

By the Committees on Appropriations; and Environmental Preservation and Conservation; and Senators Grimsley and Galvano

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1 A bill to be entitled
2 An act relating to pollution; creating s. 403.076,
3 F.S.; providing a short title; creating s. 403.077,
4 F.S.; providing goals and legislative findings;
5 specifying the authority of the Department of
6 Environmental Protection; specifying that the act does
7 not alter or affect the emergency management
8 responsibilities of certain other governmental
9 entities; creating s. 403.078, F.S.; defining the term
10 "reportable pollution release"; requiring an owner or
11 operator of an installation at which a reportable
12 pollution release occurred to provide certain
13 information to the department within 24 hours after
14 the discovery of the release; authorizing the owner or
15 operator to amend such notice; specifying compliance
16 and enforcement requirements; requiring owners or
17 operators to provide notice when a reportable
18 pollution release migrates outside the property
19 boundaries of the installation; requiring the
20 department to publish such information in a specified
21 manner; requiring the department to establish an
22 electronic mailing list; requiring the department to
23 provide a reporting form and e-mail address for such
24 notice; specifying that providing a notice does not
25 constitute an admission of liability or harm;
26 specifying penalties for violations; requiring the
27 department to adopt rules; amending s. 403.121, F.S.;
28 specifying penalties for failure to provide the
29 required notice; amending s. 376.3071, F.S.; providing

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30 an exception to prompt payment requirements to
31 subcontractors and suppliers; amending s. 376.30713,
32 F.S.; revising legislative findings; specifying that
33 applicants for advanced cleanup of certain individual
34 sites are not subject to application period
35 limitations and need not pay a certain cost-sharing
36 commitment; requiring applications by such applicants
37 to be accepted on a first-come, first-served basis;
38 providing that such applications are not subject to
39 certain ranking provisions; specifying application
40 requirements; providing construction; increasing the
41 amount per year that the Department of Environmental
42 Protection may use for advanced cleanup work;
43 specifying expenditure limitations; revising duties of
44 property owners and responsible parties with respect
45 to voluntary cost-share agreements; amending s.
46 376.3078, F.S.; providing a statement of public
47 interest; authorizing site assessments in advance of
48 site priority ranking under certain circumstances;
49 specifying criteria for sites to be eligible for such
50 assessments; specifying what must be demonstrated
51 through such assessments; specifying criteria for the
52 assignment of assessment tasks; specifying funding
53 limitations; specifying the prioritization of
54 requests; amending s. 220.1845, F.S.; increasing the
55 total amount of an authorization for tax credits;
56 amending s. 376.30781, F.S.; increasing the total
57 amount of tax credits the department is responsible
58 for allocating; providing an effective date.

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

Section 1. Section 403.076, Florida Statutes, is created to read:

403.076 Short title.—Sections 403.076-403.078 may be cited as the “Public Notice of Pollution Act.”

Section 2. Section 403.077, Florida Statutes, is created to read:

403.077 Public notice of pollution; goals and findings.—

(1) It is a goal of the state that the public be timely notified of a discovered, reportable pollution release that may pose an immediate danger to the public health, safety, or welfare.

(2) The department has the authority and the duty to control and prohibit pollution of the air, land, and water of this state and has the primary responsibility to ensure that the public is aware of reportable pollution releases. Alerting the department about reportable pollution releases, within the timeframes and in the manner provided by this act, will better inform the department and the public regarding such releases and the need, if any, to take action to protect the public health, safety, and welfare.

(3) This act does not alter or affect the emergency management responsibilities of the Governor, the Division of Emergency Management, or the governing body of any political subdivision of the state pursuant to chapter 252.

Section 3. Section 403.078, Florida Statutes, is created to read:

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88 403.078 Public notification of pollution.-

89 (1) DEFINITION.-As used in this section, the term
90 "reportable pollution release" means the release or discharge of
91 a substance from an installation to the air, land, or waters of
92 the state which is discovered by the owner or operator of the
93 installation, which is not authorized by law, and which is:

94 (a) Reportable to the State Watch Office within the
95 Division of Emergency Management pursuant to department rules,
96 permit, order, or variance;

97 (b) Reportable to the department or a contracted county
98 pursuant to department rules governing storage tank systems
99 under ss. 376.303, 376.321, and 376.322;

100 (c) Reportable to the department pursuant to department
101 rules requiring notice for noncompliance from underground
102 injection control systems where such noncompliance may endanger
103 public health or the environment and has the potential to
104 contaminate potable water wells outside the property boundaries
105 of the installation;

106 (d) A hazardous substance at or above the quantity
107 established in Table 302.4 of 40 C.F.R. s. 302.4, revised as of
108 July 1, 2016, for such substance, for which notification is
109 required by 40 C.F.R. s. 302.6; or

110 (e) An extremely hazardous substance pursuant to 40 C.F.R.
111 s. 355.61, at or above the quantity established in Appendices A
112 and B of 40 C.F.R. part 355, revised as of July 1, 2016, for
113 such substance, for which notice is required by 40 C.F.R. s.
114 355.33.

