

1 A bill to be entitled
2 An act relating to inland protection; amending s.
3 376.3071, F.S.; revising legislative findings and
4 intent; authorizing the Inland Protection Trust Fund
5 to be used for the cleanup of drycleaning solvents
6 under the drycleaning solvent cleanup program;
7 specifying an appropriation to the Water Quality
8 Assurance Trust Fund for use in the drycleaning
9 solvent cleanup program; specifying an annual
10 appropriation; amending s. 376.3078, F.S.; revising
11 the sources of funds for the drycleaning solvent
12 cleanup program; revising the maximum amount of funds
13 the Department of Environmental Protection may
14 obligate under the program annually; making a
15 technical change; revising the use of the scoring
16 system application to include program sites;
17 specifying that assignments use a specific scoring
18 system created by rule; revising the annual funding
19 available for advanced site assessment; requiring the
20 department to have a specified number of individual
21 contractors participating in the program by a
22 specified date; requiring the department to adopt a
23 scoring system by rule for scoring contractors;
24 specifying system requirements; providing an effective
25 date.

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

Section 1. Paragraphs (a), (d), and (g) of subsection (1), paragraphs (a) and (b) of subsection (2), and subsections (3) and (4) of section 376.3071, Florida Statutes, are amended, paragraph (c) is added to subsection (12), and subsection (15) is added to that section, to read:

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

(1) FINDINGS.—In addition to the legislative findings set forth in s. 376.30, the Legislature finds and declares:

(a) That significant quantities of drycleaning solvents, petroleum, and petroleum products are being stored in storage systems in this state, which is a hazardous undertaking.

(d) That adequate financial resources must be readily available, including the appropriation specified in subsection (15), to provide for the expeditious supply of safe and reliable alternative sources of potable water to affected persons and to provide a means for investigation and cleanup of contamination sites without delay.

(g) That the drycleaning solvent cleanup program under s. 376.3078 and the Petroleum Restoration Program must be implemented in a manner that reduces costs and improves the efficiency of rehabilitation activities to reduce the

51 significant backlog of contaminated sites eligible for state-
52 funded rehabilitation and the corresponding threat to the public
53 health, safety, and welfare, water resources, and the
54 environment.

55 (2) INTENT AND PURPOSE.—

56 (a) It is the intent of the Legislature to establish the
57 Inland Protection Trust Fund to serve as a repository for funds
58 which will enable the department to respond without delay to
59 incidents of inland contamination related to the storage of
60 drycleaning solvents, petroleum, and petroleum products in order
61 to protect the public health, safety, and welfare and to
62 minimize environmental damage.

63 (b) It is the intent of the Legislature that the
64 department implement rules and procedures to improve the
65 efficiency and productivity of the drycleaning solvent cleanup
66 program under s. 376.3078 and the Petroleum Restoration Program.
67 The department is directed to implement rules and policies to
68 eliminate and reduce duplication of site rehabilitation efforts,
69 paperwork, and documentation, and micromanagement of site
70 rehabilitation tasks. The department shall make efficiency and
71 productivity a priority in the administration of the Petroleum
72 Restoration Program and to this end, when necessary, shall use
73 petroleum program contracted services to improve the efficiency
74 and productivity of the program. Furthermore, when implementing
75 rules and procedures to improve such efficiency and

76 | productivity, the department shall recognize and consider the
 77 | potential value of utilizing contracted inspection and
 78 | professional resources to efficiently and productively
 79 | administer the program.

80 | (3) CREATION.—There is created the Inland Protection Trust
 81 | Fund, hereinafter referred to as the "fund," to be administered
 82 | by the department. This fund shall be used by the department as
 83 | a nonlapsing revolving fund, consisting of the appropriation
 84 | specified in subsection (15), for carrying out the purposes of
 85 | this section and ss. 376.3073 and 376.3078 ~~s. 376.3073~~. To this
 86 | fund shall also be credited all penalties, judgments,
 87 | recoveries, reimbursements, loans, and other fees and charges
 88 | related to the implementation of this section and s. 376.3073
 89 | and the excise tax revenues levied, collected, and credited
 90 | pursuant to ss. 206.9935(3) and 206.9945(1)(c). Charges against
 91 | the fund shall be made pursuant to this section.

