SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: March 19, 1998 Revised: _____ _____ _____ _____

Subject: Drycleaning Solvent Cleanup

	Analyst	Staff Director	Reference	Action
1.	Branning	Voigt	NR	Favorable/CS
2.			WM	
3.				
4.				
5.				

I. Summary:

This bill addresses some of the concerns expressed regarding the drycleaning solvent contaminated site cleanup program. Provides intent regarding voluntary cleanup of drycleaning solvent contaminated sites. Clarifies provisions regarding the payment of deductibles. Provides liability immunity for certain adjacent landowners. Requires the Department of Environmental Protection (DEP) to adopt cleanup criteria which incorporates risk-based corrective-action principles. Clarifies third-party liability insurance provisions. Provides that dry drop-off facilities are subject to the 2-percent gross receipts tax on drycleaning. Deletes the requirement that certain tax information must appear on the consumer's receipt. Provides that eligibility shall not be denied based on the nonpayment of taxes if certain conditions are met.

This bill amends sections 376.30, 376.301, 376.303, 376.3078, 376.308, 376.313, 376.70, 376.75, 287.0595, 316.301, and 213.053, Florida Statutes.

II. Present Situation:

In 1994, serious concerns were expressed regarding the contamination and potential health and environmental risks as a result of the discharge of solvents commonly used in the drycleaning process. Due to the nature of drycleaning solvents, cleanup of these types of contaminated sites was expected to be both difficult and costly. As a result, small, independent owners of drycleaning facilities found that they did not have the financial resources to investigate, clean up, and monitor these sites. Drycleaning solvents are considered to be hazardous substances under both state and federal law; therefore, the owner or operator or a drycleaning facility may be subject to third party liability as a result of damages resulting from a discharge of drycleaning solvents. Drycleaning solvent contaminated sites were not eligible for cleanup under the underground petroleum storage tanks program, and the Water Quality Assurance Trust Fund did not have the financial resources

to address the problem. As a result, the 1994 Legislature established the drycleaning contamination cleanup program which was modeled somewhat after the underground petroleum storage tank program.

Section 376.3078, F.S., is Florida's law pertaining to the drycleaning site rehabilitation program. The program is administered by the Department of Environmental Protection (DEP). Funding for the program comes from three main sources: a 2-percent tax on the gross receipts on each drycleaning facility (s. 376.70, F.S.); a $5-per-gallon tax on perchloroethylene used in the drycleaning process (s. 376.75, F.S.); and an annual registration fee of $100 for each drycleaning facility or wholesale supply facility owned and currently in operation. [s. 376.303(1)(d), F.S.] The proceeds from these revenue sources are deposited into the Water Quality Assurance Trust Fund and are used for the rehabilitation of contaminated drycleaning sites.

Section 376.3078(3)(a), F.S., provides the eligibility criteria for facilities to qualify for participation in the program. Those criteria include:

- The facility must be registered with the DEP.
- The facility is determined by the DEP to be in compliance with the department's drycleaning rules on or after November 19, 1980 [the date on which the federal Resource Conservation and Recovery Act (RCRA) hazardous waste regulations went into effect.]
- The facility has not been operated in a grossly negligent manner at any time on or after November 19, 1980.
- The facility is not listed or qualified for listing on the National Priority List (Superfund.)
- The facility is not under an order from the EPA pursuant to RCRA and does not have or is required to have a hazardous waste treatment, storage, or disposal facility permit; a postclosure permit; or a permit pursuant to the federal Hazardous and Solid Waste Amendments of 1984.

Further, the real property owner or the owner or operator of the drycleaning facility or the wholesale supply facility must not have willfully concealed the discharge of drycleaning solvents; has remitted all taxes due; has provided evidence of contamination by drycleaning solvents pursuant to DEP rules; and has reported the contamination prior to December 31, 2005.

Generally, the program provides that the cleanup costs are to be absorbed at the expense of the drycleaning funds available in the Water Quality Assurance Trust Fund. However, deductibles must be paid by the applicant. The deductibles are as follows:

- For contamination reported to DEP by June 30, 1997--$1,000 per incident.

- For contamination reported to DEP from July 1, 1997 through June 30, 2001--$5,000 per incident.

- For contamination reported to DEP from July 1, 2001 through December 31, 2005--$10,000 per incident.

For contamination reported after December 31, 2005, no cleanup costs will be absorbed at the expense of the drycleaning restoration funds. In other words, contamination reported after this date must be cleaned up at the expense of the reporting entity.

Drycleaning facility owners or operators, wholesale supply facilities, and real property owners are afforded certain liability protections and are not subject to administrative or judicial action brought by or on behalf of any person, or state or local government, for drycleaning solvents discharges provided certain specified conditions are met.

Each owner or operator of a currently operating drycleaning facility must obtain third-party liability insurance for $1 million.

A real property owner may conduct a voluntary cleanup pursuant to department rules whether or not the facility has been determined by the department to be eligible for the drycleaning solvent cleanup program. A real property owner or any other party that conducts such voluntary cleanup, however, may not seek cost recovery from the DEP or the Water Quality Assurance Trust Fund, but is immune from liability to any person, or state or local government, to compel site rehabilitation or pay for the cost of rehabilitation of environmental contamination, or to pay any fines or penalties regarding rehabilitation, so long as the real property owner complies with certain specified conditions.

