

By Senator Grimsley

26-01185-18

20181438__

1 A bill to be entitled
2 An act relating to inland protection; amending s.
3 376.3071, F.S.; revising legislative findings;
4 revising legislative intent; authorizing the Inland
5 Protection Trust Fund to be used for the cleanup of
6 drycleaning solvents under the drycleaning solvent
7 cleanup program; specifying an appropriation to the
8 Water Quality Assurance Trust Fund for use in the
9 drycleaning solvent cleanup program; specifying an
10 annual appropriation; amending s. 376.3078, F.S.;
11 revising the sources of funds for the drycleaning
12 solvent cleanup program; revising the maximum amount
13 of funds the Department of Environmental Protection
14 may 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.

26
27 Be It Enacted by the Legislature of the State of Florida:

28
29 Section 1. Paragraphs (a), (d), and (g) of subsection (1),

26-01185-18

20181438__

30 paragraphs (a) and (b) of subsection (2), and subsections (3)
31 and (4) of section 376.3071, Florida Statutes, are amended,
32 paragraph (c) is added to subsection (12) of that section, and
33 subsection (15) is added to that section, to read:

34 376.3071 Inland Protection Trust Fund; creation; purposes;
35 funding.—

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

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

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

47 (g) That the drycleaning solvent cleanup program under s.
48 376.3078 and the Petroleum Restoration Program must be
49 implemented in a manner that reduces costs and improves the
50 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

26-01185-18

20181438__

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

26-01185-18

20181438__

88 related to the implementation of this section, ss. 376.3073 and
89 376.3078, ~~and s. 376.3073~~ and the excise tax revenues levied,
90 collected, and credited pursuant to ss. 206.9935(3) and
91 206.9945(1)(c). Charges against the fund shall be made pursuant
92 to this section.

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

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

101 (b) Expeditious restoration or replacement of potable water
102 supplies as provided in s. 376.30(3)(c)1.

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

115 (d) Maintenance and monitoring of contamination sites.

116 (e) Inspection and supervision of activities described in

26-01185-18

20181438__

117 this subsection.

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

122 (g) Payment of any other reasonable costs of
123 administration, including those administrative costs incurred by
124 the Department of Health in providing field and laboratory
125 services, toxicological risk assessment, and other assistance to
126 the department in the investigation of drinking water
127 contamination complaints and costs associated with public
128 information and education activities.

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

135 (i) Funding of the provisions of ss. 376.305(6), and
136 376.3072, and 376.3078.

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

144 (k) Reasonable costs of restoring property as nearly as
145 practicable to the conditions which existed before activities

26-01185-18

20181438__

146 associated with contamination assessment or remedial action
147 taken under s. 376.303(4).

148 (l) Repayment of loans to the fund.

149 (m) Expenditure of sums from the fund to cover ineligible
150 sites or costs as set forth in subsection (13), if the
151 department in its discretion deems it necessary to do so. In
152 such cases, the department may seek recovery and reimbursement
153 of costs in the same manner and pursuant to the same procedures
154 established for recovery and reimbursement of sums otherwise
155 owed to or expended from the fund.

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

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

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

173 (q) Payments for program deductibles, copayments, and
174 limited contamination assessment reports that otherwise would be

26-01185-18

20181438__

175 paid by another state agency for state-funded drycleaning
176 solvent or petroleum contamination site rehabilitation.

177
178 The issuance of a site rehabilitation completion order pursuant
179 to subsection (5) or paragraph (12)(b) for contamination
180 eligible for programs funded by this section does not alter the
181 project's eligibility for state-funded remediation if the
182 department determines that site conditions are not protective of
183 human health under actual or proposed circumstances of exposure
184 under subsection (5). The Inland Protection Trust Fund may be
185 used only to fund the activities in ss. 376.30-376.317 except s.
186 376.3079 ~~ss. 376.3078 and 376.3079~~. Amounts on deposit in the
187 fund in each fiscal year must first be applied or allocated for
188 the payment of amounts payable by the department pursuant to
189 paragraph (n) under a service contract entered into by the
190 department pursuant to s. 376.3075 and appropriated in each year
191 by the Legislature before making or providing for other
192 disbursements from the fund. This subsection does not authorize
193 the use of the fund for cleanup of contamination caused
194 primarily by a discharge of solvents as defined in s.
195 206.9925(6), or polychlorinated biphenyls when their presence
196 causes them to be hazardous wastes, except solvent contamination
197 that ~~which~~ is the result of chemical or physical breakdown of
198 petroleum products and is otherwise eligible or solvent
199 contamination from a drycleaning facility that is eligible for
200 funding in the drycleaning solvent cleanup program. Facilities
201 used primarily for the storage of motor or diesel fuels as
202 defined in ss. 206.01 and 206.86 are not excluded from
203 eligibility pursuant to this section.

