

1 A bill to be entitled
2 An act relating to drycleaning solvent cleanup;
3 amending s. 376.30, F.S.; providing legislative
4 intent regarding drycleaning solvents; amending
5 s. 376.301, F.S.; providing definitions;
6 amending s. 376.303, F.S.; providing for late
7 fees for registration renewals; amending s.
8 376.3078, F.S.; providing legislative intent
9 regarding voluntary cleanup; providing that
10 certain deductibles must be deposited into the
11 Water Quality Assurance Trust Fund; clarifying
12 circumstances under which drycleaning
13 restoration fund may not be used; providing
14 additional criteria for determining eligibility
15 for rehabilitation; specifying when certain
16 deductibles must be paid; amending the date
17 after which no restoration funds may be used
18 for drycleaning site rehabilitation; clarifying
19 who may apply jointly for participation in the
20 program; providing certain liability immunity
21 for certain adjacent landowners; providing for
22 contamination cleanup criteria that incorporate
23 risk-based corrective action principles to be
24 adopted by rule; repealing the requirement that
25 certain costs be credited to the owner or
26 operator against certain future taxes;
27 requiring certain third-party liability
28 insurance coverage for each operating facility;
29 specifying the circumstances under which work
30 may proceed on the next site rehabilitation
31 task without prior approval; requiring the

1 Department of Environmental Protection to give
2 priority consideration to the processing and
3 approval of permits for voluntary cleanup
4 projects; providing the conditions under which
5 further rehabilitation may be required;
6 providing for continuing application of certain
7 immunity for real property owners; requiring
8 the Department of Environmental Protection to
9 attempt to negotiate certain agreements with
10 the U.S. Environmental Protection Agency;
11 amending s. 376.308, F.S.; protecting certain
12 immunity for real property owners; amending s.
13 376.313, F.S.; correcting a statutory cross
14 reference; amending s. 376.70, F.S.; clarifying
15 certain registration provisions; requiring dry
16 drop-off facilities to pay the gross receipts
17 tax; providing for the payment of taxes and the
18 determination of eligibility in the program;
19 amending s. 376.75, F.S.; exempting a certain
20 drycleaning solvent from the sales and use tax;
21 amending ss. 287.0595 and 316.302, F.S.;
22 correcting statutory cross references; amending
23 s. 213.053, F.S.; authorizing the Department of
24 Revenue to release certain information to
25 certain persons; providing an effective date.

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

28
29 Section 1. Subsection (2) of section 376.30, Florida
30 Statutes, is amended to read:

31

1 376.30 Legislative intent with respect to pollution of
2 surface and ground waters.--

3 (2) The Legislature further finds and declares that:

4 (a) The storage, transportation, and disposal of
5 pollutants, drycleaning solvents,and hazardous substances
6 within the jurisdiction of the state and state waters is a
7 hazardous undertaking;

8 (b) Spills, discharges, and escapes of pollutants,
9 drycleaning solvents,and hazardous substances that occur as a
10 result of procedures taken by private and governmental
11 entities involving the storage, transportation, and disposal
12 of such products pose threats of great danger and damage to
13 the environment of the state, to citizens of the state, and to
14 other interests deriving livelihood from the state;

15 (c) Such hazards have occurred in the past, are
16 occurring now, and present future threats of potentially
17 catastrophic proportions, all of which are expressly declared
18 to be inimical to the paramount interests of the state as set
19 forth in this section; and

20 (d) Such state interests outweigh any economic burdens
21 imposed by the Legislature upon those engaged in storing,
22 transporting, or disposing of pollutants, drycleaning
23 solvents,and hazardous substances and related activities.

24 Section 2. Section 376.301, Florida Statutes, is
25 amended to read:

26 376.301 Definitions of terms used in ss.

27 376.30-376.319, 376.70, and 376.75.--When used in ss.

28 376.30-376.319, 376.70, and 376.75, unless the context clearly
29 requires otherwise, the term:

30 (1) "Aboveground hazardous substance tank" means any
31 stationary aboveground storage tank and onsite integral piping

1 that contains hazardous substances which are liquid at
2 standard temperature and pressure and has an individual
3 storage capacity greater than 110 gallons.

4 (2) "Additive effects" means a scientific principle
5 that theory under which the toxicity that occurs as a result
6 of exposure is the sum of the toxicities of the individual
7 chemicals to which the individual is exposed ~~of chemicals~~
8 ~~increases in linear proportion to the increase in the number~~
9 ~~of substances.~~

10 (3) "Antagonistic effects" means a scientific
11 principle that the toxicity that occurs is less than the sum
12 of the toxicities of the individual chemicals to which the
13 individual is exposed.

14 (4)~~(3)~~ "Backlog" means reimbursement obligations
15 incurred pursuant to s. 376.3071(12), prior to March 29, 1995,
16 or authorized for reimbursement under the provisions of s.
17 376.3071(12), pursuant to chapter 95-2, Laws of Florida.
18 Claims within the backlog are subject to adjustment, where
19 appropriate.

20 (5)~~(4)~~ "Barrel" means 42 U.S. gallons at 60 degrees
21 Fahrenheit.

22 (6)~~(5)~~ "Bulk product facility" means a waterfront
23 location with at least one aboveground tank with a capacity
24 greater than 30,000 gallons which is used for the storage of
25 pollutants.

26 (7)~~(6)~~ "Cattle-dipping vat" means any structure,
27 excavation, or other facility constructed by any person, or
28 the site where such structure, excavation, or other facility
29 once existed, for the purpose of treating cattle or other
30 livestock with a chemical solution pursuant to or in
31 compliance with any local, state, or federal governmental

1 program for the prevention, suppression, control, or
2 eradication of any dangerous, contagious, or infectious
3 diseases.

4 (8)~~(7)~~ "Compression vessel" means any stationary
5 container, tank, or onsite integral piping system, or
6 combination thereof, which has a capacity of greater than 110
7 gallons, that is primarily used to store pollutants or
8 hazardous substances above atmospheric pressure or at a
9 reduced temperature in order to lower the vapor pressure of
10 the contents. Manifold compression vessels that function as a
11 single vessel shall be considered as one vessel.

12 (9) "Contaminant" means any physical, chemical,
13 biological, or radiological substance present in any medium
14 which may result in adverse effects to human health or the
15 environment or which creates an adverse nuisance,
16 organoleptic, or aesthetic condition in groundwater.

17 (10) "Contaminated site" means any contiguous land,
18 sediment, surface water, or groundwater areas that contain
19 contaminants that may be harmful to human health or the
20 environment.

21 (11)~~(8)~~ "Department" means the Department of
22 Environmental Protection.

23 (12)~~(9)~~ "Discharge" includes, but is not limited to,
24 any spilling, leaking, seeping, pouring, misapplying,
25 emitting, emptying, or dumping of any pollutant which occurs
26 and which affects lands and the surface and ground waters of
27 the state not regulated by ss. 376.011-376.21.

28 (13)~~(10)~~ "Drycleaning facility" means a commercial
29 establishment that operates or has at some time in the past
30 operated for the primary purpose of drycleaning clothing and
31 other fabrics utilizing a process that involves any use of

1 drycleaning solvents. The term "drycleaning facility" includes
2 laundry facilities that use drycleaning solvents as part of
3 their cleaning process. The term does not include a facility
4 that operates or has at some time in the past operated as a
5 uniform rental company or a ~~companies,~~ and linen supply
6 company ~~companies~~ regardless of whether the facility operates
7 as or was previously operated as a drycleaning facility.

8 (14)~~(11)~~ "Drycleaning solvents" means any and all
9 nonaqueous solvents used in the cleaning of clothing and other
10 fabrics and includes perchloroethylene (also known as
11 tetrachloroethylene) and petroleum-based solvents, and their
12 breakdown products. For purposes of this definition,
13 "drycleaning solvents" only includes those drycleaning
14 solvents originating from use at a drycleaning facility or by
15 a wholesale supply facility.

16 (15)~~(12)~~ "Dry drop-off facility" means any commercial
17 retail store that receives from customers clothing and other
18 fabrics for drycleaning or laundering at an offsite
19 drycleaning facility and that does not clean the clothing or
20 fabrics at the store utilizing drycleaning solvents.

21 (16)~~(13)~~ "Engineering controls" means modifications to
22 a site to reduce or eliminate the potential for exposure to
23 petroleum products' chemicals of concern, drycleaning
24 solvents, or other contaminants. Such modifications may
25 include, but are not limited to, physical or hydraulic control
26 measures, capping, point of use treatments, or slurry walls.

27 (17)~~(14)~~ "Wholesale supply facility" means a
28 commercial establishment that supplies drycleaning solvents to
29 drycleaning facilities.

30 (18)~~(15)~~ "Facility" means a nonresidential location
31 containing, or which contained, any underground stationary

1 tank or tanks which contain hazardous substances or pollutants
2 and have individual storage capacities greater than 110
3 gallons, or any aboveground stationary tank or tanks which
4 contain pollutants which are liquids at standard ambient
5 temperature and pressure and have individual storage
6 capacities greater than 550 gallons. This subsection shall not
7 apply to facilities covered by chapter 377, or containers
8 storing solid or gaseous pollutants, and agricultural tanks
9 having storage capacities of less than 550 gallons.

10 (19)~~(16)~~ "Flow-through process tank" means an
11 aboveground tank that contains hazardous substances or
12 specified mineral acids as defined in s. 376.321 and that
13 forms an integral part of a production process through which
14 there is a steady, variable, recurring, or intermittent flow
15 of materials during the operation of the process.