92 | (4) USES.—Whenever, in its determination, incidents of
 93 | inland contamination related to the storage of drycleaning
 94 | solvents, petroleum, or petroleum products may pose a threat to
 95 | the public health, safety, or welfare, water resources, or the
 96 | environment, the department shall obligate moneys available in
 97 | the fund to provide for:

98 | (a) Prompt investigation and assessment of contamination
 99 | sites.

100 | (b) Expeditious restoration or replacement of potable

101 water supplies as provided in s. 376.30(3)(c)1.

102 (c) Rehabilitation of contamination sites, which shall
103 consist of cleanup of affected soil, groundwater, and inland
104 surface waters, using the most cost-effective alternative that
105 is technologically feasible and reliable and that provides
106 adequate protection of the public health, safety, and welfare,
107 and water resources, and that minimizes environmental damage,
108 pursuant to the site selection and cleanup criteria established
109 by the department under subsection (5), except that this
110 paragraph does not authorize the department to obligate funds
111 for payment of costs which may be associated with, but are not
112 integral to, site rehabilitation, such as the cost for
113 retrofitting or replacing petroleum storage systems.

114 (d) Maintenance and monitoring of contamination sites.

115 (e) Inspection and supervision of activities described in
116 this subsection.

117 (f) Payment of expenses incurred by the department in its
118 efforts to obtain from responsible parties the payment or
119 recovery of reasonable costs resulting from the activities
120 described in this subsection.

121 (g) Payment of any other reasonable costs of
122 administration, including those administrative costs incurred by
123 the Department of Health in providing field and laboratory
124 services, toxicological risk assessment, and other assistance to
125 the department in the investigation of drinking water

126 | contamination complaints and costs associated with public
127 | information and education activities.

128 | (h) Establishment and implementation of the compliance
129 | verification program as authorized in s. 376.303(1)(a),
130 | including contracting with local governments or state agencies
131 | to provide for the administration of such program through
132 | locally administered programs, to minimize the potential for
133 | further contamination sites.

134 | (i) Funding of the provisions of ss. 376.305(6), and
135 | 376.3072, and 376.3078.

136 | (j) Activities related to removal and replacement of
137 | petroleum storage systems, exclusive of costs of any tank,
138 | piping, dispensing unit, or related hardware, if soil removal is
139 | approved as a component of site rehabilitation and requires
140 | removal of the tank where remediation is conducted under this
141 | section or if such activities were justified in an approved
142 | remedial action plan.

143 | (k) Reasonable costs of restoring property as nearly as
144 | practicable to the conditions which existed before activities
145 | associated with contamination assessment or remedial action
146 | taken under s. 376.303(4).

147 | (l) Repayment of loans to the fund.

148 | (m) Expenditure of sums from the fund to cover ineligible
149 | sites or costs as set forth in subsection (13), if the
150 | department in its discretion deems it necessary to do so. In

151 such cases, the department may seek recovery and reimbursement
152 of costs in the same manner and pursuant to the same procedures
153 established for recovery and reimbursement of sums otherwise
154 owed to or expended from the fund.

155 (n) Payment of amounts payable under any service contract
156 entered into by the department pursuant to s. 376.3075, subject
157 to annual appropriation by the Legislature.

158 (o) Drycleaning solvent remediation on eligible sites in
159 the drycleaning solvent cleanup program and petroleum
160 remediation pursuant to this section throughout a state fiscal
161 year. The department shall establish a process to uniformly
162 encumber appropriated funds throughout a state fiscal year and
163 shall allow for emergencies and imminent threats to public
164 health, safety, and welfare, water resources, and the
165 environment as provided in paragraph (5) (a). This paragraph does
166 not apply to appropriations associated with the free product
167 recovery initiative provided in paragraph (5) (c) or the advanced
168 cleanup program provided in s. 376.30713.

169 (p) Enforcement of this section and ss. 376.30-376.317 by
170 the Fish and Wildlife Conservation Commission. The department
171 shall disburse moneys to the commission for such purpose.

172 (q) Payments for program deductibles, copayments, and
173 limited contamination assessment reports that otherwise would be
174 paid by another state agency for state-funded drycleaning
175 solvent or petroleum contamination site rehabilitation.

