

STORAGE NAME: h4117s1.ep

DATE: April 7, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
ENVIRONMENTAL PROTECTION
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 4117

RELATING TO: Drycleaning Solvent Cleanup

SPONSOR(S): Committee on Environmental Protection, and Representative(s) Putnam and Dockery

COMPANION BILL(S): SB 244 by Senator Latvala

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) ENVIRONMENTAL PROTECTION YEAS 10 NAYS 0
- (2) GENERAL GOVERNMENT APPROPRIATIONS
- (3)
- (4)
- (5)

I. SUMMARY:

This bill revises legislative intent regarding drycleaning solvents. Definitions and fees are provided. Clarification is provided in the bill for the conditions under which restoration funds can be spent. Eligibility criteria for the drycleaning Cleanup Program (program) is revised. Liability provisions under the program, including liability immunity for adjacent property owners, are outlined. Rehabilitation criteria for the program are provided, these criteria will incorporate risk based corrective action principles. Provides criteria under which contaminated sites may be reopened. Provides that these criteria for cleanup do not constitute reuse and disposal criteria. Requires third-party liability insurance coverage for each operating facility. The Department of Environmental Protection (department) will be required to give priority approval of permits for voluntary cleanup. Immunity for real property owners is preserved. The department is directed to negotiate with the United States Environmental Protection Agency (EPA) to forego enforcement of federal authority. Provides that dry drop-off facilities are subject to the 2-percent gross receipts tax on drycleaning. Provides that eligibility shall not be denied based on the nonpayment of taxes if certain conditions are met. The deadline for applying for eligibility in the program is moved from December 31, 2005, to December 31, 1998.

This bill provides that the act shall take effect on July 1, 1998.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

The 1994 Legislature enacted the Drycleaning Contamination Cleanup Act to provide a source of funding for rehabilitating sites and drinking water supplies contaminated by drycleaning solvents. The act modified Chapter 376 F.S., to provide for the establishment of a registration program, under which drycleaning facilities and wholesale suppliers must register by June 30, 1995. Laundry facilities, uniform rental and linen supply companies were included in the definition of drycleaning facility. An annual registration fee was established for drycleaning facilities and wholesale suppliers. A 1.5 percent tax on the monthly gross receipts of drycleaning, laundering, uniform rental, and linen supply service businesses was established to begin on October 1, 1994. This tax was to increase to 2 percent on January 1, 2004. Also established by the 1994 legislation was a \$5 per gallon tax on the sale of perchlorethylene (perc). These taxes and fees were to be deposited in the Hazardous Waste Management Trust Fund to be used for the drycleaning facility and wholesale supplier site rehabilitation. The act also provided an exemption to eligible drycleaning facilities and wholesale supply facilities from liability for cleanup. The owner, operator, or any person who otherwise could be liable as a result of the operation of an eligible drycleaning facility or wholesale supply facility, would not be subject to administrative or judicial action brought by or on behalf of any state or local government or any person to compel cleanup or pay cleanup costs under certain circumstances.

In 1995, the Legislature revised the Drycleaning Contamination Cleanup Act. The provisions of the 1995 legislation included: a clarification of site eligibility requirements; procedures for ranking and prioritizing sites for rehabilitation; containment construction protocols and spill reporting and cleanup procedures; a speed up of the effective date of a gross receipts tax increase and a repeal of the gross receipts tax exemption concerning sale for resale of perc; and an exemption from all taxes and program eligibility provisions for uniform rental and linen supply companies. Also included was a provision requiring drycleaning facilities who imposed portions of these taxes on their customers, to disclose on receipts a statement that the imposition of these taxes was a done at the request of the Florida Dry Cleaners Coalition. The legislation also created a voluntary cleanup program in which participating sites would forego any eligibility for reimbursements. The removal of the uniform rental and linen supply companies from the program resulted in an estimated \$5 million reduction in annual revenues.

The program is administered by the department. Funding from the program comes from three main sources: a 2% tax on gross receipts on businesses engaged in drycleaning and laundering; a \$5 per gallon tax on perc sold to drycleaning facilities in the state; a deductible payment based on the date of application; and the \$100 registration fees collected from operating drycleaning and wholesale supply facilities. The drycleaning industry's estimated annual revenues for the program is \$12 to \$15 million. The actual annual collections have averaged \$7.6 million.

Eligibility criteria for facilities to qualify for participation in the program are as follows:

- The facility must be registered with the DEP.

STORAGE NAME: h4117s1.ep

DATE: April 7, 1998

PAGE 3

- 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 which replaced the Hazardous Waste Management Trust Fund. Deductibles must be paid by the applicant and 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.