16 Flow-through process tanks include, but are not limited to,
17 seal tanks, vapor recovery units, surge tanks, blend tanks,
18 feed tanks, check and delay tanks, batch tanks, oil-water
19 separators, or tanks in which mechanical, physical, or
20 chemical change of a material is accomplished.

21 (20)~~(17)~~ "Hazardous substances" means those substances
22 defined as hazardous substances in the Comprehensive
23 Environmental Response, Compensation and Liability Act of
24 1980, Pub. L. No. 96-510, 94 Stat. 2767, as amended by the
25 Superfund Amendments and Reauthorization Act of 1986.

26 (21)~~(18)~~ "Institutional controls" means the
27 restriction on use or access to a site to eliminate or
28 minimize exposure to petroleum products' chemicals of concern,
29 drycleaning solvents, or other contaminants. Such
30 restrictions may include, but are not limited to, deed
31 restrictions, use restrictions, or restrictive zoning.

1 (22) "Laundering on a wash, dry, and fold basis" means
2 the service provided by the owner or operator of a
3 coin-operated laundry to its customers whereby an employee of
4 the laundry washes, dries, and folds laundry for its
5 customers.

6 ~~(23)(19)~~ "Marine fueling facility" means a commercial
7 or recreational coastal facility, excluding a bulk product
8 facility, providing fuel to vessels.

9 ~~(24)(20)~~ "Natural attenuation" means an approach to
10 site rehabilitation that allows natural processes to contain
11 the spread of contamination and reduce the concentrations of
12 contaminants in contaminated groundwater and soil. Natural
13 attenuation processes may include the following: sorption,
14 biodegradation, chemical reactions with subsurface materials,
15 diffusion, dispersion, and volatilization.~~the verifiable~~
16 ~~reduction of petroleum products' chemicals of concern through~~
17 ~~natural processes which may include diffusion, dispersion,~~
18 ~~absorption, and biodegradation.~~

19 ~~(25)(21)~~ "Operator" means any person operating a
20 facility, whether by lease, contract, or other form of
21 agreement.

22 ~~(26)(22)~~ "Owner" means any person owning a facility.

23 ~~(27)(23)~~ "Person" means any individual, partner, joint
24 venture, or corporation; any group of the foregoing, organized
25 or united for a business purpose; or any governmental entity.

26 ~~(28)(24)~~ "Person in charge" means the person on the
27 scene who is in direct, responsible charge of a facility from
28 which pollutants are discharged, when the discharge occurs.

29 ~~(29)(25)~~ "Person responsible for conducting site
30 rehabilitation" means the site owner, operator, or the person
31 designated by the site owner or operator on the reimbursement

1 application. Mortgage holders and trust holders may be
2 eligible to participate in the reimbursement program pursuant
3 to s. 376.3071(12).

4 (30)~~(26)~~ "Petroleum" includes:

5 (a) Oil, including crude petroleum oil and other
6 hydrocarbons, regardless of gravity, which are produced at the
7 well in liquid form by ordinary methods and which are not the
8 result of condensation of gas after it leaves the reservoir;
9 and

10 (b) All natural gas, including casinghead gas, and all
11 other hydrocarbons not defined as oil in paragraph (a).

12 (31)~~(27)~~ "Petroleum product" means any liquid fuel
13 commodity made from petroleum, including, but not limited to,
14 all forms of fuel known or sold as diesel fuel, kerosene, all
15 forms of fuel known or sold as gasoline, and fuels containing
16 a mixture of gasoline and other products, excluding liquefied
17 petroleum gas and American Society for Testing and Materials
18 (ASTM) grades no. 5 and no. 6 residual oils, bunker C residual
19 oils, intermediate fuel oils (IFO) used for marine bunkering
20 with a viscosity of 30 and higher, asphalt oils, and
21 petrochemical feedstocks.

22 (32)~~(28)~~ "Petroleum products' chemicals of concern"
23 means the constituents of petroleum products, including, but
24 not limited to, xylene, benzene, toluene, ethylbenzene,
25 naphthalene, and similar chemicals, and constituents in
26 petroleum products, including, but not limited to, methyl
27 tert-butyl ether (MTBE), lead, and similar chemicals found in
28 additives, provided the chemicals of concern are present as a
29 result of a discharge of petroleum products.

30 (33)~~(29)~~ "Petroleum storage system" means a stationary
31 tank not covered under the provisions of chapter 377, together

1 with any onsite integral piping or dispensing system
2 associated therewith, which is used, or intended to be used,
3 for the storage or supply of any petroleum product. Petroleum
4 storage systems may also include oil/water separators, and
5 other pollution control devices installed at petroleum product
6 terminals as defined in this chapter and bulk product
7 facilities pursuant to, or required by, permits or best
8 management practices in an effort to control surface discharge
9 of pollutants. Nothing herein shall be construed to allow a
10 continuing discharge in violation of department rules.

11 (34)~~(30)~~ "Pollutants" includes any "product" as
12 defined in s. 377.19(11), pesticides, ammonia, chlorine, and
13 derivatives thereof, excluding liquefied petroleum gas.

14 (35)~~(31)~~ "Pollution" means the presence on the land or
15 in the waters of the state of pollutants in quantities which
16 are or may be potentially harmful or injurious to human health
17 or welfare, animal or plant life, or property or which may
18 unreasonably interfere with the enjoyment of life or property,
19 including outdoor recreation.

20 (36)~~(32)~~ "Real property owner" means the individual or
21 entity that is vested with ownership, dominion, or legal or
22 rightful title to the real property, or which has a ground
23 lease interest in the real property, on which a drycleaning
24 facility or wholesale supply facility is or has ever been
25 located.

26 (37)~~(33)~~ "Response action" means any activity,
27 including evaluation, planning, design, engineering,
28 construction, and ancillary services, which is carried out in
29 response to any discharge, release, or threatened release of a
30 hazardous substance, pollutant, or other contaminant from a

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1 facility or site identified by the department under the
2 provisions of ss. 376.30-376.319.

3 (38)~~(34)~~ "Response action contractor" means a person
4 who is carrying out any response action, including a person
5 retained or hired by such person to provide services relating
6 to a response action.

7 (39)~~(35)~~ "Secretary" means the Secretary of
8 Environmental Protection.

9 (40)~~(36)~~ "Site rehabilitation" means the assessment of
10 site contamination and the remediation activities that reduce
11 the levels of contaminants at a site through accepted
12 treatment methods to meet the cleanup target levels
13 established for that site.

14 (41)~~(37)~~ "Source removal" means the removal of free
15 product, or the removal of contaminants from soil or sediment
16 that has been contaminated ~~by petroleum or petroleum products~~
17 to the extent that leaching to groundwater or surface water
18 has occurred or is occurring ~~petroleum products' chemicals of~~
19 ~~concern leach into groundwater.~~

20 (42)~~(38)~~ "Storage system" means a stationary tank not
21 covered under the provisions of chapter 377, together with any
22 onsite integral piping or dispensing system associated
23 therewith, which is or has been used for the storage or supply
24 of any petroleum product, pollutant, or hazardous substance as
25 defined herein, and which is registered with the Department of
26 Environmental Protection under this chapter or any rule
27 adopted pursuant hereto.

28 (43)~~(39)~~ "Synergistic effects" means a scientific
29 principle that the toxicity that occurs as a result of
30 exposure is more than the sum of the toxicities of the
31 individual chemicals to which the individual is exposed ~~theory~~

1 ~~under which the toxicity of chemicals exponentially increases~~
2 ~~as the number of chemicals in a combination increases.~~

3 (44)~~(40)~~ "Terminal facility" means any structure,
4 group of structures, motor vehicle, rolling stock, pipeline,
5 equipment, or related appurtenances which are used or capable
6 of being used for one or more of the following purposes:
7 pumping, refining, drilling for, producing, storing, handling,
8 transferring, or processing pollutants, provided such
9 pollutants are transferred over, under, or across any water,
10 estuaries, tidal flats, beaches, or waterfront lands,
11 including, but not limited to, any such facility and related
12 appurtenances owned or operated by a public utility or a
13 governmental or quasi-governmental body. In the event of a
14 ship-to-ship transfer of pollutants, the vessel going to or
15 coming from the place of transfer and a terminal facility
16 shall also be considered a terminal facility. For the
17 purposes of ss. 376.30-376.319, the term "terminal facility"
18 shall not be construed to include spill response vessels
19 engaged in response activities related to removal of
20 pollutants, or temporary storage facilities created to
21 temporarily store recovered pollutants and matter, or
22 waterfront facilities owned and operated by governmental
23 entities acting as agents of public convenience for persons
24 engaged in the drilling for or pumping, storing, handling,
25 transferring, processing, or refining of pollutants. However,
26 each person engaged in the drilling for or pumping, storing,
27 handling, transferring, processing, or refining of pollutants
28 through a waterfront facility owned and operated by such a
29 governmental entity shall be construed as a terminal facility.

30 (45)~~(41)~~ "Transfer" or "transferred" includes
31 onloading, offloading, fueling, bunkering, lightering, removal

1 of waste pollutants, or other similar transfers, between
2 terminal facility and vessel or vessel and vessel.

3 Section 3. Paragraph (d) of subsection (1) of section
4 376.303, Florida Statutes, is amended to read:

5 376.303 Powers and duties of the Department of
6 Environmental Protection.--

7 (1) The department has the power and the duty to:

8 (d) Establish a registration program for drycleaning
9 facilities and wholesale supply facilities.