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177 The issuance of a site rehabilitation completion order pursuant
178 to subsection (5) or paragraph (12)(b) for contamination
179 eligible for programs funded by this section does not alter the
180 project's eligibility for state-funded remediation if the
181 department determines that site conditions are not protective of
182 human health under actual or proposed circumstances of exposure
183 under subsection (5). The Inland Protection Trust Fund may be
184 used only to fund the activities in ss. 376.30-376.317 except s.
185 376.3079 ~~ss. 376.3078 and 376.3079~~. Amounts on deposit in the
186 fund in each fiscal year must first be applied or allocated for
187 the payment of amounts payable by the department pursuant to
188 paragraph (n) under a service contract entered into by the
189 department pursuant to s. 376.3075 and appropriated in each year
190 by the Legislature before making or providing for other
191 disbursements from the fund. This subsection does not authorize
192 the use of the fund for cleanup of contamination caused
193 primarily by a discharge of solvents as defined in s.
194 206.9925(6), or polychlorinated biphenyls when their presence
195 causes them to be hazardous wastes, except solvent contamination
196 which is the result of chemical or physical breakdown of
197 petroleum products and is otherwise eligible or solvent
198 contamination from a drycleaning facility that is eligible for
199 funding in the drycleaning solvent cleanup program. Facilities
200 used primarily for the storage of motor or diesel fuels as

201 defined in ss. 206.01 and 206.86 are not excluded from
 202 eligibility pursuant to this section.

203 (12) SITE CLEANUP.—

204 (c) Drycleaning solvent facility restoration.—An annual
 205 appropriation of \$30 million shall be deposited from the fund
 206 into the Water Quality Assurance Trust Fund to be used for the
 207 drycleaning solvent cleanup program under s. 376.3078.

208 (15) APPROPRIATION.—A minimum of \$150 million is
 209 appropriated annually to the Inland Protection Trust Fund to
 210 implement this section.

211 Section 2. Paragraphs (a) and (b) of subsection (2),
 212 paragraph (m) of subsection (3), paragraphs (d) and (e) of
 213 subsection (8), and paragraph (e) of subsection (14) of section
 214 376.3078, Florida Statutes, are amended, and subsection (15) is
 215 added to that section, to read:

216 376.3078 Drycleaning facility restoration; funds; uses;
 217 liability; recovery of expenditures.—

218 (2) FUNDS; USES.—

219 (a) All penalties, judgments, recoveries, reimbursements,
 220 loans, and other fees and charges related to the implementation
 221 of this section and the tax revenues levied, collected, and
 222 credited pursuant to ss. 376.70 and 376.75, and fees collected
 223 pursuant to s. 376.303(1)(d), ~~and~~ deductibles collected pursuant
 224 to paragraph (3)(d), and the funds appropriated from the Inland
 225 Protection Trust Fund pursuant to s. 376.3071(12)(c), shall be

226 deposited into the Water Quality Assurance Trust Fund, to be
227 used upon appropriation as provided in this section and s.
228 376.3071(12)(c). Charges against the funds for drycleaning
229 facility or wholesale supply site rehabilitation shall be made
230 in accordance with ~~the provisions of~~ this section.

231 (b) Whenever, in its determination, incidents of
232 contamination by drycleaning solvents related to the operation
233 of drycleaning facilities and wholesale supply facilities may
234 pose a threat to the environment or the public health, safety,
235 or welfare, the department shall obligate moneys available
236 pursuant to this section to provide for:

237 1. Prompt investigation and assessment of the contaminated
238 drycleaning facility or wholesale supply facility sites.

239 2. Expeditious treatment, restoration, or replacement of
240 potable water supplies as provided in s. 376.30(3)(c)1.

241 3. Rehabilitation of contaminated drycleaning facility or
242 wholesale supply facility sites, which shall consist of
243 rehabilitation of affected soil, groundwater, and surface
244 waters, using the most cost-effective alternative that is
245 technologically feasible and reliable and that provides adequate
246 protection of the public health, safety, and welfare and
247 minimizes environmental damage, in accordance with the site
248 selection and rehabilitation criteria established by the
249 department under subsection (4), except that nothing in this
250 subsection shall be construed to authorize the department to

251 obligate drycleaning facility restoration funds for payment of
252 costs that may be associated with, but are not integral to,
253 drycleaning facility or wholesale supply facility site
254 rehabilitation.

