

Bill No. CS for SB 956

Amendment No. ____ Barcode 105544

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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11	Senators Jones, Lawson, Dockery and Constantine moved the		
12	following amendment:		
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14	Senate Amendment (with title amendment)		
15	On page 2, line 3, through		
16	page 3, line 3, delete those lines		
17			
18	and insert:		
19	Section 2. Subsections (1), (3), and (11) of section		
20	376.3078, Florida Statutes, are amended to read:		
21	376.3078 Drycleaning facility restoration; funds;		
22	uses; liability; recovery of expenditures.--		
23	(1) FINDINGS.--In addition to the legislative findings		
24	set forth in s. 376.30, the Legislature finds and declares		
25	that:		
26	(a) Significant quantities of drycleaning solvents		
27	have been discharged in the past at drycleaning facilities as		
28	part of the normal operation of these facilities.		
29	(b) Discharges of drycleaning solvents at such		
30	drycleaning facilities have occurred and are occurring, and		
31	pose a significant threat to the quality of the groundwaters		

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1 and inland surface waters of this state.

2 (c) Where contamination of the groundwater or surface
 3 water has occurred, remedial measures have often been delayed
 4 for long periods while determinations as to liability and the
 5 extent of liability are made, and such delays result in the
 6 continuation and intensification of the threat to the public
 7 health, safety, and welfare; in greater damage to the
 8 environment; and in significantly higher costs to contain and
 9 remove the contamination.

10 (d) Adequate financial resources must be readily
 11 available to provide for the expeditious supply of safe and
 12 reliable alternative sources of potable water to affected
 13 persons and to provide a means for investigation and
 14 rehabilitation of contaminated sites without delay.

15 (e) It is the intent of the Legislature to encourage
 16 real property owners to undertake the voluntary cleanup of
 17 property contaminated with drycleaning solvents and that the
 18 immunity provisions of this section and all other available
 19 defenses be construed in favor of real property owners.

20 (f) Strong public interests are served by subsections
 21 (3) and (11). These include improving the marketability and
 22 use of, and the ability to borrow funds as to, property
 23 contaminated by drycleaning solvents and encouraging the
 24 voluntary remediation of contaminated sites. The extent to
 25 which claims or rights are affected by subsections (3) and
 26 (11) is offset by the remedies created in this section. The
 27 limitations imposed by these subsections on such claims or
 28 rights are reasonable when balanced against the public
 29 interests served. The claims or rights affected by subsections
 30 (3) and (11) are speculative, and these subsections are
 31 intended to prevent judicial interpretations allowing windfall

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1 awards that thwart the public-interest provisions of this
 2 section.

3 (3) REHABILITATION LIABILITY.--

4 (a) In accordance with the eligibility provisions of
 5 this section, ~~a no~~ real property owner, nearby real property
 6 owner, or ~~no~~ person who owns or operates, or who otherwise
 7 could be liable as a result of the operation of, a drycleaning
 8 facility or a wholesale supply facility is not liable for or
 9 ~~shall be~~ subject to administrative or judicial action brought
 10 by or on behalf of any state or local government or agency
 11 thereof or by or on behalf of any person to compel
 12 rehabilitation or pay for the costs of rehabilitation of
 13 environmental contamination resulting from the discharge of
 14 drycleaning solvents.

15
 16 Subject to the delays that may occur as a result of the
 17 prioritization of sites under this section for any qualified
 18 site, costs for activities described in paragraph (2)(b) shall
 19 be absorbed at the expense of the drycleaning facility
 20 restoration funds, without recourse to reimbursement or
 21 recovery from the real property owner, nearby real property
 22 owner, or ~~the~~ owner or operator of the drycleaning facility or
 23 the wholesale supply facility. Notwithstanding any other
 24 provision of this chapter, this subsection applies to causes
 25 of action accruing on or after the effective date of this act
 26 and applies retroactively to causes of action accruing before
 27 the effective date of this act for which a lawsuit has not
 28 been filed before the effective date of this act.

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

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1 1, 1994, any such drycleaning facility or wholesale supply
2 facility at which there exists contamination by drycleaning
3 solvents shall be eligible under this subsection regardless of
4 when the drycleaning contamination was discovered, provided
5 that the drycleaning facility or the wholesale supply
6 facility:

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

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

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

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

27
28 and provided that the real property owner or the owner or
29 operator of the drycleaning facility or the wholesale supply
30 facility has not willfully concealed the discharge of
31 drycleaning solvents and has remitted all taxes due pursuant

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1 to ss. 376.70 and 376.75, has provided documented evidence of
2 contamination by drycleaning solvents as required by the rules
3 developed pursuant to this section, has reported the
4 contamination prior to December 31, 1998, and has not denied
5 the department access to the site.