B. EFFECT OF PROPOSED CHANGES:

The bill will revise intent language with respect to threats on surface and ground waters to specifically include drycleaning solvents as well as pollutants and hazardous substances. Definitions for "antagonistic effects" and "contaminated site" and are provided. Definitions for "additive effects", "synergistic effects" and "drycleaning facility" are revised.

The bill will specifically exclude any site that is operated or has at some time in the past operated as a uniform rental or linen supply facility from eligibility for the payment of costs for site restoration from drycleaning facility restoration funds.

It will be required that determinations of non-compliance be made within a reasonable time after the department's discovery and specifies that compliance determinations will be based on department rules regulating drycleaning solvents, drycleaning facilities, or wholesale supply facilities.

The bill also provides revisions to eligibility determinations, liability protections, the provision of cleanup rehabilitation criteria, and reopener criteria.

Revisions to eligibility determination:

Drycleaning facilities and wholesale supply facilities that cease to be operated as drycleaning facilities or wholesale supply facilities prior to October 1, 1994, at which there exists contamination by drycleaning solvents, will be eligible for funds as long as it was not operated in a grossly negligent manner at any time on or after November 19, 1980.

A drycleaning facility was operated in a grossly negligent manner if:

- Drycleaning solvents were willfully discharged onto 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 or public health or result in a violation of the law.
- A discharge of drycleaning solvents was concealed, with knowledge, intent, and purpose that the concealment would result in harm to the environment or public health or result in a violation of the law.
- A local, state, or federal law or rule regulating drycleaning facilities was willfully violated.

It is also required that the deductibles paid to the drycleaning facility restoration funds be paid within 60 days after receipt of billing by the department. The bill will require a payment of a late fee of \$75 for facilities that fail to pay renewal fees within 30 days of receipt of billing. Deductibles collected are to be deposited into the Water Quality Assurance Trust Fund.

All facilities not applying for the program prior to December 31, 1998, will not be eligible for the program. For contamination reported after that date, no costs will be absorbed at the expense of the drycleaning facility restoration funds. Eligibility can be canceled if any drycleaning facility or wholesale supply facility has not remitted the deductible payments.

Liability protection revisions:

A person whose property becomes contaminated due to the operation of a nearby drycleaning or wholesale supply facility and whose property has never been occupied by a business that utilized or stored drycleaning solvents or similar constituents is not subjected to administrative or judicial action to compel rehabilitation or pay for the costs of rehabilitation of sites contaminated by drycleaning solvents if:

- The landowner or person who owns and operates a business that is not a drycleaning facility or wholesale supply facility does not own and has never held ownership interest in or shared in the profits of a drycleaning facility operated at the source location.
- The landowner or business owner/operator did not participate in the operation of or management of the drycleaning facility.
- The landowner or business owner/operator did not cause, contribute to, or exacerbate the release or threat of release of any hazardous substance, through any act or omission.

The department may consider information and documentation provided by consultants, local government programs, federal agencies, or any individual that is relevant to an eligibility determination if the department provides the applicant with reasonable access to the information and its origin. Real property owners will still enjoy immunity from liability as long as voluntary cleanup activities continue.

Rehabilitation criteria:

By July 1, 1999, the Secretary of the department is to have established criteria by rule for the purpose of determining, on a site-specific basis, the rehabilitation program tasks that comprise a site rehabilitation program. The department is to incorporate Risk Based Corrective Action (RBCA) principles to achieve protection of human health and safety and the environment.

Protocols are to be included for the use of natural attenuation and the issuance of "no further action" letters. Criteria for determining what constitutes a rehabilitation program task or completion of a site rehabilitation program must:

- Consider current exposure and potential risk of exposure to humans and the environment.
- Establish the point of compliance at the source of contamination. The department is authorized to temporarily move the point of compliance to the boundary of the property while cleanup is preceding. The department can also extend the point of compliance beyond property boundaries if needed to facilitate natural attenuation, or address the current conditions of the plume.
- Ensure that the site-specific cleanup goal is that all sites contaminated with drycleaning solvents ultimately achieve the applicable cleanup target levels.
- Allow the use of institutional or engineering controls at sites contaminated with drycleaning solvents to eliminate or control potential exposure of humans or the environment. Controls must be preapproved by the department.
- Consider the additive effects of the contaminants. When the scientific data becomes available, the synergistic and antagonistic effects are also to be considered.
- Consider individual site characteristics including, but not limited to: current and projected uses of affected ground and surface water; current and projected land uses; population exposed; extent of contamination; and location of the plume.

