

CHAMBER ACTION

1 The State Resources Council recommends the following:

2  
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5  
6 A bill to be entitled

7 An act relating to contaminated drycleaning facilities;  
8 amending s. 376.3078, F.S.; providing that a drycleaning  
9 facility where an accident caused or exacerbated  
10 contamination is eligible for an exemption from liability;  
11 defining the term "accident"; providing an effective date.  
12

13 Be It Enacted by the Legislature of the State of Florida:

14  
15 Section 1. Subsection (3) of section 376.3078, Florida  
16 Statutes, is amended to read:

17 376.3078 Drycleaning facility restoration; funds; uses;  
18 liability; recovery of expenditures.--

19 (3) REHABILITATION LIABILITY.--

20 (a) In accordance with the eligibility provisions of this  
21 section, a real property owner, nearby real property owner, or  
22 person who owns or operates, or who otherwise could be liable as  
23 a result of the operation of, a drycleaning facility or a

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24 | wholesale supply facility is not liable for or subject to  
25 | administrative or judicial action brought by or on behalf of any  
26 | state or local government or agency thereof or by or on behalf  
27 | of any person to compel rehabilitation or pay for the costs of  
28 | rehabilitation of environmental contamination resulting from the  
29 | discharge of drycleaning solvents. Subject to the delays that  
30 | may occur as a result of the prioritization of sites under this  
31 | section for any qualified site, costs for activities described  
32 | in paragraph (2)(b) shall be absorbed at the expense of the  
33 | drycleaning facility restoration funds, without recourse to  
34 | reimbursement or recovery from the real property owner, nearby  
35 | real property owner, or owner or operator of the drycleaning  
36 | facility or the wholesale supply facility. Notwithstanding any  
37 | other provision of this chapter, this subsection applies to  
38 | causes of action accruing on or after the effective date of this  
39 | act and applies retroactively to causes of action accruing  
40 | before the effective date of this act for which a lawsuit has  
41 | not been filed before the effective date of this act.

42 |       (b) With regard to drycleaning facilities or wholesale  
43 | supply facilities that have operated as drycleaning facilities  
44 | or wholesale supply facilities on or after October 1, 1994, any  
45 | such drycleaning facility or wholesale supply facility at which  
46 | there exists contamination by drycleaning solvents shall be  
47 | eligible under this subsection regardless of when the  
48 | drycleaning contamination was discovered, provided that the  
49 | drycleaning facility or the wholesale supply facility:

50 |       1. Has been registered with the department;

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51           2. Is determined by the department to be in compliance  
52 with the department's rules regulating drycleaning solvents,  
53 drycleaning facilities, or wholesale supply facilities on or  
54 after November 19, 1980;

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

57           4. Has not been identified to qualify for listing, nor is  
58 listed, on the National Priority List pursuant to the  
59 Comprehensive Environmental Response, Compensation, and  
60 Liability Act of 1980 as amended by the Superfund Amendments and  
61 Reauthorization Act of 1986, and as subsequently amended;

62           5. Is not under an order from the United States  
63 Environmental Protection Agency pursuant to s. 3008(h) of the  
64 Resource Conservation and Recovery Act as amended (42 U.S.C.A.  
65 s. 6928(h)), or has not obtained and is not required to obtain a  
66 permit for the operation of a hazardous waste treatment,  
67 storage, or disposal facility, a postclosure permit, or a permit  
68 pursuant to the federal Hazardous and Solid Waste Amendments of  
69 1984;

70  
71 and provided that the real property owner or the owner or  
72 operator of the drycleaning facility or the wholesale supply  
73 facility has not willfully concealed the discharge of  
74 drycleaning solvents and has remitted all taxes due pursuant to  
75 ss. 376.70 and 376.75, has provided documented evidence of  
76 contamination by drycleaning solvents as required by the rules  
77 developed pursuant to this section, has reported the

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78 | contamination prior to December 31, 1998, and has not denied the  
79 | department access to the site.

80 |         (c) With regard to drycleaning facilities or wholesale  
81 | supply facilities that cease to be operated as drycleaning  
82 | facilities or wholesale supply facilities prior to October 1,  
83 | 1994, such facilities, at which there exists contamination by  
84 | drycleaning solvents, shall be eligible under this subsection  
85 | regardless of when the contamination was discovered, provided  
86 | that the drycleaning facility or wholesale supply facility:

87 |             1. Was not determined by the department, within a  
88 | reasonable time after the department's discovery, to have been  
89 | out of compliance with the department rules regulating  
90 | drycleaning solvents, drycleaning facilities, or wholesale  
91 | supply facilities implemented at any time on or after November  
92 | 19, 1980;