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

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

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

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

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

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1 operation of a hazardous waste treatment, storage, or disposal
2 facility, a postclosure permit, or a permit pursuant to the
3 federal Hazardous and Solid Waste Amendments of 1984;
4
5 and provided that the real property owner or the owner or
6 operator of the drycleaning facility or the wholesale supply
7 facility has not willfully concealed the discharge of
8 drycleaning solvents, has provided documented evidence of
9 contamination by drycleaning solvents as required by the rules
10 developed pursuant to this section, has reported the
11 contamination prior to December 31, 1998, and has not denied
12 the department access to the site.

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

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

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

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

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

11 2. For contamination reported to the department as
12 part of a completed application as required by the rules
13 developed under this section, from July 1, 1997, through
14 September 30, 1998, the costs shall be absorbed at the expense
15 of the drycleaning facility restoration funds, less a \$5,000
16 deductible per incident. The deductible shall be paid within
17 60 days after receipt of billing by the department.

18 3. For contamination reported to the department as
19 part of a completed application as required by the rules
20 developed pursuant to this section from October 1, 1998,
21 through December 31, 1998, the costs shall be absorbed at the
22 expense of the drycleaning facility restoration funds, less a
23 \$10,000 deductible per incident. The deductible shall be paid
24 within 60 days after receipt of billing by the department.

25 4. For contamination reported after December 31, 1998,
26 no costs will be absorbed at the expense of the drycleaning
27 facility restoration funds.

28 ~~(f)(e)~~ The provisions of this subsection shall not
29 apply to any site where the department has been denied site
30 access to implement the provisions of this section.

31 ~~(g)(f)~~ In order to identify those drycleaning

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1 facilities and wholesale supply facilities that have
2 experienced contamination resulting from the discharge of
3 drycleaning solvents and to ensure the most expedient
4 rehabilitation of such sites, the owners and operators of
5 drycleaning facilities and wholesale supply facilities are
6 encouraged to detect and report contamination from drycleaning
7 solvents related to the operation of drycleaning facilities
8 and wholesale supply facilities. The department shall
9 establish reasonable guidelines for the written reporting of
10 drycleaning contamination and shall distribute forms to
11 registrants under s. 376.303(1)(d), and to other interested
12 parties upon request, to be used for such purpose.

13 ~~(h)(g)~~ A report of drycleaning solvent contamination
14 at a drycleaning facility or wholesale supply facility made to
15 the department by any person in accordance with this
16 subsection, or any rules promulgated pursuant hereto, may not
17 be used directly as evidence of liability for such discharge
18 in any civil or criminal trial arising out of the discharge.

19 ~~(i)(h)~~ The provisions of this subsection shall not
20 apply to drycleaning facilities owned or operated by the state
21 or Federal Government.

22 ~~(j)(i)~~ Due to the value of Florida's potable water, it
23 is the intent of the Legislature that the department initiate
24 and facilitate as many cleanups as possible utilizing the
25 resources of the state, local governments, and the private
26 sector. The department is authorized to adopt necessary rules
27 and enter into contracts to carry out the intent of this
28 subsection and to limit or prevent future contamination from
29 the operation of drycleaning facilities and wholesale supply
30 facilities.

31 ~~(k)(j)~~ It is not the intent of the Legislature that

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1 the state become the owner or operator of a drycleaning
2 facility or wholesale supply facility by engaging in
3 state-conducted cleanup.

4 ~~(l)(*)~~ The owner, operator, and either the real
5 property owner or agent of the real property owner may apply
6 for the Drycleaning Contamination Cleanup Program by jointly
7 submitting a completed application package to the department
8 pursuant to the rules that shall be adopted by the department.
9 If the application cannot be jointly submitted, then the
10 applicant shall provide notice of the application to other
11 interested parties. After reviewing the completed application
12 package, the department shall notify the applicant in writing
13 as to whether the drycleaning facility or wholesale supply
14 facility is eligible for the program. If the department denies
15 eligibility for a completed application package, the notice of
16 denial shall specify the reasons for the denial, including
17 specific and substantive findings of fact, and shall
18 constitute agency action subject to the provisions of chapter
19 120. For the purposes of ss. 120.569 and 120.57, the real
20 property owner and the owner and operator of a drycleaning
21 facility or wholesale supply facility which is the subject of
22 a decision by the department with regard to eligibility shall
23 be deemed to be parties whose substantial interests are
24 determined by the department's decision to approve or deny
25 eligibility.

