

By the Committee on Environmental Preservation and Conservation;
and Senator Grimsley

592-02440-17

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1 A bill to be entitled
2 An act relating to contaminated site cleanup; amending
3 s. 376.30713, F.S.; revising legislative findings;
4 providing an exception to a requirement that an
5 applicant for advanced cleanup demonstrate an ability
6 to pay cost share; requiring that the Department of
7 Environmental Protection determine whether specified
8 requirements are acceptable under certain
9 circumstances; providing that the application for the
10 cleanup of individual redevelopment sites is not
11 subject to certain application period limitations and
12 cost-share provisions; specifying the application
13 requirements for such sites; conforming provisions to
14 changes made by the act; increasing the amount per
15 year the department may use for advanced cleanup work;
16 specifying expenditure limitations; amending s.
17 376.3078, F.S.; providing a statement of public
18 interest; authorizing site assessments in advance of
19 site priority ranking under certain circumstances;
20 specifying criteria for sites to be eligible for such
21 assessments; specifying what must be demonstrated
22 through such assessments; specifying criteria for the
23 assignment of assessment tasks; specifying funding
24 limitations; specifying the prioritization of
25 requests; amending s. 220.1845, F.S.; increasing the
26 total amount of an authorization for tax credits;
27 amending s. 376.30781, F.S.; increasing the total
28 amount of tax credits the department is responsible
29 for allocating; providing an effective date.

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

Section 1. Paragraphs (a) and (c) of subsection (1) and subsections (2) and (4) of section 376.30713, Florida Statutes, are amended to read:

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.

(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.

(2) The department may approve an application for advanced cleanup at eligible sites, 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

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59 shall be for the fiscal year beginning July 1. An application
60 must consist of:

61 1. A commitment to pay 25 percent or more of the total
62 cleanup cost deemed recoverable under this section along with
63 proof of the ability to pay the cost share or a demonstration
64 that the applicant is in compliance with sub-sub-subparagraphs
65 c.(I) and (II). The department shall determine whether the cost
66 savings or compliance demonstration is acceptable. Such
67 determination is not subject to chapter 120.

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

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

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

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

86 (I) For an individual application proposing that the
87 department enter into a performance-based contract, the

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88 applicant may use a commitment to pay, a demonstrated cost
89 savings to the department, or both to meet the requirement.

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

98 c. Applications for the cleanup of individual redevelopment
99 sites are not subject to the application period limitations
100 specified in paragraph (a) or to the cost-share provisions in
101 paragraph (1)(d) and are accepted on a first-come, first-served
102 basis. Applications for the cleanup of individual redevelopment
103 sites must include:

104 (I) Certification that the applicant has consulted with the
105 local government having jurisdiction over the area about the
106 proposed redevelopment of the site, that the local government is
107 in agreement with or approves the proposed redevelopment, and
108 that the proposed redevelopment complies with applicable laws
109 and requirements for such redevelopment. The certification shall
110 be accomplished by referencing or providing a legally recorded
111 or officially approved land use or site plan, a development
112 order or approval, a building permit, or a similar official
113 document issued by the local government which reflects the local
114 government's approval of the proposed redevelopment of the site
115 or by providing a letter from the local government which
116 describes the proposed redevelopment of the site and expresses

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117 the local government's agreement with or approval of the
118 proposed redevelopment.

119 (II) A demonstrated reasonable assurance that the applicant
120 has sufficient financial resources to implement and complete the
121 redevelopment project.

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

125 3. A limited contamination assessment report.

126 4. A proposed course of action.

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

135
136 The limited contamination assessment report must be sufficient
137 to support the proposed course of action and to estimate the
138 cost of the proposed course of action. Costs incurred related to
139 conducting the limited contamination assessment report are not
140 refundable from the Inland Protection Trust Fund. Site
141 eligibility under this subsection or any other provision of this
142 section is not an entitlement to advanced cleanup or continued
143 restoration funding. The applicant shall certify to the
144 department that the applicant has the prerequisite authority to
145 enter into an advanced cleanup contract with the department. The

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146 certification must be submitted with the application.

147 (b) The department shall rank the applications specified in
148 sub-subparagraphs (a)1.a. and b. based on the percentage of
149 cost-sharing commitment proposed by the applicant, with the
150 highest ranking given to the applicant who proposes the highest
151 percentage of cost sharing. If the department receives
152 applications that propose identical cost-sharing commitments and
153 that exceed the funds available to commit to all such proposals
154 during the advanced cleanup application period, the department
155 shall proceed to rerank those applicants. Those applicants
156 submitting identical cost-sharing proposals that exceed funding
157 availability must be so notified by the department and offered
158 the opportunity to raise their individual cost-share
159 commitments, in a period specified in the notice. At the close
160 of the period, the department shall proceed to rerank the
161 applications pursuant to this paragraph.

162 (4) The department may enter into contracts for a total of
163 up to \$30 ~~\$25~~ million of advanced cleanup work in each fiscal
164 year. Up to \$5 million of these funds may be designated for
165 cleanup of individual redevelopment sites as referenced in sub-
166 subparagraph (2) (a)1.c.

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

171 (b) A facility or an applicant applying for cleanup of
172 individual redevelopment sites as referenced in sub-subparagraph
173 (2) (a)1.c. may not be approved for more than \$1 million of
174 cleanup activity in each fiscal year.