Water quality standards of the state are to be applied as follows:

- Cleanup target levels should be the applicable state water quality standards. If standards don't exist, the cleanup target levels will be based on the minimum specified in department rule. The department is to consider calculations using a lifetime cancer risk level of $1.0E-6$, which represents 1 in one million; a hazard index of 1 or less; and the best achievable detection limit.
- Where surface waters are exposed to contaminated groundwater, the cleanup target levels will be based on the lower of the ground water or surface water standards as established by department rule.
- Alternative cleanup target levels can be used if it can be demonstrated that human health, public safety, and the environment are protected to the same degree as above.

Apply cleanup target levels for soils as follows:

- The department is to consider calculations using: a lifetime cancer risk of $1.0E-6$; a hazard index of 1 or less; the best achievable detection limit; and naturally occurring background concentration.
- Leachability based soil target levels are to be based on the protection of groundwater cleanup target levels.

- The department may set alternative cleanup target levels using site-specific modeling and risk assessment studies, that will ensure the protection of human health, public safety, and the environment.

A “no further action order” will be issued with or without conditions when cleanup target levels have been achieved, or when the person responsible for site rehabilitation can demonstrate the cleanup target level is unachievable within available technologies.

During the cleanup process, if the department fails to complete review of a technical document in a timely manner, the owner/operator/real property owner may proceed to the next site rehabilitation task. This is done at their own risk, realizing further work on those tasks may be required. This does not include requests for “no further action”, “monitoring only proposals”, or feasibility studies, these processes must be approved prior to implementation.

The department may require source removal if warranted and cost effective. The department is to reevaluate sites where source removal is complete to determine the degree of active cleanup needed to continue.

This bill requires that owners and operators of an operating drycleaning facility or wholesale supply facility must purchase third-party liability insurance for \$1 million of coverage for each operating facility by January 1, 1998. This requirement applies only if such insurance becomes available and covers liability for contamination subsequent to the effective date of the policy and prior to the effective date, retroactive to the commencement of operations.

The cleanup criteria established here does not constitute disposal or reuse criteria. Off-site disposal must still be in accordance with all applicable federal, state, and local regulations.

Reopeners criteria:

Sites can be re-opened if it is demonstrated that:

- Fraud was committed in demonstrating site conditions or completion of site rehabilitation.
- Remediation efforts failed to achieve the site rehabilitation criteria.
- A new discharge occurred at the drycleaning site subsequent to a determination of eligibility for participation in the drycleaning cleanup program.
- New information confirms the existence of an area of previously unknown contamination.
- The risk level is increased beyond the acceptable risk due to substantial changes in exposure conditions.

Other effects of the bill:

The department is directed to make an effort to secure federal liability protection for persons willing to undertake responsibility for remediation at a drycleaning site. The department is directed to negotiate a memorandum of agreement or similar document with the EPA, whereby the EPA agrees to forego enforcement of federal corrective action authority at drycleaning sites that have received a site rehabilitation completion or "no further action" determination.

This bill clarifies the application of the gross receipts tax on drop-off facilities. Owners and operators of facilities must register with the Department of Revenue. Drycleaning facilities or dry drop-off facilities operating at more than one location are required to have a single registration. Registration fees, of \$30, are to be paid to the Department of Revenue.

Provides an exemption to the Gross receipts tax for services provided to persons who also impose charges to others for those same services.

The department can't deny program eligibility solely 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, and communicates this amount in writing to the drycleaning solvent cleanup program applicant and the real property owner.
- Provides a procedure to the facility owner/operator/real property owner, for the payment of taxes.
- Allows the facility owner/operator/real property owner, a reasonable time to pay the taxes.

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

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

- (2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

- (3) any entitlement to a government service or benefit?

No.

- b. If an agency or program is eliminated or reduced:

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

- (2) what is the cost of such responsibility at the new level/agency?

N/A

- (3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

Yes, dry drop-off facilities will pay a gross receipts tax of 2%.

- b. Does the bill require or authorize an increase in any fees?

No, but it will allow for the imposition of a \$75 late fee for registration renewals that are more than 30 days late.

- c. Does the bill reduce total taxes, both rates and revenues?

No.

- d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Amends ss. 376.30, 376.301, 376.303, 376.3078, 376.308, 376.70, 376.75, 287.0595, 316.302, Florida Statutes.

E. SECTION-BY-SECTION RESEARCH:

Section 1: Amends s. 376.30, F.S., Includes drycleaning solvents in the legislative intent with respect to pollution of surface and ground waters.

