any incidents discovered before January 1, 1989. However, this exclusion does not prevent a new incident at the same location from participation in the restoration insurance program if the owner or operator is otherwise eligible. This exclusion does not affect eligibility for participation in the Early Detection Incentive Program.

Sites meeting the criteria of this subsection for which a site rehabilitation completion order was issued before June 1, 2008, do not qualify for the 2008 increase in site rehabilitation funding assistance and are bound by the pre-June 1, 2008, limits. Sites meeting the criteria of this subsection for which a site rehabilitation completion order was not issued before June 1, 2008, regardless of whether they have previously transitioned to nonstate-funded cleanup status, may continue state-funded cleanup pursuant to s. 376.3071(6) until a site rehabilitation completion order is issued or the increased site rehabilitation funding assistance limit is reached, whichever occurs first.

(3) Sites that were certified as insured facilities and that were denied coverage for a discharge under the Petroleum Liability and Restoration Insurance Program may request a reevaluation under the criteria in subsection (2). Such request shall be made by December 31, 1996. If the contamination is redetermined to be eligible, the deductible and coverage limit in effect at the time the discharge was reported shall be applicable. The redetermination shall not affect the department's authority for assessing supplemental deductibles or civil penalties. The department shall not assess a supplemental deductible or civil penalty for alleged failure to report or abate a discharge when the owner or operator can establish no discharge occurred. Notwithstanding any department order to the contrary, the supplemental deductibles in sub-subparagraph (2)(d)2.f. shall not be applied cumulatively but, rather, the highest applicable supplemental deductible shall be applied.

(4) For purposes of this section, the term:

(a) "Restoration" means rehabilitation of contaminated sites both on and off the property of the owner or operator of the petroleum storage system and shall consist of investigation and assessment, cleanup of affected soil, groundwater, and surface water in accordance with the site selection and cleanup criteria established by the department pursuant to s. 376.3071(5), and maintenance and monitoring of the contaminated sites. The term "restoration" also means the department's expeditious rehabilitation or replacement of potable water supplies as provided in s. 376.30(3)(c)1. In the event the department does not provide bottled water, or a replacement water supply within 3 days, the owner, operator, or their designee may provide bottled water to an affected third party, and that cost shall be reimbursable. The term "restoration" does not mean costs which may be associated with compliance with rules relating to stationary tanks adopted pursuant to s. 376.303.

(b) "Third-party liability" means the insured's liability, other than for restoration costs, for bodily injury or property damage caused by an incident of inland contamination related to the storage of petroleum product.

(c) "Incident" means the reporting of any sudden or gradual discharge of petroleum product arising from operating a storage system containing petroleum product that results in a need for restoration or results in bodily injury or property damage neither expected nor intended by the petroleum storage system owner or operator.

(d) "Petroleum products" means petroleum products as defined by s. 376.301.

(5)(a) The department shall adopt rules for the proper management and maintenance of the Florida Petroleum Liability and Restoration Insurance Program. The department may contract with an insurance company, reinsurance company, or other entity for the implementation of the program or any portion of the program. The purchase of insurance services by the department is not subject to the provisions of chapter 287.

(b) The Office of Insurance Regulation of the Financial Services Commission shall offer assistance as requested by the department to implement the program.

(c) Any insurance company, reinsurance company, or other entity contracted with by the department shall be subject to the same rules and regulations of the Office of Insurance Regulation applicable to other insurers, reinsurers, and other entities.

History.—ss. 3, 13, ch. 88-331; s. 5, ch. 89-188; s. 24, ch. 90-54; ss. 16, 19, ch. 91-305; s. 8, ch. 92-30; s. 3, ch. 94-311; s. 302, ch. 94-356; s. 1018, ch. 95-148; s. 8, ch. 96-277; s. 16, ch. 97-277; s. 179, ch. 99-13; s. 5, ch. 2000-228; s. 393, ch. 2003-261; s. 3, ch. 2008-127; s. 45, ch. 2012-5; s. 9, ch. 2014-151; s. 32, ch. 2015-2.

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

(1) The department shall, to the greatest extent possible and cost-effective, contract with local governments to provide for the administration of its departmental responsibilities under ss. 376.305, 376.3071(4)(a)-(e), (h), (k), and (m) and (6), 376.3072, and 376.3077 through locally administered programs. The department may also contract with state agencies to carry out the restoration activities authorized pursuant to ss. 376.3071, 376.3072, and 376.305. However, such a contract may not be entered into unless the local government or state agency is deemed capable of carrying out such responsibilities to the department's satisfaction.

(2) To this end, the department shall inform local governments as to the provisions of chapters 86-159, 88-331, and 90-98, Laws of Florida, and as to their options hereunder. At its own option, any local government may apply to the department for such purpose, on forms to be provided by the department, and shall supply such information as the department may require.

(3) Upon approval of its application, an eligible local government shall be entitled, through written contract with the department, to receive sufficient funds to administer the local program. This contract shall provide that reasonable costs, as determined by the department and the local government, of administration, investigation, rehabilitation, other related activities, including the restoration or replacement of potable water supplies of affected persons, and implementation of a compliance verification program, shall be paid to the eligible local government from the Inland Protection Trust Fund created under s. 376.3071 and shall stipulate the method of payment. The contract may provide for an advance of working capital to the local government or state agency in order to expedite the cleanup program and in order for local government to contract for cleanup.

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

(5) Whenever the department makes a clear determination that a local government or state agency has breached a contract to the extent that the local program or state agency program is, in the department's estimation, inadequate to prevent or control inland petroleum contamination in such jurisdiction or that such program is being carried out in a manner inconsistent with the requirements of the contract, the department shall require that necessary corrective measures be taken by the local government or state agency within a reasonable period of time, not to exceed 45 days.

(6) If the local government or state agency fails to take such necessary corrective action within the time required, the department may reassume any or all responsibilities undertaken by the local government or state agency pursuant to this section.

History.—s. 17, ch. 86-159; s. 4, ch. 87-374; s. 4, ch. 88-331; s. 6, ch. 89-188; s. 17, ch. 91-305; s. 9, ch. 96-277; s. 10, ch. 2014-151.

376.3075 Inland Protection Financing Corporation.—

(1) There is hereby created a nonprofit public benefit corporation to be known as the "Inland Protection Financing Corporation" for the purpose of financing the rehabilitation of petroleum contamination sites pursuant to ss. 376.30-376.317.

(2) The corporation shall be governed by a board of directors consisting of the Governor or the Governor's designee, the Chief Financial Officer or the Chief Financial Officer's designee, the Attorney General or the Attorney General's designee, and the Secretary of Environmental Protection. The executive director of the State Board of Administration shall be the chief executive officer of the corporation and shall direct and supervise the administrative

affairs of the corporation and shall control, direct, and supervise the operation of the corporation. The corporation shall have such other officers as may be determined by the board of directors.

(3) The corporation shall have all the powers of a corporate body under the laws of the state to the extent not inconsistent with or restricted by the provisions of this section, including, but not limited to, the power to:

(a) Adopt, amend, and repeal bylaws not inconsistent with this section.

(b) Sue and be sued.

(c) Adopt and use a common seal.

(d) Acquire, purchase, hold, lease, and convey such real and personal property as may be proper or expedient to carry out the purposes of the corporation and this section, and to sell, lease, or otherwise dispose of such property.

(e) Elect or appoint and employ such officers, agents, and employees as the corporation deems advisable to operate and manage the affairs of the corporation, which officers, agents, and employees may be officers or employees of the department and the state agencies represented on the board of directors of the corporation.

(f) Borrow money and issue notes, bonds, certificates of indebtedness, or other obligations or evidences of indebtedness necessary to finance the rehabilitation of petroleum contamination sites pursuant to ss. 376.30-376.317.

(g) Make and execute any and all contracts, trust agreements, and other instruments and agreements necessary or convenient to accomplish the purposes of the corporation and this section.

(h) Select, retain, and employ professionals, contractors, or agents, which may include the Florida State Board of Administration's Division of Bond Finance, as necessary or convenient to enable or assist the corporation in carrying out the purposes of the corporation and this section.

(i) Do any act or thing necessary or convenient to carry out the purposes of the corporation and this section and the powers provided in this section.

(4) The corporation may enter into one or more service contracts with the department to provide services to the department in connection with financing the functions and activities provided in ss. 376.30-376.317. The department may enter into one or more such service contracts with the corporation and provide for payments under such contracts pursuant to s. 376.3071(4)(n), subject to annual appropriation by the Legislature. The proceeds from such service contracts may be used for the corporation's administrative costs and expenses after payments as set forth in subsection (5). Each service contract may have a term of up to 20 years. Amounts annually appropriated and applied to make payments under such service contracts may not include any funds derived from penalties or other payments received from any property owner or private party, including payments received under s. 376.3071(7)(b). In compliance with s. 287.0641 and other applicable provisions of law, the obligations of the department under such service contracts do not constitute a general obligation of the state or a pledge of the faith and credit or taxing power of the state and such obligations are not an obligation of the State Board of Administration or entities for which it invests funds, other than the department as provided in this section, but are payable solely from amounts available in the Inland Protection Trust Fund, subject to annual appropriation. In compliance with this subsection and s. 287.0582, the service contract must expressly include the following statement: "The State of Florida's performance and obligation to pay under this contract is contingent upon an annual appropriation by the Legislature."

(5) The corporation may issue and incur notes, bonds, certificates of indebtedness, or other obligations or evidences of indebtedness payable from and secured by amounts payable to the corporation by the department under a service contract entered into pursuant to subsection (4) for the purpose of financing the rehabilitation of petroleum contamination sites pursuant to ss. 376.30-376.317. The term of any such note, bond, certificate of indebtedness, or other obligation or evidence of indebtedness may not have a financing term that exceeds 15 years. The corporation may select its financing team and issue its obligations through competitive bidding or negotiated contracts, whichever is most cost-effective. Indebtedness of the corporation does not constitute a debt or obligation of the state or a pledge of the faith and credit or taxing power of the state but is payable from and secured by payments made by the department under the service contract pursuant to s. 376.3071(4)(n).

(6) The fulfillment of the purposes of the corporation promotes the health, safety, and general welfare of the people of the state and serves as essential governmental functions and a paramount public purpose.

(7) The corporation is exempt from taxation and assessments of any nature upon its income and any property, assets, or revenues acquired, received, or used in the furtherance of the purposes provided in this chapter. The

obligations of the corporation incurred pursuant to subsection (5) and the interest and income thereon and all security agreements, letters of credit, liquidity facilities, or other obligations or instruments arising out of, entered into in connection therewith, or given to secure payment thereof are exempt from all taxation, provided such exemption does not apply to any tax imposed by chapter 220 on the interest, income, or profits on debt obligations owned by corporations.

(8) The corporation may validate obligations to be incurred pursuant to subsection (5) and the validity and enforceability of any service contracts providing for payments pledged to the payment thereof by proceedings under chapter 75. The validation complaint shall be filed only in the Circuit Court for Leon County. The notice required to be published by s. 75.06 must be published in Leon County, and the complaint and order of the circuit court shall be served only on the State Attorney for the Second Judicial Circuit. Sections 75.04(2) and 75.06(2) do not apply to a complaint for validation filed under this subsection.

(9) The corporation is not a special district for the purposes of chapter 189 or a unit of local government for the purposes of part III of chapter 218. The provisions of chapters 120 and 215, except the limitation on interest rates provided by s. 215.84 which applies to obligations of the corporation issued pursuant to this section, and part I of chapter 287, except ss. 287.0582 and 287.0641, do not apply to this section, the corporation, the service contracts entered into pursuant to this section, or debt obligations issued by the corporation as contemplated in this section.

(10) The benefits or earnings of the corporation may not inure to the benefit of any private person.

(11) Upon dissolution of the corporation, title to all property owned by the corporation shall revert to the state.

(12) The corporation may contract with the State Board of Administration to serve as trustee with respect to debt obligations issued by the corporation as contemplated by this section and to hold, administer, and invest proceeds of such debt obligations and other funds of the corporation and to perform other services required by the corporation. The state board may perform such services and may contract with others to provide all or a part of such services and to recover its and such other costs and expenses thereof.

History.—s. 10, ch. 96-277; s. 394, ch. 2003-261; s. 3, ch. 2005-180; s. 63, ch. 2007-5; s. 4, ch. 2009-68; s. 11, ch. 2014-151.

376.3077 Unlawful to deposit motor fuel in tank required to be registered, without proof of registration display.—It is unlawful for any owner, operator, or supplier to pump or otherwise deposit any motor fuel into a tank required to be registered under s. 376.303 unless proof of valid registration is displayed on such tank itself or the dispensing or measuring device connected thereto or, where appropriate, in the office or kiosk of the facility where the tank is located. The department shall enforce the provisions of this section pursuant to this chapter. The department may enter into an interagency agreement with the Department of Agriculture and Consumer Services to enforce the provisions of this section.

History.—s. 8, ch. 87-374; s. 5, ch. 88-331; s. 18, ch. 91-305; s. 303, ch. 94-356.

Note.—Former s. 526.3055.

376.3078 Drycleaning facility restoration; funds; uses; liability; recovery of expenditures.—

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

(a) Significant quantities of drycleaning solvents have been discharged in the past at drycleaning facilities as part of the normal operation of these facilities.

(b) Discharges of drycleaning solvents at such drycleaning facilities have occurred and are occurring, and pose a significant threat to the quality of the groundwaters and inland surface waters of this state.

(c) Where contamination of the groundwater or surface water has occurred, remedial measures have often been delayed for long periods while determinations as to liability and the extent of liability are made, and such delays result in the continuation and intensification of the threat to the public health, safety, and welfare; in greater damage to the environment; and in significantly higher costs to contain and remove the contamination.

(d) Adequate financial resources must be readily available to provide for the expeditious supply of safe and reliable alternative sources of potable water to affected persons and to provide a means for investigation and rehabilitation of contaminated sites without delay.

(e) It is the intent of the Legislature to encourage real property owners to undertake the voluntary cleanup of property contaminated with drycleaning solvents and that the immunity provisions of this section and all other available defenses be construed in favor of real property owners.

(f) Strong public interests are served by subsections (3) and (11). These include improving the marketability and use of, and the ability to borrow funds as to, property contaminated by drycleaning solvents and encouraging the voluntary remediation of contaminated sites. The extent to which claims or rights are affected by subsections (3) and (11) is offset by the remedies created in this section. The limitations imposed by these subsections on such claims or rights are reasonable when balanced against the public interests served. The claims or rights affected by subsections (3) and (11) are speculative, and these subsections are intended to prevent judicial interpretations allowing windfall awards that thwart the public interest provisions of this section.

(2) FUNDS; USES.—

(a) All penalties, judgments, recoveries, reimbursements, loans, and other fees and charges related to the implementation of this section and the tax revenues levied, collected, and credited pursuant to ss. 376.70 and 376.75, and fees collected pursuant to s. 376.303(1)(d), and deductibles collected pursuant to paragraph (3)(d), shall be deposited into the Water Quality Assurance Trust Fund, to be used upon appropriation as provided in this section. Charges against the funds for drycleaning facility or wholesale supply site rehabilitation shall be made in accordance with the provisions of this section.

(b) Whenever, in its determination, incidents of contamination by drycleaning solvents related to the operation of drycleaning facilities and wholesale supply facilities may pose a threat to the environment or the public health, safety, or welfare, the department shall obligate moneys available pursuant to this section to provide for:

1. Prompt investigation and assessment of the contaminated drycleaning facility or wholesale supply facility sites.
2. Expeditious treatment, restoration, or replacement of potable water supplies as provided in s. 376.30(3)(c)1.
3. Rehabilitation of contaminated drycleaning facility or wholesale supply facility sites, which shall consist of rehabilitation of affected soil, groundwater, and surface waters, using the most cost-effective alternative that is technologically feasible and reliable and that provides adequate protection of the public health, safety, and welfare and minimizes environmental damage, in accordance with the site selection and rehabilitation criteria established by the department under subsection (4), except that nothing in this subsection shall be construed to authorize the department to obligate drycleaning facility restoration funds for payment of costs that may be associated with, but are not integral to, drycleaning facility or wholesale supply facility site rehabilitation.
4. Maintenance and monitoring of contaminated drycleaning facility or wholesale supply facility sites.
5. Inspection and supervision of activities described in this subsection.
6. Payment of expenses incurred by the department in its efforts to obtain from responsible parties the payment or recovery of reasonable costs resulting from the activities described in this subsection.
7. Payment of any other reasonable costs of administration, including those administrative costs incurred by the Department of Health in providing field and laboratory services, toxicological risk assessment, and other assistance to the department in the investigation of drinking water contamination complaints and costs associated with public information and education activities.
8. Reasonable costs of restoring property as nearly as practicable to the conditions that existed prior to activities associated with contamination assessment or remedial action.

The department shall not obligate funds in excess of the annual appropriation.

(c) Drycleaning facility restoration funds may not be used to:

1. Restore sites that are contaminated by solvents normally used in drycleaning operations where the contamination at such sites did not result from the operation of a drycleaning facility or wholesale supply facility.
2. Restore sites that are contaminated by drycleaning solvents being transported to or from a drycleaning facility or wholesale supply facility.
3. Fund any costs related to the restoration of any site that has been identified to qualify for listing, or is listed, on the National Priority List pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

of 1980 as amended by the Superfund Amendments and Reauthorization Act of 1986, or that is under an order from the United States Environmental Protection Agency pursuant to s. 3008(h) of the Resource Conservation and Recovery Act as amended, or has obtained, or is required to obtain a permit for the operation of a hazardous waste treatment, storage, or disposal facility, a postclosure permit, or a permit pursuant to the federal Hazardous and Solid Waste Amendments of 1984.

4. Pay any costs associated with any fine, penalty, or action brought against a drycleaning facility owner or operator or wholesale supply facility or real property owner under local, state, or federal law.

5. Pay any costs related to the restoration of any site that is operated or has at some time in the past operated as a uniform rental or linen supply facility, regardless of whether the site operates as or was previously operated as a drycleaning facility or wholesale supply facility.

(3) REHABILITATION LIABILITY.—

(a) In accordance with the eligibility provisions of this section, a real property owner, nearby real property owner, or person who owns or operates, or who otherwise could be liable as a result of the operation of, a drycleaning facility or a wholesale supply facility is not liable for or subject to administrative or judicial action brought by or on behalf of any state or local government or agency thereof or by or on behalf of any person to compel rehabilitation or pay for the costs of rehabilitation of environmental contamination resulting from the discharge of drycleaning solvents. Subject to the delays that may occur as a result of the prioritization of sites under this section for any qualified site, costs for activities described in paragraph (2)(b) shall be absorbed at the expense of the drycleaning facility restoration funds, without recourse to reimbursement or recovery from the real property owner, nearby real property owner, or owner or operator of the drycleaning facility or the wholesale supply facility. Notwithstanding any other provision of this chapter, this subsection applies to causes of action accruing on or after the effective date of this act and applies retroactively to causes of action accruing before the effective date of this act for which a lawsuit has not been filed before the effective date of this act.

(b) With regard to drycleaning facilities or wholesale supply facilities that have operated as drycleaning facilities or wholesale supply facilities on or after October 1, 1994, any such drycleaning facility or wholesale supply facility at which there exists contamination by drycleaning solvents shall be eligible under this subsection regardless of when the drycleaning contamination was discovered, provided that the drycleaning facility or the wholesale supply facility:

1. Has been registered with the department;

2. Is determined by the department to be in compliance with the department's rules regulating drycleaning solvents, drycleaning facilities, or wholesale supply facilities on or after November 19, 1980;

3. Has not been operated in a grossly negligent manner at any time on or after November 19, 1980;

4. Has not been identified to qualify for listing, nor is listed, on the National Priority List pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 as amended by the Superfund Amendments and Reauthorization Act of 1986, and as subsequently amended;

5. Is not under an order from the United States Environmental Protection Agency pursuant to s. 3008(h) of the Resource Conservation and Recovery Act as amended (42 U.S.C.A. s. 6928(h)), or has not obtained and is not required to obtain a permit for the operation of a hazardous waste treatment, storage, or disposal facility, a postclosure permit, or a permit pursuant to the federal Hazardous and Solid Waste Amendments of 1984;

and provided that the real property owner or the owner or operator of the drycleaning facility or the wholesale supply facility has not willfully concealed the discharge of drycleaning solvents and has remitted all taxes due pursuant to ss. 376.70 and 376.75, has provided documented evidence of contamination by drycleaning solvents as required by the rules developed pursuant to this section, has reported the contamination prior to December 31, 1998, and has not denied the department access to the site.