26-01185-18

20181438

204 (12) SITE CLEANUP.—

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

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

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

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

219 (2) FUNDS; USES.—

220 (a) All penalties, judgments, recoveries, reimbursements,
221 loans, and other fees and charges related to the implementation
222 of this section and the tax revenues levied, collected, and
223 credited pursuant to ss. 376.70 and 376.75, and fees collected
224 pursuant to s. 376.303(1)(d); ~~and~~ deductibles collected
225 pursuant to paragraph (3)(d); and the funds appropriated from
226 the Inland Protection Trust Fund pursuant to s. 376.3071(12)(c),
227 shall be deposited into the Water Quality Assurance Trust Fund,
228 to be used upon appropriation as provided in this section and s.
229 376.3071(12)(c). Charges against the funds for drycleaning
230 facility or wholesale supply site rehabilitation shall be made
231 in accordance with ~~the provisions of~~ this section.

232 (b) Whenever, in its determination, incidents of

26-01185-18

20181438__

233 contamination by drycleaning solvents related to the operation
234 of drycleaning facilities and wholesale supply facilities may
235 pose a threat to the environment or the public health, safety,
236 or welfare, the department shall obligate moneys available
237 pursuant to this section to provide for:

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

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

242 3. Rehabilitation of contaminated drycleaning facility or
243 wholesale supply facility sites, which shall consist of
244 rehabilitation of affected soil, groundwater, and surface
245 waters, using the most cost-effective alternative that is
246 technologically feasible and reliable and that provides adequate
247 protection of the public health, safety, and welfare and
248 minimizes environmental damage, in accordance with the site
249 selection and rehabilitation criteria established by the
250 department under subsection (4), except that nothing in this
251 subsection shall be construed to authorize the department to
252 obligate drycleaning facility restoration funds for payment of
253 costs that may be associated with, but are not integral to,
254 drycleaning facility or wholesale supply facility site
255 rehabilitation.

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

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

260 6. Payment of expenses incurred by the department in its
261 efforts to obtain from responsible parties the payment or

26-01185-18

20181438__

262 recovery of reasonable costs resulting from the activities
263 described in this subsection.

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

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

274
275 The department may ~~shall~~ not obligate funds in excess of the sum
276 of the annual appropriation plus the appropriation specified in
277 s. 376.3071(12)(c).

278 (3) REHABILITATION LIABILITY.—

279 (m) The owner, operator, and either the real property owner
280 or agent of the real property owner may apply for the
281 drycleaning solvent ~~contamination~~ cleanup program by jointly
282 submitting a completed application package to the department
283 pursuant to the rules that shall be adopted by the department.
284 If the application cannot be jointly submitted, then the
285 applicant shall provide notice of the application to other
286 interested parties. After reviewing the completed application
287 package, the department may ~~shall~~ notify the applicant in
288 writing as to whether the drycleaning facility or wholesale
289 supply facility is eligible for the program. If the department
290 denies eligibility for a completed application package, the

26-01185-18

20181438__

291 notice of denial shall specify the reasons for the denial,
292 including specific and substantive findings of fact, and shall
293 constitute agency action subject to the provisions of chapter
294 120. For the purposes of ss. 120.569 and 120.57, the real
295 property owner and the owner and operator of a drycleaning
296 facility or wholesale supply facility which is the subject of a
297 decision by the department with regard to eligibility shall be
298 deemed to be parties whose substantial interests are determined
299 by the department's decision to approve or deny eligibility.

300 (8) SCORING SYSTEM APPLICATION.—

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

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

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

318 (e) Available funding for advanced site assessments may not
319 exceed 10 percent of the annual Water Quality Assurance Trust

26-01185-18

20181438__

320 Fund appropriation for the drycleaning solvent cleanup program
321 under this section plus the appropriation specified in s.
322 376.3071(12)(c).

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

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

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

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