

By Senator Grimsley

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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.; authorizing the department to initiate  
18      site assessment and remediation activities under  
19      certain circumstances; providing a statement of public  
20      interest; authorizing site assessments in advance of  
21      site priority ranking under certain circumstances;  
22      specifying criteria for sites to be eligible for such  
23      assessments; specifying what must be demonstrated  
24      through such assessments; specifying criteria for the  
25      assignment of assessment tasks; specifying funding  
26      limitations; specifying the prioritization of  
27      requests; amending s. 376.86, F.S.; requiring that  
28      certain funds not pledged as loan guarantees or loan  
29      loss reserves be made available for certain voluntary

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30 tax credit authorizations; providing an effective  
31 date.

32  
33 Be It Enacted by the Legislature of the State of Florida:

34  
35 Section 1. Paragraphs (a) and (c) of subsection (1) and  
36 subsections (2) and (4) of section 376.30713, Florida Statutes,  
37 are amended to read:

38 376.30713 Advanced cleanup.—

39 (1) In addition to the legislative findings provided in s.  
40 376.3071, the Legislature finds and declares:

41 (a) That the inability to conduct site rehabilitation in  
42 advance of a site's priority ranking pursuant to s.  
43 376.3071(5) (a) may substantially impede or prohibit property  
44 redevelopment, property transactions, or the proper completion  
45 of public works projects.

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

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

58 (a) Advanced cleanup applications may be submitted between

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59 May 1 and June 30 and between November 1 and December 31 of each  
60 fiscal year. Applications submitted between May 1 and June 30  
61 shall be for the fiscal year beginning July 1. An application  
62 must consist of:

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

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

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

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

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

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

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

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

103 3. A limited contamination assessment report.

104 4. A proposed course of action.

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

113

114 The limited contamination assessment report must be sufficient  
115 to support the proposed course of action and to estimate the  
116 cost of the proposed course of action. Costs incurred related to

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117 conducting the limited contamination assessment report are not  
118 refundable from the Inland Protection Trust Fund. Site  
119 eligibility under this subsection or any other provision of this  
120 section is not an entitlement to advanced cleanup or continued  
121 restoration funding. The applicant shall certify to the  
122 department that the applicant has the prerequisite authority to  
123 enter into an advanced cleanup contract with the department. The  
124 certification must be submitted with the application.

125 c. Applications for the cleanup of individual redevelopment  
126 sites are not subject to the application period limitations  
127 specified in paragraph (a) or to the cost-share provisions in  
128 paragraph (1)(d) and are accepted on a first-come, first-served  
129 basis. Applications for the cleanup of individual redevelopment  
130 sites must include:

131 (I) Certification that the applicant has consulted with the  
132 local government having jurisdiction over the area about the  
133 proposed redevelopment of the site, that the local government is  
134 in agreement with or approves the proposed redevelopment, and  
135 that the proposed redevelopment complies with applicable laws  
136 and requirements for such redevelopment. The certification shall  
137 be accomplished by referencing or providing a legally recorded  
138 or officially approved land use or site plan, a development  
139 order or approval, a building permit, or a similar official  
140 document issued by the local government which reflects the local  
141 government's approval of the proposed redevelopment of the site  
142 or by providing a letter from the local government which  
143 describes the proposed redevelopment of the site and expresses  
144 the local government's agreement with or approval of the  
145 proposed redevelopment.

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146 (II) A demonstrated reasonable assurance that the applicant  
147 has sufficient financial resources to implement and complete the  
148 redevelopment project.

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

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

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

173 (b) A facility or an applicant applying for cleanup of  
174 individual redevelopment sites as referenced in sub-subparagraph

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175 (2) (a) 1.c. may not be approved for more than \$1 million of  
176 cleanup activity in each fiscal year.

