

Bill No. CS for SB 956

Amendment No. ____ Barcode 151890

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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2	04/23/2003	WD/2R	
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11	Senator Jones moved the following amendment:		
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13	Senate Amendment (with title amendment)		
14	On page 2, line 3, through		
15	page 3, line 3, delete those lines		
16			
17	and insert:		
18	Section 2. Subsections (1), (3), and (11) of section		
19	376.3078, Florida Statutes, are amended to read:		
20	376.3078 Drycleaning facility restoration; funds;		
21	uses; liability; recovery of expenditures.--		
22	(1) FINDINGS.--In addition to the legislative findings		
23	set forth in s. 376.30, the Legislature finds and declares		
24	that:		
25	(a) Significant quantities of drycleaning solvents		
26	have been discharged in the past at drycleaning facilities as		
27	part of the normal operation of these facilities.		
28	(b) Discharges of drycleaning solvents at such		
29	drycleaning facilities have occurred and are occurring, and		
30	pose a significant threat to the quality of the groundwaters		
31	and inland surface waters of this state.		

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

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

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

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

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1 section.

2 (3) REHABILITATION LIABILITY.--

3 (a) In accordance with the eligibility provisions of
4 this section, a ~~no~~ real property owner, nearby real property
5 owner, or ~~no~~ person who owns or operates, or who otherwise
6 could be liable as a result of the operation of, a drycleaning
7 facility or a wholesale supply facility is not liable for or
8 ~~shall be~~ subject to:

9 1. Claims of any person, except for any governmental
10 entity, for property damage of any kind, including, but not
11 limited to, diminished value of real property or improvements;
12 lost or delayed rent, sale, or use of real property or
13 improvements; or stigma to real property or improvements
14 caused by drycleaning-solvent contamination; or

15 2. Administrative or judicial action brought by or on
16 behalf of any state or local government or agency thereof or
17 by or on behalf of any person to compel rehabilitation or pay
18 for the costs of rehabilitation of environmental contamination
19 resulting from the discharge of drycleaning solvents.

20
21 Subject to the delays that may occur as a result of the
22 prioritization of sites under this section for any qualified
23 site, costs for activities described in paragraph (2)(b) shall
24 be absorbed at the expense of the drycleaning facility
25 restoration funds, without recourse to reimbursement or
26 recovery from the real property owner, nearby real property
27 owner, or ~~the~~ owner or operator of the drycleaning facility or
28 the wholesale supply facility. Notwithstanding any other
29 provision of this chapter, this subsection applies to causes
30 of action accruing on or after the effective date of this act
31 and applies retroactively to causes of action accruing before

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1 the effective date of this act for which a lawsuit has not
2 been filed before the effective date of this act.

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

12 1. Has been registered with the department;

13 2. Is determined by the department to be in compliance
14 with the department's rules regulating drycleaning solvents,
15 drycleaning facilities, or wholesale supply facilities on or
16 after November 19, 1980;

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

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

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

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2 and provided that the real property owner or the owner or
3 operator of the drycleaning facility or the wholesale supply
4 facility has not willfully concealed the discharge of
5 drycleaning solvents and has remitted all taxes due pursuant
6 to ss. 376.70 and 376.75, has provided documented evidence of
7 contamination by drycleaning solvents as required by the rules
8 developed pursuant to this section, has reported the
9 contamination prior to December 31, 1998, and has not denied
10 the department access to the site.

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

19 1. Was not determined by the department, within a
20 reasonable time after the department's discovery, to have been
21 out of compliance with the department rules regulating
22 drycleaning solvents, drycleaning facilities, or wholesale
23 supply facilities implemented at any time on or after November
24 19, 1980;

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

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

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1 and

2 4. Is not under an order from the United States
3 Environmental Protection Agency pursuant to s. 3008(h) of the
4 Resource Conservation and Recovery Act, as amended, or has not
5 obtained and is not required to obtain a permit for the
6 operation of a hazardous waste treatment, storage, or disposal
7 facility, a postclosure permit, or a permit pursuant to the
8 federal Hazardous and Solid Waste Amendments of 1984;

9

10 and provided that the real property owner or the owner or
11 operator of the drycleaning facility or the wholesale supply
12 facility has not willfully concealed the discharge of
13 drycleaning solvents, has provided documented evidence of
14 contamination by drycleaning solvents as required by the rules
15 developed pursuant to this section, has reported the
16 contamination prior to December 31, 1998, and has not denied
17 the department access to the site.