10 1. Owners or operators of drycleaning facilities and
11 wholesale supply facilities and real property owners ~~suppliers~~
12 shall jointly register each facility owned and in operation
13 with the department by June 30, 1995, pay initial registration
14 fees by December 31, 1995, and pay annual renewal registration
15 fees by December 31, 1996, and each year thereafter, in
16 accordance with this subsection. If the registration form
17 cannot be jointly submitted, then the applicant shall provide
18 notice of the registration to other interested parties. The
19 department shall establish reasonable requirements for the
20 registration of such facilities. The department shall use
21 reasonable efforts to identify and notify drycleaning
22 facilities and wholesale supply facilities of the registration
23 requirements by certified mail, return receipt requested. The
24 department shall provide to the Department of Revenue a copy
25 of each applicant's registration materials, within 30 working
26 days of the receipt of the materials. This copy may be in such
27 electronic format as the two agencies mutually designate.

28 2.a. The department shall issue an invoice for annual
29 registration fees to each registered drycleaning facility or
30 wholesale supply facility by December 31 of each year. Owners
31 of drycleaning facilities and wholesale supply facilities

1 shall submit to the department an initial fee of \$100 and an
2 annual renewal registration fee of \$100 for each drycleaning
3 facility or wholesale supply facility owned and in operation.
4 The fee shall be paid within 30 days after receipt of billing
5 by the department. Facilities that fail to pay their renewal
6 fee within 30 days after receipt of billing are subject to a
7 late fee of \$75.

8 b. Revenues derived from registration, ~~and~~ renewal,
9 and late fees shall be deposited into the Water Quality
10 Assurance Trust Fund to be used as provided in s. 376.3078.

11 Section 4. Section 376.3078, Florida Statutes, is
12 amended to read:

13 376.3078 Drycleaning facility restoration; funds;
14 uses; liability; recovery of expenditures.--

15 (1) FINDINGS.--In addition to the legislative findings
16 set forth in s. 376.30, the Legislature finds and declares
17 that:

18 (a) Significant quantities of drycleaning solvents
19 have been discharged in the past at drycleaning facilities as
20 part of the normal operation of these facilities.

21 (b) Discharges of drycleaning solvents at such
22 drycleaning facilities have occurred and are occurring, and
23 pose a significant threat to the quality of the groundwaters
24 and inland surface waters of this state.

25 (c) Where contamination of the groundwater or surface
26 water has occurred, remedial measures have often been delayed
27 for long periods while determinations as to liability and the
28 extent of liability are made, and such delays result in the
29 continuation and intensification of the threat to the public
30 health, safety, and welfare; in greater damage to the
31

1 environment; and in significantly higher costs to contain and
2 remove the contamination.

3 (d) Adequate financial resources must be readily
4 available to provide for the expeditious supply of safe and
5 reliable alternative sources of potable water to affected
6 persons and to provide a means for investigation and
7 rehabilitation of contaminated sites without delay.

8 (e) It is the intent of the Legislature to encourage
9 real property owners to undertake the voluntary cleanup of
10 property contaminated with drycleaning solvents and that the
11 immunity provisions of this section and all other available
12 defenses be construed in favor of real property owners.

13 (2) FUNDS; USES.--

14 (a) All penalties, judgments, recoveries,
15 reimbursements, loans, and other fees and charges related to
16 the implementation of this section and the tax revenues
17 levied, collected, and credited pursuant to ss. 376.70 and
18 376.75, and ~~registration~~ fees collected pursuant to s.
19 376.303(1)(d), and deductibles collected pursuant to paragraph
20 (3)(d), shall be deposited into the Water Quality Assurance
21 Trust Fund, to be used upon appropriation as provided in this
22 section. Charges against the funds for drycleaning facility
23 or wholesale supply site rehabilitation shall be made in
24 accordance with the provisions of this section.

25 (b) Whenever, in its determination, incidents of
26 contamination by drycleaning solvents related to the operation
27 of drycleaning facilities and wholesale supply facilities may
28 pose a threat to the environment or the public health, safety,
29 or welfare, the department shall obligate moneys available
30 pursuant to this section to provide for:

31

1 1. Prompt investigation and assessment of the
2 contaminated drycleaning facility or wholesale supply facility
3 sites.

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

6 3. Rehabilitation of contaminated drycleaning facility
7 or wholesale supply facility sites, which shall consist of
8 rehabilitation of affected soil, groundwater, and surface
9 waters, using the most cost-effective alternative that is
10 technologically feasible and reliable and that provides
11 adequate protection of the public health, safety, and welfare
12 and minimizes environmental damage, in accordance with the
13 site selection and rehabilitation criteria established by the
14 department under subsection (4), except that nothing in this
15 subsection shall be construed to authorize the department to
16 obligate drycleaning facility restoration funds for payment of
17 costs that may be associated with, but are not integral to,
18 drycleaning facility or wholesale supply facility site
19 rehabilitation.

20 4. Maintenance and monitoring of contaminated
21 drycleaning facility or wholesale supply facility sites.

22 5. Inspection and supervision of activities described
23 in this subsection.

24 6. Payment of expenses incurred by the department in
25 its efforts to obtain from responsible parties the payment or
26 recovery of reasonable costs resulting from the activities
27 described in this subsection.

28 7. Payment of any other reasonable costs of
29 administration, including those administrative costs incurred
30 by the Department of Health ~~and Rehabilitative Services~~ in
31 providing field and laboratory services, toxicological risk

1 assessment, and other assistance to the department in the
2 investigation of drinking water contamination complaints and
3 costs associated with public information and education
4 activities.

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

8
9 The department shall not obligate funds in excess of the
10 annual appropriation.

11 (c) Drycleaning facility restoration funds may not be
12 used to:

13 1. Restore sites that are contaminated by solvents
14 normally used in drycleaning operations where the
15 contamination at such sites did not result from the operation
16 of a drycleaning facility or wholesale supply facility.

17 2. Restore sites that are contaminated by drycleaning
18 solvents being transported to or from a drycleaning facility
19 or wholesale supply facility.

20 3. Fund any costs related to the restoration of any
21 site that has been identified to qualify for listing, or is
22 listed, on the National Priority List pursuant to the
23 Comprehensive Environmental Response, Compensation, and
24 Liability Act of 1980 as amended by the Superfund Amendments
25 and Reauthorization Act of 1986, or that is under an order
26 from the United States Environmental Protection Agency
27 pursuant to s. 3008(h) of the Resource Conservation and
28 Recovery Act as amended, or has obtained, or is required to
29 obtain a permit for the operation of a hazardous waste
30 treatment, storage, or disposal facility, a postclosure
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1 permit, or a permit pursuant to the federal Hazardous and
2 Solid Waste Amendments of 1984.

3 4. Pay any costs associated with any fine, penalty, or
4 action brought against a drycleaning facility owner or
5 operator or wholesale supply facility or real property owner
6 under local, state, or federal law.

7 5. Pay any costs related to the restoration of any
8 site that is operated or has at some time in the past operated
9 as a uniform rental or linen supply facility, regardless of
10 whether the site operates as or was previously operated as a
11 drycleaning facility or wholesale supply facility.

12 (3) REHABILITATION LIABILITY.--In accordance with the
13 eligibility provisions of this section, no real property owner
14 or no person who owns or operates, or who otherwise could be
15 liable as a result of the operation of, a drycleaning facility
16 or a wholesale supply facility shall be subject to
17 administrative or judicial action brought by or on behalf of
18 any state or local government or agency thereof or by or on
19 behalf of any person to compel rehabilitation or pay for the
20 costs of rehabilitation of environmental contamination
21 resulting from the discharge of drycleaning solvents. Subject
22 to the delays that may occur as a result of the prioritization
23 of sites under this section for any qualified site, costs for
24 activities described in paragraph (2)(b) shall be absorbed at
25 the expense of the drycleaning facility restoration funds,
26 without recourse to reimbursement or recovery from the real
27 property owner or the owner or operator of the drycleaning
28 facility or the wholesale supply facility.

29 (a) With regard to drycleaning facilities or wholesale
30 supply facilities that have operated as drycleaning facilities
31 or wholesale supply facilities on or after October 1, 1994,

1 any such drycleaning facility or wholesale supply facility at
2 which there exists contamination by drycleaning solvents shall
3 be eligible under this subsection regardless of when the
4 drycleaning contamination was discovered, provided that the
5 drycleaning facility or the wholesale supply facility:

6 1. Has been registered with the department;

7 2. Is determined by the department to be in compliance
8 with the department's rules regulating drycleaning solvents,
9 drycleaning facilities, or wholesale supply facilities on or
10 after November 19, 1980;

11 3. Has not been operated in a grossly negligent manner
12 at any time on or after November 19, 1980;

13 4. Has not been identified to qualify for listing, nor
14 is listed, on the National Priority List pursuant to the
15 Comprehensive Environmental Response, Compensation, and
16 Liability Act of 1980 as amended by the Superfund Amendments
17 and Reauthorization Act of 1986, and as subsequently amended;

18 5. Is not under an order from the United States
19 Environmental Protection Agency pursuant to s. 3008(h) of the
20 Resource Conservation and Recovery Act as amended (42 U.S.C.A.
21 s. 6928(h)), or has not obtained and is not required to obtain
22 a permit for the operation of a hazardous waste treatment,
23 storage, or disposal facility, a postclosure permit, or a
24 permit pursuant to the federal Hazardous and Solid Waste
25 Amendments of 1984;

26
27 and provided that the real property owner or the owner or
28 operator of the drycleaning facility or the wholesale supply
29 facility has not willfully concealed the discharge of
30 drycleaning solvents and has remitted all taxes due pursuant
31 to ss. 376.70 and 376.75, has provided documented evidence of

1 contamination by drycleaning solvents as required by the rules
2 developed pursuant to this section, has reported the
3 contamination prior to December 31, 1998 ~~2005~~, and has not
4 denied the department access to the site.