(c) With regard to drycleaning facilities or wholesale supply facilities that cease to be operated as drycleaning facilities or wholesale supply facilities prior to October 1, 1994, such facilities, at which there exists contamination by drycleaning solvents, shall be eligible under this subsection regardless of when the contamination was discovered, provided that the drycleaning facility or wholesale supply facility:

1. Was not determined by the department, within a reasonable time after the department's discovery, to have been out of compliance with the department rules regulating drycleaning solvents, drycleaning facilities, or wholesale supply facilities implemented at any time on or after November 19, 1980;

2. Was not operated in a grossly negligent manner at any time on or after November 19, 1980;

3. Has not been identified to qualify for listing, nor is listed, on the National Priority List pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, and as subsequently amended; and

4. Is not under an order from the United States Environmental Protection Agency pursuant to s. 3008(h) of the Resource Conservation and Recovery Act, as amended, or has not obtained and is not required to obtain a permit for the operation of a hazardous waste treatment, storage, or disposal facility, a postclosure permit, or a permit pursuant to the federal Hazardous and Solid Waste Amendments of 1984;

and provided that the real property owner or the owner or operator of the drycleaning facility or the wholesale supply facility has not willfully concealed the discharge of drycleaning solvents, has provided documented evidence of contamination by drycleaning solvents as required by the rules developed pursuant to this section, has reported the contamination prior to December 31, 1998, and has not denied the department access to the site.

(d) For purposes of determining eligibility, a drycleaning facility or wholesale supply facility was operated in a grossly negligent manner if the department determines that the owner or operator of the drycleaning facility or the wholesale supply facility:

1. Willfully discharged drycleaning solvents onto the soils or into the waters of the state after November 19, 1980, with the knowledge, intent, and purpose that the discharge would result in harm to the environment or to public health or result in a violation of the law;

2. Willfully concealed a discharge of drycleaning solvents with the knowledge, intent, and purpose that the concealment would result in harm to the environment or to public health or result in a violation of the law; or

3. Willfully violated a local, state, or federal law or rule regulating the operation of drycleaning facilities or wholesale supply facilities with the knowledge, intent, and purpose that the act would result in harm to the environment or to public health or result in a violation of the law.

(e)1. With respect to eligible drycleaning solvent contamination reported to the department as part of a completed application as required by the rules developed pursuant to this section by June 30, 1997, the costs of activities described in paragraph (2)(b) shall be absorbed at the expense of the drycleaning facility restoration funds, less a $1,000 deductible per incident, which shall be paid by the applicant or current property owner. The deductible shall be paid within 60 days after receipt of billing by the department.

2. For contamination reported to the department as part of a completed application as required by the rules developed under this section, from July 1, 1997, through September 30, 1998, the costs shall be absorbed at the expense of the drycleaning facility restoration funds, less a $5,000 deductible per incident. The deductible shall be paid within 60 days after receipt of billing by the department.

3. For contamination reported to the department as part of a completed application as required by the rules developed pursuant to this section from October 1, 1998, through December 31, 1998, the costs shall be absorbed at the expense of the drycleaning facility restoration funds, less a $10,000 deductible per incident. The deductible shall be paid within 60 days after receipt of billing by the department.

4. For contamination reported after December 31, 1998, no costs will be absorbed at the expense of the drycleaning facility restoration funds.

(f) This subsection does not apply to any site where the department has been denied site access to implement the provisions of this section.

(g) In order to identify those drycleaning facilities and wholesale supply facilities that have experienced contamination resulting from the discharge of drycleaning solvents and to ensure the most expedient rehabilitation of such sites, the owners and operators of drycleaning facilities and wholesale supply facilities are encouraged to detect and report contamination from drycleaning solvents related to the operation of drycleaning facilities and wholesale

supply facilities. The department shall establish reasonable guidelines for the written reporting of drycleaning contamination and shall distribute forms to registrants under s. 376.303(1)(d), and to other interested parties upon request, to be used for such purpose.

(h) A report of drycleaning solvent contamination at a drycleaning facility or wholesale supply facility made to the department by any person in accordance with this subsection, or any rules promulgated pursuant hereto, may not be used directly as evidence of liability for such discharge in any civil or criminal trial arising out of the discharge.

(i) A drycleaning facility at which contamination by drycleaning solvents exists and which was damaged by accident prior to January 1, 1975, is eligible under this subsection, regardless of whether an application for eligibility was filed on or before December 31, 1998. As used in this paragraph, the term "accident" means an unplanned and unanticipated occurrence beyond the control of the owner or operator of a drycleaning facility which resulted in physical damage to the facility when the actions of responders to such occurrence could reasonably be determined to have caused or exacerbated contamination by drycleaning solvents at such facility.

(j) This subsection does not apply to drycleaning facilities owned or operated by the state or Federal Government.

(k) Due to the value of Florida's potable water, it is the intent of the Legislature that the department initiate and facilitate as many cleanups as possible utilizing the resources of the state, local governments, and the private sector. The department is authorized to adopt necessary rules and enter into contracts to carry out the intent of this subsection and to limit or prevent future contamination from the operation of drycleaning facilities and wholesale supply facilities.

(l) It is not the intent of the Legislature that the state become the owner or operator of a drycleaning facility or wholesale supply facility by engaging in state-conducted cleanup.

(m) The owner, operator, and either the real property owner or agent of the real property owner may apply for the Drycleaning Contamination Cleanup Program by jointly submitting a completed application package to the department pursuant to the rules that shall be adopted by the department. If the application cannot be jointly submitted, then the applicant shall provide notice of the application to other interested parties. After reviewing the completed application package, the department shall notify the applicant in writing as to whether the drycleaning facility or wholesale supply facility is eligible for the program. If the department denies eligibility for a completed application package, the notice of denial shall specify the reasons for the denial, including specific and substantive findings of fact, and shall constitute agency action subject to the provisions of chapter 120. For the purposes of ss. 120.569 and 120.57, the real property owner and the owner and operator of a drycleaning facility or wholesale supply facility which is the subject of a decision by the department with regard to eligibility shall be deemed to be parties whose substantial interests are determined by the department's decision to approve or deny eligibility.

(n) Eligibility under this subsection applies to the drycleaning facility or wholesale supply facility, and attendant site rehabilitation applies to such facilities and to any place where drycleaning-solvent contamination migrating from the eligible facility is found. A determination of eligibility or ineligibility shall not be affected by any conveyance of the ownership of the drycleaning facility, wholesale supply facility, or the real property on which such facility is located. Nothing contained in this chapter shall be construed to allow a drycleaning facility or wholesale supply facility which would not be eligible under this subsection to become eligible as a result of the conveyance of the ownership of the ineligible drycleaning facility or wholesale supply facility to another owner.

(o) If funding for the drycleaning contamination rehabilitation program is eliminated, the provisions of this subsection shall not apply.

(p)1. The department shall have the authority to cancel the eligibility of any drycleaning facility or wholesale supply facility that submits fraudulent information in the application package or that fails to continuously comply with the conditions of eligibility set forth in this subsection, or has not remitted all fees pursuant to s. 376.303(1)(d), or has not remitted the deductible payments pursuant to paragraph (e).

2. If the program eligibility of a drycleaning facility or wholesale supply facility is subject to cancellation pursuant to this section, then the department shall notify the applicant in writing of its intent to cancel program eligibility and shall state the reason or reasons for cancellation. The applicant shall have 45 days to resolve the reason or reasons for cancellation to the satisfaction of the department. If, after 45 days, the applicant has not resolved the reason or reasons

for cancellation to the satisfaction of the department, the order of cancellation shall become final and shall be subject to the provisions of chapter 120.

(q) A real property owner shall not be subject to administrative or judicial action brought by or on behalf of any person or local or state government, or agency thereof, for gross negligence or violations of department rules prior to January 1, 1990, which resulted from the operation of a drycleaning facility, provided that the real property owner demonstrates that:

1. The real property owner had ownership in the property at the time of the gross negligence or violation of department rules and did not cause or contribute to contamination on the property;
2. The real property owner was a distinct and separate entity from the owner and operator of the drycleaning facility, and did not have an ownership interest in or share in the profits of the drycleaning facility;
3. The real property owner did not participate in the operation or management of the drycleaning facility;
4. The real property owner complied with all discharge reporting requirements, and did not conceal any contamination; and
5. The department has not been denied access.

The defense provided by this paragraph does not apply to any liability under a federally delegated program.

(r) A person whose property becomes contaminated due to geophysical or hydrologic reasons from the operation of a nearby drycleaning or wholesale supply facility and whose property has never been occupied by a business that utilized or stored drycleaning solvents or similar constituents is not subject to administrative or judicial action brought by or on behalf of another to compel the rehabilitation of or the payment of the costs for the rehabilitation of sites contaminated by drycleaning solvents, provided that the person:

1. Does not own and has never held an ownership interest in, or shared in the profits of, the drycleaning facility operated at the source location;
2. Did not participate in the operation or management of the drycleaning facility at the source location; and
3. Did not cause, contribute to, or exacerbate the release or threat of release of any hazardous substance through any act or omission.

The defense provided by this paragraph does not apply to any liability under a federally delegated program.

(s) Nothing in this subsection precludes the department from considering information and documentation provided by private consultants, local government programs, federal agencies, or any individual which is relevant to an eligibility determination if the department provides the applicant with reasonable access to the information and its origin.

(4) REHABILITATION CRITERIA.—It is the intent of the Legislature to protect the health of all people under actual circumstances of exposure. The secretary of the department shall establish criteria by rule for the purpose of determining, on a site-specific basis, the rehabilitation program tasks that comprise a site rehabilitation program, including a voluntary site rehabilitation program, and the level at which a rehabilitation program task and a site rehabilitation program may be deemed completed. In establishing the rule, the department shall incorporate, to the maximum extent feasible, risk-based corrective action principles to achieve protection of human health and safety and the environment in a cost-effective manner as provided in this subsection. The rule shall also include protocols for the use of natural attenuation and the issuance of "no further action" letters. The criteria for determining what constitutes a rehabilitation program task or completion of a site rehabilitation program task or site rehabilitation program, including a voluntary site rehabilitation program, must:

(a) Consider the current exposure and potential risk of exposure to humans and the environment, including multiple pathways of exposure. The physical, chemical, and biological characteristics of each contaminant must be considered in order to determine the feasibility of risk-based corrective action assessment.

(b) Establish the point of compliance at the source of the contamination. However, the department is authorized to temporarily move the point of compliance to the boundary of the property, or to the edge of the plume when the plume is within the property boundary, while cleanup, including cleanup through natural attenuation processes in

conjunction with appropriate monitoring, is proceeding. The department also is authorized, pursuant to criteria provided for in this section, to temporarily extend the point of compliance beyond the property boundary with appropriate monitoring, if such extension is needed to facilitate natural attenuation or to address the current conditions of the plume, provided human health, public safety, and the environment are protected. When temporarily extending the point of compliance beyond the property boundary, it cannot be extended further than the lateral extent of the plume at the time of execution of the voluntary cleanup agreement, if known, or the lateral extent of the plume as defined at the time of site assessment. Temporary extension of the point of compliance beyond the property boundary, as provided in this paragraph, must include actual notice by the person responsible for site rehabilitation to local governments and the owners of any property into which the point of compliance is allowed to extend and constructive notice to residents and business tenants of the property into which the point of compliance is allowed to extend. Persons receiving notice pursuant to this paragraph shall have the opportunity to comment within 30 days of receipt of the notice.

(c) Ensure that the site-specific cleanup goal is that all sites contaminated with drycleaning solvents ultimately achieve the applicable cleanup target levels provided in this section. In the circumstances provided below, and after constructive notice and opportunity to comment within 30 days from receipt of the notice to local government, to owners of any property into which the point of compliance is allowed to extend, and to residents on any property into which the point of compliance is allowed to extend, the department may allow concentrations of contaminants to temporarily exceed the applicable cleanup target levels while cleanup, including cleanup through natural attenuation processes in conjunction with appropriate monitoring, is proceeding, if human health, public safety, and the environment are protected.

(d) Allow the use of institutional or engineering controls at sites contaminated with drycleaning solvents, where appropriate, to eliminate or control the potential exposure to contaminants of humans or the environment. The use of controls must be preapproved by the department and only after constructive notice and opportunity to comment within 30 days from receipt of notice is provided to local governments, to owners of any property into which the point of compliance is allowed to extend, and to residents on any property into which the point of compliance is allowed to extend. When institutional or engineering controls are implemented to control exposure, the removal of the controls must have prior department approval and must be accompanied by the resumption of active cleanup, or other approved controls, unless cleanup target levels under this section have been achieved.

(e) Consider the additive effects of contaminants. The synergistic and antagonistic effects shall also be considered when the scientific data become available.

(f) Take into consideration individual site characteristics, which shall include, but not be limited to, the current and projected use of the affected groundwater and surface water in the vicinity of the site, current and projected land uses of the area affected by the contamination, the exposed population, the degree and extent of contamination, the rate of contaminant migration, the apparent or potential rate of contaminant degradation through natural attenuation processes, the location of the plume, and the potential for further migration in relation to site property boundaries.

(g) Apply state water quality standards as follows:

1. Cleanup target levels for each contaminant found in groundwater shall be the applicable state water quality standards. Where such standards do not exist, the cleanup target levels for groundwater shall be based on the minimum criteria specified in department rule. The department shall consider the following, as appropriate, in establishing the applicable minimum criteria: calculations using a lifetime cancer risk level of 1.0E-6; a hazard index of 1 or less; the best achievable detection limit; the naturally occurring background concentration; or nuisance, organoleptic, and aesthetic considerations.

2. Where surface waters are exposed to contaminated groundwater, the cleanup target levels for the contaminants shall be based on the lower of the groundwater or surface water standards as established by department rule. The point of measuring compliance with the surface water standards shall be in the groundwater immediately adjacent to the surface water body.

3. The department may set alternative cleanup target levels based upon the person responsible for site rehabilitation demonstrating, using site-specific modeling and risk assessment studies, that human health, public safety, and the environment are protected to the same degree as provided in subparagraphs 1. and 2. Where a state

water quality standard is applicable, a deviation may not result in the application of cleanup target levels more stringent than the standard. In determining whether it is appropriate to establish alternative cleanup target levels at a site, the department must consider the effectiveness of source removal that has been completed at the site and the practical likelihood of the use of low yield or poor quality groundwater, the use of groundwater near marine surface water bodies, the current and projected use of the affected groundwater in the vicinity of the site, or the use of groundwater in the immediate vicinity of the contaminated area, where it has been demonstrated that the groundwater contamination is not migrating away from such localized source, provided human health, public safety, and the environment are protected.

(h) Provide for the department to issue a "no further action order," with conditions where appropriate, when alternative cleanup target levels established pursuant to subparagraph (g)3. have been achieved, or when the person responsible for site rehabilitation can demonstrate that the cleanup target level is unachievable within available technologies. Prior to issuing such an order, the department shall consider the feasibility of an alternative site rehabilitation technology in the area.

(i) Establish appropriate cleanup target levels for soils.

1. In establishing soil cleanup target levels for human exposure to each contaminant found in soils from the land surface to 2 feet below land surface, the department shall consider the following, as appropriate: calculations using a lifetime cancer risk level of 1.0E-6; a hazard index of 1 or less; the best achievable detection limit; or the naturally occurring background concentration. Institutional controls or other methods shall be used to prevent human exposure to contaminated soils more than 2 feet below the land surface. Any removal of such institutional controls shall require such contaminated soils to be remediated.

2. Leachability-based soil target levels shall be based on protection of the groundwater cleanup target levels or the alternate cleanup target levels for groundwater established pursuant to this paragraph, as appropriate. Source removal and other cost-effective alternatives that are technologically feasible shall be considered in achieving the leachability soil target levels established by the department. The leachability goals shall not be applicable if the department determines, based upon individual site characteristics, that contaminants will not leach into the groundwater at levels which pose a threat to human health, public safety, and the environment.

3. Using risk-based corrective action principles, the department shall approve alternative cleanup target levels based upon the person responsible for site rehabilitation demonstrating, using site-specific modeling and risk assessment studies, that human health, public safety, and the environment are protected.

The department shall require source removal, as a risk reduction measure, if warranted and cost-effective. Once source removal at a site is complete, the department shall reevaluate the site to determine the degree of active cleanup needed to continue. Further, the department shall determine if the reevaluated site qualifies for monitoring only or if no further action is required to rehabilitate the site. If additional site rehabilitation is necessary to reach "no further action" status, the department is encouraged to utilize natural attenuation and monitoring where site conditions warrant.

(5) DISPOSAL OR REUSE.—The cleanup criteria established pursuant to subsection (4) do not constitute disposal or reuse criteria. Offsite disposal or relocation must be in accordance with all applicable federal, state, and local regulations.

(6) INTENT; APPLICATION.—

(a) It is recognized that restoration of groundwater resources contaminated with certain drycleaning solvents, such as perchloroethylene, may not be achievable using currently available technology. In situations where the use of available technology is not anticipated to achieve water quality standards, the department, at its discretion, may use innovative technology that has been field-tested and that has engineering and cost data available.

(b) Nothing in this subsection shall be construed to restrict the department from temporarily postponing completion of any site rehabilitation program for which drycleaning facility restoration funds are being expended whenever such postponement is deemed necessary in order to make funds available for rehabilitation of a drycleaning facility or wholesale supply facility contamination site with a higher priority status.

(c) The department shall provide the rehabilitation of eligible drycleaning facilities and wholesale supply facilities consistent with this subsection. Nothing in this chapter shall subject the department to liability for any action that may be required of the owner, operator, or real property owner by any private party or any local, state, or federal government entity.

(7) SCORING SYSTEM.—The department shall use the following scoring system to rank and prioritize sites for rehabilitation that have been determined to be eligible for the program pursuant to subsection (3). If the application package documents that a site has one of the following characteristics, then the site shall be allocated the corresponding number of points.

(a) Any site having a condition that exhibits a fire or explosion hazard shall be of highest priority.

(b) Threat to drinking water supply wells.

1. Capacity:

a. A site shall be awarded points based on the permitted capacity of the largest uncontaminated public water supply well or the capacity of the largest uncontaminated private drinking water well constructed prior to the date of contamination discovery that is located within 1 mile of the site. If multiple uncontaminated wells of the same capacity are present within 1 mile, then select the uncontaminated well closest to the site. Points shall be awarded as follows:

For uncontaminated wells (only one shall apply):

Capacity (gallons per day)	Points
greater than 1,000,000	90
100,000 to 1,000,000	60
less than 100,000	30

b. If no points were awarded from sub-subparagraph a., and contaminated wells are present, then the site shall be awarded points based on the permitted capacity of the largest contaminated public water supply well or the capacity of the largest contaminated private drinking water well constructed prior to the date of contamination discovery that is located within 1 mile of the site. If multiple contaminated wells of the same capacity are present within 1 mile, then select the contaminated well closest to the site. Points shall be awarded as follows:

For contaminated wells (only one shall apply):

Capacity (gallons per day)	Points
greater than 1,000,000	25
100,000 to 1,000,000	15
less than 100,000	5

2. A site shall be awarded points based on the proximity of the public water supply well or private well selected in subparagraph 1. as follows. If the well selected is an uncontaminated well, then select only one from sub-subparagraph a. below. If the well selected is a contaminated well, then select only one from sub-subparagraph b. below:

a. For uncontaminated wells:

Distance	Points
within 500 feet	40
within ¼ mile	30
within ½ mile	20
within 1 mile	10

b. For contaminated wells:

Distance	Points
within 500 feet	15
within ¼ mile	10
within ½ mile	8
within 1 mile	5

(c) A site shall be awarded points based on groundwater vulnerability to contamination using the department's current DRASTIC Index (only one shall apply):

DRASTIC Index	Points
79 and below	3
80 to 99	6
100 to 119	9
120 to 139	12
140 to 159	15
160 to 179	18
180 to 199	21
200 to 266	24

(d) Aquifer Classification (select all that apply):

1. A site located in a G-I or F-I aquifer area shall be awarded 3 points.
2. A site located in a G-II aquifer area shall be awarded 2 points.
3. A site located in a United States Environmental Protection Agency designated sole source aquifer area shall be awarded 1 point.