18 ~~(d)(c)~~ For purposes of determining eligibility, a
19 drycleaning facility or wholesale supply facility was operated
20 in a grossly negligent manner if the department determines
21 that the owner or operator of the drycleaning facility or the
22 wholesale supply facility:

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

28 2. Willfully concealed a discharge of drycleaning
29 solvents with the knowledge, intent, and purpose that the
30 concealment would result in harm to the environment or to
31 public health or result in a violation of the law; or

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

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

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

23 3. For contamination reported to the department as
24 part of a completed application as required by the rules
25 developed pursuant to this section from October 1, 1998,
26 through December 31, 1998, the costs shall be absorbed at the
27 expense of the drycleaning facility restoration funds, less a
28 \$10,000 deductible per incident. The deductible shall be paid
29 within 60 days after receipt of billing by the department.

30 4. For contamination reported after December 31, 1998,
31 no costs will be absorbed at the expense of the drycleaning

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1 facility restoration funds.

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

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

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

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

27 ~~(j)(i)~~ Due to the value of Florida's potable water, it
28 is the intent of the Legislature that the department initiate
29 and facilitate as many cleanups as possible utilizing the
30 resources of the state, local governments, and the private
31 sector. The department is authorized to adopt necessary rules

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1 and enter into contracts to carry out the intent of this
2 subsection and to limit or prevent future contamination from
3 the operation of drycleaning facilities and wholesale supply
4 facilities.

5 ~~(k)(j)~~ It is not the intent of the Legislature that
6 the state become the owner or operator of a drycleaning
7 facility or wholesale supply facility by engaging in
8 state-conducted cleanup.

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

31 ~~(m)(l)~~ Eligibility under this subsection applies to

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1 the drycleaning facility or wholesale supply facility, and
2 attendant site rehabilitation applies to such facilities and
3 to any place where drycleaning-solvent contamination migrating
4 from the eligible facility is found. A determination of
5 eligibility or ineligibility shall not be affected by any
6 conveyance of the ownership of the drycleaning facility,
7 wholesale supply facility, or the real property on which such
8 facility is located. Nothing contained in this chapter shall
9 be construed to allow a drycleaning facility or wholesale
10 supply facility which would not be eligible under this
11 subsection to become eligible as a result of the conveyance of
12 the ownership of the ineligible drycleaning facility or
13 wholesale supply facility to another owner.

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

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

25 2. If the program eligibility of a drycleaning
26 facility or wholesale supply facility is subject to
27 cancellation pursuant to this section, then the department
28 shall notify the applicant in writing of its intent to cancel
29 program eligibility and shall state the reason or reasons for
30 cancellation. The applicant shall have 45 days to resolve the
31 reason or reasons for cancellation to the satisfaction of the

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

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

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

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

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

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

25 5. The department has not been denied access.

26
27 The defense provided by this paragraph does not apply to any
28 liability under a federally delegated program.

29 ~~(g)(p)~~ A person whose property becomes contaminated
30 due to geophysical or hydrologic reasons from the operation of
31 a nearby drycleaning or wholesale supply facility and whose

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1 property has never been occupied by a business that utilized
 2 or stored drycleaning solvents or similar constituents is not
 3 subject to administrative or judicial action brought by or on
 4 behalf of another to compel the rehabilitation of or the
 5 payment of the costs for the rehabilitation of sites
 6 contaminated by drycleaning solvents, provided that the
 7 person:

- 8 1. Does not own and has never held an ownership
 9 interest in, or shared in the profits of, the drycleaning
 10 facility operated at the source location;
- 11 2. Did not participate in the operation or management
 12 of the drycleaning facility at the source location; and
- 13 3. Did not cause, contribute to, or exacerbate the
 14 release or threat of release of any hazardous substance
 15 through any act or omission.

16
 17 The defense provided by this paragraph does not apply to any
 18 liability under a federally delegated program.