During the interim preceding the 1998 legislative session, the Senate Natural Resources Committee undertook a review of the drycleaning site cleanup program to address many of the concerns that several legislators had regarding the administration and funding of this program. The actual number of sites which may ultimately be eligible for cleanup under the drycleaning contamination site cleanup program is difficult to predict and is subject to debate between the industry and the DEP. One reason for this is that a facility may apply for eligibility in the program through December 31, 2005. For reasons not fully known, several facilities have delayed applying for inclusion in the program. Such delays, however, can be costly for the facility since over the life of the program the deductibles that must be paid by the applicant increase. There appears to be a pattern of increased applications for inclusion in the program each time a statutory deadline occurs regarding the increase in the deductibles the applicant must pay.

The DEP has estimated that there may be up to 2,800 potential cleanup sites over the life of the program. The industry has questioned the validity of this estimate since it includes sites which have not yet applied for the program and dry drop-off sites where there may have been no solvent use. As of August, 1997, there were 1,648 active drycleaning facilities registered with the DEP and another 914 dry drop-off facilities which may have a history of solvent use on the premises. In

addition, there were 181 former drycleaning facilities registered and 18 wholesale supply facilities registered. As of August, 1997, there were 1130 applications to the program. At the time of the committee's report, 707 had been deemed eligible for the program. It was, therefore, recommended that the eligibility period for qualifying for state funding be reduced from 2005 to December 31, 1998. This would help to define the scope of the problem and provide certainty as to the total number of sites the state would be obligated to clean up.

Also, there is significant difference of opinion between the drycleaning industry and the DEP as to the average cost to clean up a site contaminated with perchloroethylene (PERC). Assuming that the number of eligible sites may be as high as 2,800 and using a DEP cost cleanup estimate of $500,000 per site, it will take $1.4 billion to rehabilitate these sites. If the number of eligible sites is one-half of the DEP estimate, or 1,400 sites, and the average cleanup cost per site is one-half of the DEP estimate, or $250,000, the total amount needed for the program would be $350 million. At the current rate of revenue of $8 million a year, the total revenues available for the program over the next 20 years is expected to be $160 million.

III. Effect of Proposed Changes:

This bill addresses some of the concerns expressed regarding the drycleaning solvent contaminated site cleanup program.

Section 1: Section 376.30, F.S., is amended to include drycleaning solvents in legislative intent regarding pollution.

Section 2: Section 376.301, F.S., is amended to define "antagonistic effects," "contaminant," "contaminated site" and "laundering on a wash, dry, and fold basis,"; and amends the definitions of "additive effects," "drycleaning facility," "engineering controls," "institutional controls," "natural attenuation," "source removal," and "synergistic effects."

Section 3: Section 376.303, F.S., is amended to provide for late fees for registration renewals.

Section 4: Section 376.3078, F.S., is amended to provide intent regarding voluntary cleanup of drycleaning solvent contaminated sites.

For purposes of determining eligibility, a drycleaning facility or wholesale supply facility was operated in a grossly negligent manner if the DEP determines that the owner or operator of the drycleaning facility or wholesale supply facility:

- Willfully discharged drycleaning solvents on the soils or into the waters of the state after November 19, 1980, with the knowledge, intent, and purpose that the discharge would result in harm to the environment, public health, or result in a violation of the law;

- Willfully concealed a discharge with the knowledge, intent, and purpose that the concealment would result in harm to the environment, public health, or result in a violation of the law; or

- Willfully violated a local, state, or federal law or rule concerning the operation of a drycleaning facility or a wholesale supply facility with knowledge, intent, and purpose that the act would result in harm to the environment, public health, or result in a violation of the law.

The provisions regarding the payment of deductibles are clarified. The bill also moves the deadline for applying for eligibility in the program from December 31, 2005 to December 31, 1998.

Clarifies that the owner, operator, and *either* the real property owner or agent of the real property owner may apply jointly for the Drycleaning Contamination Cleanup Program.

A person whose property becomes contaminated due to geophysical or hydrologic reasons from the operation of a nearby drycleaning or wholesale supply facility and whose property has never bee occupied by a business that utilized or stored drycleaning solvents or similar constituents is afforded immunity from certain administrative and judicial actions under certain specified conditions.

The DEP must adopt, by rule, the rehabilitation program tasks that comprise a site rehabilitation program, and the level at which a rehabilitation program task and a site rehabilitation program may be deemed completed. In establishing the rule, the DEP shall incorporate, to the maximum extent feasible, risk-based corrective-action principles to achieve protection of human health and safety and the environment in a cost-effective manner. The rule shall also include protocols for the use of natural attenuation and the issuance of “no further action” letters. The cleanup criteria to be adopted by rule is specified.

The third-party liability insurance provisions for drycleaning facilities are clarified.

Persons who conduct voluntary cleanup are afforded immunity from liability to compel cleanup under certain conditions. This immunity shall continue to apply to any real property owner who transfers, conveys, leases, or sells property on which a drycleaning facility is located so long as the voluntary cleanup activities continue.