5 (b) With regard to drycleaning facilities or wholesale
6 supply facilities that cease to be operated as drycleaning
7 facilities or wholesale supply facilities prior to October 1,
8 1994, such facilities, at which there exists contamination by
9 drycleaning solvents, shall be eligible under this subsection
10 regardless of when the contamination was discovered, provided
11 that the drycleaning facility or wholesale supply facility:

12 1. Was not determined by the department, within a
13 reasonable time after the department's discovery, to have been
14 out of compliance with the department rules regulating
15 drycleaning solvents, drycleaning facilities, or wholesale
16 supply facilities implemented ~~which were in effect at the time~~
17 ~~of operation~~ at any time on or after November 19, 1980;

18 2. Was not operated in a grossly negligent manner at
19 any time on or after November 19, 1980;

20 3. Has not been identified to qualify for listing, nor
21 is listed, on the National Priority List pursuant to the
22 Comprehensive Environmental Response, Compensation, and
23 Liability Act of 1980, as amended by the Superfund Amendments
24 and Reauthorization Act of 1986, and as subsequently amended;
25 and

26 4. Is not under an order from the United States
27 Environmental Protection Agency pursuant to s. 3008(h) of the
28 Resource Conservation and Recovery Act, as amended, or has not
29 obtained and is not required to obtain a permit for the
30 operation of a hazardous waste treatment, storage, or disposal
31

1 facility, a postclosure permit, or a permit pursuant to the
2 federal Hazardous and Solid Waste Amendments of 1984;

3
4 and provided that the real property owner or the owner or
5 operator of the drycleaning facility or the wholesale supply
6 facility has not willfully concealed the discharge of
7 drycleaning solvents, has provided documented evidence of
8 contamination by drycleaning solvents as required by the rules
9 developed pursuant to this section, has reported the
10 contamination prior to December 31, 1998, ~~December 31, 2005~~,
11 and has not denied the department access to the site.

12 (c) For purposes of determining eligibility, a
13 drycleaning facility or wholesale supply facility was operated
14 in a grossly negligent manner if the department determines
15 that the owner or operator of the drycleaning facility or the
16 wholesale supply facility:

17 1. Willfully discharged drycleaning solvents onto the
18 soils or into the waters of the state after November 19, 1980,
19 with the knowledge, intent, and purpose that the discharge
20 would result in harm to the environment or to public health or
21 result in a violation of the law;

22 2. Willfully concealed a discharge of drycleaning
23 solvents with the knowledge, intent, and purpose that the
24 concealment would result in harm to the environment or to
25 public health or result in a violation of the law; or

26 3. Willfully violated a local, state, or federal law
27 or rule regulating the operation of drycleaning facilities or
28 wholesale supply facilities with the knowledge, intent, and
29 purpose that the act would result in harm to the environment
30 or to public health or result in a violation of the law. ~~For~~
31 ~~purposes of this subsection, the willful discharge of~~

1 ~~drycleaning solvents onto the soils or into the waters of the~~
 2 ~~state after November 19, 1980, or the willful concealment of a~~
 3 ~~discharge of drycleaning solvents, or a willful violation of~~
 4 ~~local, state, or federal law or rule regulating the operation~~
 5 ~~of drycleaning facilities or wholesale supply facilities shall~~
 6 ~~be construed to be gross negligence in the operation of a~~
 7 ~~drycleaning facility or wholesale supply facility.~~

8 (d)1. With respect to eligible drycleaning solvent
 9 contamination reported to the department as part of a
 10 completed application, as required by the rules developed
 11 pursuant to this section, by June 30, 1997, the costs of
 12 activities described in paragraph (2)(b) shall be absorbed at
 13 the expense of the drycleaning facility restoration funds,
 14 less a \$1,000 deductible per incident, which shall be paid by
 15 the applicant or current property owner. The deductible shall
 16 be paid within 60 days after receipt of billing by the
 17 department.

18 2. For contamination reported to the department as
 19 part of a completed application, as required by the rules
 20 developed under this section, from July 1, 1997, through
 21 September 30, 1998 ~~June 30, 2001~~, the costs shall be absorbed
 22 at the expense of the drycleaning facility restoration funds,
 23 less a \$5,000 deductible per incident. The deductible shall be
 24 paid within 60 days after receipt of billing by the
 25 department.

26 3. For contamination reported to the department as
 27 part of a completed application, as required by the rules
 28 developed pursuant to this section, from October 1, 1998 ~~July~~
 29 ~~1, 2001~~, through December 31, 1998 ~~2005~~, the costs shall be
 30 absorbed at the expense of the drycleaning facility
 31 restoration funds, less a \$10,000 deductible per incident. The

1 deductible shall be paid within 60 days after receipt of
2 billing by the department.

3 4. For contamination reported after December 31, 1998
4 ~~2005~~, no costs will be absorbed at the expense of the
5 drycleaning facility restoration funds.

6 (e) The provisions of this subsection shall not apply
7 to any site where the department has been denied site access
8 to implement the provisions of this section.

9 (f) In order to identify those drycleaning facilities
10 and wholesale supply facilities that have experienced
11 contamination resulting from the discharge of drycleaning
12 solvents and to ensure the most expedient rehabilitation of
13 such sites, the owners and operators of drycleaning facilities
14 and wholesale supply facilities are encouraged to detect and
15 report contamination from drycleaning solvents related to the
16 operation of drycleaning facilities and wholesale supply
17 facilities. The department shall establish reasonable
18 guidelines for the written reporting of drycleaning
19 contamination and shall distribute forms to registrants under
20 s. 376.303(1)(d), and to other interested parties upon
21 request, to be used for such purpose.

22 (g) A report of drycleaning solvent contamination at a
23 drycleaning facility or wholesale supply facility made to the
24 department by any person in accordance with this subsection,
25 or any rules promulgated pursuant hereto, may not be used
26 directly as evidence of liability for such discharge in any
27 civil or criminal trial arising out of the discharge.

28 (h) The provisions of this subsection shall not apply
29 to drycleaning facilities owned or operated by the state or
30 Federal Government.

31

1 (i) Due to the value of Florida's potable water, it is
2 the intent of the Legislature that the department initiate and
3 facilitate as many cleanups as possible utilizing the
4 resources of the state, local governments, and the private
5 sector. The department is authorized to adopt necessary rules
6 and enter into contracts to carry out the intent of this
7 subsection and to limit or prevent future contamination from
8 the operation of drycleaning facilities and wholesale supply
9 facilities.

10 (j) It is not the intent of the Legislature that the
11 state become the owner or operator of a drycleaning facility
12 or wholesale supply facility by engaging in state-conducted
13 cleanup.

14 (k) The owner, the operator, and either the real
15 property owner or the agent of the real property owner may
16 apply for the Drycleaning Contamination Cleanup Program by
17 jointly submitting a completed application package to the
18 department pursuant to the rules that shall be adopted by the
19 department. If the application cannot be jointly submitted,
20 then the applicant shall provide notice of the application to
21 other interested parties. After reviewing the completed
22 application package, the department shall notify the applicant
23 in writing as to whether the drycleaning facility or wholesale
24 supply facility is eligible for the program. If the department
25 denies eligibility for a completed application package, the
26 notice of denial shall specify the reasons for the denial,
27 including specific and substantive findings of fact, and shall
28 constitute agency action subject to the provisions of chapter
29 120. For the purposes of ss. 120.569 and 120.57, the real
30 property owner and the owner and operator of a drycleaning
31 facility or wholesale supply facility which is the subject of

1 a decision by the department with regard to eligibility shall
2 be deemed to be parties whose substantial interests are
3 determined by the department's decision to approve or deny
4 eligibility.

5 (l) Eligibility under this subsection applies to the
6 drycleaning facility or wholesale supply facility. A
7 determination of eligibility or ineligibility shall not be
8 affected by any conveyance of the ownership of the drycleaning
9 facility, wholesale supply facility, or the real property on
10 which such facility is located. Nothing contained in this
11 chapter shall be construed to allow a drycleaning facility or
12 wholesale supply facility which would not be eligible under
13 this subsection to become eligible as a result of the
14 conveyance of the ownership of the ineligible drycleaning
15 facility or wholesale supply facility to another owner.

16 (m) If funding for the drycleaning contamination
17 rehabilitation program is eliminated, the provisions of this
18 subsection shall not apply.

19 (n)1. The department shall have the authority to
20 cancel the eligibility of any drycleaning facility or
21 wholesale supply facility that submits fraudulent information
22 in the application package or that fails to continuously
23 comply with the conditions of eligibility set forth in this
24 subsection, or has not remitted all fees pursuant to s.
25 376.303(1)(d), or has not remitted the deductible payments
26 pursuant to paragraph (d).