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

26 (11) VOLUNTARY CLEANUP.--A real property owner is
 27 authorized to conduct site rehabilitation activities at any
 28 time pursuant to department rules, either through agents of
 29 the real property owner or through responsible response action
 30 contractors or subcontractors, whether or not the facility has
 31 been determined by the department to be eligible for the

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1 drycleaning solvent cleanup program. A real property owner or
2 any other person who that conducts site rehabilitation may not
3 seek cost recovery from the department or the Water Quality
4 Assurance Trust Fund for any such rehabilitation activities. A
5 real property owner who that voluntarily conducts such site
6 rehabilitation, whether commenced before or on or after
7 October 1, 1995, shall be immune from and have no liability
8 for claims of any person, except for any governmental entity,
9 for property damages of any kind, including, but not limited
10 to, diminished value of real property or improvements; lost or
11 delayed rent, sale, or use of real property or improvements;
12 or stigma to real property or improvements caused by
13 drycleaning-solvent contamination or be subject to any
14 administrative or judicial action brought by or on behalf of
15 ~~to~~ any person, state or local government, or agency thereof to
16 compel or enjoin site rehabilitation or pay for the cost of
17 rehabilitation of environmental contamination, and or to pay
18 any fines or penalties regarding rehabilitation, as soon as
19 the real property owner:
20 (a) Conducts contamination assessment and site
21 rehabilitation consistent with state and federal laws and
22 rules;
23 (b) Conducts such site rehabilitation in a timely
24 manner according to a rehabilitation schedule approved by the
25 department; and
26 (c) Does not deny the department access to the site.
27 Upon completion of such site rehabilitation activities in
28 accordance with the requirements of this subsection, the
29 department shall render a site rehabilitation completion
30 order.
31

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1 The immunity set forth in this subsection also applies to any
2 nearby real property owner. This immunity shall continue to
3 apply to any real property owner who transfers, conveys,
4 leases, or sells property on which a drycleaning facility is
5 located so long as the voluntary cleanup activities continue.
6 Notwithstanding any other provision of this chapter, this
7 subsection applies to causes of action accruing on or after
8 the effective date of this act and applies retroactively to
9 causes of action accruing before the effective date of this
10 act for which a lawsuit has not been filed before the
11 effective date of this act.

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

14 376.30781 Partial tax credits for rehabilitation of
15 drycleaning-solvent-contaminated sites and brownfield sites in
16 designated brownfield areas; application process; rulemaking
17 authority; revocation authority.--

18 (4) To claim the credit, each applicant must apply to
19 the Department of Environmental Protection for an allocation
20 of the \$2 million annual credit by December 31 on a form
21 developed by the Department of Environmental Protection in
22 cooperation with the Department of Revenue. The form shall
23 include an affidavit from each applicant certifying that all
24 information contained in the application, including all
25 records of costs incurred and claimed in the tax credit
26 application, are true and correct. If the application is
27 submitted pursuant to subparagraph (2)(a)2., the form must
28 include an affidavit signed by the real property owner stating
29 that it is not, and has never been, the owner or operator of
30 the drycleaning facility where the contamination exists.

31 Approval of partial tax credits must be accomplished on a

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1 first-come, first-served basis based upon the date complete
2 applications are received by the Division of Waste Management.

3 An applicant shall submit only one application per site per
4 year. To be eligible for a tax credit the applicant must:

5 (a) Have entered into a voluntary cleanup agreement
6 with the Department of Environmental Protection for a
7 drycleaning-solvent-contaminated site or a Brownfield Site
8 Rehabilitation Agreement, as applicable; and

9 (b) Have paid all deductibles pursuant to s.
10 376.3078(3)(e) ~~s. 376.3078(3)(d)~~ for eligible
11 drycleaning-solvent-cleanup program sites.

12
13

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

15 And the title is amended as follows:

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

17
18

and insert:

19 waters; amending s. 376.3078, F.S.; providing
20 additional legislative findings with respect to
21 drycleaning facility restoration; exempting
22 certain real property owners and nearby real
23 property owners from liability for damages
24 arising from contamination by drycleaning
25 solvents in certain circumstances; providing
26 for retroactive application; amending s.
27 376.30781, F.S.; conforming a cross-reference;
28 amending

29
30
31