

1 A bill to be entitled
2 An act relating to contaminated site cleanup; amending
3 s. 376.3071, F.S.; requiring a contractor or the
4 person to whom the contractor has assigned its right
5 to payment to remit certain payments to subcontractors
6 and suppliers within a specified time period; amending
7 s. 376.30713, F.S.; revising legislative findings;
8 providing an exception to a requirement that an
9 applicant for advanced cleanup demonstrate an ability
10 to pay cost share; requiring that the Department of
11 Environmental Protection determine whether specified
12 requirements are acceptable under certain
13 circumstances; providing that applications for the
14 cleanup of individual redevelopment sites are not
15 subject to certain application period limitations and
16 cost-share provisions; specifying the application
17 requirements for such sites; increasing the amount per
18 year the department may use for advanced cleanup work;
19 specifying expenditure limitations; revising the time
20 period during which the department may terminate or
21 amend voluntary cost-share agreements; revising duties
22 of property owners and responsible parties with
23 respect to voluntary cost-share agreements; amending
24 s. 376.3078, F.S.; providing a statement of public
25 interest; authorizing site assessments in advance of

26 site priority ranking under certain circumstances;
 27 specifying criteria for sites to be eligible for such
 28 assessments; specifying what must be demonstrated
 29 through such assessments; specifying criteria for the
 30 assignment of assessment tasks; specifying funding
 31 limitations; specifying the prioritization of
 32 requests; providing an effective date.
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34 Be It Enacted by the Legislature of the State of Florida:
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36 Section 1. Paragraph (h) of subsection (6) of section
 37 376.3071, Florida Statutes, is amended to read:

38 376.3071 Inland Protection Trust Fund; creation; purposes;
 39 funding.—

40 (6) CONTRACTING AND CONTRACTOR SELECTION REQUIREMENTS.—

41 (h) The contractor or the person to whom ~~which~~ the
 42 contractor has assigned its right to payment pursuant to
 43 paragraph (e) shall make prompt payment to subcontractors and
 44 suppliers for their costs associated with an approved contract
 45 pursuant to s. 287.0585, except that the contractor or the
 46 person to which the contractor has assigned its right to payment
 47 pursuant to paragraph (e) shall remit payments required by s.
 48 287.0585 (1) to subcontractors and suppliers within 30 working
 49 days after the contractor receives payment from the department
 50 ~~287.0585(1).~~

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

54 376.30713 Advanced cleanup.—

55 (1) In addition to the legislative findings provided in s.
56 376.3071, the Legislature finds and declares:

57 (a) That the inability to conduct site rehabilitation in
58 advance of a site's priority ranking pursuant to s.
59 376.3071(5) (a) may substantially impede or prohibit property
60 redevelopment, property transactions, or the proper completion
61 of public works projects.

62 (c) It is in the public interest and of substantial
63 economic benefit to the state to provide an opportunity for site
64 rehabilitation to be conducted on a limited basis at
65 contaminated sites, in advance of the site's priority ranking,
66 to encourage redevelopment and facilitate property transactions
67 or public works projects.

68 (2) The department may approve an application for advanced
69 cleanup at eligible sites including those applying pursuant to
70 paragraph (c), notwithstanding the site's priority ranking
71 established pursuant to s. 376.3071(5) (a), pursuant to this
72 section. Only the facility owner or operator or the person
73 otherwise responsible for site rehabilitation qualifies as an
74 applicant under this section.

75 (a) Advanced cleanup applications may be submitted between
76 May 1 and June 30 and between November 1 and December 31 of each
77 fiscal year. Applications submitted between May 1 and June 30
78 shall be for the fiscal year beginning July 1. An application
79 must consist of:

80 1. A commitment to pay 25 percent or more of the total
81 cleanup cost deemed recoverable under this section along with
82 proof of the ability to pay the cost share. The department shall
83 determine whether the cost savings demonstration is acceptable.
84 Such determination is not subject to chapter 120.

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

88 (I) For an aggregate 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 aggregate 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 the percentage of cost
96 savings in the aggregate that is being provided to the
97 department for cleanup of the sites under the application
98 compared to the cost of cleanup of those same sites using the

99 | current rates provided to the department by the proposed agency
100 | term contractor.

101 | b. Applications for the cleanup of individual sites may be
102 | submitted in one of two formats to meet the cost-share
103 | requirement:

104 | (I) For an individual application proposing that the
105 | department enter into a performance-based contract, the
106 | applicant may use a commitment to pay, a demonstrated cost
107 | savings to the department, or both to meet the requirement.