26 ~~(m)(l)~~ Eligibility under this subsection applies to
27 the drycleaning facility or wholesale supply facility, and
28 attendant site rehabilitation applies to such facilities and
29 to any place where drycleaning-solvent contamination migrating
30 from the eligible facility is found. A determination of
31 eligibility or ineligibility shall not be affected by any

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1 conveyance of the ownership of the drycleaning facility,
2 wholesale supply facility, or the real property on which such
3 facility is located. Nothing contained in this chapter shall
4 be construed to allow a drycleaning facility or wholesale
5 supply facility which would not be eligible under this
6 subsection to become eligible as a result of the conveyance of
7 the ownership of the ineligible drycleaning facility or
8 wholesale supply facility to another owner.

9 ~~(n)(m)~~ If funding for the drycleaning contamination
10 rehabilitation program is eliminated, the provisions of this
11 subsection shall not apply.

12 ~~(o)(n)~~1. The department shall have the authority to
13 cancel the eligibility of any drycleaning facility or
14 wholesale supply facility that submits fraudulent information
15 in the application package or that fails to continuously
16 comply with the conditions of eligibility set forth in this
17 subsection, or has not remitted all fees pursuant to s.
18 376.303(1)(d), or has not remitted the deductible payments
19 pursuant to paragraph ~~(e)(d)~~.

20 2. If the program eligibility of a drycleaning
21 facility or wholesale supply facility is subject to
22 cancellation pursuant to this section, then the department
23 shall notify the applicant in writing of its intent to cancel
24 program eligibility and shall state the reason or reasons for
25 cancellation. The applicant shall have 45 days to resolve the
26 reason or reasons for cancellation to the satisfaction of the
27 department. If, after 45 days, the applicant has not resolved
28 the reason or reasons for cancellation to the satisfaction of
29 the department, the order of cancellation shall become final
30 and shall be subject to the provisions of chapter 120.

31 ~~(p)(o)~~ A real property owner shall not be subject to

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1 administrative or judicial action brought by or on behalf of
2 any person or local or state government, or agency thereof,
3 for gross negligence or violations of department rules prior
4 to January 1, 1990, which resulted from the operation of a
5 drycleaning facility, provided that the real property owner
6 demonstrates that:

7 1. The real property owner had ownership in the
8 property at the time of the gross negligence or violation of
9 department rules and did not cause or contribute to
10 contamination on the property;

11 2. The real property owner was a distinct and separate
12 entity from the owner and operator of the drycleaning
13 facility, and did not have an ownership interest in or share
14 in the profits of the drycleaning facility;

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

17 4. The real property owner complied with all discharge
18 reporting requirements, and did not conceal any contamination;
19 and

20 5. The department has not been denied access.

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

24 ~~(q)(p)~~ A person whose property becomes contaminated
25 due to geophysical or hydrologic reasons from the operation of
26 a nearby drycleaning or wholesale supply facility and whose
27 property has never been occupied by a business that utilized
28 or stored drycleaning solvents or similar constituents is not
29 subject to administrative or judicial action brought by or on
30 behalf of another to compel the rehabilitation of or the
31 payment of the costs for the rehabilitation of sites

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1 contaminated by drycleaning solvents, provided that the
2 person:

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

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

8 3. Did not cause, contribute to, or exacerbate the
9 release or threat of release of any hazardous substance
10 through any act or omission.

11

12 The defense provided by this paragraph does not apply to any
13 liability under a federally delegated program.

14 ~~(r)(g)~~ Nothing in this subsection precludes the
15 department from considering information and documentation
16 provided by private consultants, local government programs,
17 federal agencies, or any individual which is relevant to an
18 eligibility determination if the department provides the
19 applicant with reasonable access to the information and its
20 origin.

