

By the Committee on Community Affairs; and Senator Baker

578-04907-10

20102592c1

1                   A bill to be entitled  
2           An act relating to petroleum contamination site  
3           cleanup; amending s. 215.32, F.S.; providing that  
4           unappropriated cash in the Inland Protection Trust  
5           Fund is not subject to certain transfers by the  
6           Legislature; amending s. 376.3071, F.S.; revising  
7           provisions relating to petroleum contamination site  
8           selection and cleanup criteria; deleting obsolete  
9           provisions relating to funding for limited interim  
10          soil-source removals; requiring the Department of  
11          Environmental Protection to utilize natural  
12          attenuation monitoring strategies to transition sites  
13          into long-term natural attenuation monitoring under  
14          specified conditions; providing for natural  
15          attenuation and active remediation of sites; requiring  
16          the department to evaluate certain costs and  
17          strategies; prohibiting a local government from  
18          denying any development permit based solely on the  
19          presence of petroleum contamination for any  
20          construction, repairs, or renovations performed in  
21          conjunction with tank upgrade activity in an existing  
22          retail fuel facility; requiring that such facility be  
23          fully operational before the request for the building  
24          permit; requiring that the construction, repairs, or  
25          renovations be performed by a licensed contractor;  
26          requiring that the construction, repairs, or  
27          renovations performed in conjunction with such permit  
28          comply with the applicable provisions of chs. 489 and  
29          553, F.S.; providing an exception; establishing a low-

578-04907-10

20102592c1

30 scored site initiative; providing conditions for  
31 participation; requiring the department to issue  
32 certain determinations and orders; providing that  
33 certain sites are eligible for payment of preapproved  
34 costs; requiring assessment work to be completed  
35 within a certain timeframe; providing payment and  
36 funding limitations; deleting provisions relating to  
37 nonreimbursable voluntary cleanup; providing an  
38 effective date.

39  
40 Be It Enacted by the Legislature of the State of Florida:

41  
42 Section 1. Paragraph (b) of subsection (2) of section  
43 215.32, Florida Statutes, is amended to read:

44 215.32 State funds; segregation.-

45 (2) The source and use of each of these funds shall be as  
46 follows:

47 (b)

48 1. The trust funds ~~shall~~ consist of moneys received by the  
49 state which under law or under trust agreement are segregated  
50 for a purpose authorized by law. The state agency or branch of  
51 state government receiving or collecting such moneys is ~~shall be~~  
52 responsible for their proper expenditure as provided by law.  
53 Upon the request of the state agency or branch of state  
54 government responsible for the administration of the trust fund,  
55 the Chief Financial Officer may establish accounts within the  
56 trust fund at a level ~~considered~~ necessary for proper  
57 accountability. Once an account is established within a trust  
58 fund, the Chief Financial Officer may authorize payment from

578-04907-10

20102592c1

59 that account only upon determining that there is sufficient cash  
60 and releases at the level of the account.

61 2. In addition to other trust funds created by law, to the  
62 extent possible, each agency shall use the following trust funds  
63 ~~as described in this subparagraph~~ for day-to-day operations:

64 a. Operations or operating trust fund, for use as a  
65 depository for funds ~~to be~~ used for program operations funded by  
66 program revenues, with the exception of administrative  
67 activities when the operations or operating trust fund is a  
68 proprietary fund.

69 b. Operations and maintenance trust fund, for use as a  
70 depository for client services funded by third-party payors.

71 c. Administrative trust fund, for use as a depository for  
72 funds ~~to be~~ used for management activities that are departmental  
73 in nature and funded by indirect cost earnings and assessments  
74 against trust funds. Proprietary funds are excluded from the  
75 requirement of using an administrative trust fund.

76 d. Grants and donations trust fund, for use as a depository  
77 for funds ~~to be~~ used for allowable grant or donor agreement  
78 activities funded by restricted contractual revenue from private  
79 and public nonfederal sources.