Upon completion of site rehabilitation, additional site rehabilitation is not required unless it can be demonstrated that:

1. Fraud was committed regarding completion of site rehabilitation;

2. New information confirms the existence of area of previously unknown contamination which exceeds the site-specific rehabilitation levels, or which otherwise pose the threat of real and substantial harm to public health, safety, or the environment;

3. The remediation efforts failed to achieve the site rehabilitation criteria;

4. The level of risk is increased beyond the acceptable risk due to substantial changes in exposure conditions, such as a change in land use from nonresidential to residential use; or

5. A new discharge occurs at the drycleaning site subsequent to a determination of eligibility for participation in the drycleaning program.

In an effort to secure federal liability protection for persons willing to undertake remediation responsibility at a drycleaning site, the DEP shall attempt to negotiate a memorandum of agreement or similar document with the U.S. Environmental Protection Agency (EPA), whereby the EPA agrees to forego enforcement of federal corrective action authority at drycleaning sites that have received a site determination from the DEP or that are in the process of implementing a voluntary cleanup agreement.

Section 5: Section 376.308(6), F.S., is amended to provide that nothing in ch. 376, F.S., shall affect, void, or defeat any immunity of any real property owner under s. 376.3078, F.S.

Section 6: Section 376.313(5), F.S., is amended to correct a cross-reference.

Section 7: Section 376.70, F.S., is amended to provide that dry drop-off facilities are subject to the 2-percent gross receipts tax on drycleaning. The owner or operator of a dry drop-off facility is required to register with the Department of Revenue and pay a registration fee of $30.

Gross receipts arising from charges for services taxable pursuant to this section to persons who also impose charges to others for those same services are exempt from the gross receipts tax.

The requirement that certain drycleaning facilities include a statement on the drycleaning services receipt to the consumer pertaining to the imposition of the gross receipts tax is deleted. Gross receipts arising from charges for services taxable pursuant to this section to persons who also impose charges to others for those same services are exempt from the gross receipts tax imposed pursuant to this section.

The DEP shall not deny eligibility in the drycleaning solvent cleanup program because of the facility's or operator's failure to remit all taxes due unless the Department of Revenue:

- Ascertains the amount of the delinquent tax, if any, and communicates this amount in writing to the drycleaning solvent cleanup program applicant and the real property owner; and

- Provides a method to the facility owner, the facility operator, and the real property owner for the payment of the taxes.

The owner or operator of a drycleaning facility must demonstrate to the satisfaction of the Department of Revenue that failure to remit all taxes due in a timely manner was not due to willful and overt actions to avoid payment of taxes.

Section 8: Section 376.75, F.S., is amended to delete a provision that the drycleaning facility must include a statement on the consumers receipt regarding the imposition of the tax on perchloroethylene.

Section 9: Section 287.0595(1), F.S., is amended to correct a cross-reference.

Section 10: Section 316.302, F.S., is amended to correct a cross-reference.

Section 11: Section 213. 053, F.S., is amended to allow the Department of Revenue to provide information relative to ss. 376.70 and 376.75, F.S., to the DEP in the conduct of its official business and to the facility owner, facility operator, and real property owners.

Section 12: This act takes effect July 1, 1998.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

This bill would impose a $75 late fee for registration renewals that are more than 30 days late.

B. Private Sector Impact:

This bill would impose a late fee for drycleaning facilities and wholesale supply facilities that do not pay their renewal fees within 30 days of billing. As of June 1997, there were 1597 drycleaning facilities registered with the DEP and 18 wholesale suppliers. Late registration is a real problem for the program. The DEP has indicated that there were 352 facilities that are more than 6 weeks late, 254 facilities over a year late, and 86 facilities that have never paid their registration fee. These facilities would be subject to the $75 late fee as well as the $100 registration renewal fee.

The provisions in the bill requiring the DEP to adopt a cleanup criteria rule which incorporates risk-based corrective-action measures is intended to provide more flexibility in the cleanup of drycleaning solvent contaminated sites while being protective of human health and the environment. This may help to reduce the overall cost of site cleanup and allow more sites to be cleaned up a little faster.

C. Government Sector Impact:

On Friday, March 13, 1998, the revenue estimating conference met and considered the revenue impacts of this bill. The projected revenue from registrations with the DEP for FY 1998-1999 was $130,500 and the projected revenue from gross receipts tax was $6.6 million. There are no data on dry drop-off facilities, especially those retail stores that serve as a drycleaning pickup and drop-off site but are not part of a drycleaning business. It was assumed that 5 to 10 percent of current gross receipts tax revenue arises from sales of drycleaning to non-affiliated stores and that these stores mark up the price of cleaning by 30 percent. These stores are assumed to do $300 to $500 per week in drycleaning business. Assuming 5 percent of drycleaning is done for unaffiliated stores, the net new tax that the program would be receive would be $99,000. Assuming the high percentage of 10 percent, the net new tax would be $198,000. The revenue estimating conference felt that the $100,000 increase was a more realistic tax revenue increase, but caution that there is no firm data for these assumptions.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.