(e) Conditions favoring a continual source (only one shall apply):

1. If a site has chlorinated drycleaning solvents in the soil at concentrations greater than or equal to 1 milligram per kilogram or in the groundwater at concentrations greater than or equal to 1,500 micrograms per liter, then the site shall be awarded 7 points.
2. If the site has chlorinated drycleaning solvents in the soil at concentrations less than 1 milligram per kilogram or in the groundwater at concentrations less than 1,500 micrograms per liter, then the site shall be awarded 2 points.

(f) Environmental Setting (select all that apply):

1. A site located within ½ mile of an uncontaminated surface water body used as a permitted public water system shall be awarded 10 points.
2. A site located within ½ mile of an Outstanding Florida Water body shall be awarded 2 points.
3. A site located within ¼ mile of a surface water body shall be awarded 1 point.
4. A site located within ¼ mile of an area of critical state concern as defined in chapter 380 shall be awarded 2 points.

(8) SCORING SYSTEM APPLICATION.—

(a) If the department determines that a site is eligible for the program, pursuant to this section, then the department shall develop a score for the site in accordance with provisions of subsection (7).

(b) A priority list of eligible sites shall be developed, by the department, based on an ordering of scored sites such that the highest-scored sites shall be of highest priority for rehabilitation.

(c) Scored sites shall be incorporated into the priority list on a quarterly basis with the ranking of all sites previously on the list being adjusted accordingly.

(d) Assignments for program tasks to be conducted by state contractors shall be made according to the current priority list and shall be based on the department determination of contractor logistics, geographical considerations, and other criteria the department determines are necessary to achieve cost-effective site rehabilitation.

(e) Assignments for the program tasks shall be made beginning with the highest-ranked sites on the priority list at the effective date the assignment is made and proceed through lower-ranked sites.

(f) All scored sites will be added to the priority list on a quarterly basis until all the sites have been assigned.

(g) Once an assignment is made, a subsequent quarterly adjustment to the priority list shall not alter that assignment unless a more cost-effective approach can be achieved by reassignment, a compelling public health condition or an environmental condition warrants a reassignment, or the reassignment is otherwise in the public interest.

(h) Regardless of the score of a site, the department may initiate emergency action for those sites that, in the judgment of the department, are a threat to human health and safety, or where failure to prevent migration of drycleaning solvents would cause irreversible damage to the environment.

(9) REQUIREMENT FOR DRYCLEANING FACILITIES.—It is the intent of the Legislature that the following drycleaning solvent containment shall be required of the owners or operators of drycleaning facilities, as follows:

(a) Owners or operators of drycleaning facilities shall by January 1, 1997, install dikes or other containment structures around each machine or item of equipment in which drycleaning solvents are used and around any area in which solvents or waste-containing solvents are stored. Such dikes or containment structures shall be capable of containing 110 percent of the capacity of each such machine and each such storage area. To the extent practicable, each owner or operator of a drycleaning facility shall seal or otherwise render impervious those portions of all dikes' floor surfaces upon which any drycleaning solvents may leak, spill, or otherwise be released. A drycleaning facility that commenced operating before January 1, 1996, and applied to the program by December 30, 1997, is considered to have had secondary containment timely installed for the purpose of determining eligibility for state-funded site rehabilitation under this section if the drycleaning facility meets the following criteria:

1. Reported in the completed application that the facility was not in compliance with paragraph (a) of this subsection, and entered into a consent order with the department to install secondary containment and installed the required containment by April 15, 1999; or

2. Reported in the completed application that the facility had installed secondary containment but stated in the application that the date the facility installed secondary containment was not known, and was requested by the department subsequent to April 30, 1997, to apply for program eligibility and did so apply within 90 days of the request, and installed secondary containment by February 28, 1998.

The department shall reconsider the applications of facilities that meet the criteria set forth in this paragraph and that were previously determined to be ineligible due to failure to comply with secondary containment requirements. The facilities must meet all other eligibility requirements.

(b) For drycleaning facilities that commence operating subsequent to January 1, 1996, the owners or operators of such facilities shall, prior to the commencement of operations, install beneath each machine or item of equipment in which drycleaning solvents are used a rigid and impermeable containment vessel capable of containing 110 percent of the total tank capacity of each machine.

(c) Notwithstanding the provisions of subsection (3), the owner or operator of a drycleaning facility or wholesale supply facility at which there is a spill of more than 1 quart of drycleaning solvent outside of a containment structure, on or after July 1, 1995, shall report the spill to the state through the State Warning Point pursuant to s. 403.161(1)(d) immediately upon the discovery of such spill, and immediately initiate and complete actions to abate the source of the spill, remove product from all indoor and outdoor surface areas, remove product and dissolved product from any septic tank or catch basin in which the solvent has accumulated, and remove affected soils, if any.

(d) Failure to comply with the requirements of this subsection shall constitute gross negligence with regard to determining site eligibility in subsection (3).

(10) INSURANCE REQUIREMENTS.—The owner or operator of an operating drycleaning facility or wholesale supply facility shall have purchased third-party liability insurance for $1 million of coverage for each operating facility. The owner or operator shall maintain such insurance while operating as a drycleaning facility or wholesale supply facility and provide proof of such insurance to the department upon registration renewal each year thereafter. Such requirement applies only if such insurance becomes available to the owner or operator at a reasonable rate and covers liability for contamination subsequent to the effective date of the policy and prior to the effective date, retroactive to the commencement of operations at the drycleaning facility or wholesale supply facility. Such insurance may be offered in group coverage policies with a minimum coverage of $1 million for each member of the group per year. For the purposes of this subsection, reasonable rate means the rate developed based on exposure to loss and underwriting and administrative costs as determined by the Office of Insurance Regulation of the Financial Services Commission, in consultation with representatives of the drycleaning industry.

(11) VOLUNTARY CLEANUP.—A real property owner is authorized to conduct site rehabilitation activities at any time pursuant to department rules, either through agents of the real property owner or through responsible response action contractors or subcontractors, whether or not the facility has been determined by the department to be eligible for the drycleaning solvent cleanup program. A real property owner or any other person who conducts site rehabilitation may not seek cost recovery from the department or the Water Quality Assurance Trust Fund for any such rehabilitation activities. A real property owner who voluntarily initiates such site rehabilitation, whether commenced before or on or after October 1, 1995, shall upon initiation of such site rehabilitation be immune from and have no liability for claims of any person, for property damages of any kind, including, but not limited to, diminished value of real property or improvements; lost or delayed rent, sale, or use of real property or improvements; or stigma to real property or improvements caused by drycleaning-solvent contamination or be subject to any administrative or judicial action brought by or on behalf of any person, state or local government, or agency thereof to compel or enjoin site rehabilitation or pay for the cost of rehabilitation of environmental contamination, and to pay any fines or penalties regarding rehabilitation, as soon as the real property owner:

(a) Conducts contamination assessment and site rehabilitation consistent with state and federal laws and rules;

(b) Conducts such site rehabilitation in a timely manner according to a rehabilitation schedule approved by the department; and

(c) Does not deny the department access to the site. Upon completion of such site rehabilitation activities in accordance with the requirements of this subsection, the department shall render a site rehabilitation completion order.

The immunity set forth in this subsection also applies to any nearby real property owner. This immunity shall continue to apply to any real property owner who transfers, conveys, leases, or sells property on which a drycleaning facility is located so long as the voluntary cleanup activities continue. Notwithstanding any other provision of this chapter, this subsection applies to causes of action accruing on or after the effective date of this act and applies retroactively to causes of action accruing before the effective date of this act for which a lawsuit has not been filed before the effective date of this act.

(12) REOPENERS.—Upon completion of site rehabilitation in compliance with subsection (11), additional site rehabilitation is not required unless it is demonstrated:

(a) That fraud was committed in demonstrating site conditions or completion of site rehabilitation;

(b) That new information confirms the existence of an area of previously unknown contamination which exceeds the site-specific rehabilitation levels established in accordance with subsection (4), or which otherwise poses the threat of real and substantial harm to public health, safety, or the environment;

(c) That the remediation efforts failed to achieve the site rehabilitation criteria established under this section;

(d) That the level of risk is increased beyond the acceptable risk established under subsection (4) due to substantial changes in exposure conditions, such as a change in land use from nonresidential to residential use. Any person who changes the land use of the site, thus causing the level of risk to increase beyond the acceptable risk level, may be

required by the department to undertake additional remediation measures to assure that human health, public safety, and the environment are protected consistent with this section; or

(e) That a new discharge occurs at the drycleaning site subsequent to a determination of eligibility for participation in the drycleaning program established under this section.

(13) DEPARTMENTAL DUTY TO SEEK RECOVERY AND REIMBURSEMENT.—

(a) Except as provided in subsection (3) and as otherwise provided by law, the department shall recover from any person causing or having caused the discharge of drycleaning solvents in relation to the operation of a drycleaning facility or wholesale supply facility, jointly and severally, all sums owed or expended from drycleaning facility restoration funds, pursuant to s. 376.308, except that the department may decline to pursue such recovery if it finds the amount involved to be too small or the likelihood of recovery too uncertain.

(b) Except as provided in subsection (3) and as otherwise provided by law, it is the duty of the department in administering the drycleaning facility restoration funds to diligently pursue the reimbursement to the Water Quality Assurance Trust Fund of any sum expended from the fund for rehabilitation in accordance with the provisions of this section, unless the department finds the amount involved to be too small or the likelihood of recovery too uncertain. For the purposes of s. 95.11, the limitation period within which to institute an action to recover such sums shall commence on the last date on which any such sums were expended, and not the date that the discharge occurred.

(c) The Legislature recognizes its limitations in addressing cleanup liability under federal pollution control programs. In an effort to secure federal liability protection for persons willing to undertake remediation responsibility at a drycleaning site, the department shall attempt to negotiate a memorandum of agreement or similar document with the United States Environmental Protection Agency, whereby the United States Environmental Protection Agency agrees to forego enforcement of federal corrective action authority at drycleaning sites that have received a site rehabilitation completion or "no further action" determination from the department or that are in the process of implementing a voluntary cleanup agreement in accordance with this section.

(14) ADVANCED SITE ASSESSMENT.—It is in the public interest, and of substantial environmental and economic benefit to the state, to provide an opportunity to conduct site assessment on a limited basis at contaminated sites in advance of the ranking of the sites on the priority list as specified in subsection (8).

(a) A real property owner who is eligible for site rehabilitation at a facility that has been determined eligible for the drycleaning solvent cleanup program under this section may request an advanced site assessment, and the department may authorize the performance of a site assessment in advance of the ranking of the site on the priority list as specified in subsection (8), if the following criteria are met:

1. The site assessment information would provide new information that would be sufficient for the department to better evaluate the actual risk of the contamination, thereby reducing the risk to public health and the environment;

2. The property owner agrees:

a. To implement the appropriate institutional controls allowed by department rules adopted pursuant to subsection (4) at the time the property owner requests the advanced site assessment; and

b. To implement and maintain, upon completion of the cleanup, the required institutional controls, or a combination of institutional and engineering controls, when the site meets the site rehabilitation criteria for closure with controls in accordance with department rules adopted pursuant to subsection (4);

3. Current conditions at the site allow the site assessment to be conducted in a manner that will result in cost savings to the Water Quality Assurance Trust Fund;

4. There is sufficient money in the annual Water Quality Assurance Trust Fund appropriation for the drycleaning solvent cleanup program to pay for the site assessment; and

5. In accordance with subsection (3), access to the site is provided and the deductible is paid.

(b) A site may be assessed out of priority ranking order when, at the department's discretion, the site assessment will provide a cost savings to the program.

(c) An advanced site assessment must incorporate risk-based corrective action principles to achieve protection of human health and safety and the environment in a cost-effective manner, in accordance with subsection (4). The site assessment must also be sufficient to estimate the cost and determine the proposed course of action toward site

cleanup. Advanced site assessment activities performed under this subsection shall be designed to affirmatively demonstrate that the site meets one of the following findings based on the following specified criteria:

1. Recommend remedial action to mitigate risks that, in the judgment of the department, are a threat to human health or where failure to prevent migration of drycleaning solvents would cause irreversible damage to the environment;

2. Recommend additional groundwater monitoring to support natural attenuation monitoring or long-term groundwater monitoring; or

3. Recommend "no further action," with or without institutional controls or institutional and engineering controls, for those sites that meet the "no further action" criteria department rules adopted pursuant to subsection (4).

If the site does not meet one of the findings specified in subparagraphs 1.-3., the department shall notify the property owner in writing of this decision, and the site shall be returned to its priority ranking order in accordance with its score.

(d) Advanced site assessment program tasks shall be assigned by the drycleaning solvent cleanup program. In addition to the provisions in paragraph (a), the assignment of site assessment tasks shall be based on the department's determination of contractor logistics, geographical considerations, and other criteria that the department determines are necessary to achieve the most cost-effective approach.

(e) Available funding for advanced site assessments may not exceed 10 percent of the annual Water Quality Assurance Trust Fund appropriation for the drycleaning solvent cleanup program.

(f) The total funds committed to any one site may not exceed $70,000.

(g) The department shall prioritize the requests for advanced site assessment, based on the date of receipt and the environmental and economic value to the state, until 10 percent of the annual Water Quality Assurance Trust Fund appropriation, as provided in paragraph (e), has been obligated.

History.—s. 6, ch. 94-355; s. 3, ch. 95-239; s. 49, ch. 96-321; s. 107, ch. 96-410; s. 10, ch. 98-189; s. 180, ch. 99-13; s. 9, ch. 2000-317; s. 395, ch. 2003-261; s. 2, ch. 2003-276; s. 1, ch. 2006-148; s. 80, ch. 2014-17; s. 8, ch. 2017-95.

376.30781 Tax credits for rehabilitation of drycleaning-solvent-contaminated sites and brownfield sites in designated brownfield areas; application process; rulemaking authority; revocation authority.—

(1) The Legislature finds that:

(a) To facilitate property transactions and economic growth and development, it is in the state's interest to encourage the cleanup, at the earliest possible time, of drycleaning-solvent-contaminated sites and brownfield sites in designated brownfield areas.

(b) It is the intent of the Legislature to encourage the voluntary cleanup of drycleaning-solvent-contaminated sites and brownfield sites in designated brownfield areas by providing a tax credit for the restoration of such property in specified circumstances.

(2) Notwithstanding the requirements of subsection (5), tax credits allowed pursuant to s. 220.1845 are available for site rehabilitation or solid waste removal conducted during the calendar year in which the applicable voluntary cleanup agreement or brownfield site rehabilitation agreement is executed, even if the site rehabilitation or solid waste removal is conducted prior to the execution of that agreement or the designation of the brownfield area.

(3)(a) A credit in the amount of 50 percent of the costs of voluntary cleanup activity that is integral to site rehabilitation at the following sites is allowed pursuant to s. 220.1845:

1. A drycleaning-solvent-contaminated site eligible for state-funded site rehabilitation under s. 376.3078(3);

2. A drycleaning-solvent-contaminated site at which site rehabilitation is undertaken by the real property owner pursuant to s. 376.3078(11), if the real property owner is not also, and has never been, the owner or operator of the drycleaning facility where the contamination exists; or

3. A brownfield site in a designated brownfield area under s. 376.80.

(b) A tax credit applicant, or multiple tax credit applicants working jointly to clean up a single site, may not receive more than $500,000 per year in tax credits for each site voluntarily rehabilitated. Multiple tax credit applicants shall be granted tax credits in the same proportion as each applicant's contribution to payment of site rehabilitation

costs. Tax credits are available only for site rehabilitation conducted during the calendar year for which the tax credit application is submitted. For purposes of this section, the term "integral to site rehabilitation" means work that is necessary to implement the requirements of chapter 62-785 or chapter 62-782, Florida Administrative Code.

(c) In order to encourage completion of site rehabilitation at contaminated sites that are being voluntarily cleaned up and that are eligible for a tax credit under this section, the tax credit applicant may claim an additional 25 percent of the total site rehabilitation costs, not to exceed $500,000, in the final year of cleanup as evidenced by the Department of Environmental Protection issuing a "No Further Action" order for that site.

(d) In order to encourage the construction of housing that meets the definition of affordable provided in s. 420.0004, an applicant for the tax credit may claim an additional 25 percent of the total site rehabilitation costs that are eligible for tax credits under this section, not to exceed $500,000. To receive this additional tax credit, the applicant must provide a certification letter from the Florida Housing Finance Corporation, the local housing authority, or other governmental agency that is a party to the use agreement indicating that the construction on the brownfield site has received a certificate of occupancy and the brownfield site has a properly recorded instrument that limits the use of the property to housing. Notwithstanding that only one application may be submitted each year for each site, an application for the additional credit provided for in this paragraph shall be submitted after all requirements to obtain the additional tax credit have been met.

(e) In order to encourage the redevelopment of a brownfield site, as defined in the brownfield site rehabilitation agreement, that is hindered by the presence of solid waste, as defined in s. 403.703, costs related to solid waste removal may also be claimed under this section. A tax credit applicant, or multiple tax credit applicants working jointly to clean up a single brownfield site, may also claim costs to address the solid waste removal as defined in this paragraph in accordance with department rules. Multiple tax credit applicants shall be granted tax credits in the same proportion as each applicant's contribution to payment of solid waste removal costs. These costs are eligible for a tax credit provided the applicant submits an affidavit stating that, after consultation with appropriate local government officials and the department, to the best of the applicant's knowledge based upon such consultation and available historical records, the brownfield site was never operated as a permitted solid waste disposal area or was never operated for monetary compensation, and the applicant submits all other documentation and certifications required by this section. In this section, where reference is made to "site rehabilitation," the department shall instead consider whether the costs claimed are for solid waste removal. Tax credit applications claiming costs pursuant to this paragraph shall not be subject to the calendar-year limitation and January 31 annual application deadline, and the department shall accept a one-time application filed subsequent to the completion by the tax credit applicant of the applicable requirements listed in this subsection. A tax credit applicant may claim 50 percent of the costs for solid waste removal, not to exceed $500,000, after the applicant has determined solid waste removal is completed for the brownfield site. A solid waste removal tax credit application may be filed only once per brownfield site. For the purposes of this section, the term:

1. "Solid waste disposal area" means a landfill, dump, or other area where solid waste has been disposed.

2. "Monetary compensation" means the fees that were charged or the assessments that were levied for the disposal of solid waste at a solid waste disposal area.

3. "Solid waste removal" means removal of solid waste from the land surface or excavation of solid waste from below the land surface and removal of the solid waste from the brownfield site. The term also includes:

a. Transportation of solid waste to a licensed or exempt solid waste management facility or to a temporary storage area.

b. Sorting or screening of solid waste prior to removal from the site.

c. Deposition of solid waste at a permitted or exempt solid waste management facility, whether the solid waste is disposed of or recycled.

(f) In order to encourage the construction and operation of a new health care facility or a health care provider, as defined in s. 408.032 or s. 408.07, on a brownfield site, an applicant for a tax credit may claim an additional 25 percent of the total site rehabilitation costs, not to exceed $500,000, if the applicant meets the requirements of this paragraph. In order to receive this additional tax credit, the applicant must provide documentation indicating that the construction of the health care facility or health care provider by the applicant on the brownfield site has received a

certificate of occupancy or a license or certificate has been issued for the operation of the health care facility or health care provider.

(4) The Department of Environmental Protection is responsible for allocating the tax credits provided for in s. 220.1845, which may not exceed a total of $18.5 million in tax credits in fiscal year 2018-2019 and $10 million in tax credits each fiscal year thereafter.