108 | (II) For an individual application relying on a
109 | demonstrated cost savings to the department, the applicant
110 | shall, in conjunction with the proposed agency term contractor,
111 | establish and provide in the application a 25-percent cost
112 | savings to the department for cleanup of the site under the
113 | application compared to the cost of cleanup of the same site
114 | using the current rates provided to the department by the
115 | proposed agency term contractor.

116 | 2. A nonrefundable review fee of \$250 to cover the
117 | administrative costs associated with the department's review of
118 | the application.

119 | 3. A limited contamination assessment report.

120 | 4. A proposed course of action.

121 | 5. A department site access agreement, or similar
122 | agreements approved by the department that do not violate state
123 | law, entered into with the property owner or owners, as

124 applicable, and evidence of authorization from such owner or
125 owners for petroleum site rehabilitation program tasks
126 consistent with the proposed course of action where the
127 applicant is not the property owner for any of the sites
128 contained in the application.

129
130 The limited contamination assessment report must be sufficient
131 to support the proposed course of action and to estimate the
132 cost of the proposed course of action. Costs incurred related to
133 conducting the limited contamination assessment report are not
134 refundable from the Inland Protection Trust Fund. Site
135 eligibility under this subsection or any other provision of this
136 section is not an entitlement to advanced cleanup or continued
137 restoration funding. The applicant shall certify to the
138 department that the applicant has the prerequisite authority to
139 enter into an advanced cleanup contract with the department. The
140 certification must be submitted with the application.

141 (b) The department shall rank the applications based on
142 the percentage of cost-sharing commitment proposed by the
143 applicant, with the highest ranking given to the applicant who
144 proposes the highest percentage of cost sharing. If the
145 department receives applications that propose identical cost-
146 sharing commitments and that exceed the funds available to
147 commit to all such proposals during the advanced cleanup
148 application period, the department shall proceed to rerank those

149 applicants. Those applicants submitting identical cost-sharing
150 proposals that exceed funding availability must be so notified
151 by the department and offered the opportunity to raise their
152 individual cost-share commitments, in a period specified in the
153 notice. At the close of the period, the department shall proceed
154 to rerank the applications pursuant to this paragraph.

155 (c) Applications for the advanced cleanup of individual
156 sites scheduled for redevelopment are not subject to the
157 application period limitations or the requirement to pay 25
158 percent of the total cleanup costs specified in paragraph (a) or
159 to the cost-share provisions in paragraph (1) (d). Applications
160 shall be accepted on a first-come, first-served basis and are
161 not subject to the ranking provisions of paragraph (b).
162 Applications for the cleanup of individual redevelopment sites
163 must include:

164 1. A nonrefundable review fee of \$250 to cover the
165 administrative costs associated with the department's review of
166 the application.

167 2. A limited contamination assessment report. The report
168 must be sufficient to support the proposed course of action and
169 to estimate the cost of the proposed course of action. Costs
170 incurred related to conducting and preparing the report are not
171 refundable from the Inland Protection Trust Fund.

172 3. A proposed course of action.

173 4. A department site access agreement, or similar
174 agreements approved by the department that do not violate state
175 law, entered into with the property owner or owners, as
176 applicable, and evidence of authorization from such owner or
177 owners for petroleum site rehabilitation program tasks
178 consistent with the proposed course of action where the
179 applicant is not the property owner for any of the sites
180 contained in the application.

181 5. A certification to the department that the applicant
182 has the prerequisite authority to enter into an advanced cleanup
183 contract with the department. The advanced cleanup contract
184 shall include redevelopment and site rehabilitation milestones.

185 6. Documentation in the form of a letter from the local
186 government having jurisdiction over the area about the proposed
187 redevelopment of the site which states that the local government
188 is in agreement with or approves the proposed redevelopment and
189 that the proposed redevelopment complies with applicable laws
190 and requirements for such redevelopment.

191 7. A demonstrated reasonable assurance that the applicant
192 has sufficient financial resources to implement and complete the
193 redevelopment project.

194
195 Site eligibility under this subsection or any other provision of
196 this section is not an entitlement to advanced cleanup or
197 continued restoration funding.