80 e. Agency working capital trust fund, for use as a  
81 depository for funds ~~to be~~ used pursuant to s. 216.272.

82 f. Clearing funds trust fund, for use as a depository for  
83 funds to account for collections pending distribution to lawful  
84 recipients.

85 g. Federal grant trust fund, for use as a depository for  
86 funds ~~to be~~ used for allowable grant activities funded by  
87 restricted program revenues from federal sources.

578-04907-10

20102592c1

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89 To the extent possible, each agency must adjust its internal  
90 accounting to use existing trust funds consistent with the  
91 requirements of this subparagraph. If an agency does not have  
92 trust funds listed in this subparagraph and cannot make such  
93 adjustment, the agency must recommend the creation of the  
94 necessary trust funds to the Legislature by ~~no later than~~ the  
95 next scheduled review of the agency's trust funds pursuant to s.  
96 215.3206.

97 3. All such moneys are hereby appropriated to be expended  
98 in accordance with the law or trust agreement under which they  
99 were received, subject ~~always to the provisions of~~ chapter 216  
100 relating to the appropriation of funds and to the applicable  
101 laws relating to the deposit or expenditure of moneys in the  
102 State Treasury.

103 4.a. Notwithstanding any provision of law restricting the  
104 use of trust funds to specific purposes, unappropriated cash  
105 balances from selected trust funds may be authorized by the  
106 Legislature for transfer to the Budget Stabilization Fund and  
107 General Revenue Fund in the General Appropriations Act.

108 b. This subparagraph does not apply to trust funds required  
109 by federal programs or mandates; trust funds established for  
110 bond covenants, indentures, or resolutions whose revenues are  
111 legally pledged by the state or public body to meet debt service  
112 or other financial requirements of any debt obligations of the  
113 state or any public body; the Inland Protection Trust Fund; the  
114 State Transportation Trust Fund; the trust fund containing the  
115 net annual proceeds from the Florida Education Lotteries; the  
116 Florida Retirement System Trust Fund; trust funds under the

578-04907-10

20102592c1

117 management of the State Board of Education or the Board of  
118 Governors of the State University System if, ~~where~~ such trust  
119 funds are for auxiliary enterprises, self-insurance, and  
120 contracts, grants, and donations, as those terms are defined by  
121 general law; trust funds that serve as clearing funds or  
122 accounts for the Chief Financial Officer or state agencies;  
123 trust funds that account for assets held by the state in a  
124 trustee capacity as an agent or fiduciary for individuals,  
125 private organizations, or other governmental units; and other  
126 trust funds authorized by the State Constitution.

127 Section 2. Paragraph (c) of subsection (5) and paragraph  
128 (b) of subsection (11) of section 376.3071, Florida Statutes,  
129 are amended to read:

130 376.3071 Inland Protection Trust Fund; creation; purposes;  
131 funding.—

132 (5) SITE SELECTION AND CLEANUP CRITERIA.—

133 (c) The department shall require source removal, if  
134 warranted and cost-effective, at each site eligible for  
135 restoration funding from the Inland Protection Trust Fund.

136 1. Funding for free product recovery may be provided in  
137 advance of the order established by the priority ranking system  
138 under paragraph (a) for site cleanup activities. However, a  
139 separate prioritization for free product recovery shall be  
140 established consistent with paragraph (a). No more than \$5  
141 million shall be encumbered from the Inland Protection Trust  
142 Fund in any fiscal year for free product recovery conducted in  
143 advance of the priority order under paragraph (a) established  
144 for site cleanup activities.