(5) To claim the credit for site rehabilitation or solid waste removal, each tax credit applicant must apply to the Department of Environmental Protection for an allocation of the annual credit provided in s. 220.1845 by filing a tax credit application with the Division of Waste Management on a form developed by the Department of Environmental Protection in cooperation with the Department of Revenue. The form shall include an affidavit from each tax credit applicant certifying that all information contained in the application, including all records of costs incurred and claimed in the tax credit application, are true and correct. If the application is submitted pursuant to subparagraph (3)(a)2., the form must include an affidavit signed by the real property owner stating that it is not, and has never been, the owner or operator of the drycleaning facility where the contamination exists. Approval of tax credits must be accomplished on a first-come, first-served basis based upon the date and time complete applications are received by the Division of Waste Management, subject to the limitations of subsection (14). To be eligible for a tax credit, the tax credit applicant must:

(a) For site rehabilitation tax credits, have entered into a voluntary cleanup agreement with the Department of Environmental Protection for a drycleaning-solvent-contaminated site or a Brownfield Site Rehabilitation Agreement, as applicable, and have paid all deductibles pursuant to s. 376.3078(3)(e) for eligible drycleaning-solvent-cleanup program sites, as applicable. A site rehabilitation tax credit applicant must submit only a single completed application per site for each calendar year's site rehabilitation costs. A site rehabilitation application must be received by the Division of Waste Management of the Department of Environmental Protection by January 31 of the year after the calendar year for which site rehabilitation costs are being claimed in a tax credit application. All site rehabilitation costs claimed must have been for work conducted between January 1 and December 31 of the year for which the application is being submitted. All payment requests must have been received and all costs must have been paid prior to submittal of the tax credit application, but no later than January 31 of the year after the calendar year for which site rehabilitation costs are being claimed.

(b) For solid waste removal tax credits, have entered into a brownfield site rehabilitation agreement with the Department of Environmental Protection. A solid waste removal tax credit applicant must submit only a single complete application per brownfield site, as defined in the brownfield site rehabilitation agreement, for solid waste removal costs. A solid waste removal tax credit application must be received by the Division of Waste Management of the Department of Environmental Protection subsequent to the completion of the requirements listed in paragraph (3)(e).

(6) To obtain the tax credit certificate, the tax credit applicant must provide all pertinent information requested on the tax credit application form, including, at a minimum, the name and address of the tax credit applicant and the address and tracking identification number of the eligible site. Along with the tax credit application form, the tax credit applicant must submit the following:

(a) A nonrefundable review fee of $250 made payable to the Water Quality Assurance Trust Fund to cover the administrative costs associated with the department's review of the tax credit application;

(b) Copies of documents that describe the goods or services and associated costs being claimed that were integral to site rehabilitation as defined in s. 376.301 or s. 376.79 or were for solid waste removal as defined in this section during the time period covered by the application. Such documents must include contractual records that describe the scope of work performed, payment requests that describe the goods or services provided, and payment records involving actual costs incurred and paid. Such documentation must be sufficient to demonstrate a link between the contractual records, the payment requests, and the payment records for the time period covered by the application;

(c) Proof that the documentation submitted pursuant to paragraph (b) has been reviewed and verified by an independent certified public accountant in accordance with standards established by the American Institute of Certified Public Accountants. Specifically, a certified public accountant's report must be submitted and the certified public accountant must attest to the accuracy and validity of the costs claimed in the application by conducting an

independent review of the data presented by the tax credit applicant. Accuracy and validity of costs incurred and paid shall be determined after the level of effort is certified by an appropriate professional registered in this state in each contributing technical discipline. The certified public accountant's report must also attest that the costs included in the application form are not duplicated within the application, that all payment requests were received and all costs were paid prior to submittal of the tax credit application, and, for site rehabilitation tax credits, that all costs claimed are for work conducted between January 1 and December 31 of the year for which the application is being submitted. A copy of the accountant's report shall be submitted to the Department of Environmental Protection in addition to the accountant's certification form in the tax credit application; and

(d) A certification form stating that activities associated with the documentation submitted pursuant to paragraph (b) have been conducted under the observation of, and related technical documents have been signed and sealed by, an appropriate professional registered in this state in each contributing technical discipline. The certification form shall be signed and sealed by the appropriate registered professionals stating that the costs incurred were integral, necessary, and required for site rehabilitation, as that term is defined in ss. 376.301 and 376.79. If the scope of solid waste removal activities does not require oversight by a registered technical professional in this state, such certification form is not required as part of the tax credit application.

(7) The certified public accountant and appropriate registered professionals submitting forms as part of a tax credit application must verify such forms by completing and signing the appropriate certifications included as part of the application form. Verification shall be accomplished as provided in s. 92.525(1)(b) and subject to s. 92.525(3).

(8) The Department of Environmental Protection shall review the tax credit application and any supplemental documentation that the tax credit applicant may submit prior to the annual application deadline, if applicable, for completeness and eligibility, as follows:

(a) To be considered complete, the review must verify that the tax credit applicant has met the appropriate qualifying criteria in subsections (3) and (5), has submitted a completed application form, and has addressed each of the categories of submittals listed in subsection (6). Upon verification that the tax credit applicant has met such completeness requirements, the tax credit application secures a place in the first-come, first-served application line. If the department determines that an application is incomplete, the department shall notify the applicant in writing and the applicant shall have 30 days after receiving such notification to correct any deficiency. Upon timely correction of any deficiencies, the tax credit application secures a place in the first-come, first-served application line. Tax credit applications may not be altered to claim additional costs during this time.

(b) In order to have costs considered eligible, the review of the complete application shall be performed to verify that the work claimed was integral to site rehabilitation or was for solid waste removal, that the work claimed was performed in the applicable timeframe, and that the costs claimed were properly documented. Upon verification, the department shall issue a written decision granting eligibility for tax credits (a tax credit certificate). Complete tax credit applications shall be reviewed for eligible costs in conjunction with the report of the certified public accountant and the certifications from the appropriate registered technical professionals, as applicable.

(9) On or before May 1, the Department of Environmental Protection shall inform each tax credit applicant that is subject to the January 31 annual application deadline of the applicant's eligibility status and the amount of any tax credit due. The department shall provide each eligible tax credit applicant with a tax credit certificate that must be submitted with its tax return to the Department of Revenue to claim the tax credit or be transferred pursuant to s. 220.1845(2)(g). The May 1 deadline for annual site rehabilitation tax credit certificate awards shall not apply to any tax credit application for which the department has issued a notice of deficiency pursuant to subsection (8). The department shall respond within 90 days after receiving a response from the tax credit applicant to such a notice of deficiency. Credits may not result in the payment of refunds if total credits exceed the amount of tax owed.

(10) For solid waste removal, new health care facility or health care provider, and affordable housing tax credit applications, the Department of Environmental Protection shall inform the applicant of the department's determination within 90 days after the application is deemed complete. Each eligible tax credit applicant shall be informed of the amount of its tax credit and provided with a tax credit certificate that must be submitted with its tax return to the Department of Revenue to claim the tax credit or be transferred pursuant to s. 220.1845(2)(g). Credits may not result in the payment of refunds if total credits exceed the amount of tax owed.

(11) If a tax credit applicant does not receive a tax credit allocation due to an exhaustion of the annual tax credit provided in s. 220.1845, such application will then be included in the same first-come, first-served order in the next year's annual tax credit allocation, if any, based on the prior year application.

(12) The Department of Environmental Protection may adopt rules to prescribe the necessary forms required to claim tax credits under this section and to provide the administrative guidelines and procedures required to administer this section.

(13) The Department of Environmental Protection may revoke or modify any written decision granting eligibility for tax credits under this section if it is discovered that the tax credit applicant submitted any false statement, representation, or certification in any application, record, report, plan, or other document filed in an attempt to receive tax credits under this section. The Department of Environmental Protection shall immediately notify the Department of Revenue of any revoked or modified orders affecting previously granted partial tax credits. Additionally, the tax credit applicant must notify the Department of Revenue of any change in its tax credit claimed.

(14)(a) A tax credit applicant who receives state-funded site rehabilitation under s. 376.3078(3) for rehabilitation of a drycleaning-solvent-contaminated site is ineligible to receive a tax credit under s. 220.1845 for costs incurred by the tax credit applicant in conjunction with the rehabilitation of that site during the same time period that state-administered site rehabilitation was underway.

(b) Tax credits for site rehabilitation awarded pursuant to paragraphs (3)(b)-(d) and (f) are additive, but at no time shall the total tax credit award for site rehabilitation exceed 100 percent of the costs incurred and paid by an applicant.

(c) A single brownfield site may receive tax credits for both eligible site rehabilitation costs and eligible solid waste removal costs provided the costs for any given activity are not claimed for both site rehabilitation and solid waste removal such that the same costs are claimed twice.

(d) For purposes of this subsection, costs incurred that are not considered integral to site rehabilitation include, but are not limited to, brownfield area designation costs and tax credit application preparation and submittal costs.

(e) If the department notifies an applicant pursuant to subsection (9) that any claimed costs are ineligible, those costs may not be allocated and applied to the annual tax credit authorization, and any disputed costs may not delay the application processing or award for subsequent eligible tax credit applicants in the first-come, first-served application line. However, if the department subsequently agrees to award tax credits on any amount that was disputed, the department shall do so based upon the first-come, first-served application line determined by the applicant's original completeness date and time, provided there is any tax credit authorization available. If a tax credit applicant does not receive an award for the disputed costs due to an exhaustion of the annual tax credit authorization, such subsequent tax credit award shall be included in the same first-come, first-served order in the next year's annual tax credit allocation, if any, based upon the applicant's original completeness date and time.

History.—s. 4, ch. 98-189; s. 181, ch. 99-13; s. 4, ch. 2003-173; s. 3, ch. 2003-276; s. 3, ch. 2006-291; s. 22, ch. 2006-312; s. 64, ch. 2007-5; s. 3, ch. 2008-239; s. 60, ch. 2010-205; s. 13, ch. 2011-76; s. 22, ch. 2015-221; s. 41, ch. 2017-36; s. 4, ch. 2018-24; s. 49, ch. 2018-118.

376.3079 Third-party liability insurance.—

(1) It is the intent of the Legislature that, if necessary, the department assist owners of drycleaning facilities and wholesale supply facilities in obtaining third-party liability insurance coverage if such facilities or suppliers are regulated by and in compliance with the department's rules relating to drycleaning facilities and wholesale supply facilities. In order to assist drycleaning facilities and wholesale supply facilities in obtaining such insurance coverage, the department may contract with an insurance company, a reinsurance company, or other insurance consultant to issue third-party liability policies. If such third-party insurance is not available, the department shall not provide such insurance from state funds.

(2)(a) Any owner or operator of a drycleaning facility or wholesale supply facility may be eligible for third-party liability insurance coverage if the facility is registered with the department pursuant to s. 376.303(1)(d) and is otherwise in compliance with the department's rules relating to drycleaning facilities or wholesale supply facilities.

(b) The following drycleaning facilities or wholesale supply facilities are not eligible for state-assisted third-party liability insurance:

1. Sites owned or operated by the state or Federal Government.

2. Sites where the owner or operator has denied the department site access or where the facility has been determined not to be in compliance with the department's rules relating to drycleaning facilities or wholesale supply facilities.

(c) Third-party liability insurance coverage may not be provided by the state-contracted insurance carrier to cover third-party claims relating to damages caused by contamination that was discovered prior to the effective date of the insured's policy.

(3) For purposes of this section and s. 376.3078, the term:

(a) "Third-party liability" means the insured's liability, other than for site rehabilitation costs and property damage as applied to sites utilizing the provisions of s. 376.3078(3) and (11), for bodily injury caused by an incident of contamination related to the operation of a drycleaning facility or wholesale supply facility.

(b) "Incident" means any sudden or gradual discharge of drycleaning solvents arising from the operation of a drycleaning facility or wholesale supply facility that results in a need for site rehabilitation or results in bodily injury or property damage neither expected nor intended by the drycleaning facility owner or operator or wholesale supply facility.

(4)(a) The purchase of insurance services by the department is not subject to the provisions of chapter 287.

(b) The Office of Insurance Regulation of the Financial Services Commission shall offer assistance as requested by the department to implement the program.

(c) Any insurance company, reinsurance company, or other entity contracted with by the department shall be subject to the same rules of the Office of Insurance Regulation applicable to other insurers, reinsurers, and other entities.

(5) It is the express intent of the Legislature that the provisions of this section shall not provide the basis for any claim against the department or the Water Quality Assurance Trust Fund for bodily injury or property damages caused by an incident of contamination related to the operation of a drycleaning facility or wholesale supply facility.

History.—s. 7, ch. 94-355; s. 4, ch. 95-239; s. 50, ch. 96-321; s. 396, ch. 2003-261; s. 4, ch. 2003-276; s. 65, ch. 2007-5.

376.308 Liabilities and defenses of facilities.—

(1) In any suit instituted by the department under ss. 376.30-376.317, it is not necessary to plead or prove negligence in any form or matter. The department need only plead and prove that the prohibited discharge or other polluting condition has occurred. The following persons shall be liable to the department for any discharges or polluting condition:

(a) Any person who caused a discharge or other polluting condition or who owned or operated the facility, or the stationary tanks or the nonresidential location which constituted the facility, at the time the discharge occurred.

(b) In the case of a discharge of hazardous substances, all persons specified in s. 403.727(4).

(c) In the case of a discharge of petroleum, petroleum products, or drycleaning solvents, the owner of the facility, the drycleaning facility, or the wholesale supply facility, unless the owner can establish that he or she acquired title to property contaminated by the activities of a previous owner or operator or other third party, that he or she did not cause or contribute to the discharge, and that he or she did not know of the polluting condition at the time the owner acquired title. If the owner acquired title subsequent to July 1, 1992, or, in the case of a drycleaning facility or wholesale supply facility, subsequent to July 1, 1994, he or she must also establish by a preponderance of the evidence that he or she undertook, at the time of acquisition, all appropriate inquiry into the previous ownership and use of the property consistent with good commercial or customary practice in an effort to minimize liability. The court or hearing officer shall take into account any specialized knowledge or experience on the part of the defendant, the relationship of the purchase price to the value of the property if uncontaminated, commonly known or reasonably ascertainable information about the property, the obviousness of the presence or likely presence of contamination at the property, and the ability to detect such contamination by appropriate inspection. In an action relating to a discharge of petroleum, petroleum products, or drycleaning solvents under chapter 403, the defenses and definitions set forth herein shall apply.

(2) In addition to the defense described in paragraph (1)(c), the only other defenses of a person specified in subsection (1) are to plead and prove that the occurrence was solely the result of any of the following or any

combination of the following:

(a) An act of war;

(b) An act of government, either state, federal, or local, unless the person claiming the defense is a governmental body, in which case the defense is available only by acts of other governmental bodies;

(c) An act of God, which means only an unforeseeable act exclusively occasioned by the violence of nature without the interference of any human agency; or

(d) An act or omission of a third party, other than an employee or agent of the defendant or other than one whose act or omission occurs in connection with a contractual relationship existing, directly or indirectly, with the defendant, except when the sole contractual arrangement arises from a published tariff and acceptance for carriage by a common carrier or by rail, and the defendant establishes by a preponderance of the evidence that:

1. The defendant exercised due care with respect to the pollutant concerned, taking into consideration the characteristics of such pollutant, in light of all relevant facts and circumstances.

2. The defendant took precautions against any foreseeable acts or omissions of any such third party and against the consequences that could foreseeably result from such acts or omissions.

(3) For purposes of this section, the following additional defenses shall apply to sites contaminated with petroleum or petroleum products:

(a) The defendant is a lender serving as a trustee, personal representative, or other type of fiduciary, provided the defendant did not otherwise cause or contribute to the discharge;

(b) The defendant is a lender which holds indicia of ownership in the site primarily to protect a security interest, and which has not divested the borrower of, or otherwise engaged in, decisionmaking control over site operations, particularly with respect to the storage, use, or disposal of petroleum or petroleum products, or which otherwise caused or contributed to the discharge; provided, that the financial institution may direct or compel the borrower to maintain compliance with environmental statutes and rules and may act to prevent or abate a discharge; or

(c) The defendant is a lender which held a security interest in the site and has foreclosed or otherwise acted to acquire title primarily to protect its security interest, and seeks to sell, transfer, or otherwise divest the assets for subsequent sale at the earliest possible time, taking all relevant facts and circumstances into account, and has not undertaken management activities beyond those necessary to protect its financial interest, to effectuate compliance with environmental statutes and rules, or to prevent or abate a discharge; however, if the facility is not eligible for cleanup pursuant to s. 376.305(6), s. 376.3071, or s. 376.3072, any funds expended by the department for cleanup of the property shall constitute a lien on the property against any subsequent sale after the amount of the former security interest (including the cost of collection, management, and sale) is satisfied.

(4) Liability pursuant to this chapter shall be joint and several. However, if more than one discharge occurred and the damage is divisible and may be attributed to a particular defendant or defendants, each defendant is liable only for the costs associated with his or her damages. The burden shall be on the defendant to demonstrate the divisibility of damages.

(5) Effective July 1, 1996, and operating retroactively to March 29, 1995, notwithstanding any other provision of law, judgment, consent order, order, or ordinance, no person who owns or operates a facility or who otherwise could be responsible for costs as a result of contamination eligible for restoration funding from the Inland Protection Trust Fund shall be subject to administrative or judicial action, brought by or on behalf of the state or any local government or any other person, to compel rehabilitation in advance of commitment of restoration funding in accordance with a site's priority ranking pursuant to s. 376.3071(5)(a) or to pay for the costs of rehabilitation of environmental contamination resulting from a discharge of petroleum products that is eligible for restoration funding from the Inland Protection Trust Fund. For purposes of chapter 95, a cause of action to compel rehabilitation of environmental contamination at a facility resulting from a discharge of petroleum products that is eligible for restoration funding, or to compel payment of costs for environmental contamination resulting from a discharge of petroleum products that is eligible for restoration funding, shall not accrue until restoration funding can be committed to the facility or environmental contamination in accordance with the priority ranking. In the event of a new release, the facility operator shall be required to abate the source of the discharge. If free product is present, the operator shall notify the department, which may direct the removal of free product where prior approval of the scope of work and costs has

been granted by the department. Nothing herein shall preclude any person from bringing civil action for damages or personal injury, not to include the cost of restoration or the compelling of restoration in advance of the state's commitment of restoration funding in accordance with a site's priority ranking pursuant to s. 376.3071(5)(a). The Legislature's intent in establishing the limitations in this subsection is to recognize that on March 29, 1995, the Legislature enacted chapter 95-2, Laws of Florida.

(6) This section may not be construed to affect cleanup program eligibility under ss. 376.305(6), 376.3071, 376.3072, 376.3078, and 376.3079. Except as otherwise expressly provided in this chapter, nothing in this chapter shall affect, void, or defeat any immunity of any real property owner or nearby real property owner under s. 376.3078.

History.—s. 84, ch. 83-310; s. 11, ch. 84-338; s. 18, ch. 86-159; s. 10, ch. 92-30; s. 4, ch. 94-311; s. 8, ch. 94-355; s. 1019, ch. 95-148; s. 5, ch. 95-239; s. 11, ch. 96-277; s. 11, ch. 98-189; s. 5, ch. 2003-276; s. 66, ch. 2007-5; s. 90, ch. 2008-4.

376.309 Facilities, financial responsibility.—

(1) Each owner of a facility is required to establish and maintain evidence of financial responsibility. Such evidence of financial responsibility shall be the only evidence required by the department that such owner has the ability to meet the liabilities which may be incurred under ss. 376.30-376.317.

(2) Any claim brought pursuant to ss. 376.30-376.317 may be brought directly against the bond, the insurer, or any other person providing a facility with evidence of financial responsibility.

(3) Each owner of a facility subject to the provisions of ss. 376.30-376.317 shall designate a person in the state as his or her legal agent for service of process under ss. 376.30-376.317, and such designation shall be filed with the Department of State. In the absence of such designation, the Secretary of State shall be the designated agent for purposes of service of process under ss. 376.30-376.317.

History.—s. 84, ch. 83-310; s. 19, ch. 86-159; s. 617, ch. 95-148; s. 67, ch. 2007-5.

376.311 Penalties for a discharge.—

(1) The penalty provisions of this section do not apply to any discharge promptly reported and, where applicable, removed by an operator in accordance with the rules and orders of the department when the site has been determined eligible for participation in a program described in s. 376.3078 or s. 376.3079.

(2) Penalties assessed herein for a discharge shall be in accordance with the provisions administered by the department in chapter 403.

History.—s. 84, ch. 83-310; s. 11, ch. 92-30; s. 9, ch. 94-355; s. 12, ch. 96-277.

376.313 Nonexclusiveness of remedies and individual cause of action for damages under ss. 376.30-376.317.—

(1) The remedies in ss. 376.30-376.317 shall be deemed to be cumulative and not exclusive.