Section 2: Amends s. 376.301, F.S., Provides definitions, amends current definitions.

Section 3: Amends s. 376.303, F.S., Provides that facilities failing to pay renewal fees within 30 days after receipt of billing are subject to a \$75 late fee.

Section 4: Amends s.376.3078, F.S., Provides intent regarding voluntary cleanup of drycleaning solvent contaminated sites. It also provides revisions to eligibility determinations, liability protections, the provision of cleanup rehabilitation criteria, and reopener criteria.

Section 5: Amends s. 376.308, F.S., Provides that nothing in ch. 376, FS, shall affect, void, or defeat any immunity of any real property owner under s. 376.3078, F.S.

Section 6: Amends s. 376.313, F.S., Corrects a cross-reference.

Section 7: Amends s. 376.70, F.S., Provides 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.

Section 8: Amends s. 287.0595, F.S., Corrects a cross-reference.

Section 9: Amends s. 316.302, F.S., Corrects a cross-reference.

Section 10: Amends s. 213.053, F.S., Allows the Department of Revenue to provide information relative to ss. 376.70 and 376.75, F.S., to the department in the conduct of its official business and to the facility owner, facility operator, and real property owners.

Section 11: This act takes effect July 1, 1998.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See fiscal comments.

2. Recurring Effects:

See fiscal comments.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

There will be a \$75 late fee for drycleaning facilities and wholesale supply facilities that do not pay their renewal fees within 30 days of billing.

2. Direct Private Sector Benefits:

The provisions of the bill requiring RBCA principles in cleanup 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 faster.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

According to the department, the program is underfunded and projected revenue will limit the rate of cleanup. The number of sites requiring cleanup is difficult to predict, but estimates indicate there may be up to 2,800 potential cleanup sites. The department intends to use RBCA, where applicable, to reduce cleanup costs. Assuming 2,800 sites and an average cleanup costs of \$500,000 per site, it will require \$1.4 billion to rehabilitate these sites. Using industry projected revenue rates, it will take 93 years to complete cleanup at all sites. The actual revenues to date have been substantially less than projected. Actual funds transferred from the Department of Revenue for deposit into the trust fund indicate that annual tax revenue for this program is about \$7.6 million, requiring about 180 years to complete cleanup at all sites. The reasons for the revenue shortfall are unclear. It appears that in order to achieve a funding level equal to the drycleaning industry's original estimates, revenues will have to almost double.

The department is carefully monitoring planned expenditures versus projected revenues. The initial sites are scheduled to reach construction phase of the treatment systems during fiscal year 1998. Assuming an average cleanup cost of \$500,000 per site, the initial 85 sites currently underway are projected to cost a total of \$42.5 million. Using current annual revenue estimates of \$7.6 million, total revenue from program inception through the end of fiscal year 1998 is estimated to be \$27.1 million. Due to the timing of construction and operation and maintenance costs which extend out for a period of years, it is uncertain exactly when the funding shortfall may occur. When it does occur, the department will delay projects to remain within funding limitations.

The industry has questioned the validity of the department's 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 4, 1997, there were 1,648 active drycleaning facilities registered with the department 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 for the program.

On March 13, 1998, the revenue estimating conference met and considered the revenue impacts of this bill. The projected revenue from registrations with the department 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 receive would be \$99,000. The revenue estimating conference felt this increase was more realistic than a 10 percent increase that would result in an additional \$198,000.

Changing the reporting date for documented evidence of contamination to December 31, 1998, may limit the number of sites in the program providing deductible payments and requiring expenditures for site rehabilitation.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the revenue raising authority of cities or counties.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the amount of state tax shared with cities and counties.

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 23, 1998, the Committee on Environmental Protection passed HB 4117 as a committee substitute. There was one strike amendment adopted to the bill, the amendment added the following provisions to the bill:

- Clarification of what the drycleaning facility restoration funds may be used for.
- Clarification of immunity provisions for eligible sites.
- Water quality standards for cleanup are based on department rule.
- Cleanup criteria established does not constitute disposal or reuse criteria.
- Revision of the reopeners section to include two more circumstances under which sites can be reopened.

There was one amendment to the amendment that reinstated current statutory language requiring a statement that the imposition of the tax was requested by the Florida Drycleaners Coalition on receipts when the tax is imposed on consumers.

VII. SIGNATURES:

COMMITTEE ON ENVIRONMENTAL PROTECTION:

Prepared by:

Legislative Research Director:

Chris Flack

Wayne Kiger