27 2. If the program eligibility of a drycleaning
28 facility or wholesale supply facility is subject to
29 cancellation pursuant to this section, then the department
30 shall notify the applicant in writing of its intent to cancel
31 program eligibility and shall state the reason or reasons for

1 cancellation. The applicant shall have 45 days to resolve the
2 reason or reasons for cancellation to the satisfaction of the
3 department. If, after 45 days, the applicant has not resolved
4 the reason or reasons for cancellation to the satisfaction of
5 the department, the order of cancellation shall become final
6 and shall be subject to the provisions of chapter 120.

7 (o) A real property owner shall not be subject to
8 administrative or judicial action brought by or on behalf of
9 any person or local or state government, or agency thereof,
10 for gross negligence or violations of department rules prior
11 to January 1, 1990, which resulted from the operation of a
12 drycleaning facility, provided that the real property owner
13 demonstrates that:

14 1. The real property owner had ownership in the
15 property at the time of the gross negligence or violation of
16 department rules and did not cause or contribute to
17 contamination on the property;

18 2. The real property owner was a distinct and separate
19 entity from the owner and operator of the drycleaning
20 facility, and did not have an ownership interest in or share
21 in the profits of the drycleaning facility;

22 3. The real property owner did not participate in the
23 operation or management of the drycleaning facility;

24 4. The real property owner complied with all discharge
25 reporting requirements, and did not conceal any contamination;
26 and

27 5. The department has not been denied access.
28

29 The ~~This~~ defense provided by this paragraph does ~~shall~~ not
30 apply to any liability under ~~pursuant to~~ a federally delegated
31 program.

1 (p) A person whose property becomes contaminated due
2 to geophysical or hydrologic reasons from the operation of a
3 nearby drycleaning or wholesale supply facility and whose
4 property has never been occupied by a business that utilized
5 or stored drycleaning solvents or similar constituents is not
6 subject to administrative or judicial action brought by or on
7 behalf of another to compel the rehabilitation of or the
8 payment of the costs for the rehabilitation of sites
9 contaminated by drycleaning solvents, provided that the
10 person:

11 1. Does not own and has never held an ownership
12 interest in, or shared in the profits of, the drycleaning
13 facility operated at the source location;

14 2. Did not participate in the operation or management
15 of the drycleaning facility at the source location; and

16 3. Did not cause, contribute to, or exacerbate the
17 release or threat of release of any hazardous substance
18 through any act or omission.

19
20 The defense provided by this paragraph does not apply to any
21 liability under a federally delegated program.

22 (q) Nothing in this subsection precludes the
23 department from considering information and documentation
24 provided by private consultants, local government programs,
25 federal agencies, or any individual which is relevant to an
26 eligibility determination if the department provides the
27 applicant with reasonable access to the information and its
28 origin.

29 (4) ~~SITE SELECTION AND REHABILITATION CRITERIA.~~--It is
30 the intent of the Legislature to protect the health of all
31 people under actual circumstances of exposure. By July 1,

1 1999, the secretary of the department shall establish criteria
2 by rule for the purpose of determining, on a site-specific
3 basis, the rehabilitation program tasks that comprise a site
4 rehabilitation program, including a voluntary site
5 rehabilitation program, and the level at which a
6 rehabilitation program task and a site rehabilitation program
7 may be deemed completed. In establishing the rule, the
8 department shall incorporate, to the maximum extent feasible,
9 risk-based corrective action principles to achieve protection
10 of human health and safety and the environment in a
11 cost-effective manner as provided in this subsection. The
12 rule shall also include protocols for the use of natural
13 attenuation and the issuance of "no further action" letters.
14 The criteria for determining what constitutes a rehabilitation
15 program task or completion of a site rehabilitation program
16 task or site rehabilitation program, including a voluntary
17 site rehabilitation program, must:

18 (a) Consider the current exposure and potential risk
19 of exposure to humans and the environment, including multiple
20 pathways of exposure. The physical, chemical, and biological
21 characteristics of each contaminant must be considered in
22 order to determine the feasibility of risk-based corrective
23 action assessment.

24 (b) Establish the point of compliance at the source of
25 the contamination. However, the department is authorized to
26 temporarily move the point of compliance to the boundary of
27 the property, or to the edge of the plume when the plume is
28 within the property boundary, while cleanup, including cleanup
29 through natural attenuation processes in conjunction with
30 appropriate monitoring, is proceeding. The department also is
31 authorized, pursuant to criteria provided for in this section,

1 to temporarily extend the point of compliance beyond the
2 property boundary with appropriate monitoring, if such
3 extension is needed to facilitate natural attenuation or to
4 address the current conditions of the plume, provided human
5 health, public safety, and the environment are protected.
6 When temporarily extending the point of compliance beyond the
7 property boundary, it cannot be extended further than the
8 lateral extent of the plume at the time of execution of the
9 voluntary cleanup agreement, if known, or the lateral extent
10 of the plume as defined at the time of site assessment.
11 Temporary extension of the point of compliance beyond the
12 property boundary, as provided in this paragraph, must include
13 actual notice by the person responsible for site
14 rehabilitation to local governments and the owners of any
15 property into which the point of compliance is allowed to
16 extend and constructive notice to residents and business
17 tenants of the property into which the point of compliance is
18 allowed to extend. Persons receiving notice pursuant to this
19 paragraph shall have the opportunity to comment within 30 days
20 of receipt of the notice.

21 (c) Ensure that the site-specific cleanup goal is that
22 all sites contaminated with drycleaning solvents ultimately
23 achieve the applicable cleanup target levels provided in this
24 section. In the circumstances provided below, and after
25 constructive notice and opportunity to comment within 30 days
26 from receipt of the notice to local government, to owners of
27 any property into which the point of compliance is allowed to
28 extend, and to residents on any property into which the point
29 of compliance is allowed to extend, the department may allow
30 concentrations of contaminants to temporarily exceed the
31 applicable cleanup target levels while cleanup, including

1 cleanup through natural attenuation processes in conjunction
2 with appropriate monitoring, is proceeding, if human health,
3 public safety, and the environment are protected.

4 (d) Allow the use of institutional or engineering
5 controls at sites contaminated with drycleaning solvents,
6 where appropriate, to eliminate or control the potential
7 exposure to contaminants of humans or the environment. The use
8 of controls must be preapproved by the department and only
9 after constructive notice and opportunity to comment within 30
10 days from receipt of notice is provided to local governments,
11 to owners of any property into which the point of compliance
12 is allowed to extend, and to residents on any property into
13 which the point of compliance is allowed to extend. When
14 institutional or engineering controls are implemented to
15 control exposure, the removal of the controls must have prior
16 department approval and must be accompanied by the resumption
17 of active cleanup, or other approved controls, unless cleanup
18 target levels under this section have been achieved.

19 (e) Consider the additive effects of contaminants.
20 The synergistic and antagonistic effects shall also be
21 considered when the scientific data become available.

22 (f) Take into consideration individual site
23 characteristics, which shall include, but not be limited to,
24 the current and projected use of the affected groundwater and
25 surface water in the vicinity of the site, current and
26 projected land uses of the area affected by the contamination,
27 the exposed population, the degree and extent of
28 contamination, the rate of contaminant migration, the apparent
29 or potential rate of contaminant degradation through natural
30 attenuation processes, the location of the plume, and the

31

1 potential for further migration in relation to site property
2 boundaries.

3 (g) Apply state water quality standards as follows:

4 1. Cleanup target levels for each contaminant found in
5 groundwater shall be the applicable state water quality
6 standards. Where such standards do not exist, the cleanup
7 target levels for groundwater shall be based on the minimum
8 criteria specified in department rule. The department shall
9 consider the following, as appropriate, in establishing the
10 applicable minimum criteria: calculations using a lifetime
11 cancer risk level of 1.0E-6; a hazard index of 1 or less; the
12 best achievable detection limit; the naturally occurring
13 background concentration; or nuisance, organoleptic, and
14 aesthetic considerations.

15 2. Where surface waters are exposed to contaminated
16 groundwater, the cleanup target levels for the contaminants
17 shall be based on the lower of the groundwater or surface
18 water standards as established by department rule. The point
19 of measuring compliance with the surface water standards shall
20 be in the groundwater immediately adjacent to the surface
21 water body.

22 3. The department may set alternative cleanup target
23 levels based upon the person responsible for site
24 rehabilitation demonstrating, using site-specific modeling and
25 risk assessment studies, that human health, public safety, and
26 the environment are protected to the same degree as provided
27 in subparagraphs 1. and 2. Where a state water quality
28 standard is applicable, a deviation may not result in the
29 application of cleanup target levels more stringent than the
30 standard. In determining whether it is appropriate to
31 establish alternative cleanup target levels at a site, the

1 department must consider the effectiveness of source removal
2 that has been completed at the site and the practical
3 likelihood of the use of low yield or poor quality
4 groundwater, the use of groundwater near marine surface water
5 bodies, the current and projected use of the affected
6 groundwater in the vicinity of the site, or the use of
7 groundwater in the immediate vicinity of the contaminated
8 area, where it has been demonstrated that the groundwater
9 contamination is not migrating away from such localized
10 source, provided human health, public safety, and the
11 environment are protected.

12 (h) Provide for the department to issue a "no further
13 action order," with conditions where appropriate, when
14 alternative cleanup target levels established pursuant to
15 subparagraph (g)3. have been achieved, or when the person
16 responsible for site rehabilitation can demonstrate that the
17 cleanup target level is unachievable within available
18 technologies. Prior to issuing such an order, the department
19 shall consider the feasibility of an alternative site
20 rehabilitation technology in the area.

21 (i) Establish appropriate cleanup target levels for
22 soils.