(2) Nothing in ss. 376.30-376.317 requires the pursuit of any claim against the Water Quality Assurance Trust Fund or the Inland Protection Trust Fund as a condition precedent to any other remedy.

(3) Except as provided in s. 376.3078(3) and (11), nothing contained in ss. 376.30-376.317 prohibits any person from bringing a cause of action in a court of competent jurisdiction for all damages resulting from a discharge or other condition of pollution covered by ss. 376.30-376.317 and which was not authorized pursuant to chapter 403. Nothing in this chapter shall prohibit or diminish a party's right to contribution from other parties jointly or severally liable for a prohibited discharge of pollutants or hazardous substances or other pollution conditions. Except as otherwise provided in subsection (4) or subsection (5), in any such suit, it is not necessary for such person to plead or prove negligence in any form or manner. Such person need only plead and prove the fact of the prohibited discharge or other pollutive condition and that it has occurred. The only defenses to such cause of action shall be those specified in s. 376.308.

(4) In any civil action brought after July 1, 1986, against the owner or operator of a petroleum storage system for damages arising from a petroleum storage system discharge, the provisions of subsection (3) shall not apply if it can be proven that, at the time of the discharge:

(a) The alleged damages resulted solely from a discharge from a petroleum storage system which was installed, replaced, or retrofitted, and maintained, in a manner consistent with the construction, operation, repair, and maintenance standards established for such systems under chapter 62-761, Florida Administrative Code, as that

chapter may hereafter be amended. The requirement of consistency with such standards may be satisfied only by being in compliance with the standards at the time of the discharge, regardless of the time specified for compliance under the schedule provided in said chapter.

(b) A leak detection system or systems or a monitoring well or wells were installed and operating in a manner consistent with technical requirements of chapter 62-761, Florida Administrative Code, as that chapter may hereafter be amended; and

(c) All inventory, recordkeeping, and reporting requirements of chapter 62-761, Florida Administrative Code, as that chapter may hereafter be amended, have been and are being complied with.

Any person bringing such an action must prove negligence to recover damages under this subsection. For the purposes of this subsection, noncompliance with this act, or any of the rules promulgated pursuant hereto, as the same may hereafter be amended, shall be prima facie evidence of negligence.

(5)(a) In any civil action against the owner or operator of a drycleaning facility or a wholesale supply facility, or the owner of the real property on which such facility is located, if such facility is not eligible under s. 376.3078(3) and is not involved in voluntary cleanup under s. 376.3078(11), for damages arising from the discharge of drycleaning solvents from a drycleaning facility or wholesale supply facility, the provisions of subsection (3) shall not apply if it can be proven that, at the time of the discharge the alleged damages resulted solely from a discharge from a drycleaning facility or wholesale supply facility that was in compliance with department rules regulating drycleaning facilities or wholesale supply facilities.

(b) Any person bringing such an action must prove negligence in order to recover damages under this subsection. For the purposes of this subsection, noncompliance with s. 376.303 or s. 376.3078, or any of the rules promulgated pursuant thereto, or any applicable state or federal law or regulation, as the same may hereafter be amended, shall be prima facie evidence of negligence.

(6) The court, in issuing any final judgment in any such action, may award costs of litigation (including reasonable attorney's and expert witness fees) to any party, whenever the court determines such an award is in the public interest.

History.—s. 84, ch. 83-310; s. 12, ch. 84-338; ss. 20, 21, ch. 86-159; s. 12, ch. 92-30; s. 10, ch. 94-355; s. 6, ch. 95-239; ss. 17, 18, ch. 98-75; s. 12, ch. 98-189; s. 6, ch. 2003-276; s. 68, ch. 2007-5; s. 16, ch. 2013-92.

376.315 Construction of ss. 376.30-376.317.—Sections 376.30-376.317, being necessary for the general welfare and the public health and safety of the state and its inhabitants, shall be liberally construed to effect the purposes set forth under ss. 376.30-376.317 and the Federal Water Pollution Control Act, as amended.

History.—s. 84, ch. 83-310; s. 22, ch. 86-159; s. 69, ch. 2007-5.

376.317 Superseded laws; state preemption.—

(1) If any provision of ss. 376.30-376.317 or of the rules developed pursuant to such sections, which provision pertains to a facility maintained for the purpose of the underground storage of petroleum products for use as fuel in vehicles, including, but not limited to, those vehicles used on and off roads, aircraft, watercraft, and rail, is in conflict with any other provision, limitation, or restriction which is now in effect under any law of this state or any ordinance of a local government, political subdivision, or municipality, or any rule or regulation adopted thereunder, the provisions of ss. 376.30-376.317 shall control, except as provided in subsection (3).

(2) Except as provided in subsection (3), the state preempts the regulation of the prevention and removal of pollutant discharges from a facility described in subsection (1) which has no single tank having a capacity exceeding 40,000 gallons at any time.

(3) A county government is authorized to adopt countywide ordinances that regulate underground storage tanks, as described herein, which ordinances are the same as or more stringent or extensive than any state law or rule regulating such tanks, provided:

(a) The original ordinance was legally adopted and in force before September 1, 1984; or

(b) The ordinance establishing a more stringent or extensive local program is approved by the department pursuant to subsection (5) after the county demonstrates to the department that it has effectively administered the state law or rules for a period of 2 years prior to filing a petition for approval. However, any county which has sought approval of a local tank program from the department prior to January 1, 1988, shall not be required to demonstrate that it has effectively administered the state program for any minimum period.

(4) The department shall either approve or disapprove a request to contract for a compliance verification program authorized pursuant to s. 376.3073 within 90 days after receipt of the complete application. If approved, the department shall provide full funding to the local government to carry out the contracted compliance and enforcement responsibilities pursuant to s. 376.3073. The department may not disapprove an application due to the population size of a county and may delegate compliance verification and enforcement to those local governments who agree to enforce the state's program jointly.

(5) The department is authorized to permit any county government to establish, in accordance with s. 403.182, a program regulating underground storage tanks, which program is more stringent or extensive than that established by any state law or rule regulating underground storage tanks. The department shall approve or deny a request by a county for approval of an ordinance establishing such a program according to the procedures and time limits of s. 120.60. The department shall consider local conditions that warrant such more stringent or extensive regulation of underground storage tanks, including, but not limited to, the proximity of the county to a sole or single-source aquifer, the potential threat to the public water supply because of the proximity of underground storage tanks to public wells or groundwater, or the detection of petroleum products in public or private water supplies.

(6) A county government may adopt an ordinance regulating underground storage tanks that is the same as any state law or rule regulating such tanks upon approval by the department of a completed application.

History.—s. 13, ch. 84-338; s. 23, ch. 86-159; s. 5, ch. 87-374; s. 18, ch. 88-156; s. 6, ch. 88-331; s. 7, ch. 89-188; s. 13, ch. 92-30; s. 70, ch. 2007-5; s. 36, ch. 2013-18.

376.320 Applicability.—The provisions of ss. 376.320-376.326 apply only to specified mineral acids when stored in aboveground tanks. The purpose of ss. 376.320-376.326 is to prevent the release of specified mineral acids from aboveground tanks and to register the aboveground tanks in which specified mineral acids are stored.

History.—s. 1, ch. 90-98; s. 16, ch. 92-30.

376.321 Definitions; ss. 376.320-376.326.—As used in ss. 376.320-376.326, the term:

(1) "Aboveground" means that more than 90 percent of a tank volume is not buried below the ground surface. An aboveground tank may either be in contact with the ground or elevated above it.

(2) "Containment and integrity plan" or "CIP" means a document designed, created, and maintained at a facility, which shall be considered a public record and made available pursuant to the provisions of chapter 119, and which sets forth the procedures for the inspection and maintenance program for aboveground tanks at that facility which store specified mineral acids. That program shall be designed for the chemical and physical characteristics of the specific mineral acid stored and for the specific materials of construction of the aboveground tank. The CIP shall be designed to ensure control of the specific mineral acid stored in an aboveground tank for the expected lifetime, as determined by standard engineering practices, of the materials of construction of the specific aboveground tank in which that mineral acid is stored.

(3) "Department" means the Department of Environmental Protection.

(4) "Facility" means any nonresidential location or part thereof containing an aboveground tank or aboveground tanks which contain specified mineral acids, which have an individual storage capacity greater than 110 gallons.

(5) "Flow-through process tank" means a flow-through process tank as defined in s. 376.301.

(6) "Liner" means an artificially constructed material of sufficient thickness, density, and composition that will contain the discharge of any specified mineral acid from an aboveground tank until such time as the mineral acid can be neutralized and/or removed. The liner shall prevent any escape of specified mineral acids or accumulated liquid to the soil or to the surface water or groundwater except through secondary containment.

(7) "Mineral acids" means hydrobromic acid (HBr), hydrochloric acid (HCl), hydrofluoric acid (HF), phosphoric acid (H_3PO_4), and sulfuric acid (H_2SO_4), including those five acids in solution, if at least 20 percent by weight of the solution is one of the five listed acids.

(8) "Nonresidential" means that the tank is not used at a private dwelling.

(9) "Operator" means any person operating a facility whether by lease, contract, or other form of agreement.

(10) "Owner" means any person owning an aboveground tank subject to ss. 376.320-376.326.

(11) "Permitted wastewater treatment system" means a facility to which the department has issued a permit to treat wastewater and release the treated product into the environment.

(12) "Secondary containment" means a system that is used for release prevention, and may include one or more of the following devices:

(a) A double-walled tank;

(b) An external liner; or

(c) A system or structure constructed such that accidental releases from an aboveground tank would be collected by a drainage system within the system or structure and routed to a permitted wastewater treatment system, plant recirculating process system, or approved alternate containment system.

(13) "Stationary" means a tank or tanks not meant for multiple site use or a tank or tanks which remain in one location at the facility site for a period of 180 days or longer.

(14) "Tank" means a stationary device which is constructed primarily of nonearthen materials (e.g., concrete, metal, plastic, glass) that provides structural support and is designed primarily to contain mineral acids. Connected piping from the tank to and including the nearest cutoff valve shall be considered part of the tank for purposes of this definition. "Tank" does not include flow-through process tanks.

History.—s. 2, ch. 90-98; s. 17, ch. 92-30; s. 304, ch. 94-356.

376.322 Powers and duties of the department.—The department shall have the power and duty to:

(1) Contract with local governments as needed to perform any of its duties under ss. 376.320-376.326.

(2) Establish a program to register tanks subject to the provisions of ss. 376.320-376.326.

(3) Adopt rules to implement ss. 376.320-376.326.

(4) Enforce the provisions of ss. 376.320-376.326 pursuant to the provisions of ss. 403.121 and 403.161.

(5) Require that facilities covered by ss. 376.320-376.326 be subject to thorough and complete inspections at reasonable times. The provisions of s. 403.091 shall apply to such inspections.

History.—s. 3, ch. 90-98; s. 18, ch. 92-30.

376.323 Registration.—All tanks shall be registered no later than July 1, 1992. Registrations shall be renewed annually. Registration fees shall not exceed $2,500 per facility. The department shall issue to the tank owner or operator one registration placard per facility, covering all tanks at that facility which have been properly registered, as evidence of the completion of the registration requirement. The department shall develop by rule a fee schedule sufficient to cover the costs associated with registration, inspection, surveillance, and other activities associated with ss. 376.320-376.326. Revenues from such fees collected shall be deposited into the Water Quality Assurance Trust Fund, and shall be used to implement the provisions of ss. 376.320-376.326.

History.—s. 4, ch. 90-98; s. 19, ch. 92-30.

376.324 Containment and integrity plan.—

(1) The owner or operator of each mineral acid storage tank shall prepare and have in place a containment and integrity plan (CIP) for the facility. The plan shall detail the facility's inspection and maintenance program for each mineral acid tank at the facility. The CIP shall include procedures and requirements designed to minimize the risk of spills, releases, and discharges from tanks. The CIP shall be reviewed and updated every 2 years.

(2) A professional engineer registered in the state shall certify that the tanks covered by the CIP for that facility have been inspected and maintained in accordance with the CIP and that the integrity and containment of the tanks has not been compromised.

(3) The CIP shall be maintained and made available for audit by the department at the facility at any reasonable time and shall be made available to the public upon request.

(4) Each facility shall implement the inspection and maintenance program set forth in the CIP no later than December 1, 1992.

History.—s. 5, ch. 90-98; s. 20, ch. 92-30.

376.325 Alternative to containment and integrity plan requirements.—

(1) As an alternative to the requirements of s. 376.324, an owner or operator may choose to provide the department with certification by a professional engineer that no aboveground tank at the facility is in direct contact with the ground, and under and around each tank has been placed and sealed to its supports a secondary containment system which is either:

(a) Designed and built to contain in excess of 110 percent of the capacity of the largest tank within the containment; or

(b) Equipped with a drainage system routed to a permitted wastewater treatment system that is designed and built to contain accidental releases.

(2) All new and replacement tanks installed after July 1, 1992, shall have secondary containment.

History.—s. 6, ch. 90-98; s. 21, ch. 92-30.

376.326 Application of s. 376.317.—Nothing in ss. 376.320-376.326 shall be construed to exclude aboveground storage tanks from the application of s. 376.317.

History.—s. 7, ch. 90-98; s. 22, ch. 92-30.

376.40 Petroleum exploration and production; purposes; funding.—

(1) FINDINGS.—The Legislature declares that the financial resources of the state in the form of a bond trust fund, the limits of which are in excess of limits available to most operators, should be available to provide the Department of Environmental Protection the surety for any cleanup and remedial action for operations which are not conducted in a safe and environmentally compatible manner.

(2) INTENT AND PURPOSE.—It is the intent of the Legislature that the Minerals Trust Fund serve as a repository for funds which will enable the Department of Environmental Protection to respond without delay to incidents which affect safety or threaten to cause environmental damage or contamination as a result of incidents involving petroleum exploration and production activities and which are not otherwise handled in a timely manner by the operator or permittee. The useful life of facilities used to produce oil and natural gas in the state can be from 15 to 40 years and it is the Legislature's intent that safe and environmentally compatible operations be conducted for the economic life of any well, field, or production facility. It is the further intent of the Legislature that this trust fund make available immediately to the department funds sufficient to correct violations such as an operator's failure to adequately plug, abandon, or restore production sites or other test sites and facilities after operations cease, if the permittee or operator cannot or will not correct the violations within a reasonable time. Furthermore, it is the Legislature's intent that if an amount in excess of the funds on deposit in the trust fund is needed for remedial action, money from the Florida Coastal Protection Trust Fund be made available in the form of a temporary transfer of funds. The temporary transfer shall be repaid as soon as possible after the department obtains penalties, judgments, recoveries, or reimbursements.

(3) USES.—

(a) When the department has reason to believe that incidents of contamination related to the conduct of operations, including, but not limited to, drilling of exploratory or production wells, operation and maintenance of producing wells, pressure maintenance wells, or disposal wells, and related gathering lines, may pose a threat to the environment or the public health, safety, or welfare, or if the permittee, owner, or operator of such facility does not take immediate remedial or other approved corrective action, the department shall obligate moneys available from fees collected and deposited pursuant to subsection (4) in the trust fund to provide for:

1. Prompt investigation and assessment of surface or underground contamination or other permit violations;

2. Prompt remedial action to repair, replace, or restore to a safe condition test sites, wells, and facilities at the affected site or location;

3. Rehabilitation of contamination at sites, which rehabilitation shall include cleanup of contaminated soils, groundwater, and surface waters to minimize environmental damage;

4. Maintenance and monitoring of sites or facilities that have been repaired, replaced, or restored;

5. Inspection and supervision of activities described in this section;

6. Payment of expenses incurred by the department in its efforts to obtain from responsible parties the payment or recovery of reasonable costs resulting from activities described in this section; or

7. Payment of any other reasonable costs of administration.

(b) The department may also use moneys from the trust fund to conduct routine inspections of exploratory or production wells, pressure maintenance wells, disposal wells, and related gathering lines.

(4) FUNDING.—There shall be deposited in the Minerals Trust Fund:

(a) All fees charged permittees under ss. 377.24(1), 377.2408(1), and 377.2425(1)(b).

(b) All penalties, judgments, recoveries, reimbursements, and other fees and charges related to the implementation of this section.

(c) Any other funds required to be deposited in the trust fund under provisions of law.

If moneys on deposit in the trust fund are not sufficient to satisfy the needed remedial or corrective action, and if the responsible party does not take remedial and corrective action in a timely manner or if a catastrophic event occurs, a temporary transfer of the required amount, or a maximum of $10 million, from the Florida Coastal Protection Trust Fund pursuant to s. 376.11(6)(j) is authorized. The Florida Coastal Protection Trust Fund shall be reimbursed immediately upon deposit into the Minerals Trust Fund of moneys referred to in paragraph (b).

(5) RECOVERY.—The department shall recover to the use of the trust fund from the permittee for any facilities for petroleum exploration or production, petroleum gathering, or other exploration or production activities all sums expended from the trust fund pursuant to this section. Requests for reimbursement to the trust fund for such costs, if not paid within 120 days after demand, shall be turned over to the Department of Legal Affairs for collection.

(6) INVESTMENTS; INTEREST.—Moneys in the trust fund which are not needed currently to meet the obligations of the department in the exercise of its responsibilities under this section shall be deposited with the Chief Financial Officer to the credit of the trust fund and may be invested as provided by law.

History.—s. 4, ch. 89-358; s. 5, ch. 94-193; s. 305, ch. 94-356; s. 51, ch. 96-321; s. 397, ch. 2003-261; s. 57, ch. 2015-229.

376.41 Minerals Trust Fund.—

(1) The Minerals Trust Fund is established in and administered by the Department of Environmental Protection.

(2) Funds to be credited to and uses of the trust fund shall be administered in accordance with ss. 211.06, 211.31, 211.3103, 376.11, 376.40, 377.24, 377.2408, 377.2425, 377.247, and 377.41.

(3) Notwithstanding s. 216.301 and pursuant to s. 216.351, any balance in the trust fund at the end of a fiscal year shall remain in the trust fund and shall be available for carrying out the purposes of the trust fund.

History.—s. 2, ch. 2015-8.

376.60 Asbestos removal program inspection and notification fee.—The Department of Environmental Protection shall charge an inspection and notification fee, not to exceed $300 for a small business as defined in s. 288.703, or $1,000 for any other project, for any asbestos removal project. The department may establish a fee schedule by rule. Schools, colleges, universities, residential dwellings, and those persons otherwise exempted from licensure under s. 469.002(4) are exempt from the fees. Any fee collected must be deposited in the asbestos program account in the Air Pollution Control Trust Fund to be used by the department to administer its asbestos removal program.

(1) In those counties with approved local air pollution control programs, the department shall return 80 percent of the asbestos removal program inspection and notification fees collected in that county to the local government quarterly, if the county requests it.

(2) The fees returned to a county under subsection (1) must be used only for asbestos-related program activities.

(3) A county may not levy any additional fees for asbestos removal activity while it receives fees under subsection (1).

(4) If a county has requested reimbursement under subsection (1), the department shall reimburse the approved local air pollution control program with 80 percent of the fees collected in the county retroactive to July 1, 1994, for asbestos-related program activities.

(5) If an approved local air pollution control program that is providing asbestos notification and inspection services according to 40 C.F.R. part 61, subpart M, and is collecting fees sufficient to support the requirements of 40 C.F.R. part 61, subpart M, opts not to receive the state-generated asbestos notification fees, the state may discontinue collection of the state asbestos notification fees in that county.

History.—s. 1, ch. 90-117; s. 59, ch. 90-331; s. 25, ch. 92-30; s. 306, ch. 94-356; s. 1, ch. 97-31; s. 1, ch. 98-44; s. 21, ch. 98-419; s. 252, ch. 2011-142.

376.70 Tax on gross receipts of drycleaning facilities.—

(1) There is levied a gross receipts tax on each drycleaning facility and dry drop-off facility, as defined in s. 376.301, for the privilege of engaging in the business of laundering and drycleaning clothing and other fabrics in this state. The tax shall be at a rate of 2 percent of all charges imposed by the drycleaning facility or the dry drop-off facility for the drycleaning or laundering of clothing or other fabrics. Gross receipts from coin-operated laundry machines and from laundry done on a wash, dry, and fold basis shall not be subject to tax.

