

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 are 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
30 | tax credit authorizations; providing an effective
31 | date.

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

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

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

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

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

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

104 3. A limited contamination assessment report.

105 4. A proposed course of action.

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

114
115 The limited contamination assessment report must be sufficient
116 to support the proposed course of action and to estimate the
117 cost of the proposed course of action. Costs incurred related to
118 conducting the limited contamination assessment report are not
119 refundable from the Inland Protection Trust Fund. Site
120 eligibility under this subsection or any other provision of this
121 section is not an entitlement to advanced cleanup or continued
122 restoration funding. The applicant shall certify to the
123 department that the applicant has the prerequisite authority to
124 enter into an advanced cleanup contract with the department. The
125 certification must be submitted with the application.

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

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

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

150 (b) The department shall rank the applications specified

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

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

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

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

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

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

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

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

200 (8) SCORING SYSTEM APPLICATION.—

201 (h) Regardless of the score of a site, the department may
202 initiate site assessment and remediation activities or emergency
203 action for those sites that, in the judgment of the department,
204 are a threat to human health and safety, or where failure to
205 prevent migration of drycleaning solvents would cause
206 irreversible damage to the environment.

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

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

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

224 2. The property owner agrees:

225 a. To implement the appropriate institutional controls in

226 accordance with department rules adopted pursuant to subsection
227 (4) at the time the property owner requests the advanced site
228 assessment; and

229 b. To implement and maintain, upon completion of the
230 cleanup, the required institutional controls, or a combination
231 of institutional and engineering controls, when the site meets
232 the site rehabilitation criteria for closure with controls in
233 accordance with department rules adopted pursuant to subsection
234 (4);

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

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

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

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

246 (c) An advanced site assessment must incorporate risk-
247 based corrective action principles to achieve protection of
248 human health and safety and the environment in a cost-effective
249 manner, in accordance with department rules adopted pursuant
250 subsection (4). The site assessment must also be sufficient to

251 estimate the cost and determine the proposed course of action
252 toward site cleanup. Advanced site assessment activities
253 performed under this subsection shall be designed to
254 affirmatively demonstrate that the site meets one of the
255 following findings based on the following specified criteria:
256 1. Recommend remedial action to mitigate risks that, in
257 the judgment of the department, are a threat to human health or
258 where failure to prevent migration of drycleaning solvents would
259 cause irreversible damage to the environment;
260 2. Recommend additional groundwater monitoring to support
261 natural attenuation monitoring or long-term groundwater
262 monitoring; or
263 3. Recommend "no further action," with or without
264 institutional controls or institutional and engineering controls
265 for those sites that meet the "no further action" criteria in
266 accordance with department rules adopted pursuant to subsection
267 (4).
268
269 If the site does not meet one of the findings specified in
270 subparagraphs 1.-3., the department shall notify the property
271 owner in writing of this decision, and the site shall be
272 returned to its priority ranking order in accordance with its
273 score.
274 (d) Advanced site assessment program tasks shall be
275 assigned by the drycleaning solvent cleanup program. In addition

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276 to the provisions in paragraph (a), the assignment of site
277 assessment tasks shall be based on the department's
278 determination of contractor logistics, geographical
279 considerations, and other criteria that the department
280 determines are necessary to achieve the most cost-effective
281 approach.

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

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

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

293 Section 3. Subsection (9) is added to section 376.86,
294 Florida Statutes, to read:

295 376.86 Brownfield Areas Loan Guarantee Program.—

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

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301 | which will be made available for the voluntary tax credit
302 | authorizations specified in this subsection.

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