23 1. In establishing soil cleanup target levels for
24 human exposure to each contaminant found in soils from the
25 land surface to 2 feet below land surface, the department
26 shall consider the following, as appropriate: calculations
27 using a lifetime cancer risk level of 1.0E-6; a hazard index
28 of 1 or less; the best achievable detection limit; or the
29 naturally occurring background concentration. Institutional
30 controls or other methods shall be used to prevent human
31 exposure to contaminated soils more than 2 feet below the land

1 surface. Any removal of such institutional controls shall
2 require such contaminated soils to be remediated.

3 2. Leachability-based soil target levels shall be
4 based on protection of the groundwater cleanup target levels
5 or the alternate cleanup target levels for groundwater
6 established pursuant to this paragraph, as appropriate. Source
7 removal and other cost-effective alternatives that are
8 technologically feasible shall be considered in achieving the
9 leachability soil target levels established by the department.

10 The leachability goals shall not be applicable if the
11 department determines, based upon individual site
12 characteristics, that contaminants will not leach into the
13 groundwater at levels which pose a threat to human health,
14 public safety, and the environment.

15 3. The department may set alternative cleanup target
16 levels based upon the person responsible for site
17 rehabilitation demonstrating, using site-specific modeling and
18 risk assessment studies, that human health, public safety, and
19 the environment are protected.

20
21 The department shall require source removal, if warranted and
22 cost-effective. Once source removal at a site is complete,
23 the department shall reevaluate the site to determine the
24 degree of active cleanup needed to continue. Further, the
25 department shall determine if the reevaluated site qualifies
26 for monitoring only or if no further action is required to
27 rehabilitate the site. If additional site rehabilitation is
28 necessary to reach "no further action" status, the department
29 is encouraged to utilize natural attenuation and monitoring
30 where site conditions warrant.

31

1 (5) DISPOSAL OR REUSE.--The cleanup criteria
2 established pursuant to subsection (4) do not constitute
3 disposal or reuse criteria. Offsite disposal or relocation
4 must be in accordance with all applicable federal, state, and
5 local rules and regulations.~~that drycleaning facility~~
6 ~~restoration funds in the Water Quality Assurance Trust Fund be~~
7 ~~used to fund the rehabilitation of sites that pose a~~
8 ~~significant threat to the public health, safety, or welfare.~~

9 ~~(a) The department shall adopt rules to establish~~
10 ~~priorities for state-conducted rehabilitation at contaminated~~
11 ~~drycleaning facility or wholesale supply facility sites based~~
12 ~~upon factors that include, but need not be limited to:~~

13 ~~1. The degree to which human health, safety, or~~
14 ~~welfare may be affected by exposure to the contamination.~~

15 ~~2. The size of the population or area affected by the~~
16 ~~contamination.~~

17 ~~3. The present and future uses of the affected aquifer~~
18 ~~or surface waters, with particular consideration as to the~~
19 ~~probability that the contamination is substantially affecting,~~
20 ~~or will migrate to and substantially affect, a known public or~~
21 ~~private source of potable water.~~

22 ~~4. The effect of the contamination on the environment.~~

23
24 ~~Drycleaning facility restoration funds shall then be obligated~~
25 ~~for activities described in paragraph (2)(b) at individual~~
26 ~~sites in accordance with the criteria established in this~~
27 ~~subsection. However, nothing in this paragraph shall be~~
28 ~~construed to restrict the department from modifying the~~
29 ~~priority status of a drycleaning facility or wholesale supply~~
30 ~~facility rehabilitation site where conditions warrant.~~

31

1 ~~(b) Criteria for determining completion of site~~
2 ~~rehabilitation program tasks and site rehabilitation programs~~
3 ~~shall be based upon the factors set forth in paragraph (a) and~~
4 ~~the following additional factors:~~

5 ~~1. Individual site characteristics, including natural~~
6 ~~rehabilitation processes.~~

7 ~~2. Applicable state water quality standards.~~

8 ~~3. Whether deviation from state water quality~~
9 ~~standards or from established criteria is appropriate, based~~
10 ~~upon the degree to which the desired rehabilitation level is~~
11 ~~achievable and can be reasonably and cost-effectively~~
12 ~~implemented within available technologies or control~~
13 ~~strategies; except that, where a state water quality standard~~
14 ~~is applicable, such deviation may not result in the~~
15 ~~application of standards more stringent than said standard.~~

16 (6) INTENT; APPLICATION.--

17 (a)~~(c)~~ It is recognized that restoration of
18 groundwater resources contaminated with certain drycleaning
19 solvents, such as perchloroethylene, may not be achievable
20 using currently available technology. In situations where the
21 use of available technology is not anticipated to achieve
22 water quality standards, the department, at its discretion,
23 may use innovative technology that has been field-tested
24 ~~through a federal innovative technology program and that has~~
25 engineering and cost data available.

26 (b)~~(d)~~ Nothing in this subsection shall be construed
27 to restrict the department from temporarily postponing
28 completion of any site rehabilitation program for which
29 drycleaning facility restoration funds are being expended
30 whenever such postponement is deemed necessary in order to
31 make funds available for rehabilitation of a drycleaning

1 facility or wholesale supply facility contamination site with
2 a higher priority status.

3 (c)~~(e)~~ The department shall provide the rehabilitation
4 of eligible drycleaning facilities and wholesale supply
5 facilities consistent with this subsection. Nothing in this
6 chapter shall subject the department to liability for any
7 action that may be required of the owner, operator, or real
8 property owner by any private party or any local, state, or
9 federal government entity.

10 (7)~~(5)~~ SCORING SYSTEM.--The department shall use the
11 following scoring system to rank and prioritize sites for
12 rehabilitation that have been determined to be eligible for
13 the program pursuant to subsection (3). If the application
14 package documents that a site has one of the following
15 characteristics, then the site shall be allocated the
16 corresponding number of points.

17 (a) Any site having a condition that exhibits a fire
18 or explosion hazard shall be of highest priority.

19 (b) Threat to drinking water supply wells.

20 1. Capacity:

21 a. A site shall be awarded points based on the
22 permitted capacity of the largest uncontaminated public water
23 supply well or the capacity of the largest uncontaminated
24 private drinking water well constructed prior to the date of
25 contamination discovery that is located within 1 mile of the
26 site. If multiple uncontaminated wells of the same capacity
27 are present within 1 mile, then select the uncontaminated well
28 closest to the site. Points shall be awarded as follows:

29 For uncontaminated wells (only one shall apply):

30

31 Capacity (gallons per day) Points

1	greater than 1,000,000	90
2	100,000 to 1,000,000	60
3	less than 100,000	30

4
 5 b. If no points were awarded from sub-subparagraph a.,
 6 and contaminated wells are present, then the site shall be
 7 awarded points based on the permitted capacity of the largest
 8 contaminated public water supply well or the capacity of the
 9 largest contaminated private drinking water well constructed
 10 prior to the date of contamination discovery that is located
 11 within 1 mile of the site. If multiple contaminated wells of
 12 the same capacity are present within 1 mile, then select the
 13 contaminated well closest to the site. Points shall be
 14 awarded as follows:

15 For contaminated wells (only one shall apply):

16		
17	Capacity (gallons per day)	Points
18	greater than 1,000,000	25
19	100,000 to 1,000,000	15
20	less than 100,000	5

21
 22 2. A site shall be awarded points based on the
 23 proximity of the public water supply well or private well
 24 selected in subparagraph 1. as follows. If the well selected
 25 is an uncontaminated well, then select only one from
 26 sub-subparagraph a. below. If the well selected is a
 27 contaminated well, then select only one from sub-subparagraph
 28 b. below:

29 a. For uncontaminated wells:

30		
31	Distance	Points

1	within 500 feet	40
2	within 1/4 mile	30
3	within 1/2 mile	20
4	within 1 mile	10

5

6 b. For contaminated wells:

7

8	Distance	Points
9	within 500 feet	15
10	within 1/4 mile	10
11	within 1/2 mile	8
12	within 1 mile	5

13

14 (c) A site shall be awarded points based on
 15 groundwater vulnerability to contamination using the
 16 department's current DRASTIC Index (only one shall apply):

17

18	DRASTIC Index	Points
19	79 and below	3
20	80 to 99	6
21	100 to 119	9
22	120 to 139	12
23	140 to 159	15
24	160 to 179	18
25	180 to 199	21
26	200 to 266	24

27

28 (d) Aquifer Classification (select all that apply):

29 1. A site located in a G-I or F-I aquifer area shall
 30 be awarded 3 points.

31

1 2. A site located in a G-II aquifer area shall be
2 awarded 2 points.

3 3. A site located in a United States Environmental
4 Protection Agency designated sole source aquifer area shall be
5 awarded 1 point.

6 (e) Conditions favoring a continual source (only one
7 shall apply):

8 1. If a site has chlorinated drycleaning solvents in
9 the soil at concentrations greater than or equal to 1
10 milligram per kilogram or in the groundwater at concentrations
11 greater than or equal to 1,500 micrograms per liter, then the
12 site shall be awarded 7 points.

13 2. If the site has chlorinated drycleaning solvents in
14 the soil at concentrations less than 1 milligram per kilogram
15 or in the groundwater at concentrations less than 1,500
16 micrograms per liter, then the site shall be awarded 2 points.

17 (f) Environmental Setting (select all that apply):

18 1. A site located within 1/2 mile of an
19 uncontaminated surface water body used as a permitted public
20 water system shall be awarded 10 points.