(2) Each drycleaning facility or dry drop-off facility imposing a charge for the drycleaning or laundering of clothing or other fabrics is required to register with the Department of Revenue and become licensed for the purposes of this section. The owner or operator of the facility shall register the facility with the Department of Revenue. Drycleaning facilities or dry drop-off facilities operating at more than one location are only required to have a single registration.

(3) The tax imposed by this section is due on the 1st day of the month succeeding the month in which the charge is imposed and shall be paid on or before the 20th day of each month. The tax shall be reported on forms and in the manner prescribed by the Department of Revenue by rule. The proceeds of the taxes, after deducting the administrative costs incurred by the Department of Revenue in administering, auditing, collecting, distributing, and enforcing the tax, shall be transferred by the Department of Revenue into the Water Quality Assurance Trust Fund and shall be used as provided in s. 376.3078. For the purposes of this section, the proceeds of the tax include all funds collected and received by the Department of Revenue, including interest and penalties on delinquent taxes.

(4) Any drycleaning facility which includes in the total retail charge to a consumer of drycleaning services any portion of the tax imposed pursuant to this section shall disclose on the receipt for the amount charged for such services the amount of such tax and a statement that the imposition of the tax was requested by the Florida Dry Cleaners Coalition.

(5) Gross receipts arising from charges for services taxable pursuant to this section to persons who also impose charges to others for those same services are exempt from the tax imposed pursuant to this section.

(6)(a) The Department of Revenue shall administer, collect, and enforce the tax imposed under this section pursuant to the procedures for administration, collection, and enforcement of the general state sales tax imposed under chapter 212, except as provided in this subsection. Such procedures include, but are not limited to, those regarding the filing of consolidated returns, the granting of sale for resale exemptions, and the interest and penalties on delinquent taxes. The tax shall not be included in the computation of estimated taxes pursuant to s. 212.11, nor shall the dealer's credit for collecting taxes or fees in s. 212.12 apply. The provisions of s. 212.07(4) shall not apply to the tax imposed by this section.

(b) The Department of Revenue is authorized to employ persons and incur other expenses for which funds are appropriated by the Legislature. The Department of Revenue is empowered to adopt such rules and shall prescribe and publish such forms as may be necessary to effectuate the purposes of this section.

(c) The Department of Revenue is authorized to establish audit procedures and to assess delinquent taxes.

(7) The department shall not deny eligibility in the drycleaning solvent cleanup program because of the facility owner's, the facility operator's, and the real property owner's failure to remit all taxes due pursuant to this section and s. 376.75, unless the Department of Revenue:

(a) Ascertains the amount of the delinquent tax, if any, and communicates this amount in writing to the drycleaning solvent cleanup program applicant and the real property owner; and

(b) Provides a method to the facility owner, the facility operator, and the real property owner for the payment of the taxes.

Pursuant to this subsection, the owner or operator of a drycleaning facility must demonstrate to the satisfaction of the Department of Revenue that failure to remit all taxes due in a timely manner was not due to willful and overt actions to avoid payment of taxes.

(8) The Legislature declares that the failure to promptly implement the provisions of this section would present an immediate threat to the welfare of the state. Therefore, the executive director of the Department of Revenue is authorized to adopt emergency rules pursuant to s. 120.54(4) to implement this section. Notwithstanding any other provision of law, such emergency rules shall remain effective for 180 days from the date of adoption. Other rules of the Department of Revenue related to and in furtherance of the orderly implementation of this section shall not be subject to a s. 120.56(2) rule challenge or a s. 120.54(3)(c)2. drawout proceeding, but, once adopted, shall be subject to a s. 120.56(3) invalidity challenge. Such rules shall be adopted by the Governor and Cabinet and shall become effective upon filing with the Department of State, notwithstanding the provisions of s. 120.54(3)(e)6.

History.—s. 11, ch. 94-355; s. 7, ch. 95-239; s. 52, ch. 96-321; s. 108, ch. 96-410; s. 13, ch. 98-189; s. 49, ch. 2002-218; s. 42, ch. 2017-36.

376.71 Registration fee and gross receipts tax; exemptions.—The registration fee and the gross receipts tax imposed under ss. 376.303(1)(d) and 376.70 do not apply to uniform rental companies or linen supply companies.

History.—s. 8, ch. 95-239; s. 43, ch. 2005-2.

376.75 Tax on production or importation of perchloroethylene.—

(1) Beginning October 1, 1994, a tax of $5 per gallon is levied on the sale of perchloroethylene (tetrachloroethylene) in this state to a drycleaning facility located in this state or the import of perchloroethylene into this state by a drycleaning facility. This tax is not subject to sales and use tax pursuant to chapter 212.

(2) Any person producing in, importing into, or causing to be imported into, or selling in, this state perchloroethylene must register with the Department of Revenue and become licensed for the purposes of remitting the tax pursuant to, or providing information required by, this section. Such person must register as a seller of perchloroethylene, a user of perchloroethylene in drycleaning facilities, or a user of perchloroethylene for purposes other than drycleaning. Persons operating at more than one location are only required to have a single registration. Failure to timely register is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3) The tax imposed by this section is due on the 1st day of the month succeeding the month of the sale and must be paid on or before the 20th day of each month. Tax shall be reported on forms and in the manner prescribed by the Department of Revenue by rule.

(4) Any person subject to taxation under this section or any person who sells tax-paid perchloroethylene, other than a retail dealer, must separately state the amount of such tax paid on any charge ticket, sales slip, invoice, or other tangible evidence of the sale or must certify on the sales document that the tax required pursuant to this section has been paid.

(5) All perchloroethylene imported, produced, or sold in this state is presumed to be subject to the tax imposed by this section. Any person who has purchased perchloroethylene for use in such person's drycleaning facility in this state must document that the tax imposed by this section has been paid or must pay such tax directly to the Department of Revenue in accordance with subsection (3).

(6) For purposes of this section, to demonstrate that perchloroethylene is not sold or transferred to a drycleaning facility for eventual use in a drycleaning facility in this state, a person may rely on a certificate signed under penalty of perjury by a transferee of the perchloroethylene stating that the transferee does not own or operate a drycleaning facility or the transferee will not use the perchloroethylene in a drycleaning facility in this state. Any producer, importer, seller, or other transferor of perchloroethylene who is required to register in accordance with subsection (2) but who does not make any taxable sales or taxable transfers during a year shall file with the Department of Revenue a form containing the quantity of perchloroethylene sold or transferred, a statement indicating that all sales were exempt from tax, and such other information as the Department of Revenue may prescribe.

(7) The Department of Revenue may authorize a quarterly return and payment when the tax remitted by the licensee for the preceding quarter did not exceed $100; may authorize a semiannual return and payment when the tax remitted by the licensee for the preceding 6 months did not exceed $200; and may authorize an annual return and payment when the tax remitted by the licensee for the preceding 12 months did not exceed $400.

(8) The tax imposed by this section shall be reported to the Department of Revenue. The payment shall be accompanied by such forms as the Department of Revenue prescribes. The proceeds of the tax, after deducting the administrative costs incurred by the Department of Revenue in administering, auditing, collecting, distributing, and enforcing the tax, shall be transferred by the Department of Revenue into the Water Quality Assurance Trust Fund and shall be used as provided in s. 376.3078. For the purposes of this section, the proceeds of the tax include all funds collected and received by the Department of Revenue, including interest and penalties on delinquent taxes.

(9)(a) The Department of Revenue shall administer, collect, and enforce the tax authorized under this section pursuant to the same procedures used in the administration, collection, and enforcement of the general state sales tax imposed under chapter 212, except as provided in this section. The provisions of chapter 212 regarding the authority to audit and make assessments, the keeping of books and records, and interest and penalties on delinquent taxes shall apply. The tax shall not be included in the computation of estimated taxes pursuant to s. 212.11, nor shall the dealer's credit for collecting taxes or fees in s. 212.12 apply to the tax. The provisions of s. 212.07(4) shall not apply to the tax imposed by this section.

(b) The Department of Revenue, under the applicable rules of the Public Employees Relations Commission, is authorized to employ persons and incur other expenses for which funds are appropriated by the Legislature. The Department of Revenue is empowered to adopt such rules and shall prescribe and publish such forms as may be necessary to effectuate the purposes of this section.

(c) The Department of Revenue is authorized to establish audit procedures and to assess delinquent taxes.

(10) The Legislature declares that the failure to promptly implement the provisions of this section would present an immediate threat to the welfare of the state. Therefore, the executive director of the Department of Revenue is authorized to adopt emergency rules pursuant to s. 120.54(4) to implement this section. Notwithstanding any other provision of law, such emergency rules shall remain effective for 180 days from the date of adoption. Other rules of the Department of Revenue related to and in furtherance of the orderly implementation of this section shall not be subject to a s. 120.56(2) rule challenge or a s. 120.54(3)(c)2. drawout proceeding, but, once adopted, shall be subject to a s. 120.56(3) invalidity challenge. Such rules shall be adopted by the Governor and Cabinet and shall become effective upon filing with the Department of State, notwithstanding the provisions of s. 120.54(3)(e)6.

(11) If perchloroethylene on which tax has been paid is exported from this state or acquired for purposes other than use in a drycleaning facility in this state or for sale, resale, or other transfer for such use, the person who paid the tax to the Department of Revenue may apply for a refund or take a credit of such tax paid. The person applying for the refund or credit must refund such tax to the person who incurred the burden of the tax before the claim to the state for refund or credit will be approved.

(12) Any drycleaning facility which includes in the total retail charge to a consumer of drycleaning services any portion of the tax imposed pursuant to this section shall disclose on the receipt for the amount charged for such services the amount of such tax and a statement that the imposition of the tax was requested by the Florida Dry Cleaners Coalition.

History.—s. 12, ch. 94-355; s. 9, ch. 95-239; s. 53, ch. 96-321; s. 109, ch. 96-410; s. 34, ch. 97-99; s. 14, ch. 98-189; s. 43, ch. 2017-36.

376.77 Short title.—Sections 376.77-376.85 may be cited as the "Brownfields Redevelopment Act."

History.—s. 1, ch. 97-277; s. 1, ch. 98-75.

376.78 Legislative intent.—The Legislature finds and declares the following:

(1) The reduction of public health and environmental hazards on existing commercial and industrial sites is vital to their use and reuse as sources of employment, housing, recreation, and open space areas. The reuse of industrial land is an important component of sound land use policy for productive urban purposes which will help prevent the

premature development of farmland, open space areas, and natural areas, and reduce public costs for installing new water, sewer, and highway infrastructure.

(2) The abandonment or underuse of brownfield sites also results in the inefficient use of public facilities and services, as well as land and other natural resources, extends conditions of blight in local communities, and contributes to concerns about environmental equity and the distribution of environmental risks across population groups.

(3) Incentives should be put in place to encourage responsible persons to voluntarily develop and implement cleanup plans without the use of taxpayer funds or the need for enforcement actions by state and local governments.

(4) Environmental and public health hazards cannot be eliminated without clear, predictable remediation standards that provide for the protection of the environment and public health.

(5) Site rehabilitation should be based on the actual risk that contamination may pose to the environment and public health, taking into account current and future land and water use and the degree to which contamination may spread and place the public or the environment at risk.

(6) According to the statistical proximity study contained in the final report of the Environmental Equity and Justice Commission, minority and low-income communities are disproportionately impacted by targeted environmentally hazardous sites. The results indicate the need for the health and risk exposure assessments of minority and poverty populations around environmentally hazardous sites in this state. Redevelopment of hazardous sites should address questions relating to environmental and health consequences.

(7) Environmental justice considerations should be inherent in meaningful public participation elements of a brownfields redevelopment program.

(8) The existence of brownfields within a community may contribute to, or may be a symptom of, overall community decline, including issues of human disease and illness, crime, educational and employment opportunities, and infrastructure decay. The environment is an important element of quality of life in any community, along with economic opportunity, educational achievement, access to health care, housing quality and availability, provision of governmental services, and other socioeconomic factors. Brownfields redevelopment, properly done, can be a significant element in community revitalization, especially within community redevelopment areas, enterprise zones, empowerment zones, closed military bases, or designated brownfield pilot project areas.

(9) Cooperation among federal, state, and local agencies, local community development organizations, and current owners and prospective purchasers of brownfield sites is required to accomplish timely cleanup activities and the redevelopment or reuse of brownfield sites.

History.—s. 2, ch. 97-277; s. 1, ch. 2014-114.

376.79 Definitions relating to Brownfields Redevelopment Act.—As used in ss. 376.77-376.85, the term:

(1) "Additive effects" means a scientific principle that the toxicity that occurs as a result of exposure is the sum of the toxicities of the individual chemicals to which the individual is exposed.

(2) "Antagonistic effects" means a scientific principle that the toxicity that occurs as a result of exposure is less than the sum of the toxicities of the individual chemicals to which the individual is exposed.

(3) "Background concentration" means the concentration of contaminants naturally occurring or resulting from anthropogenic impacts unrelated to the discharge of pollutants or hazardous substances at a contaminated site undergoing site rehabilitation.

(4) "Brownfield sites" means real property, the expansion, redevelopment, or reuse of which may be complicated by actual or perceived environmental contamination.

(5) "Brownfield area" means a contiguous area of one or more brownfield sites, some of which may not be contaminated, and which has been designated by a local government by resolution. Such areas may include all or portions of community redevelopment areas, enterprise zones, empowerment zones, other such designated economically deprived communities and areas, and Environmental Protection Agency-designated brownfield pilot projects.

(6) "Contaminant" means any physical, chemical, biological, or radiological substance present in any medium which may result in adverse effects to human health or the environment or which creates an adverse nuisance, organoleptic, or aesthetic condition in groundwater.

(7) "Contaminated site" means any contiguous land, sediment, surface water, or groundwater areas that contain contaminants that may be harmful to human health or the environment.

(8) "Department" means the Department of Environmental Protection.

(9) "Engineering controls" means modifications to a site to reduce or eliminate the potential for exposure to chemicals of concern from petroleum products, drycleaning solvents, or other contaminants. Such modifications may include, but are not limited to, physical or hydraulic control measures, capping, point of use treatments, or slurry walls.

(10) "Environmental justice" means the fair treatment of all people of all races, cultures, and incomes with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.

(11) "Institutional controls" means the restriction on use of or access to a site to eliminate or minimize exposure to chemicals of concern from petroleum products, drycleaning solvents, or other contaminants. Such restrictions may include, but are not limited to, deed restrictions, restrictive covenants, or conservation easements.

(12) "Local pollution control program" means a local pollution control program that has received delegated authority from the Department of Environmental Protection under ss. 376.80(9) and 403.182.

(13) "Long-term natural attenuation" means natural attenuation approved by the department as a site rehabilitation program task for a period of more than 5 years.

(14) "Natural attenuation" means a verifiable approach to site rehabilitation that allows natural processes to contain the spread of contamination and reduce the concentrations of contaminants in contaminated groundwater and soil. Natural attenuation processes may include sorption, biodegradation, chemical reactions with subsurface materials, diffusion, dispersion, and volatilization.

(15) "Person responsible for brownfield site rehabilitation" means the individual or entity that is designated by the local government to enter into the brownfield site rehabilitation agreement with the department or an approved local pollution control program and enters into an agreement with the local government for redevelopment of the site.

(16) "Person" means any individual, partner, joint venture, or corporation; any group of the foregoing, organized or united for a business purpose; or any governmental entity.

(17) "Risk reduction" means the lowering or elimination of the level of risk posed to human health or the environment through interim remedial actions, remedial action, or institutional, and if appropriate, engineering controls.

(18) "Secretary" means the secretary of the Department of Environmental Protection.

(19) "Site rehabilitation" means the assessment of site contamination and the remediation activities that reduce the levels of contaminants at a site through accepted treatment methods to meet the cleanup target levels established for that site. For purposes of sites subject to the Resource Conservation and Recovery Act, as amended, the term includes removal, decontamination, and corrective action of releases of hazardous substances.

(20) "Source removal" means the removal of free product, or the removal of contaminants from soil or sediment that has been contaminated to the extent that leaching to groundwater or surface water has occurred or is occurring.

(21) "Synergistic effects" means a scientific principle that the toxicity that occurs as a result of exposure is more than the sum of the toxicities of the individual chemicals to which the individual is exposed.

History.—s. 3, ch. 97-277; s. 2, ch. 98-75; s. 10, ch. 2000-317; s. 1, ch. 2004-40; s. 4, ch. 2008-239; s. 3, ch. 2016-184.

376.80 Brownfield program administration process.—

(1) The following general procedures apply to brownfield designations:

(a) The local government with jurisdiction over a proposed brownfield area shall designate such area pursuant to this section.

(b) For a brownfield area designation proposed by:

1. The jurisdictional local government, the designation criteria under paragraph (2)(a) apply, except if the local government proposes to designate as a brownfield area a specified redevelopment area as provided in paragraph (2)(b).

2. Any person, other than a governmental entity, including, but not limited to, individuals, corporations, partnerships, limited liability companies, community-based organizations, or not-for-profit corporations, the

designation criteria under paragraph (2)(c) apply.

(c) Except as otherwise provided, the following provisions apply to all proposed brownfield area designations:

1. Notification to department following adoption.—A local government with jurisdiction over the brownfield area must notify the department, and, if applicable, the local pollution control program under s. 403.182, of its decision to designate a brownfield area for rehabilitation for the purposes of ss. 376.77-376.86. The notification must include a resolution adopted by the local government body. The local government shall notify the department, and, if applicable, the local pollution control program under s. 403.182, of the designation within 30 days after adoption of the resolution.

2. Resolution adoption.—The brownfield area designation must be carried out by a resolution adopted by the jurisdictional local government, which includes a map adequate to clearly delineate exactly which parcels are to be included in the brownfield area or alternatively a less-detailed map accompanied by a detailed legal description of the brownfield area. For municipalities, the governing body shall adopt the resolution in accordance with the procedures outlined in s. 166.041, except that the procedures for the public hearings on the proposed resolution must be in the form established in s. 166.041(3)(c)2. For counties, the governing body shall adopt the resolution in accordance with the procedures outlined in s. 125.66, except that the procedures for the public hearings on the proposed resolution shall be in the form established in s. 125.66(4)(b).

3. Right to be removed from proposed brownfield area.—If a property owner within the area proposed for designation by the local government requests in writing to have his or her property removed from the proposed designation, the local government shall grant the request.

4. Notice and public hearing requirements for designation of a proposed brownfield area outside a redevelopment area or by a nongovernmental entity. Compliance with the following provisions is required before designation of a proposed brownfield area under paragraph (2)(a) or paragraph (2)(c):

a. At least one of the required public hearings shall be conducted as closely as is reasonably practicable to the area to be designated to provide an opportunity for public input on the size of the area, the objectives for rehabilitation, job opportunities and economic developments anticipated, neighborhood residents' considerations, and other relevant local concerns.

b. Notice of a public hearing must be made in a newspaper of general circulation in the area, must be made in ethnic newspapers or local community bulletins, must be posted in the affected area, and must be announced at a scheduled meeting of the local governing body before the actual public hearing.

(2)(a) *Local government-proposed brownfield area designation outside specified redevelopment areas.*—If a local government proposes to designate a brownfield area that is outside a community redevelopment area, enterprise zone, empowerment zone, closed military base, or designated brownfield pilot project area, the local government shall provide notice, adopt the resolution, and conduct public hearings pursuant to paragraph (1)(c). At a public hearing to designate the proposed brownfield area, the local government must consider:

1. Whether the brownfield area warrants economic development and has a reasonable potential for such activities;

2. Whether the proposed area to be designated represents a reasonably focused approach and is not overly large in geographic coverage;

3. Whether the area has potential to interest the private sector in participating in rehabilitation; and

4. Whether the area contains sites or parts of sites suitable for limited recreational open space, cultural, or historical preservation purposes.

(b) *Local government-proposed brownfield area designation within specified redevelopment areas.*—Paragraph (a) does not apply to a proposed brownfield area if the local government proposes to designate the brownfield area inside a community redevelopment area, enterprise zone, empowerment zone, closed military base, or designated brownfield pilot project area and the local government complies with paragraph (1)(c).

(c) *Brownfield area designation proposed by persons other than a governmental entity.*—For designation of a brownfield area that is proposed by a person other than the local government, the local government with jurisdiction over the proposed brownfield area shall provide notice and adopt a resolution to designate the brownfield area pursuant to paragraph (1)(c) if, at the public hearing to adopt the resolution, the person establishes all of the following:

1. A person who owns or controls a potential brownfield site is requesting the designation and has agreed to rehabilitate and redevelop the brownfield site.