21 (11) VOLUNTARY CLEANUP.--A real property owner is
22 authorized to conduct site rehabilitation activities at any
23 time pursuant to department rules, either through agents of
24 the real property owner or through responsible response action
25 contractors or subcontractors, whether or not the facility has
26 been determined by the department to be eligible for the
27 drycleaning solvent cleanup program. A real property owner or
28 any other person who ~~that~~ conducts site rehabilitation may not
29 seek cost recovery from the department or the Water Quality
30 Assurance Trust Fund for any such rehabilitation activities. A
31 real property owner who ~~that~~ voluntarily initiates ~~conducts~~

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1 such site rehabilitation, whether commenced before or on or
2 after October 1, 1995, shall upon initiation of such site
3 rehabilitation be immune from and have no liability for claims
4 of any person, for property damages of any kind, including,
5 but not limited to, diminished value of real property or
6 improvements; lost or delayed rent, sale, or use of real
7 property or improvements; or stigma to real property or
8 improvements caused by drycleaning-solvent contamination or be
9 subject to any administrative or judicial action brought by or
10 on behalf of ~~to~~ any person, state or local government, or
11 agency thereof to compel or enjoin site rehabilitation or pay
12 for the cost of rehabilitation of environmental contamination,
13 and ~~or~~ to pay any fines or penalties regarding rehabilitation,
14 as soon as the real property owner:

15 (a) Conducts contamination assessment and site
16 rehabilitation consistent with state and federal laws and
17 rules;

18 (b) Conducts such site rehabilitation in a timely
19 manner according to a rehabilitation schedule approved by the
20 department; and

21 (c) Does not deny the department access to the site.

22 Upon completion of such site rehabilitation activities in
23 accordance with the requirements of this subsection, the
24 department shall render a site rehabilitation completion
25 order.

26
27 The immunity set forth in this subsection also applies to any
28 nearby real property owner. This immunity shall continue to
29 apply to any real property owner who transfers, conveys,
30 leases, or sells property on which a drycleaning facility is
31 located so long as the voluntary cleanup activities continue.

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1 Notwithstanding any other provision of this chapter, this
 2 subsection applies to causes of action accruing on or after
 3 the effective date of this act and applies retroactively to
 4 causes of action accruing before the effective date of this
 5 act for which a lawsuit has not been filed before the
 6 effective date of this act.

7 Section 3. Subsection (4) of section 376.30781,
 8 Florida Statutes, is amended to read:

9 376.30781 Partial tax credits for rehabilitation of
 10 drycleaning-solvent-contaminated sites and brownfield sites in
 11 designated brownfield areas; application process; rulemaking
 12 authority; revocation authority.--

13 (4) To claim the credit, each applicant must apply to
 14 the Department of Environmental Protection for an allocation
 15 of the \$2 million annual credit by December 31 on a form
 16 developed by the Department of Environmental Protection in
 17 cooperation with the Department of Revenue. The form shall
 18 include an affidavit from each applicant certifying that all
 19 information contained in the application, including all
 20 records of costs incurred and claimed in the tax credit
 21 application, are true and correct. If the application is
 22 submitted pursuant to subparagraph (2)(a)2., the form must
 23 include an affidavit signed by the real property owner stating
 24 that it is not, and has never been, the owner or operator of
 25 the drycleaning facility where the contamination exists.
 26 Approval of partial tax credits must be accomplished on a
 27 first-come, first-served basis based upon the date complete
 28 applications are received by the Division of Waste Management.
 29 An applicant shall submit only one application per site per
 30 year. To be eligible for a tax credit the applicant must:

31 (a) Have entered into a voluntary cleanup agreement

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1 with the Department of Environmental Protection for a
 2 drycleaning-solvent-contaminated site or a Brownfield Site
 3 Rehabilitation Agreement, as applicable; and
 4 (b) Have paid all deductibles pursuant to s.
 5 376.3078(3)(e) ~~s. 376.3078(3)(d)~~ for eligible
 6 drycleaning-solvent-cleanup program sites.

7
8

9 ===== T I T L E A M E N D M E N T =====

10 And the title is amended as follows:

11 On page 1, lines 7-11, delete those lines

12

13 and insert:

14 waters; amending s. 376.3078, F.S.; providing
 15 additional legislative findings with respect to
 16 drycleaning facility restoration; exempting
 17 certain real property owners and nearby real
 18 property owners from liability for damages
 19 arising from contamination by drycleaning
 20 solvents in certain circumstances; providing
 21 for retroactive application; amending s.
 22 376.30781, F.S.; conforming a cross-reference;
 23 amending

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