21 2. A site located within 1/2 mile of an Outstanding
22 Florida Water body shall be awarded 2 points.

23 3. A site located within 1/4 mile of a surface water
24 body shall be awarded 1 point.

25 4. A site located within 1/4 mile of an area of
26 critical state concern as defined in chapter 380 shall be
27 awarded 2 points.

28 (8)~~(6)~~ SCORING SYSTEM APPLICATION.--

29 (a) If the department determines that a site is
30 eligible for the program, pursuant to this section, then the
31

1 department shall develop a score for the site in accordance
2 with provisions of subsection (5).

3 (b) A priority list of eligible sites shall be
4 developed, by the department, based on an ordering of scored
5 sites such that the highest-scored sites shall be of highest
6 priority for rehabilitation.

7 (c) Scored sites shall be incorporated into the
8 priority list on a quarterly basis with the ranking of all
9 sites previously on the list being adjusted accordingly.

10 (d) Assignments for program tasks to be conducted by
11 state contractors shall be made according to the current
12 priority list and shall be based on the department
13 determination of contractor logistics, geographical
14 considerations, and other criteria the department determines
15 are necessary to achieve cost-effective site rehabilitation.

16 (e) Assignments for the program tasks shall be made
17 beginning with the highest-ranked sites on the priority list
18 at the effective date the assignment is made and proceed
19 through lower-ranked sites.

20 (f) All scored sites will be added to the priority
21 list on a quarterly basis until all the sites have been
22 assigned.

23 (g) Once an assignment is made, a subsequent quarterly
24 adjustment to the priority list shall not alter that
25 assignment unless a more cost-effective approach can be
26 achieved by reassignment, a compelling public health condition
27 or an environmental condition warrants a reassignment, or the
28 reassignment is otherwise in the public interest.

29 (h) Regardless of the score of a site, the department
30 may initiate emergency action for those sites that, in the
31 judgment of the department, are a threat to human health and

1 safety, or where failure to prevent migration of drycleaning
2 solvents would cause irreversible damage to the environment.

3 (9)~~(7)~~ REQUIREMENT FOR DRYCLEANING FACILITIES.--It is
4 the intent of the Legislature that the following drycleaning
5 solvent containment shall be required of the owners or
6 operators of drycleaning facilities, as follows:

7 (a) Owners or operators of drycleaning facilities
8 shall by January 1, 1997, install dikes or other containment
9 structures around each machine or item of equipment in which
10 drycleaning solvents are used and around any area in which
11 solvents or waste-containing solvents are stored. Such dikes
12 or containment structures shall be capable of containing 110
13 percent of the capacity of each such machine and each such
14 storage area. To the extent practicable, each owner or
15 operator of a drycleaning facility shall seal or otherwise
16 render impervious those portions of all dikes' floor surfaces
17 upon which any drycleaning solvents may leak, spill, or
18 otherwise be released.

19 (b) For drycleaning facilities that commence operating
20 subsequent to January 1, 1996, the owners or operators of such
21 facilities shall, prior to the commencement of operations,
22 install beneath each machine or item of equipment in which
23 drycleaning solvents are used a rigid and impermeable
24 containment vessel capable of containing 110 percent of the
25 total tank capacity of each machine.

26 (c) Notwithstanding the provisions of subsection (3),
27 the owner or operator of a drycleaning facility or wholesale
28 supply facility at which there is a spill of more than 1 quart
29 of drycleaning solvent outside of a containment structure, on
30 or after July 1, 1995, shall report the spill to the state
31 through the State Warning Point pursuant to s. 403.161(1)(d)

1 immediately upon the discovery of such spill, and immediately
2 initiate and complete actions to abate the source of the
3 spill, remove product from all indoor and outdoor surface
4 areas, remove product and dissolved product from any septic
5 tank or catch basin in which the solvent has accumulated, and
6 remove affected soils, if any.

7 (d) Failure to comply with the requirements of this
8 subsection shall constitute gross negligence with regard to
9 determining site eligibility in subsection (3).

10 (10)(8) INSURANCE REQUIREMENTS.--The owner or operator
11 of an operating drycleaning facility or wholesale supply
12 facility shall, by January 1, 1999 ~~180 days after October 1,~~
13 ~~1995~~, have purchased third-party liability insurance for \$1
14 million of coverage for each operating facility. The owner or
15 operator shall maintain such insurance while operating as a
16 drycleaning facility or wholesale supply facility and provide
17 proof of such insurance to the department upon registration
18 renewal each year thereafter. Such requirement applies only if
19 such insurance becomes available to the owner or operator at a
20 reasonable rate and covers liability for contamination
21 subsequent to the effective date of the policy and prior to
22 the effective date, retroactive to the commencement of
23 operations at the drycleaning facility or wholesale supply
24 facility. Such insurance may be offered in group coverage
25 policies with a minimum coverage of \$1 million for each member
26 of the group per year that occurred both before and after the
27 ~~effective date of the policy~~. For the purposes of this
28 subsection, reasonable rate means the rate developed based on
29 exposure to loss and underwriting and administrative costs as
30 determined by the Department of Insurance, in consultation
31 with representatives of the drycleaning industry. ~~Failure to~~

1 ~~comply with this subsection shall subject the owner and~~
2 ~~operator to the provisions of s. 376.302.~~

3 (11)(9) VOLUNTARY CLEANUP.--A real property owner is
4 authorized to conduct site rehabilitation activities at any
5 time pursuant to department rules, either through agents of
6 the real property owner or through responsible response action
7 contractors or subcontractors, whether or not the facility has
8 been determined by the department to be eligible for the
9 drycleaning solvent cleanup program. A real property owner or
10 any other person party that conducts site rehabilitation may
11 not seek cost recovery from the department or the Water
12 Quality Assurance Trust Fund for any such rehabilitation
13 activities. A real property owner that voluntarily conducts
14 such site rehabilitation, whether commenced before or on or
15 after October 1, 1995, shall be immune from liability to any
16 person, state or local government, or agency thereof to compel
17 or enjoin site rehabilitation or pay for the cost of
18 rehabilitation of environmental contamination, or to pay any
19 fines or penalties regarding rehabilitation, as soon so long
20 as the real property owner:

21 (a) Conducts contamination assessment and site
22 rehabilitation consistent with state and federal laws and
23 rules;

24 (b) Conducts such site rehabilitation in a timely
25 manner according to a rehabilitation schedule approved by the
26 department; and

27 (c) Does not deny the department access to the site.
28 Upon completion of such site rehabilitation activities in
29 accordance with the requirements of this subsection, the
30 department shall render a site rehabilitation completion
31 order.

1
2 This immunity shall continue to apply to any real property
3 owner who transfers, conveys, leases, or sells property on
4 which a drycleaning facility is located, so long as the
5 voluntary cleanup activities continue.

6 (12) REOPENERS.--Upon completion of site
7 rehabilitation in compliance with subsection (11), additional
8 site rehabilitation is not required unless it is demonstrated:

9 (a) That fraud was committed in demonstrating site
10 conditions or completion of site rehabilitation;

11 (b) That new information confirms the existence of an
12 area of previously unknown contamination which exceeds the
13 site-specific rehabilitation levels established in accordance
14 with subsection (4), or which otherwise poses the threat of
15 real and substantial harm to human health, public safety, or
16 the environment;

17 (c) That the remediation efforts failed to achieve the
18 site rehabilitation criteria established under this section;

19 (d) That the level of risk is increased beyond the
20 acceptable risk established under subsection (4) due to
21 substantial changes in exposure conditions, such as a change
22 in land use from nonresidential to residential use. Any person
23 who changes the land use of the site thus causing the level of
24 risk to increase beyond the acceptable risk level may be
25 required by the department to undertake additional remediation
26 measures to assure that human health, public safety, and the
27 environment are protected consistent with this section; or

28 (e) That a new discharge occurs at the drycleaning
29 site subsequent to a determination of eligibility for
30 participation in the drycleaning program established under
31 this section.

1 ~~(13)(10)~~ DEPARTMENTAL DUTY TO SEEK RECOVERY AND
2 REIMBURSEMENT.--

3 (a) Except as provided in subsection (3) and as
4 otherwise provided by law, the department shall recover from
5 any person causing or having caused the discharge of
6 drycleaning solvents in relation to the operation of a
7 drycleaning facility or wholesale supply facility, jointly and
8 severally, all sums owed or expended from drycleaning facility
9 restoration funds, pursuant to s. 376.308, except that the
10 department may decline to pursue such recovery if it finds the
11 amount involved to be too small or the likelihood of recovery
12 too uncertain.

13 (b) Except as provided in subsection (3) and as
14 otherwise provided by law, it is the duty of the department in
15 administering the drycleaning facility restoration funds to
16 diligently pursue the reimbursement to the Water Quality
17 Assurance Trust Fund of any sum expended from the fund for
18 rehabilitation in accordance with the provisions of this
19 section, unless the department finds the amount involved to be
20 too small or the likelihood of recovery too uncertain. For
21 the purposes of s. 95.11, the limitation period within which
22 to institute an action to recover such sums shall commence on
23 the last date on which any such sums were expended, and not
24 the date that the discharge occurred.