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

194 Section 2. Paragraph (h) of subsection (8) of section  
195 376.3078, Florida Statutes, is amended, and subsection (14) is  
196 added to that section, to read:

197 376.3078 Drycleaning facility restoration; funds; uses;  
198 liability; recovery of expenditures.—

199 (8) SCORING SYSTEM APPLICATION.—

200 (h) Regardless of the score of a site, the department may  
201 initiate site assessment and remediation activities, or  
202 emergency action, for those sites that, in the judgment of the  
203 department, are a threat to human health and safety, or where

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204 failure to prevent migration of drycleaning solvents would cause  
205 irreversible damage to the environment.

206 (14) ADVANCED SITE ASSESSMENT.—It is in the public  
207 interest, and of substantial environmental and economic benefit  
208 to the state, to provide an opportunity to conduct site  
209 assessment on a limited basis at contaminated sites in advance  
210 of the ranking of the sites on the priority list as specified in  
211 subsection (8).

212 (a) A real property owner who is eligible for site  
213 rehabilitation at a facility that has been determined eligible  
214 for the drycleaning solvent cleanup program under this section  
215 may request an advanced site assessment, and the department may  
216 authorize the performance of a site assessment in advance of the  
217 ranking of the site on the priority list as specified in  
218 subsection (8), if the following criteria are met:

219 1. The site assessment information would provide new  
220 information that would be sufficient for the department to  
221 better evaluate the actual risk of the contamination, thereby  
222 reducing the risk to public health and the environment;

223 2. The property owner agrees:

224 a. To implement the appropriate institutional controls  
225 allowed by department rules adopted pursuant to subsection (4)  
226 at the time the property owner requests the advanced site  
227 assessment; and

228 b. To implement and maintain, upon completion of the  
229 cleanup, the required institutional controls, or a combination  
230 of institutional and engineering controls, when the site meets  
231 the site rehabilitation criteria for closure with controls in  
232 accordance with department rules adopted pursuant to subsection



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233 (4);

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

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

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

242 (b) A site may be assessed out of priority ranking order  
243 when, at the department's discretion, the site assessment will  
244 provide a cost savings to the program.

245 (c) An advanced site assessment must incorporate risk-based  
246 corrective action principles to achieve protection of human  
247 health and safety and the environment in a cost-effective  
248 manner, in accordance with subsection (4). The site assessment  
249 must also be sufficient to estimate the cost and determine the  
250 proposed course of action toward site cleanup. Advanced site  
251 assessment activities performed under this subsection shall be  
252 designed to affirmatively demonstrate that the site meets one of  
253 the following findings based on the following specified  
254 criteria:

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

259 2. Recommend additional groundwater monitoring to support  
260 natural attenuation monitoring or long-term groundwater  
261 monitoring; or

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262       3. Recommend "no further action," with or without  
263 institutional controls or institutional and engineering  
264 controls, for those sites that meet the "no further action"  
265 criteria department rules adopted pursuant to subsection (4).  
266

267 If the site does not meet one of the findings specified in  
268 subparagraphs 1.-3., the department shall notify the property  
269 owner in writing of this decision, and the site shall be  
270 returned to its priority ranking order in accordance with its  
271 score.

272       (d) Advanced site assessment program tasks shall be  
273 assigned by the drycleaning solvent cleanup program. In addition  
274 to the provisions in paragraph (a), the assignment of site  
275 assessment tasks shall be based on the department's  
276 determination of contractor logistics, geographical  
277 considerations, and other criteria that the department  
278 determines are necessary to achieve the most cost-effective  
279 approach.

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

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

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

290       Section 3. Subsection (9) is added to section 376.86,

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291 Florida Statutes, to read:

292 376.86 Brownfield Areas Loan Guarantee Program.—

293 (9) Funds not pledged by the council for loan guarantees or  
294 as loan loss reserves pursuant to this section must be made  
295 available annually for the voluntary cleanup tax credit  
296 authorizations provided in ss. 220.1845 and 376.30781. By June 1  
297 of each year, the department shall determine the amount of funds  
298 that will be made available for the voluntary tax credit  
299 authorizations specified in this subsection.

300 Section 4. This act shall take effect July 1, 2017.