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175 (c) A property owner or responsible party may enter into a
176 voluntary cost-share agreement in which the property owner or
177 responsible party commits to bundle multiple sites and lists the
178 facilities that will be included in those future bundles. The
179 facilities listed are not subject to agency term contractor
180 assignment pursuant to department rule. The department reserves
181 the right to terminate or amend the voluntary cost-share
182 agreement for any identified site under the voluntary cost-share
183 agreement if the property owner or responsible party fails to
184 submit an application to bundle any site, not already covered by
185 an advance cleanup contract, under such voluntary cost-share
186 agreement within a subsequent open application period during
187 which it is eligible to participate. For the purposes of this
188 section, the term "facility" includes, but is not limited to,
189 multiple site facilities such as airports, port facilities, and
190 terminal facilities even though such enterprises may be treated
191 as separate facilities for other purposes under this chapter.

192 Section 2. Subsection (14) is added to section 376.3078,
193 Florida Statutes, to read:

194 376.3078 Drycleaning facility restoration; funds; uses;
195 liability; recovery of expenditures.-

196 (14) ADVANCED SITE ASSESSMENT.-It is in the public
197 interest, and of substantial environmental and economic benefit
198 to the state, to provide an opportunity to conduct site
199 assessment on a limited basis at contaminated sites in advance
200 of the ranking of the sites on the priority list as specified in
201 subsection (8).

202 (a) A real property owner who is eligible for site
203 rehabilitation at a facility that has been determined eligible

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204 for the drycleaning solvent cleanup program under this section
205 may request an advanced site assessment, and the department may
206 authorize the performance of a site assessment in advance of the
207 ranking of the site on the priority list as specified in
208 subsection (8), if the following criteria are met:

209 1. The site assessment information would provide new
210 information that would be sufficient for the department to
211 better evaluate the actual risk of the contamination, thereby
212 reducing the risk to public health and the environment;

213 2. The property owner agrees:

214 a. To implement the appropriate institutional controls
215 allowed by department rules adopted pursuant to subsection (4)
216 at the time the property owner requests the advanced site
217 assessment; and

218 b. To implement and maintain, upon completion of the
219 cleanup, the required institutional controls, or a combination
220 of institutional and engineering controls, when the site meets
221 the site rehabilitation criteria for closure with controls in
222 accordance with department rules adopted pursuant to subsection
223 (4);

224 3. Current conditions at the site allow the site assessment
225 to be conducted in a manner that will result in cost savings to
226 the Water Quality Assurance Trust Fund;

227 4. There is sufficient money in the annual Water Quality
228 Assurance Trust Fund appropriation for the drycleaning solvent
229 cleanup program to pay for the site assessment; and

230 5. In accordance with subsection (3), access to the site is
231 provided and the deductible is paid.

232 (b) A site may be assessed out of priority ranking order

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233 when, at the department's discretion, the site assessment will
234 provide a cost savings to the program.

235 (c) An advanced site assessment must incorporate risk-based
236 corrective action principles to achieve protection of human
237 health and safety and the environment in a cost-effective
238 manner, in accordance with subsection (4). The site assessment
239 must also be sufficient to estimate the cost and determine the
240 proposed course of action toward site cleanup. Advanced site
241 assessment activities performed under this subsection shall be
242 designed to affirmatively demonstrate that the site meets one of
243 the following findings based on the following specified
244 criteria:

245 1. Recommend remedial action to mitigate risks that, in the
246 judgment of the department, are a threat to human health or
247 where failure to prevent migration of drycleaning solvents would
248 cause irreversible damage to the environment;

249 2. Recommend additional groundwater monitoring to support
250 natural attenuation monitoring or long-term groundwater
251 monitoring; or

252 3. Recommend "no further action," with or without
253 institutional controls or institutional and engineering
254 controls, for those sites that meet the "no further action"
255 criteria department rules adopted pursuant to subsection (4).

256
257 If the site does not meet one of the findings specified in
258 subparagraphs 1.-3., the department shall notify the property
259 owner in writing of this decision, and the site shall be
260 returned to its priority ranking order in accordance with its
261 score.

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262 (d) Advanced site assessment program tasks shall be
263 assigned by the drycleaning solvent cleanup program. In addition
264 to the provisions in paragraph (a), the assignment of site
265 assessment tasks shall be based on the department's
266 determination of contractor logistics, geographical
267 considerations, and other criteria that the department
268 determines are necessary to achieve the most cost-effective
269 approach.

270 (e) Available funding for advanced site assessments may not
271 exceed 10 percent of the annual Water Quality Assurance Trust
272 Fund appropriation for the drycleaning solvent cleanup program.

273 (f) The total funds committed to any one site may not
274 exceed \$70,000.

275 (g) The department shall prioritize the requests for
276 advanced site assessment, based on the date of receipt and the
277 environmental and economic value to the state, until 10 percent
278 of the annual Water Quality Assurance Trust Fund appropriation,
279 as provided in paragraph (e), has been obligated.

280 Section 3. Paragraph (f) of subsection (2) of section
281 220.1845, Florida Statutes, is amended to read:

282 220.1845 Contaminated site rehabilitation tax credit.—

283 (2) AUTHORIZATION FOR TAX CREDIT; LIMITATIONS.—

284 (f) The total amount of the tax credits which may be
285 granted under this section is \$21.6 million in the 2015-2016
286 fiscal year, ~~and~~ \$5 million in the 2016-2017 fiscal year, and
287 \$10 million annually thereafter.

288 Section 4. Subsection 4 of section 376.30781, Florida
289 Statutes, is amended to read:

290 376.30781 Tax credits for rehabilitation of drycleaning-

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291 solvent-contaminated sites and brownfield sites in designated
292 brownfield areas; application process; rulemaking authority;
293 revocation authority.—

294 (4) The Department of Environmental Protection is
295 responsible for allocating the tax credits provided for in s.
296 220.1845, which may not exceed a total of \$21.6 million in tax
297 credits in the 2015-2016 fiscal year, ~~and~~ \$5 million in tax
298 credits in the 2016-2017 fiscal year, and \$10 million in tax
299 credits annually thereafter.

300 Section 5. This act shall take effect July 1, 2017.