115 (2) OWNER AND OPERATOR RESPONSIBILITIES.-

116 (a) In the event of a reportable pollution release, any

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117 person who is an owner or operator of the installation at which
118 the reportable pollution release occurred must provide a notice
119 containing the following information, to the extent known at the
120 time of such notice, to the department within 24 hours after its
121 discovery:

122 1. The name and address of the installation where the
123 reportable pollution release occurred.

124 2. The name and title of the reporting person and the
125 nature of his or her relationship to the installation.

126 3. The identification numbers for any active department
127 permits, variances, registrations, or orders that are relevant
128 to the reportable pollution release.

129 4. The name and telephone number of a contact person for
130 further information.

131 5. The substance released.

132 6. The estimated quantity of the substance released and, if
133 applicable, the estimated quantity that has since been
134 recovered.

135 7. The cause of the release.

136 8. The source of the release.

137 9. The location of the release.

138 10. The date, time, and duration of the release.

139 11. The medium into which the substance was released,
140 including, but not limited to, the outdoor air, land,
141 groundwater, aquifer, or specified waters or wetlands.

142 12. Whether the released substance has migrated to land or
143 waters of the state outside the property boundaries of the
144 installation and the location of such migration.

145 13. To the extent available, toxicological information

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146 associated with the substance released as specified on a safety
147 data sheet or comparable source published by the Occupational
148 Safety and Health Administration or the Centers for Disease
149 Control and Prevention, or their successor agencies.

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151 The owner or operator may also include in the notice any other
152 information he or she wishes in order to assist in the
153 protection of the public health, safety, and welfare.

154 (b) If multiple parties are subject to the notification
155 requirements based on a single reportable pollution release, a
156 single notification made by one party in accordance with this
157 section constitutes compliance on behalf of all parties subject
158 to the requirement. However, if the notification is not made in
159 accordance with this section, the department may pursue
160 enforcement against all parties subject to the requirement.

161 (c) If, after providing notice pursuant to paragraph (a),
162 the installation owner or operator determines that a reportable
163 pollution release did not occur or that an amendment to the
164 notice is warranted, the installation owner or operator may
165 submit a letter to the department documenting such
166 determination.

167 (d) If, after providing notice under paragraph (a), the
168 installation owner or operator determines that a release subject
169 to the noticing requirements of this act has migrated outside
170 the property boundaries of the installation, the owner or
171 operator, within 24 hours after such discovery, must provide an
172 additional notice to the department. Such notice must comply
173 with the requirements of paragraph (a) and specify the extent of
174 the migration outside the property boundaries.

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175 (3) DEPARTMENTAL RESPONSIBILITIES.—

176 (a) The department shall publish on a website accessible to
177 the public all notices submitted by an owner or operator
178 pursuant to subsection (2) within 24 hours of receipt.

179 (b) The department shall create an electronic mailing list
180 for such notices and allow the public, including local
181 governments, health departments, news media, and other
182 interested persons, to subscribe to and receive periodic direct
183 announcement of any notices submitted pursuant to subsection
184 (2). The department shall establish regional electronic mailing
185 lists, such as by county or district boundaries, to allow
186 subscribers to determine the notices they wish to receive by
187 geographic area.

188 (c) The department shall establish an e-mail address and an
189 online form as options for owners and operators to provide the
190 notice specified in paragraphs (2) (a) and (b).

191 (4) ADMISSION OF LIABILITY OR HARM.—Providing notice under
192 subsection (2) does not constitute an admission of liability or
193 harm.

194 (5) VIOLATIONS.—For failure to provide the notification
195 required by paragraph (2) (a) or paragraph (2) (d), the owner or
196 operator shall be subject to the civil penalties specified in s.
197 403.121.

198 (6) ADOPTION OF RULES.—The department shall adopt rules
199 necessary to administer the provisions of this section.

200 Section 4. Present paragraph (f) of subsection (4) of
201 section 403.121, Florida Statutes, is redesignated as paragraph
202 (g), and a new paragraph (f) is added to that subsection, to
203 read:

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204 403.121 Enforcement; procedure; remedies.—The department
205 shall have the following judicial and administrative remedies
206 available to it for violations of this chapter, as specified in
207 s. 403.161(1).