2. The rehabilitation and redevelopment of the proposed brownfield site will result in economic productivity of the area, along with the creation of at least 5 new permanent jobs at the brownfield site that are full-time equivalent positions not associated with the implementation of the brownfield site rehabilitation agreement and that are not associated with redevelopment project demolition or construction activities pursuant to the redevelopment of the proposed brownfield site or area. However, the job creation requirement does not apply to the rehabilitation and redevelopment of a brownfield site that will provide affordable housing as defined in s. 420.0004 or the creation of recreational areas, conservation areas, or parks.

3. The redevelopment of the proposed brownfield site is consistent with the local comprehensive plan and is a permittable use under the applicable local land development regulations.

4. Notice of the proposed rehabilitation of the brownfield area has been provided to neighbors and nearby residents of the proposed area to be designated pursuant to paragraph (1)(c), and the person proposing the area for designation has afforded to those receiving notice the opportunity for comments and suggestions about rehabilitation. Notice pursuant to this subparagraph must be posted in the affected area.

5. The person proposing the area for designation has provided reasonable assurance that he or she has sufficient financial resources to implement and complete the rehabilitation agreement and redevelopment of the brownfield site.

(d) *Negotiation of brownfield site rehabilitation agreement.*—The designation of a brownfield area and the identification of a person responsible for brownfield site rehabilitation simply entitles the identified person to negotiate a brownfield site rehabilitation agreement with the department or approved local pollution control program.

(3) When there is a person responsible for brownfield site rehabilitation, the local government must notify the department of the identity of that person. If the agency or person who will be responsible for the coordination changes during the approval process specified in subsections (4), (5), and (6), the department or the affected approved local pollution control program must notify the affected local government when the change occurs.

(4) Local governments or persons responsible for rehabilitation and redevelopment of brownfield areas must establish an advisory committee or use an existing advisory committee that has formally expressed its intent to address redevelopment of the specific brownfield area for the purpose of improving public participation and receiving public comments on rehabilitation and redevelopment of the brownfield area, future land use, local employment opportunities, community safety, and environmental justice. Such advisory committee should include residents within or adjacent to the brownfield area, businesses operating within the brownfield area, and others deemed appropriate. The person responsible for brownfield site rehabilitation must notify the advisory committee of the intent to rehabilitate and redevelop the site before executing the brownfield site rehabilitation agreement, and provide the committee with a copy of the draft plan for site rehabilitation which addresses elements required by subsection (5). This includes disclosing potential reuse of the property as well as site rehabilitation activities, if any, to be performed. The advisory committee shall review any proposed redevelopment agreements prepared pursuant to paragraph (5)(i) and provide comments, if appropriate, to the board of the local government with jurisdiction over the brownfield area. The advisory committee must receive a copy of the executed brownfield site rehabilitation agreement. When the person responsible for brownfield site rehabilitation submits a site assessment report or the technical document containing the proposed course of action following site assessment to the department or the local pollution control program for review, the person responsible for brownfield site rehabilitation must hold a meeting or attend a regularly scheduled meeting to inform the advisory committee of the findings and recommendations in the site assessment report or the technical document containing the proposed course of action following site assessment.

(5) The person responsible for brownfield site rehabilitation must enter into a brownfield site rehabilitation agreement with the department or an approved local pollution control program if actual contamination exists at the brownfield site. The brownfield site rehabilitation agreement must include:

(a) A brownfield site rehabilitation schedule, including milestones for completion of site rehabilitation tasks and submittal of technical reports and rehabilitation plans as agreed upon by the parties to the agreement.

(b) A commitment to conduct site rehabilitation activities under the observation of professional engineers or geologists who are registered in accordance with the requirements of chapter 471 or chapter 492, respectively.

Submittals provided by the person responsible for brownfield site rehabilitation must be signed and sealed by a professional engineer registered under chapter 471, or a professional geologist registered under chapter 492, certifying that the submittal and associated work comply with the law and rules of the department and those governing the profession. In addition, upon completion of the approved remedial action, the department shall require a professional engineer registered under chapter 471 or a professional geologist registered under chapter 492 to certify that the corrective action was, to the best of his or her knowledge, completed in substantial conformance with the plans and specifications approved by the department.

(c) A commitment to conduct site rehabilitation in accordance with department quality assurance rules.

(d) A commitment to conduct site rehabilitation consistent with state, federal, and local laws and consistent with the brownfield site contamination cleanup criteria in s. 376.81, including any applicable requirements for risk-based corrective action.

(e) Timeframes for the department's review of technical reports and plans submitted in accordance with the agreement. The department shall make every effort to adhere to established agency goals for reasonable timeframes for review of such documents.

(f) A commitment to secure site access for the department or approved local pollution control program to all brownfield sites within the eligible brownfield area for activities associated with site rehabilitation.

(g) Other provisions that the person responsible for brownfield site rehabilitation and the department agree upon, that are consistent with ss. 376.77-376.86, and that will improve or enhance the brownfield site rehabilitation process.

(h) A commitment to consider appropriate pollution prevention measures and to implement those that the person responsible for brownfield site rehabilitation determines are reasonable and cost-effective, taking into account the ultimate use or uses of the brownfield site. Such measures may include improved inventory or production controls and procedures for preventing loss, spills, and leaks of hazardous waste and materials, and include goals for the reduction of releases of toxic materials.

(i) Certification that the person responsible for brownfield site rehabilitation has consulted with the local government with jurisdiction over the brownfield area about the proposed redevelopment of the brownfield site, that the local government is in agreement with or approves the proposed redevelopment, and that the proposed redevelopment complies with applicable laws and requirements for such redevelopment. Certification shall be accomplished by referencing or providing a legally recorded or officially approved land use or site plan, a development order or approval, a building permit, or a similar official document issued by the local government that reflects the local government's approval of proposed redevelopment of the brownfield site; providing a copy of the local government resolution designating the brownfield area that contains the proposed redevelopment of the brownfield site; or providing a letter from the local government that describes the proposed redevelopment of the brownfield site and expresses the local government's agreement with or approval of the proposed redevelopment.

(6) Any contractor performing site rehabilitation program tasks must demonstrate to the department that the contractor:

(a) Meets all certification and license requirements imposed by law; and

(b) Will conduct sample collection and analyses pursuant to department rules.

(7) During the cleanup process, if the department or local program fails to complete review of a technical document within the timeframe specified in the brownfield site rehabilitation agreement, the person responsible for brownfield site rehabilitation may proceed to the next site rehabilitation task. However, the person responsible for brownfield site rehabilitation does so at its own risk and may be required by the department or local program to complete additional work on a previous task. Exceptions to this subsection include requests for "no further action," "monitoring only proposals," and feasibility studies, which must be approved prior to implementation.

(8) If the person responsible for brownfield site rehabilitation fails to comply with the brownfield site rehabilitation agreement, the department shall allow 90 days for the person responsible for brownfield site rehabilitation to return to compliance with the provision at issue or to negotiate a modification to the brownfield site rehabilitation agreement with the department for good cause shown. If an imminent hazard exists, the 90-day grace period shall not apply. If the project is not returned to compliance with the brownfield site rehabilitation agreement and a modification cannot be negotiated, the immunity provisions of s. 376.82 are revoked.

(9) The department is specifically authorized and encouraged to enter into delegation agreements with local pollution control programs approved under s. 403.182 to administer the brownfield program within their jurisdictions, thereby maximizing the integration of this process with the other local development processes needed to facilitate redevelopment of a brownfield area. When determining whether a delegation pursuant to this subsection of all or part of the brownfield program to a local pollution control program is appropriate, the department shall consider the following. The local pollution control program must:

(a) Have and maintain the administrative organization, staff, and financial and other resources to effectively and efficiently implement and enforce the statutory requirements of the delegated brownfield program; and

(b) Provide for the enforcement of the requirements of the delegated brownfield program, and for notice and a right to challenge governmental action, by appropriate administrative and judicial process, which shall be specified in the delegation.

The local pollution control program shall not be delegated authority to take action on or to make decisions regarding any brownfield site on land owned by the local government. Any delegation agreement entered into pursuant to this subsection shall contain such terms and conditions necessary to ensure the effective and efficient administration and enforcement of the statutory requirements of the brownfield program as established by the act and the relevant rules and other criteria of the department.

(10) Local governments are encouraged to use the full range of economic and tax incentives available to facilitate and promote the rehabilitation of brownfield areas, to help eliminate the public health and environmental hazards, and to promote the creation of jobs and economic development in these previously run-down, blighted, and underutilized areas.

(11)(a) The Legislature finds and declares that:

1. Brownfield site rehabilitation and redevelopment can improve the overall health of a community and the quality of life for communities, including for individuals living in such communities.

2. The community health benefits of brownfield site rehabilitation and redevelopment should be better measured in order to achieve the legislative intent as expressed in s. 376.78.

3. There is a need in this state to define and better measure the community health benefits of brownfield site rehabilitation and redevelopment.

4. Funding sources should be established to support efforts by the state and local governments, in collaboration with local health departments, community health providers, and nonprofit organizations, to evaluate the community health benefits of brownfield site rehabilitation and redevelopment.

(b) Local governments may and are encouraged to evaluate the community health benefits and effects of brownfield site rehabilitation and redevelopment in connection with brownfield areas located within their jurisdictions. Factors that may be evaluated and monitored before and after brownfield site rehabilitation and redevelopment include, but are not limited to:

1. Health status, disease distribution, and quality of life measures regarding populations living in or around brownfield sites that have been rehabilitated and redeveloped.

2. Access to primary and other health care or health services for persons living in or around brownfield sites that have been rehabilitated and redeveloped.

3. Any new or increased access to open, green, park, or other recreational spaces that provide recreational opportunities for individuals living in or around brownfield sites that have been rehabilitated and redeveloped.

4. Other factors described in rules adopted by the Department of Environmental Protection or the Department of Health, as applicable.

(c) The Department of Health may and is encouraged to assist local governments, in collaboration with local health departments, community health providers, and nonprofit organizations, in evaluating the community health benefits of brownfield site rehabilitation and redevelopment.

(12) A local government that designates a brownfield area pursuant to this section is not required to use the term “brownfield area” within the name of the brownfield area designated by the local government.

History.—s. 4, ch. 97-277; s. 3, ch. 98-75; s. 11, ch. 2000-317; s. 2, ch. 2004-40; s. 44, ch. 2005-2; s. 7, ch. 2006-291; s. 5, ch. 2008-239; s. 2, ch. 2014-114.

376.81 Brownfield site and brownfield areas contamination cleanup criteria.—

(1) It is the intent of the Legislature to protect the health of all people under actual circumstances of exposure. By July 1, 2001, the secretary of the department shall establish criteria by rule for the purpose of determining, on a site-specific basis, the rehabilitation program tasks that comprise a site rehabilitation program and the level at which a rehabilitation program task and a site rehabilitation program may be deemed completed. In establishing the rule, the department shall apply, to the maximum extent feasible, a risk-based corrective action process to achieve protection of human health and safety and the environment in a cost-effective manner based on the principles set forth in this subsection. The rule must prescribe a phased risk-based corrective action process that is iterative and that tailors site rehabilitation tasks to site-specific conditions and risks. The department and the person responsible for brownfield site rehabilitation are encouraged to establish decision points at which risk management decisions will be made. The department shall provide an early decision, when requested, regarding applicable exposure factors and a risk management approach based on the current and future land use at the site. The rule must include protocols for the use of natural attenuation, including long-term natural attenuation where site conditions warrant, the use of institutional and engineering controls, and the issuance of "no further action" letters. The criteria for determining what constitutes a rehabilitation program task or completion of a site rehabilitation program task or site rehabilitation program must:

(a) Consider the current exposure and potential risk of exposure to humans and the environment, including multiple pathways of exposure. The physical, chemical, and biological characteristics of each contaminant must be considered in order to determine the feasibility of risk-based corrective action assessment.

(b) Establish the point of compliance at the source of the contamination. However, the department may temporarily move the point of compliance to the boundary of the property, or to the edge of the plume when the plume is within the property boundary, while cleanup, including cleanup through natural attenuation processes in conjunction with appropriate monitoring, is proceeding. The department may, pursuant to criteria provided for in this section, temporarily extend the point of compliance beyond the property boundary with appropriate monitoring, if such extension is needed to facilitate natural attenuation or to address the current conditions of the plume, provided human health, public safety, and the environment are protected. When temporarily extending the point of compliance beyond the property boundary, it cannot be extended further than the lateral extent of the plume at the time of execution of the brownfield site rehabilitation agreement, if known, or the lateral extent of the plume as defined at the time of site assessment. Temporary extension of the point of compliance beyond the property boundary, as provided in this paragraph, must include actual notice by the person responsible for brownfield site rehabilitation to local governments and the owners of any property into which the point of compliance is allowed to extend and constructive notice to residents and business tenants of the property into which the point of compliance is allowed to extend. Persons receiving notice pursuant to this paragraph shall have the opportunity to comment within 30 days of receipt of the notice.

(c) Ensure that the site-specific cleanup goal is that all contaminated brownfield sites and brownfield areas ultimately achieve the applicable cleanup target levels provided in this section. In the circumstances provided below, and after constructive notice and opportunity to comment within 30 days from receipt of the notice to local government, to owners of any property into which the point of compliance is allowed to extend, and to residents on any property into which the point of compliance is allowed to extend, the department may allow concentrations of contaminants to temporarily exceed the applicable cleanup target levels while cleanup, including cleanup through natural attenuation processes in conjunction with appropriate monitoring, is proceeding, if human health, public safety, and the environment are protected.

(d) Allow brownfield site and brownfield area rehabilitation programs to include the use of institutional or engineering controls, where appropriate, to eliminate or control the potential exposure to contaminants of humans or the environment. The use of controls must be preapproved by the department and only after constructive notice and opportunity to comment within 30 days from receipt of notice is provided to local governments, to owners of any property into which the point of compliance is allowed to extend, and to residents on any property into which the

point of compliance is allowed to extend. When institutional or engineering controls are implemented to control exposure, the removal of the controls must have prior department approval and must be accompanied by the resumption of active cleanup, or other approved controls, unless cleanup target levels under this section have been achieved.

(e) Consider the interactive effects of contaminants, including additive, synergistic, and antagonistic effects.

(f) Take into consideration individual site characteristics, which shall include, but not be limited to, the current and projected use of the affected groundwater and surface water in the vicinity of the site, current and projected land uses of the area affected by the contamination, the exposed population, the degree and extent of contamination, the rate of contaminant migration, the apparent or potential rate of contaminant degradation through natural attenuation processes, the location of the plume, and the potential for further migration in relation to site property boundaries.

(g) Apply state water quality standards as follows:

1. Cleanup target levels for each contaminant found in groundwater shall be the applicable state water quality standards. Where such standards do not exist, the cleanup target levels for groundwater shall be based on the minimum criteria specified in department rule. The department shall apply the following, as appropriate, in establishing the applicable cleanup target levels: calculations using a lifetime cancer risk level of 1.0E-6; a hazard index of 1 or less; the best achievable detection limit; and nuisance, organoleptic, and aesthetic considerations. However, the department may not require site rehabilitation to achieve a cleanup target level for any individual contaminant which is more stringent than the site-specific background concentration for that contaminant.

2. Where surface waters are exposed to contaminated groundwater, the cleanup target levels for the contaminants must be based on the more protective of the groundwater or surface water standards as established by department rule, unless it has been demonstrated that the contaminants do not cause or contribute to the exceedance of applicable surface water quality criteria. In such circumstances, the point of measuring compliance with the surface water standards shall be in the groundwater immediately adjacent to the surface water body.

3. Using risk-based corrective action principles, the department shall approve alternative cleanup target levels in conjunction with institutional and engineering controls, if needed, based upon an applicant's demonstration, using site-specific or other relevant data and information, risk assessment modeling results, including results from probabilistic risk assessment modeling, risk assessment studies, risk reduction techniques, or a combination thereof, that human health, public safety, and the environment are protected to the same degree as provided in subparagraphs 1. and 2. Where a state water quality standard is applicable, a deviation may not result in the application of cleanup target levels more stringent than the standard. In determining whether it is appropriate to establish alternative cleanup target levels at a site, the department must consider the effectiveness of source removal, if any, which has been completed at the site and the practical likelihood of the use of low yield or poor quality groundwater, the use of groundwater near marine surface water bodies, the current and projected use of the affected groundwater in the vicinity of the site, or the use of groundwater in the immediate vicinity of the contaminated area, where it has been demonstrated that the groundwater contamination is not migrating away from such localized source, provided human health, public safety, and the environment are protected. When using alternative cleanup target levels at a brownfield site, institutional controls are not required if:

a. The only cleanup target levels exceeded are the groundwater cleanup target levels derived from nuisance, organoleptic, or aesthetic considerations;

b. Concentrations of all contaminants meet the state water quality standards or the minimum criteria, based on the protection of human health, provided in subparagraph 1.;

c. All of the groundwater cleanup target levels established pursuant to subparagraph 1. are met at the property boundary;

d. The person responsible for brownfield site rehabilitation has demonstrated that the contaminants will not migrate beyond the property boundary at concentrations exceeding the groundwater cleanup target levels established pursuant to subparagraph 1.;

e. The property has access to and is using an offsite water supply and no unplugged private wells are used for domestic purposes; and

f. The real property owner provides written acceptance of the "no further action" proposal to the department or the local pollution control program.

(h) Provide for the department to issue a "no further action order," with conditions, including, but not limited to, the use of institutional or engineering controls where appropriate, when alternative cleanup target levels established pursuant to subparagraph (g)3. have been achieved, or when the person responsible for brownfield site rehabilitation can demonstrate that the cleanup target level is unachievable within available technologies. Before issuing such an order, the department shall consider the feasibility of an alternative site rehabilitation technology at the brownfield site.

(i) Establish appropriate cleanup target levels for soils.

1. In establishing soil cleanup target levels for human exposure to each contaminant found in soils from the land surface to 2 feet below land surface, the department shall apply the following, as appropriate: calculations using a lifetime cancer risk level of 1.0E-6; a hazard index of 1 or less; and the best achievable detection limit. However, the department may not require site rehabilitation to achieve a cleanup target level for an individual contaminant which is more stringent than the site-specific background concentration for that contaminant. Institutional controls or other methods shall be used to prevent human exposure to contaminated soils more than 2 feet below the land surface. Any removal of such institutional controls shall require such contaminated soils to be remediated.

2. Leachability-based soil cleanup target levels shall be based on protection of the groundwater cleanup target levels or the alternate cleanup target levels for groundwater established pursuant to this paragraph, as appropriate. Source removal and other cost-effective alternatives that are technologically feasible shall be considered in achieving the leachability soil cleanup target levels established by the department. The leachability goals are not applicable if the department determines, based upon individual site characteristics, and in conjunction with institutional and engineering controls, if needed, that contaminants will not leach into the groundwater at levels that pose a threat to human health, public safety, and the environment.

3. Using risk-based corrective action principles, the department shall approve alternative cleanup target levels in conjunction with institutional and engineering controls, if needed, based upon an applicant's demonstration, using site-specific or other relevant data and information, risk assessment modeling results, including results from probabilistic risk assessment modeling, risk assessment studies, risk reduction techniques, or a combination thereof, that human health, public safety, and the environment are protected to the same degree as provided in subparagraphs 1. and 2.

(2) The department shall require source removal, as a risk reduction measure, if warranted and cost-effective. Once source removal at a site is complete, the department shall reevaluate the site to determine the degree of active cleanup needed to continue. Further, the department shall determine if the reevaluated site qualifies for monitoring only or if no further action is required to rehabilitate the site. If additional site rehabilitation is necessary to reach "no further action" status, the department is encouraged to utilize natural attenuation monitoring, including long-term natural attenuation monitoring, where site conditions warrant.

(3) The cleanup criteria described in this section govern only site rehabilitation activities occurring at the contaminated site. Removal of contaminated media from a site for offsite relocation or treatment must be in accordance with all applicable federal, state, and local laws and regulations.

History.—s. 5, ch. 97-277; s. 4, ch. 98-75; s. 12, ch. 2000-317; s. 4, ch. 2016-184.