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

95 |             3. Has not been identified to qualify for listing, nor is  
96 | listed, on the National Priority List pursuant to the  
97 | Comprehensive Environmental Response, Compensation, and  
98 | Liability Act of 1980, as amended by the Superfund Amendments  
99 | and Reauthorization Act of 1986, and as subsequently amended;  
100 | and

101 |             4. Is not under an order from the United States  
102 | Environmental Protection Agency pursuant to s. 3008(h) of the  
103 | Resource Conservation and Recovery Act, as amended, or has not  
104 | obtained and is not required to obtain a permit for the  
105 | operation of a hazardous waste treatment, storage, or disposal

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

108  
109 and provided that the real property owner or the owner or  
110 operator of the drycleaning facility or the wholesale supply  
111 facility has not willfully concealed the discharge of  
112 drycleaning solvents, has provided documented evidence of  
113 contamination by drycleaning solvents as required by the rules  
114 developed pursuant to this section, has reported the  
115 contamination prior to December 31, 1998, and has not denied the  
116 department access to the site.

117 (d) For purposes of determining eligibility, a drycleaning  
118 facility or wholesale supply facility was operated in a grossly  
119 negligent manner if the department determines that the owner or  
120 operator of the drycleaning facility or the wholesale supply  
121 facility:

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

127 2. Willfully concealed a discharge of drycleaning solvents  
128 with the knowledge, intent, and purpose that the concealment  
129 would result in harm to the environment or to public health or  
130 result in a violation of the law; or

131 3. Willfully violated a local, state, or federal law or  
132 rule regulating the operation of drycleaning facilities or  
133 wholesale supply facilities with the knowledge, intent, and

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134 purpose that the act would result in harm to the environment or  
135 to public health or result in a violation of the law.

136 (e)1. With respect to eligible drycleaning solvent  
137 contamination reported to the department as part of a completed  
138 application as required by the rules developed pursuant to this  
139 section by June 30, 1997, the costs of activities described in  
140 paragraph (2)(b) shall be absorbed at the expense of the  
141 drycleaning facility restoration funds, less a \$1,000 deductible  
142 per incident, which shall be paid by the applicant or current  
143 property owner. The deductible shall be paid within 60 days  
144 after receipt of billing by the department.

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

152 3. For contamination reported to the department as part of  
153 a completed application as required by the rules developed  
154 pursuant to this section from October 1, 1998, through December  
155 31, 1998, the costs shall be absorbed at the expense of the  
156 drycleaning facility restoration funds, less a \$10,000  
157 deductible per incident. The deductible shall be paid within 60  
158 days after receipt of billing by the department.

159 4. For contamination reported after December 31, 1998, no  
160 costs will be absorbed at the expense of the drycleaning  
161 facility restoration funds.

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162           (f) ~~The provisions of~~ This subsection does ~~shall~~ not apply  
 163 to any site where the department has been denied site access to  
 164 implement the provisions of this section.

165           (g) In order to identify those drycleaning facilities and  
 166 wholesale supply facilities that have experienced contamination  
 167 resulting from the discharge of drycleaning solvents and to  
 168 ensure the most expedient rehabilitation of such sites, the  
 169 owners and operators of drycleaning facilities and wholesale  
 170 supply facilities are encouraged to detect and report  
 171 contamination from drycleaning solvents related to the operation  
 172 of drycleaning facilities and wholesale supply facilities. The  
 173 department shall establish reasonable guidelines for the written  
 174 reporting of drycleaning contamination and shall distribute  
 175 forms to registrants under s. 376.303(1)(d), and to other  
 176 interested parties upon request, to be used for such purpose.

177           (h) A report of drycleaning solvent contamination at a  
 178 drycleaning facility or wholesale supply facility made to the  
 179 department by any person in accordance with this subsection, or  
 180 any rules promulgated pursuant hereto, may not be used directly  
 181 as evidence of liability for such discharge in any civil or  
 182 criminal trial arising out of the discharge.

183           (i) A drycleaning facility at which contamination by  
 184 drycleaning solvents exists and which was damaged by accident  
 185 prior to January 1, 1975, is eligible under this subsection,  
 186 regardless of whether an application for eligibility was filed  
 187 on or before December 31, 1998. As used in this paragraph, the  
 188 term "accident" means an unplanned and unanticipated occurrence  
 189 beyond the control of the owner or operator of a drycleaning

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190 facility which resulted in physical damage to the facility when  
 191 the actions of responders to such occurrence could reasonably be  
 192 determined to have caused or exacerbated contamination by  
 193 drycleaning solvents at such facility.

194 (j)-(i) ~~The provisions of~~ This subsection does ~~shall~~ not  
 195 apply to drycleaning facilities owned or operated by the state  
 196 or Federal Government.