208 (4) In an administrative proceeding, in addition to the
209 penalties that may be assessed under subsection (3), the
210 department shall assess administrative penalties according to
211 the following schedule:

212 (f) For failure to provide required notice pursuant to s.
213 403.078, up to \$10,000 per day for each day an installation
214 owner or operator is in violation of the section.

215 Section 5. Paragraph (h) of subsection (6) of section
216 376.3071, Florida Statutes, is amended to read:

217 376.3071 Inland Protection Trust Fund; creation; purposes;
218 funding.—

219 (6) CONTRACTING AND CONTRACTOR SELECTION REQUIREMENTS.—

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

230 Section 6. Paragraphs (a) and (c) of subsection (1) and
231 subsections (2) and (4) of section 376.30713, Florida Statutes,
232 are amended to read:

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233 376.30713 Advanced cleanup.—

234 (1) In addition to the legislative findings provided in s.
235 376.3071, the Legislature finds and declares:

236 (a) That the inability to conduct site rehabilitation in
237 advance of a site's priority ranking pursuant to s.
238 376.3071(5) (a) may substantially impede or prohibit property
239 redevelopment, property transactions, or the proper completion
240 of public works projects.

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

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

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

259 1. A commitment to pay 25 percent or more of the total
260 cleanup cost deemed recoverable under this section along with
261 proof of the ability to pay the cost share. The department shall

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262 determine whether the cost savings demonstration is acceptable.
263 Such determination is not subject to chapter 120.

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

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

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

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

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

286 (II) For an individual application relying on a
287 demonstrated cost savings to the department, the applicant
288 shall, in conjunction with the proposed agency term contractor,
289 establish and provide in the application a 25-percent cost
290 savings to the department for cleanup of the site under the

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291 application compared to the cost of cleanup of the same site
292 using the current rates provided to the department by the
293 proposed agency term contractor.

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

297 3. A limited contamination assessment report.

298 4. A proposed course of action.

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

307

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

319 (b) The department shall rank the applications based on the

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320 percentage of cost-sharing commitment proposed by the applicant,
321 with the highest ranking given to the applicant who proposes the
322 highest percentage of cost sharing. If the department receives
323 applications that propose identical cost-sharing commitments and
324 that exceed the funds available to commit to all such proposals
325 during the advanced cleanup application period, the department
326 shall proceed to rerank those applicants. Those applicants
327 submitting identical cost-sharing proposals that exceed funding
328 availability must be so notified by the department and offered
329 the opportunity to raise their individual cost-share
330 commitments, in a period specified in the notice. At the close
331 of the period, the department shall proceed to rerank the
332 applications pursuant to this paragraph.

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

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

345 2. A limited contamination assessment report. The report
346 must be sufficient to support the proposed course of action and
347 to estimate the cost of the proposed course of action. Costs
348 incurred related to conducting and preparing the report are not

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349 refundable from the Inland Protection Trust Fund.

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

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

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

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

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

372
373 Site eligibility under this section is not an entitlement to
374 advanced cleanup funding or continued restoration funding.

375 (4) The department may enter into contracts for a total of
376 up to \$30 ~~\$25~~ million of advanced cleanup work in each fiscal
377 year. Up to \$5 million of these funds may be designated by the

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378 department for advanced cleanup of individual sites scheduled
379 for redevelopment under paragraph (2) (c).

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

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

388 (c) A property owner or responsible party may enter into a
389 voluntary cost-share agreement in which the property owner or
390 responsible party commits to bundle multiple sites and lists the
391 facilities that will be included in those future bundles. The
392 facilities listed are not subject to agency term contractor
393 assignment pursuant to department rule. The department must
394 reserve ~~reserves~~ the right to terminate or amend the voluntary
395 cost-share agreement for any identified site under the voluntary
396 cost-share agreement if the property owner or responsible party
397 fails to submit an application to bundle any site, not already
398 covered by an advance cleanup contract, under such voluntary
399 cost-share agreement within three a subsequent open application
400 periods or 18 months, whichever period is shorter, ~~period~~ during
401 which it is eligible to participate. The property owner or
402 responsible party must agree to conduct limited site assessments
403 on the identified sites within 12 months after the execution of
404 the voluntary cost-share agreement. For the purposes of this
405 section, the term "facility" includes, but is not limited to,
406 multiple site facilities such as airports, port facilities, and

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407 terminal facilities even though such enterprises may be treated
408 as separate facilities for other purposes under this chapter.