255 4. Maintenance and monitoring of contaminated drycleaning
256 facility or wholesale supply facility sites.

257 5. Inspection and supervision of activities described in
258 this subsection.

259 6. Payment of expenses incurred by the department in its
260 efforts to obtain from responsible parties the payment or
261 recovery of reasonable costs resulting from the activities
262 described in this subsection.

263 7. Payment of any other reasonable costs of
264 administration, including those administrative costs incurred by
265 the Department of Health in providing field and laboratory
266 services, toxicological risk assessment, and other assistance to
267 the department in the investigation of drinking water
268 contamination complaints and costs associated with public
269 information and education activities.

270 8. Reasonable costs of restoring property as nearly as
271 practicable to the conditions that existed prior to activities
272 associated with contamination assessment or remedial action.

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274 The department may ~~shall~~ not obligate funds in excess of the sum
275 of the annual appropriation plus the appropriation specified in

276 | s. 376.3071(12)(c).

277 | (3) REHABILITATION LIABILITY.—

278 | (m) The owner, operator, and either the real property
 279 | owner or agent of the real property owner may apply for the
 280 | drycleaning solvent ~~contamination~~ cleanup program by jointly
 281 | submitting a completed application package to the department
 282 | pursuant to the rules that shall be adopted by the department.
 283 | If the application cannot be jointly submitted, then the
 284 | applicant shall provide notice of the application to other
 285 | interested parties. After reviewing the completed application
 286 | package, the department may ~~shall~~ notify the applicant in
 287 | writing as to whether the drycleaning facility or wholesale
 288 | supply facility is eligible for the program. If the department
 289 | denies eligibility for a completed application package, the
 290 | notice of denial shall specify the reasons for the denial,
 291 | including specific and substantive findings of fact, and shall
 292 | constitute agency action subject to the provisions of chapter
 293 | 120. For the purposes of ss. 120.569 and 120.57, the real
 294 | property owner and the owner and operator of a drycleaning
 295 | facility or wholesale supply facility which is the subject of a
 296 | decision by the department with regard to eligibility shall be
 297 | deemed to be parties whose substantial interests are determined
 298 | by the department's decision to approve or deny eligibility.

299 | (8) SCORING SYSTEM APPLICATION.—

300 | (d) Assignments for program tasks or sites to be conducted

301 by state contractors ~~shall be made according to the current~~
302 ~~priority list~~ and shall be based on the department scoring
303 system created pursuant to paragraph (15) (b) ~~determination of~~
304 ~~contractor logistics, geographical considerations, and other~~
305 ~~criteria the department determines are necessary to achieve~~
306 ~~cost-effective site rehabilitation.~~

307 (e) Assignments for the program tasks or sites shall be
308 made beginning with the highest-ranked sites on the priority
309 list at the effective date the assignment is made and proceed
310 through lower-ranked sites.

311 (14) ADVANCED SITE ASSESSMENT.—It is in the public
312 interest, and of substantial environmental and economic benefit
313 to the state, to provide an opportunity to conduct site
314 assessment on a limited basis at contaminated sites in advance
315 of the ranking of the sites on the priority list as specified in
316 subsection (8).

317 (e) Available funding for advanced site assessments may
318 not exceed 10 percent of the annual Water Quality Assurance
319 Trust Fund appropriation for the drycleaning solvent cleanup
320 program under this section plus the appropriation specified in
321 s. 376.3071(12) (c).

322 (15) STATE CONTRACTOR PARTICIPATION AND SCORING SYSTEM.—

323 (a) The department must have at least 25 individual state
324 contractors participating in the drycleaning solvent cleanup
325 program by December 31, 2018.

326 (b) The department shall by rule create a system for
327 scoring contractors to be assigned to drycleaning solvent
328 cleanup program tasks and sites. Such system, at a minimum, must
329 consider the contractor's qualifications, the contractor's
330 rates, and any of the contractor's performance evaluations for
331 previous work performed pursuant to this section.

332 Section 3. This act shall take effect July 1, 2018.