376.82 Eligibility criteria and liability protection.—

(1) ELIGIBILITY.—Any person who has not caused or contributed to the contamination of a brownfield site on or after July 1, 1997, is eligible to participate in the brownfield program established in ss. 376.77-376.85, subject to the following:

(a) Potential brownfield sites that are subject to an ongoing formal judicial or administrative enforcement action or corrective action pursuant to federal authority, including, but not limited to, the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. ss. 9601 et seq., as amended; the Safe Drinking Water Act, 42 U.S.C. ss. 300f-300i, as amended; the Clean Water Act, 33 U.S.C. ss. 1251-1387, as amended; or under an order from the United States Environmental Protection Agency pursuant to s. 3008(h) of the Resource Conservation and Recovery

Act, as amended (42 U.S.C.A. s. 6928(h)); or that have obtained or are required to obtain a permit for the operation of a hazardous waste treatment, storage, or disposal facility; a postclosure permit; or a permit pursuant to the federal Hazardous and Solid Waste Amendments of 1984, are not eligible for participation unless specific exemptions are secured by a memorandum of agreement with the United States Environmental Protection Agency pursuant to paragraph (2)(g). A brownfield site within an eligible brownfield area that subsequently becomes subject to formal judicial or administrative enforcement action or corrective action under such federal authority shall have its eligibility revoked unless specific exemptions are secured by a memorandum of agreement with the United States Environmental Protection Agency pursuant to paragraph (2)(g).

(b) Persons who have not caused or contributed to the contamination of a brownfield site on or after July 1, 1997, and who, prior to the department's approval of a brownfield site rehabilitation agreement, are subject to ongoing corrective action or enforcement under state authority established in this chapter or chapter 403, including those persons subject to a pending consent order with the state, are eligible for participation in a brownfield site rehabilitation agreement if:

1. The proposed brownfield site is currently idle or underutilized as a result of the contamination, and participation in the brownfield program will immediately, after cleanup or sooner, result in increased economic productivity at the site, including at a minimum the creation of 10 new permanent jobs, whether full-time or part-time, which are not associated with implementation of the brownfield site rehabilitation agreement; and

2. The person is complying in good faith with the terms of an existing consent order or department-approved corrective action plan, or responding in good faith to an enforcement action, as evidenced by a determination issued by the department or an approved local pollution control program.

(c) Potential brownfield sites owned by the state or a local government which contain contamination for which a governmental entity is potentially responsible and which are already designated as federal brownfield pilot projects or have filed an application for designation to the United States Environmental Protection Agency are eligible for participation in a brownfield site rehabilitation agreement.

(d) After July 1, 1997, petroleum and drycleaning contamination sites shall not receive both restoration funding assistance available for the discharge under this chapter and any state assistance available under s. 288.107. Nothing in this act shall affect the cleanup criteria, priority ranking, and other rights and obligations inherent in petroleum contamination and drycleaning contamination site rehabilitation under ss. 376.30-376.317, or the availability of economic incentives otherwise provided for by law.

(2) LIABILITY PROTECTION.—

(a) Any person, including his or her successors and assigns, who executes and implements to successful completion a brownfield site rehabilitation agreement, is relieved of:

1. Further liability for remediation of the contaminated site or sites to the state and to third parties.

2. Liability in contribution to any other party who has or may incur cleanup liability for the contaminated site or sites.

3. Liability for claims of property damages, including, but not limited to, diminished value of real property or improvements; lost or delayed rent, sale, or use of real property or improvements; or stigma to real property or improvements caused by contamination addressed by a brownfield site rehabilitation agreement. Notwithstanding any other provision of this chapter, this subparagraph applies to causes of action accruing on or after July 1, 2014. This subparagraph does not apply to a person who discharges contaminants on property subject to a brownfield site rehabilitation agreement, who commits fraud in demonstrating site conditions or completing site rehabilitation of a property subject to a brownfield site rehabilitation agreement, or who exacerbates contamination of a property subject to a brownfield site rehabilitation agreement in violation of applicable laws which causes property damages.

(b) This section does not limit the right of a third party other than the state to pursue an action for damages to persons for bodily harm; however, such an action may not compel site rehabilitation in excess of that required in the approved brownfield site rehabilitation agreement or otherwise required by the department or approved local pollution control program.

(c) This section shall not affect the ability or authority to seek contribution from any person who may have liability with respect to the contaminated site and who did not receive cleanup liability protection under this act.

(d) The liability protection provided under this section shall become effective upon execution of a brownfield site rehabilitation agreement and shall remain effective, provided the person responsible for brownfield site rehabilitation complies with the terms of the site rehabilitation agreement. Any statute of limitations that would bar the department from pursuing relief in accordance with its existing authority is tolled from the time the agreement is executed until site rehabilitation is completed or immunity is revoked pursuant to s. 376.80(8).

(e) Completion of the performance of the remediation obligations at the brownfield site shall be evidenced by a site rehabilitation completion letter or a "no further action" letter issued by the department or the approved local pollution control program, which letter shall include the following statement: "Based upon the information provided by (property owner) concerning property located at (address), it is the opinion of (the Florida Department of Environmental Protection or approved local pollution control program) that (party) has successfully and satisfactorily implemented the approved brownfield site rehabilitation agreement schedule and, accordingly, no further action is required to assure that any land use identified in the brownfield site rehabilitation agreement is consistent with existing and proposed uses."

(f) Compliance with s. 376.80(5)(i) must be evidenced as set forth in that paragraph.

(g) The Legislature recognizes its limitations in addressing cleanup liability under federal pollution control programs. In an effort to secure federal liability protection for persons willing to undertake remediation responsibility at a brownfield site, the department shall attempt to negotiate a memorandum of agreement or similar document with the United States Environmental Protection Agency, whereby the United States Environmental Protection Agency agrees to forego enforcement of federal corrective action authority at brownfield sites that have received a site rehabilitation completion or "no further action" determination from the department or the approved local pollution control program or that are in the process of implementing a brownfield site rehabilitation agreement in accordance with this act.

(h) No unit of state or local government may be held liable for implementing corrective actions at a contaminated site within an eligible brownfield area as a result of the involuntary ownership of the site through bankruptcy, tax delinquency, abandonment, or other circumstances in which the state or local government involuntarily acquires title by virtue of its function as a sovereign, or as a result of ownership from donation, gift, or foreclosure unless the state or local government has otherwise caused or contributed to a release of a contaminant at the brownfield site.

(i) The Legislature finds and declares that certain brownfield sites may be redeveloped for open space, or limited recreational, cultural, or historical preservation purposes, and that such facilities enhance the redeveloped environment, attract visitors, and provide wholesome activities for employees and residents of the area. Further, the Legislature finds that purchasers of contaminated sites who are nonprofit conservation organizations acting for the public interest and who did not cause or contribute to the release of contamination on the site warrant protection from liability.

(j) Notwithstanding any provision of this chapter, chapter 403, other laws, or ordinances of local governments, a nonprofit, charitable, federal tax-exempt, s. 501(c)(3) national land conservation corporation which purchases title to property in the state for the purpose of conveying such land to any governmental entity for conservation, historical preservation or cultural resource, park, greenway, or other similar uses shall not be liable to the state, local government, or any third party for penalties or remediation costs in connection with environmental contamination found in the soil or groundwater of such property, provided that such corporation did not cause the original deposit or release of the environmental contaminants, and provided the department and local pollution control program and responsible parties have access to the land for investigation, remediation, or monitoring purposes.

(k) A person whose property becomes contaminated due to geophysical or hydrologic reasons, including the migration of contaminants onto their property from the operation of facilities and activities on a nearby designated brownfield area, and whose property has never been occupied by a business that utilized or stored the contaminants or similar constituents is not subject to administrative or judicial action brought by or on behalf of another to compel the rehabilitation of or the payment of the costs for the rehabilitation of sites contaminated by materials that migrated onto the property from the designated brownfield area, if the person:

1. Does not own and has never held an ownership interest in, or shared in the profits of, activities in the designated brownfield area operated at the source location;

2. Did not participate in the operation or management of the activities in the designated brownfield area operated at the source location; and

3. Did not cause, contribute to, or exacerbate the release or threat of release of any hazardous substance through any act or omission.

(l) When a property, including a brownfield site, escheats to a county, the county is not subject to any liability imposed by this chapter or chapter 403 for preexisting soil or groundwater contamination due solely to its ownership. However, this paragraph does not affect the rights or liabilities of any past or future owners of the escheated property and does not affect the liability of any governmental entity for the results of its actions that create or exacerbate a pollution source. The county and the Department of Environmental Protection may enter into a written agreement for the performance, funding, and reimbursement of the investigative and remedial acts necessary for a property that escheats to the county.

(3) REOPENERS.—Upon completion of site rehabilitation in compliance with ss. 376.77-376.85, no additional site rehabilitation shall be required unless it is demonstrated:

(a) That fraud was committed in demonstrating site conditions or completion of site rehabilitation;

(b) That new information confirms the existence of an area of previously unknown contamination which exceeds the site-specific rehabilitation levels established in accordance with s. 376.81, or which otherwise poses the threat of real and substantial harm to public health, safety, or the environment in violation of the terms of ss. 376.77-376.85;

(c) That the remediation efforts failed to achieve the site rehabilitation criteria established under s. 376.81;

(d) That the level of risk is increased beyond the acceptable risk established under s. 376.81 due to substantial changes in exposure conditions, such as a change in land use from nonresidential to residential use. Any person who changes the land use of the brownfield site thus causing the level of risk to increase beyond the acceptable risk level may be required by the department to undertake additional remediation measures to assure that human health, public safety, and the environment are protected to levels consistent with s. 376.81; or

(e) That a new release occurs at the brownfield site subsequent to a determination of eligibility for participation in the brownfield program established under s. 376.80.

(4) ADDITIONAL LIABILITY PROTECTION FOR LENDERS.—

(a) The Legislature declares that, in order to achieve the economic redevelopment and site rehabilitation of brownfield sites in accordance with this act, it is imperative to encourage financing of real property transactions involving brownfield site rehabilitation plans. Accordingly, lenders, including those serving as a trustee, personal representative, or in any other fiduciary capacity, in connection with a loan, are entitled to the liability protection established in subsection (2) if they have not caused or contributed to a release of a contaminant at the brownfield site.

(b) Lenders who hold indicia of ownership of a parcel within a brownfield area primarily to protect a security interest or who own a parcel within a brownfield area as a result of foreclosure or a deed in lieu of foreclosure of a security interest and who seek to sell, transfer, or otherwise divest the parcel via sale at the earliest practicable time are not liable for the release or discharge of a contaminant from the parcel; for the failure of the person responsible for brownfield site rehabilitation to comply with the brownfield site rehabilitation agreement; or for future site rehabilitation activities required pursuant to a reopener provision established in subsection (3) where the lender has not divested the borrower of, or otherwise engaged in, decisionmaking control of the site rehabilitation or site operations or undertaken management activities beyond those required to protect its financial interest while making a good faith effort to sell the site as soon as practicable and when an act or omission of the lender has not otherwise caused or contributed to a release of a contaminant at the brownfield site.

(c) The economic incentives that were granted to a person responsible for site rehabilitation by state or local governments shall not accrue to a lender who obtains ownership of the brownfield site by one of the methods described in this subsection. The economic incentives are abated during the lender's ownership, but they may be transferred and reinstated upon the sale of the brownfield site.

History.—s. 6, ch. 97-277; s. 5, ch. 98-75; s. 182, ch. 99-13; s. 13, ch. 2000-317; s. 3, ch. 2004-40; s. 71, ch. 2007-5; s. 6, ch. 2008-239; s. 3, ch. 2014-114.

376.83 Violation; penalties.—

(1) It is a violation of ss. 376.77-376.85, and it is prohibited for any person, to knowingly make any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained, or to falsify, tamper with, or knowingly render inaccurate any monitoring device or method required to be maintained under ss. 376.77-376.85, or by any permit, rule, or order issued under this chapter or chapter 403.

(2) Any person who willfully commits a violation specified in subsection (1) is guilty of a misdemeanor of the first degree, punishable by a fine of not more than $10,000 or by 6 months in jail, or by both, for each offense. Each day during any portion of which such violation occurs constitutes a separate offense.

History.—s. 7, ch. 97-277; s. 6, ch. 98-75.

376.84 Brownfield redevelopment economic incentives.—It is the intent of the Legislature that brownfield redevelopment activities be viewed as opportunities to significantly improve the utilization, general condition, and appearance of these sites. Different standards than those in place for new development, as allowed under current state and local laws, should be used to the fullest extent to encourage the redevelopment of a brownfield. State and local governments are encouraged to offer redevelopment incentives for this purpose, as an ongoing public investment in infrastructure and services, to help eliminate the public health and environmental hazards, and to promote the creation of jobs in these areas. Such incentives may include financial, regulatory, and technical assistance to persons and businesses involved in the redevelopment of the brownfield pursuant to this act.

(1) Financial incentives and local incentives for redevelopment may include, but not be limited to:

(a) Tax increment financing through community redevelopment agencies pursuant to part III of chapter 163.

(b) Enterprise zone tax exemptions for businesses pursuant to chapters 196 and 290.

(c) Safe neighborhood improvement districts as provided in ss. 163.501-163.523.

(d) Waiver, reduction, or limitation by line of business with respect to business taxes pursuant to chapter 205.

(e) Tax exemption for historic properties as provided in s. 196.1997.

(f) Residential electricity exemption of up to the first 500 kilowatts of use may be exempted from the municipal public service tax pursuant to s. 166.231.

(g) Minority business enterprise programs as provided in s. 287.0943.

(h) Electric and gas tax exemption as provided in s. 166.231(6).

(i) Economic development tax abatement as provided in s. 196.1995.

(j) Grants, including community development block grants.

(k) Pledging of revenues to secure bonds.

(l) Low-interest revolving loans and zero-interest loan pools.

(m) Local grant programs for facade, storefront, signage, and other business improvements.

(n) Governmental coordination of loan programs with lenders, such as microloans, business reserve fund loans, letter of credit enhancements, gap financing, land lease and sublease loans, and private equity.

(o) Payment schedules over time for payment of fees, within criteria, and marginal cost pricing.

(2) Regulatory incentives may include, but not be limited to:

(a) Cities' absorption of developers' concurrency needs.

(b) Developers' performance of certain analyses.

(c) Exemptions and lessening of state and local review requirements.

(d) Water and sewer regulatory incentives.

(e) Waiver of transportation impact fees and permit fees.

(f) Zoning incentives to reduce review requirements for redevelopment changes in use and occupancy; establishment of code criteria for specific uses; and institution of credits for previous use within the area.

(g) Flexibility in parking standards and buffer zone standards.

(h) Environmental management through specific code criteria and conditions allowed by current law.

(i) Maintenance standards and activities by ordinance and otherwise, and increased security and crime prevention measures available through special assessments.

(j) Traffic-calming measures.

(k) Historic preservation ordinances, loan programs, and review and permitting procedures.

(l) One-stop permitting and streamlined development and permitting process.

(3) Technical assistance incentives may include, but not be limited to:

(a) Expedited development applications.

(b) Formal and informal information on business incentives and financial programs.

(c) Site design assistance.

(d) Marketing and promotion of projects or areas.

History.—s. 8, ch. 97-277; s. 72, ch. 2007-5.

376.85 Annual report.—The Department of Environmental Protection shall prepare and submit to the President of the Senate and the Speaker of the House of Representatives by August 1 of each year a report that includes, but is not limited to, the number, size, and locations of brownfield sites: that have been remediated under the provisions of this act, that are currently under rehabilitation pursuant to a negotiated site rehabilitation agreement with the department or a delegated local program, where alternative cleanup target levels have been established pursuant to s. 376.81(1)(g)3., and where engineering and institutional control strategies are being employed as conditions of a "no further action order" to maintain the protections provided in s. 376.81(1)(g)1. and 2.

History.—s. 13, ch. 97-277; s. 61, ch. 2010-205.

376.86 Brownfield Areas Loan Guarantee Program.—

(1) The Brownfield Areas Loan Guarantee Council is created to review and approve or deny, by a majority vote of its membership, the situations and circumstances for participation in partnerships by agreements with local governments, financial institutions, and others associated with the redevelopment of brownfield areas pursuant to the Brownfields Redevelopment Act for a limited state guaranty of up to 5 years of loan guarantees or loan loss reserves issued pursuant to law. The limited state loan guaranty applies only to 50 percent of the primary lenders loans for redevelopment projects in brownfield areas. If the redevelopment project is for affordable housing, as defined in s. 420.0004, in a brownfield area, the limited state loan guaranty applies to 75 percent of the primary lender's loan. If the redevelopment project includes the construction and operation of a new health care facility or a health care provider, as defined in s. 408.032 or s. 408.07, on a brownfield site and the applicant has obtained documentation in accordance with s. 376.30781 indicating that the construction of the health care facility or health care provider by the applicant on the brownfield site has received a certificate of occupancy or a license or certificate has been issued for the operation of the health care facility or health care provider, the limited state loan guaranty applies to 75 percent of the primary lender's loan. A limited state guaranty of private loans or a loan loss reserve is authorized for lenders licensed to operate in the state upon a determination by the council that such an arrangement would be in the public interest and the likelihood of the success of the loan is great.

(2) The council shall consist of the secretary of the Department of Environmental Protection or the secretary's designee, the State Surgeon General or the State Surgeon General's designee, the executive director of the State Board of Administration or the executive director's designee, the executive director of the Florida Housing Finance Corporation or the executive director's designee, and the executive director of the Department of Economic Opportunity or the director's designee. The executive director of the Department of Economic Opportunity or the director's designee shall serve as chair of the council. Staff services for activities of the council shall be provided as needed by the member agencies.

(3) The council may enter into an investment agreement with the Department of Environmental Protection and the State Board of Administration concerning the investment of the balance of funds maintained in the Inland Protection Trust Fund. The investment must be limited as follows:

(a) Not more than $5 million of the balance of the Inland Protection Trust Fund in a fiscal year may be at risk at any time on loan guarantees or as loan loss reserves. Of that amount, 15 percent shall be reserved for investment agreements involving predominantly minority-owned businesses which meet the requirements of subsection (4).

(b) Such funds at risk at any time may not be used to guarantee any loan guaranty or loan loss reserve agreement for a period longer than 5 years.

(4) A lender seeking a limited state guaranty for a loan from the Brownfield Areas Loan Guarantee Council must first provide to the council a report demonstrating that the lender has reviewed the project for redevelopment of the brownfield area and determined its feasibility in accordance with its standard procedures. The procedures include, but are not limited to:

(a) Obtaining a satisfactory credit report from a source deemed reliable by the lender;

(b) Reviewing a report of environmental conditions at the project and determining that actions are underway to comply with specific recommendations;

(c) Investigating the background and experience of the entity to receive the loan and manage the project and determining that the managing entity appears to possess the experience, competence, and capacity to manage the project;

(d) Determining that conditions exist to establish a financially sound redevelopment project that exposes the state loan guarantee program to a reasonable or acceptable level of risk; and

(e) Determining that the local government with jurisdiction over the area where the brownfield redevelopment project is located has committed in-kind resources, local financial incentives, or local financial resources to the total project cost.

(5) A lender covered by a limited state guaranty for a loan is not entitled to file a claim for loss pursuant to the guaranty unless all reasonable and normal remedies available and customary for lending institutions for resolving problems of loan repayments are exhausted. If the lender has received collateral security in connection with the loan, the lender must first exhaust all available remedies against the collateral security.

(6) The council may, by rule, establish requirements for the issuance of loan guarantees, including contractual provisions to foster reimbursement, in the event of default, to the guarantee fund.

(7) The council may receive public and private funds, federal grants, and private donations in carrying out its responsibilities.

(8) The council shall provide an annual report to the Legislature by February 1 of each year describing its activities and agreements approved relating to redevelopment of brownfield areas. This section shall be reviewed by the Legislature by January 1, 2007, and a determination made related to the need to continue or modify this section. New loan guarantees may not be approved in 2007 until the review by the Legislature has been completed and a determination has been made as to the feasibility of continuing the use of the Inland Protection Trust Fund to guarantee portions of loans under this section.

History.—s. 10, ch. 98-75; s. 7, ch. 2000-153; ss. 55, 56, ch. 2003-399; s. 4, ch. 2004-40; s. 8, ch. 2006-291; s. 7, ch. 2008-239; s. 253, ch. 2011-142; s. 46, ch. 2012-5; s. 5, ch. 2018-24.