145 ~~2. Funding for limited interim soil source removals for~~

578-04907-10

20102592c1

146 ~~sites that will become inaccessible for future remediation due~~  
147 ~~to road infrastructure and right-of-way restrictions resulting~~  
148 ~~from a pending Department of Transportation road construction~~  
149 ~~project or for secondary containment upgrading of underground~~  
150 ~~storage tanks required under chapter 62-761, Florida~~  
151 ~~Administrative Code, may be provided in advance of the order~~  
152 ~~established by the priority ranking system under paragraph (a)~~  
153 ~~for site cleanup activities. The department shall provide~~  
154 ~~written guidance on the limited source removal information and~~  
155 ~~technical evaluation necessary to justify a request for a~~  
156 ~~limited source removal in advance of the priority order pursuant~~  
157 ~~to paragraph (a) established for site cleanup activities.~~  
158 ~~Prioritization for limited source removal projects associated~~  
159 ~~with a secondary containment upgrade in any fiscal year shall be~~  
160 ~~determined on a first-come, first-served basis according to the~~  
161 ~~approval date issued under s. 376.30711 for the limited source~~  
162 ~~removal. Funding for limited source removals associated with~~  
163 ~~secondary containment upgrades shall be limited to 10 sites in~~  
164 ~~each fiscal year for each facility owner and any related person.~~  
165 ~~The limited source removal for secondary containment upgrades~~  
166 ~~shall be completed no later than 6 months after the department~~  
167 ~~issues its approval of the project, and the approval~~  
168 ~~automatically expires at the end of the 6 months. Funding for~~  
169 ~~Department of Transportation and secondary containment upgrade~~  
170 ~~source removals may not exceed \$50,000 for a single facility~~  
171 ~~unless the department makes a determination that it is cost-~~  
172 ~~effective and environmentally beneficial to exceed this amount,~~  
173 ~~but in no event shall the department authorize costs in excess~~  
174 ~~of \$100,000 for a single facility. Department funding for~~

578-04907-10

20102592c1

175 ~~limited interim soil source removals associated with Department~~  
176 ~~of Transportation projects and secondary containment upgrades~~  
177 ~~shall be limited to supplemental soil assessment, soil~~  
178 ~~screening, soil removal, backfill material, treatment or~~  
179 ~~disposal of the contaminated soil, dewatering related to the~~  
180 ~~contaminated soil removal in an amount of up to 10 percent of~~  
181 ~~the total interim soil source removal project costs, treatment,~~  
182 ~~and disposal of the contaminated groundwater and preparation of~~  
183 ~~the source removal report. No other costs associated with the~~  
184 ~~facility upgrade may be paid with department funds. No more than~~  
185 ~~\$1 million for Department of Transportation limited source~~  
186 ~~removal projects and \$10 million for secondary containment~~  
187 ~~upgrade limited source removal projects conducted in advance of~~  
188 ~~the priority order established under paragraph (a) for site~~  
189 ~~cleanup activities shall be encumbered from the Inland~~  
190 ~~Protection Trust Fund in any fiscal year. This subparagraph is~~  
191 ~~repealed effective June 30, 2010.~~

192 ~~2.3.~~ Once free product removal and other source removal  
193 identified in this paragraph are completed at a site, and  
194 notwithstanding the order established by the priority ranking  
195 system under paragraph (a) for site cleanup activities, the  
196 department may reevaluate the site to determine the degree of  
197 active cleanup needed to continue site rehabilitation. Further,  
198 the department shall determine if the reevaluated site qualifies  
199 for natural attenuation monitoring, long-term natural  
200 attenuation monitoring, or no further action. If additional site  
201 rehabilitation is necessary to reach no further action status,  
202 the site rehabilitation shall be conducted in the order  
203 established by the priority ranking system under paragraph (a).