25 (c) The Legislature recognizes its limitations in
26 addressing cleanup liability under federal pollution control
27 programs. In an effort to secure federal liability protection
28 for persons willing to undertake remediation responsibility at
29 a drycleaning site, the department shall attempt to negotiate
30 a memorandum of agreement or similar document with the United
31 States Environmental Protection Agency, whereby the United

1 States Environmental Protection Agency agrees to forego
2 enforcement of federal corrective action authority at
3 drycleaning sites that have received a site rehabilitation
4 completion or "no further action" determination from the
5 department or that are in the process of implementing a
6 voluntary cleanup agreement in accordance with this section.

7 Section 5. Subsection (6) of section 376.308, Florida
8 Statutes, is amended to read:

9 376.308 Liabilities and defenses of facilities.--

10 (6) Nothing herein shall be construed to affect
11 cleanup program eligibility under ss. 376.305(6), 376.3071,
12 376.3072, 376.3078, and 376.3079. Except as otherwise
13 expressly provided in this chapter, nothing in this chapter
14 shall affect, void, or defeat any immunity of any real
15 property under s. 376.3078.

16 Section 6. Paragraph (a) of subsection (5) of section
17 376.313, Florida Statutes, is amended to read:

18 376.313 Nonexclusiveness of remedies and individual
19 cause of action for damages under ss. 376.30-376.319.--

20 (5)(a) In any civil action against the owner or
21 operator of a drycleaning facility or a wholesale supply
22 facility, or the owner of the real property on which such
23 facility is located, if such facility is not eligible under s.
24 376.3078(3)~~s. 376.3078(3)~~, for damages arising from the
25 discharge of drycleaning solvents from a drycleaning facility
26 or wholesale supply facility, the provisions of subsection (3)
27 shall not apply if it can be proven that, at the time of the
28 discharge the alleged damages resulted solely from a discharge
29 from a drycleaning facility or wholesale supply facility that
30 was in compliance with department rules regulating drycleaning
31 facilities or wholesale supply facilities.

1 Section 7. Section 376.70, Florida Statutes, is
2 amended to read:

3 376.70 Tax on gross receipts of drycleaning
4 facilities.--

5 (1) There is levied a gross receipts tax on each
6 drycleaning facility and dry drop-off facility, as defined in
7 s. 376.301, for the privilege of engaging in the business of
8 laundering and drycleaning clothing and other fabrics in this
9 state. The tax shall be at a rate of 2 ~~1.5~~ percent of all
10 charges imposed by the drycleaning facility or the dry
11 drop-off facility for the drycleaning or laundering of
12 clothing or other fabrics. ~~Beginning January 1, 1996, the tax~~
13 ~~rate shall be 2 percent of such charges.~~ Gross receipts from
14 coin-operated laundry machines and from laundry done on a
15 wash, dry, and fold basis shall not be subject to tax.

16 (2) Each drycleaning facility or dry drop-off facility
17 imposing a charge for the drycleaning or laundering of
18 clothing or other fabrics is required to register with the
19 Department of Revenue and become licensed for the purposes of
20 this section. The owner or operator of the facility shall
21 register the facility with the Department of Revenue.
22 Drycleaning facilities or dry drop-off facilities operating at
23 more than one location are only required to have a single
24 registration. The fee for registration is \$30. The owner or
25 operator of the facility shall pay the registration fee to the
26 Department of Revenue.

27 (3) The tax imposed by this section is due on the 1st
28 day of the month succeeding the month in which the charge is
29 imposed and shall be paid on or before the 20th day of each
30 month. The tax shall be reported on forms and in the manner
31 prescribed by the Department of Revenue by rule. The proceeds

1 of the taxes, after deducting the administrative costs
2 incurred by the Department of Revenue in administering,
3 auditing, collecting, distributing, and enforcing the tax,
4 shall be transferred by the Department of Revenue into the
5 Water Quality Assurance Trust Fund and shall be used as
6 provided in s. 376.3078. For the purposes of this section,
7 the proceeds of the tax include all funds collected and
8 received by the Department of Revenue, including interest and
9 penalties on delinquent taxes.

10 (4) Any drycleaning facility which includes in the
11 total retail charge to a consumer of drycleaning services any
12 portion of the tax imposed pursuant to this section shall
13 disclose on the receipt for the amount charged for such
14 services the amount of such tax and a statement that the
15 imposition of the tax was requested by the Florida Dry
16 Cleaners Coalition.

17 (5) Gross receipts arising from charges for services
18 taxable pursuant to this section to persons who also impose
19 charges to others for those same services are exempt from the
20 tax imposed pursuant to this section.

21 (6)~~(5)~~(a) The Department of Revenue shall administer,
22 collect, and enforce the tax imposed under this section
23 pursuant to the procedures for administration, collection, and
24 enforcement of the general state sales tax imposed under
25 chapter 212, except as provided in this subsection. Such
26 procedures include, but are not limited to, those regarding
27 the filing of consolidated returns, the granting of sale for
28 resale exemptions, and the interest and penalties on
29 delinquent taxes. The tax shall not be included in the
30 computation of estimated taxes pursuant to s. 212.11, nor
31 shall the dealer's credit for collecting taxes or fees in s.

1 212.12 apply. The provisions of s. 212.07(4) shall not apply
2 to the tax imposed by this section.

3 (b) The Department of Revenue, ~~under the applicable~~
4 ~~rules of the Public Employees Relations Commission,~~ is
5 authorized to employ persons and incur other expenses for
6 which funds are appropriated by the Legislature. The
7 Department of Revenue is empowered to adopt such rules and
8 shall prescribe and publish such forms as may be necessary to
9 effectuate the purposes of this section.

10 (c) The Department of Revenue is authorized to
11 establish audit procedures and to assess delinquent taxes.

12 (7) The department shall not deny eligibility in the
13 drycleaning solvent cleanup program because of the facility
14 owner's, the facility operator's, and the real property
15 owner's failure to remit all taxes due pursuant to this
16 section and s. 376.75, unless the Department of Revenue:

17 (a) Ascertains the amount of the delinquent tax, if
18 any, and communicates this amount in writing to the
19 drycleaning solvent cleanup program applicant and the real
20 property owner; and

21 (b) Provides a method to the facility owner, the
22 facility operator, and the real property owner for the payment
23 of the taxes.

24
25 Pursuant to this subsection, the owner or operator of a
26 drycleaning facility must demonstrate to the satisfaction of
27 the Department of Revenue that failure to remit all taxes due
28 in a timely manner was not due to willful and overt actions to
29 avoid payment of taxes.

30 (8)(6) The Legislature declares that the failure to
31 promptly implement the provisions of this section would

1 present an immediate threat to the welfare of the state.
2 Therefore, the executive director of the Department of Revenue
3 is authorized to adopt emergency rules pursuant to s.
4 120.54(4) to implement this section. Notwithstanding any other
5 provision of law, such emergency rules shall remain effective
6 for 180 days from the date of adoption. Other rules of the
7 Department of Revenue related to and in furtherance of the
8 orderly implementation of this section shall not be subject to
9 a s. 120.56(2) rule challenge or a s. 120.54(3)(c)2. drawout
10 proceeding, but, once adopted, shall be subject to a s.
11 120.56(3) invalidity challenge. Such rules shall be adopted by
12 the Governor and Cabinet and shall become effective upon
13 filing with the Department of State, notwithstanding the
14 provisions of s. 120.54(3)(e)6.

15 Section 8. Subsection (1) of Section 376.75, Florida
16 Statutes, is amended to read:

17 376.75 Tax on production or importation of
18 perchloroethylene.--

19 (1) Beginning October 1, 1994, a tax of \$5 per gallon
20 is levied on the sale of perchloroethylene
21 (tetrachloroethylene) in this state to a drycleaning facility
22 located in this state or the import of perchloroethylene into
23 this state by a drycleaning facility. This tax is not subject
24 to sales and use tax pursuant to Ch. 212.

25 Section 9. Paragraph (a) of subsection (1) of section
26 287.0595, Florida Statutes, is amended to read:

27 287.0595 Pollution response action contracts;
28 department rules.--

29 (1) The Department of Environmental Protection shall
30 establish, through the promulgation of administrative rules as
31 provided in chapter 120:

1 (a) Procedures for determining the qualifications of
2 responsible potential bidders prior to advertisement for and
3 receipt of bids for pollution response action contracts,
4 including procedures for the rejection of unqualified bidders.
5 Response actions are those activities described in s.
6 376.301(37)~~s. 376.301(33)~~.

7 Section 10. Paragraph (f) of subsection (2) of section
8 316.302, Florida Statutes, is amended to read:

9 316.302 Commercial motor vehicles; safety regulations;
10 transporters and shippers of hazardous materials;
11 enforcement.--

12 (2)

13 (f) A person who operates a commercial motor vehicle
14 having a declared gross vehicle weight of less than 26,000
15 pounds solely in intrastate commerce and who is not
16 transporting hazardous materials, or who is transporting
17 petroleum products as defined in s. 376.301 ~~s. 376.301(27)~~, is
18 exempt from subsection (1). However, such person must comply
19 with 49 C.F.R. parts 382, 392, 393, and 49 C.F.R. s. 396.9.

20 Section 11. Paragraph (o) is added to subsection (7)
21 of section 213.053, Florida Statutes, to read:

22 213.053 Confidentiality and information sharing.--

23 (7) Notwithstanding any other provision of this
24 section, the department may provide:

25 (o) Information relative to ss. 376.70 and 376.75 to
26 the Department of Environmental Protection in the conduct of
27 its official business and to the facility owner, facility
28 operator, and real property owner as defined in s. 376.301.

29 Section 12. This act shall take effect July 1 of the
30 year in which enacted.

31