198 (4) The department may enter into contracts for a total of
199 up to \$30 ~~\$25~~ million of advanced cleanup work in each fiscal
200 year. Up to \$5 million of these funds may be designated by the
201 department for cleanup of individual redevelopment sites
202 pursuant to paragraph (c).

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

207 (b) A facility or an applicant applying for cleanup of
208 individual redevelopment sites pursuant to paragraph (c) may not
209 be approved for more than \$1 million of cleanup activity in each
210 fiscal year.

211 (c) A property owner or responsible party may enter into a
212 voluntary cost-share agreement in which the property owner or
213 responsible party commits to bundle multiple sites and lists the
214 facilities that will be included in those future bundles. The
215 facilities listed are not subject to agency term contractor
216 assignment pursuant to department rule. The department reserves
217 the right to terminate or amend the voluntary cost-share
218 agreement for any identified site under the voluntary cost-share
219 agreement if the property owner or responsible party fails to
220 submit an application to bundle any site, not already covered by
221 an advance cleanup contract, under such voluntary cost-share
222 agreement within three a subsequent open application periods or

223 18 months, whichever period is shorter, ~~period~~ during which it
224 is eligible to participate. The property owner or responsible
225 party agrees to conduct limited site assessments on the
226 identified sites within 12 months after execution of the
227 voluntary cost-share agreement. For the purposes of this
228 section, the term "facility" includes, but is not limited to,
229 multiple site facilities such as airports, port facilities, and
230 terminal facilities even though such enterprises may be treated
231 as separate facilities for other purposes under this chapter.

232 Section 3. Subsection (14) is added to section 376.3078,
233 Florida Statutes, to read:

234 376.3078 Drycleaning facility restoration; funds; uses;
235 liability; recovery of expenditures.—

236 (14) ADVANCED SITE ASSESSMENT.—It is in the public
237 interest, and of substantial environmental and economic benefit
238 to the state, to provide an opportunity to conduct site
239 assessment on a limited basis at contaminated sites in advance
240 of the ranking of the sites on the priority list as specified in
241 subsection (8).

242 (a) A real property owner that is eligible for site
243 rehabilitation at a facility that has been determined eligible
244 for the drycleaning solvent cleanup program under this section
245 may request an advanced site assessment, and the department may
246 authorize the performance of a site assessment in advance of the
247 ranking of the site on the priority list as specified in

248 subsection (8), if the following criteria are met:

249 1. The site assessment information would provide new
250 information that would be sufficient for the department to
251 better evaluate the actual risk of the contamination, thereby
252 reducing the risk to public health and the environment;

253 2. The property owner agrees:

254 a. To implement the appropriate institutional controls in
255 accordance with department rules adopted pursuant to subsection
256 (4) at the time the property owner requests the advanced site
257 assessment; and

258 b. To implement and maintain, upon completion of the
259 cleanup, the required institutional controls, or a combination
260 of institutional and engineering controls, when the site meets
261 the site rehabilitation criteria for closure with controls in
262 accordance with department rules adopted pursuant to subsection
263 (4);

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

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

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

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

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

275 (c) An advanced site assessment must incorporate risk-
276 based corrective action principles to achieve protection of
277 human health and safety and the environment in a cost-effective
278 manner, in accordance with department rules adopted pursuant
279 subsection (4). The site assessment must also be sufficient to
280 estimate the cost and determine the proposed course of action
281 toward site cleanup. Advanced site assessment activities
282 performed under this subsection shall be designed to
283 affirmatively demonstrate that the site meets one of the
284 following findings based on the following specified criteria:

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

289 2. Recommend additional groundwater monitoring to support
290 natural attenuation monitoring or long-term groundwater
291 monitoring; or

292 3. Recommend "no further action," with or without
293 institutional controls or institutional and engineering controls
294 for those sites that meet the "no further action" criteria in
295 accordance with department rules adopted pursuant to subsection
296 (4) .

297

298 If the site does not meet one of the findings specified in
299 subparagraphs 1.-3., the department shall notify the property
300 owner in writing of this decision, and the site shall be
301 returned to its priority ranking order in accordance with its
302 score.

303 (d) Advanced site assessment program tasks shall be
304 assigned by the drycleaning solvent cleanup program. In addition
305 to the provisions in paragraph (a), the assignment of site
306 assessment tasks shall be based on the department's
307 determination of contractor logistics, geographical
308 considerations, and other criteria that the department
309 determines are necessary to achieve the most cost-effective
310 approach.

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

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

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

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