578-04907-10

20102592c1

204 ~~and~~ The department shall ~~is encouraged to~~ utilize natural  
205 attenuation ~~and~~ monitoring strategies and, when cost-effective,  
206 transition sites eligible for restoration funding assistance to  
207 long-term natural attenuation monitoring where the plume is  
208 shrinking or stable and confined to the source property  
209 boundaries and the petroleum products' chemicals of concern meet  
210 the natural attenuation default concentrations, as defined by  
211 department rule. If the plume migrates beyond the source  
212 property boundaries, natural attenuation monitoring may be  
213 conducted in accordance with department rule, or if the site no  
214 longer qualifies for natural attenuation monitoring, active  
215 remediation may be resumed. If the petroleum products' chemicals  
216 of concern increase or are not significantly reduced after 42  
217 months of monitoring, active remediation shall be resumed as  
218 necessary. For sites undergoing active remediation, the  
219 department shall evaluate the cost of natural attenuation  
220 monitoring pursuant to s. 376.30711 to ensure that site  
221 mobilizations are performed in a cost-effective manner. Sites  
222 that are not eligible for state restoration funding may  
223 transition to long-term natural attenuation monitoring using the  
224 criteria in this subparagraph. Nothing in this subparagraph  
225 precludes a site from pursuing a "No Further Action" order with  
226 conditions ~~where site conditions warrant.~~

227 3. The department shall evaluate whether higher natural  
228 attenuation default concentrations for natural attenuation  
229 monitoring or long-term natural attenuation monitoring are cost-  
230 effective and would adequately protect public health and the  
231 environment. The department shall also evaluate site-specific  
232 characteristics that would allow for higher natural attenuation



578-04907-10

20102592c1

233 or long-term natural attenuation concentration levels.

234 4. A local government may not deny a building permit based  
235 solely on the presence of petroleum contamination for any  
236 construction, repairs, or renovations performed in conjunction  
237 with tank upgrade activity in an existing retail fuel facility.  
238 Such facility must have been fully operational prior to the  
239 request for the building permit and any construction, repairs,  
240 or renovations must be performed by a licensed contractor. All  
241 building permits and any construction, repairs, or renovations  
242 performed in conjunction with such permits must comply with the  
243 applicable provisions of chapters 489 and 553.

244 (11)

245 (b) Low-scored site initiative ~~Nonreimbursable voluntary~~  
246 ~~cleanup.~~ Notwithstanding s. 376.30711, any site ~~For sites with~~  
247 ~~releases reported prior to January 1, 1995, the department shall~~  
248 ~~issue a determination of "No Further Action" at sites ranked~~  
249 ~~with a total priority ranking score of 10 points or less may~~  
250 voluntarily participate in the low-scored site initiative,  
251 whether or not the site is eligible for state restoration  
252 funding.

253 1. To participate in the low-scored site initiative, the  
254 responsible party or property owner must affirmatively  
255 demonstrate that, ~~which meet~~ the following conditions are met:

256 a.1. Upon reassessment pursuant to department rule, the  
257 site retains a priority ranking score of 10 points or less ~~No~~  
258 ~~free product exists in wells, boreholes, subsurface utility~~  
259 ~~conduits, or vaults or buildings and no other fire or explosion~~  
260 ~~hazard exists as a result of a release of petroleum products.~~

261 b.2. No excessively contaminated soil, as defined by

578-04907-10

20102592c1

262 department rule, exists onsite as a result of a release of  
263 petroleum products.

264 ~~c.3.~~ A minimum of 6 months of groundwater monitoring  
265 indicates that the plume is shrinking or stable ~~Public supply~~  
266 ~~wells for consumptive use of water expected to be affected by~~  
267 ~~the site shall not be located within a 1/2-mile radius of the~~  
268 ~~site; private supply wells for consumptive use of water expected~~  
269 ~~to be affected by the site shall not be located within a 1/4-~~  
270 ~~mile radius of the site; and there must be no current or~~  
271 ~~projected consumptive use of the water affected by the site for~~  
272 ~~at least the following 3 years. Where appropriate, institutional~~  
273 ~~controls meeting the requirements of subparagraph (5)(b)4. may~~  
274 ~~be required by the department to meet these criteria.~~

275 ~~d.4.~~ The release of petroleum products at the site does  
276 ~~shall~~ not adversely affect adjacent surface waters, including  
277 their effects on human health and the environment.