409 Section 7. Subsection (14) is added to section 376.3078,
410 Florida Statutes, to read:

411 376.3078 Drycleaning facility restoration; funds; uses;
412 liability; recovery of expenditures.—

413 (14) ADVANCED SITE ASSESSMENT.—It is in the public
414 interest, and of substantial environmental and economic benefit
415 to the state, to provide an opportunity to conduct site
416 assessment on a limited basis at contaminated sites in advance
417 of the ranking of the sites on the priority list as specified in
418 subsection (8).

419 (a) A real property owner who is eligible for site
420 rehabilitation at a facility that has been determined eligible
421 for the drycleaning solvent cleanup program under this section
422 may request an advanced site assessment, and the department may
423 authorize the performance of a site assessment in advance of the
424 ranking of the site on the priority list as specified in
425 subsection (8), if the following criteria are met:

426 1. The site assessment information would provide new
427 information that would be sufficient for the department to
428 better evaluate the actual risk of the contamination, thereby
429 reducing the risk to public health and the environment;

430 2. The property owner agrees:

431 a. To implement the appropriate institutional controls
432 allowed by department rules adopted pursuant to subsection (4)
433 at the time the property owner requests the advanced site
434 assessment; and

435 b. To implement and maintain, upon completion of the

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436 cleanup, the required institutional controls, or a combination
437 of institutional and engineering controls, when the site meets
438 the site rehabilitation criteria for closure with controls in
439 accordance with department rules adopted pursuant to subsection
440 (4);

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

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

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

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

452 (c) An advanced site assessment must incorporate risk-based
453 corrective action principles to achieve protection of human
454 health and safety and the environment in a cost-effective
455 manner, in accordance with subsection (4). The site assessment
456 must also be sufficient to estimate the cost and determine the
457 proposed course of action toward site cleanup. Advanced site
458 assessment activities performed under this subsection shall be
459 designed to affirmatively demonstrate that the site meets one of
460 the following findings based on the following specified
461 criteria:

462 1. Recommend remedial action to mitigate risks that, in the
463 judgment of the department, are a threat to human health or
464 where failure to prevent migration of drycleaning solvents would

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465 cause irreversible damage to the environment;

466 2. Recommend additional groundwater monitoring to support
467 natural attenuation monitoring or long-term groundwater
468 monitoring; or

469 3. Recommend "no further action," with or without
470 institutional controls or institutional and engineering
471 controls, for those sites that meet the "no further action"
472 criteria department rules adopted pursuant to subsection (4).

473

474 If the site does not meet one of the findings specified in
475 subparagraphs 1.-3., the department shall notify the property
476 owner in writing of this decision, and the site shall be
477 returned to its priority ranking order in accordance with its
478 score.

479 (d) Advanced site assessment program tasks shall be
480 assigned by the drycleaning solvent cleanup program. In addition
481 to the provisions in paragraph (a), the assignment of site
482 assessment tasks shall be based on the department's
483 determination of contractor logistics, geographical
484 considerations, and other criteria that the department
485 determines are necessary to achieve the most cost-effective
486 approach.

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

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

492 (g) The department shall prioritize the requests for
493 advanced site assessment, based on the date of receipt and the

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494 environmental and economic value to the state, until 10 percent
495 of the annual Water Quality Assurance Trust Fund appropriation,
496 as provided in paragraph (e), has been obligated.

497 Section 8. Paragraph (f) of subsection (2) of section
498 220.1845, Florida Statutes, is amended to read:

499 220.1845 Contaminated site rehabilitation tax credit.—

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

501 (f) The total amount of the tax credits which may be
502 granted under this section is \$21.6 million in the 2015-2016
503 fiscal year, ~~and~~ \$5 million in the 2016-2017 fiscal year, and
504 \$10 million annually thereafter.

505 Section 9. Subsection 4 of section 376.30781, Florida
506 Statutes, is amended to read:

507 376.30781 Tax credits for rehabilitation of drycleaning-
508 solvent-contaminated sites and brownfield sites in designated
509 brownfield areas; application process; rulemaking authority;
510 revocation authority.—

511 (4) The Department of Environmental Protection is
512 responsible for allocating the tax credits provided for in s.
513 220.1845, which may not exceed a total of \$21.6 million in tax
514 credits in the 2015-2016 fiscal year, ~~and~~ \$5 million in tax
515 credits in the 2016-2017 fiscal year, and \$10 million in tax
516 credits annually thereafter.

517 Section 10. This act shall take effect July 1, 2017.