278 ~~e.5.~~ The area of groundwater containing the petroleum  
279 products' chemicals of concern ~~in concentrations greater than~~  
280 ~~the boundary values defined in subparagraph 7.~~ is less than one-  
281 quarter acre and is confined to the source property boundaries  
282 of the real property on which the discharge originated.

283 ~~f.6.~~ Soils onsite that are subject to human exposure found  
284 between land surface and 2 feet below land surface ~~shall~~ meet  
285 the soil cleanup target levels ~~criteria~~ established by  
286 department rule or human exposure is limited by ~~pursuant to sub-~~  
287 ~~subparagraph (5)(b)9.a. Where appropriate,~~ institutional or  
288 engineering controls ~~meeting the requirements of subparagraph~~  
289 ~~(5)(b)4. may be required by the department to meet these~~  
290 ~~criteria.~~

578-04907-10

20102592c1

291       2. Upon affirmative demonstration of the conditions under  
292 subparagraph 1., the department shall issue a determination of  
293 "No Further Action." Such determination acknowledges that  
294 minimal contamination exists onsite and that such contamination  
295 is not a threat to human health or the environment. If no  
296 contamination is detected, the department may issue a site  
297 rehabilitation completion order.

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

301           a. A responsible party or property owner may submit an  
302 assessment plan designed to affirmatively demonstrate that the  
303 site meets the conditions under subparagraph 1. Notwithstanding  
304 the priority ranking score of the site, the department may  
305 preapprove the cost of the assessment pursuant to s. 376.30711,  
306 including 6 months of groundwater monitoring, not to exceed  
307 \$30,000 for each site. The department may not pay the costs  
308 associated with the establishment of institutional or  
309 engineering controls.

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

312           c. No more than \$10 million for the low-scored site  
313 initiative shall be encumbered from the Inland Protection Trust  
314 Fund in any fiscal year. Funds shall be made available on a  
315 first-come, first-served basis and shall be limited to 10 sites  
316 in each fiscal year for each responsible party or property  
317 owner.

318       ~~7. Concentrations of the petroleum products' chemicals of~~  
319 ~~concern in groundwater at the property boundary of the real~~

578-04907-10

20102592c1

320 ~~property on which the petroleum contamination originates shall~~  
321 ~~not exceed the criteria established pursuant to sub-subparagraph~~  
322 ~~(5) (b) 7.a. Where appropriate, institutional or engineering~~  
323 ~~controls meeting the requirements of subparagraph (5) (b) 4. may~~  
324 ~~be required by the department to meet these criteria.~~

325 ~~8. The department is authorized to establish alternate~~  
326 ~~cleanup target levels for onsite nonboundary wells pursuant to~~  
327 ~~the criteria in subparagraph (5) (b) 8.~~

328 ~~9. A scientific evaluation that demonstrates that the~~  
329 ~~boundary criteria in subparagraph 7. will not be exceeded and a~~  
330 ~~1-year site-specific groundwater monitoring plan approved in~~  
331 ~~advance by the department validates the scientific evaluation.~~  
332 ~~If the boundary criteria in subparagraph 7. are exceeded at any~~  
333 ~~time, the department may order an extension of the monitoring~~  
334 ~~period for up to 12 additional months from the time of the~~  
335 ~~excess reading. The department shall determine the adequacy of~~  
336 ~~the groundwater monitoring system at a site. All wells required~~  
337 ~~by the department pursuant to this paragraph shall be installed~~  
338 ~~before the monitoring period begins.~~

339 ~~10. Costs associated with activities performed pursuant to~~  
340 ~~this paragraph for sites which qualify for a determination of~~  
341 ~~"No Further Action" under this paragraph shall not be~~  
342 ~~reimbursable from the Inland Protection Trust Fund.~~

343 Section 3. This act shall take effect July 1, 2010.