197 (k)-(j) Due to the value of Florida's potable water, it is  
 198 the intent of the Legislature that the department initiate and  
 199 facilitate as many cleanups as possible utilizing the resources  
 200 of the state, local governments, and the private sector. The  
 201 department is authorized to adopt necessary rules and enter into  
 202 contracts to carry out the intent of this subsection and to  
 203 limit or prevent future contamination from the operation of  
 204 drycleaning facilities and wholesale supply facilities.

205 (l)-(k) It is not the intent of the Legislature that the  
 206 state become the owner or operator of a drycleaning facility or  
 207 wholesale supply facility by engaging in state-conducted  
 208 cleanup.

209 (m)-(l) The owner, operator, and either the real property  
 210 owner or agent of the real property owner may apply for the  
 211 Drycleaning Contamination Cleanup Program by jointly submitting  
 212 a completed application package to the department pursuant to  
 213 the rules that shall be adopted by the department. If the  
 214 application cannot be jointly submitted, then the applicant  
 215 shall provide notice of the application to other interested  
 216 parties. After reviewing the completed application package, the  
 217 department shall notify the applicant in writing as to whether

218 | the drycleaning facility or wholesale supply facility is  
 219 | eligible for the program. If the department denies eligibility  
 220 | for a completed application package, the notice of denial shall  
 221 | specify the reasons for the denial, including specific and  
 222 | substantive findings of fact, and shall constitute agency action  
 223 | subject to the provisions of chapter 120. For the purposes of  
 224 | ss. 120.569 and 120.57, the real property owner and the owner  
 225 | and operator of a drycleaning facility or wholesale supply  
 226 | facility which is the subject of a decision by the department  
 227 | with regard to eligibility shall be deemed to be parties whose  
 228 | substantial interests are determined by the department's  
 229 | decision to approve or deny eligibility.

230 |       (n)~~(m)~~ Eligibility under this subsection applies to the  
 231 | drycleaning facility or wholesale supply facility, and attendant  
 232 | site rehabilitation applies to such facilities and to any place  
 233 | where drycleaning-solvent contamination migrating from the  
 234 | eligible facility is found. A determination of eligibility or  
 235 | ineligibility shall not be affected by any conveyance of the  
 236 | ownership of the drycleaning facility, wholesale supply  
 237 | facility, or the real property on which such facility is  
 238 | located. Nothing contained in this chapter shall be construed  
 239 | to allow a drycleaning facility or wholesale supply facility  
 240 | which would not be eligible under this subsection to become  
 241 | eligible as a result of the conveyance of the ownership of the  
 242 | ineligible drycleaning facility or wholesale supply facility to  
 243 | another owner.

244        (o)~~(n)~~ If funding for the drycleaning contamination  
 245 rehabilitation program is eliminated, the provisions of this  
 246 subsection shall not apply.

247        (p)~~(e)~~1. The department shall have the authority to cancel  
 248 the eligibility of any drycleaning facility or wholesale supply  
 249 facility that submits fraudulent information in the application  
 250 package or that fails to continuously comply with the conditions  
 251 of eligibility set forth in this subsection, or has not remitted  
 252 all fees pursuant to s. 376.303(1)(d), or has not remitted the  
 253 deductible payments pursuant to paragraph (e).

254        2. If the program eligibility of a drycleaning facility or  
 255 wholesale supply facility is subject to cancellation pursuant to  
 256 this section, then the department shall notify the applicant in  
 257 writing of its intent to cancel program eligibility and shall  
 258 state the reason or reasons for cancellation. The applicant  
 259 shall have 45 days to resolve the reason or reasons for  
 260 cancellation to the satisfaction of the department. If, after 45  
 261 days, the applicant has not resolved the reason or reasons for  
 262 cancellation to the satisfaction of the department, the order of  
 263 cancellation shall become final and shall be subject to the  
 264 provisions of chapter 120.

265        (q)~~(p)~~ A real property owner shall not be subject to  
 266 administrative or judicial action brought by or on behalf of any  
 267 person or local or state government, or agency thereof, for  
 268 gross negligence or violations of department rules prior to  
 269 January 1, 1990, which resulted from the operation of a  
 270 drycleaning facility, provided that the real property owner  
 271 demonstrates that:

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272 1. The real property owner had ownership in the property  
273 at the time of the gross negligence or violation of department  
274 rules and did not cause or contribute to contamination on the  
275 property;

276 2. The real property owner was a distinct and separate  
277 entity from the owner and operator of the drycleaning facility,  
278 and did not have an ownership interest in or share in the  
279 profits of the drycleaning facility;

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

282 4. The real property owner complied with all discharge  
283 reporting requirements, and did not conceal any contamination;  
284 and

285 5. The department has not been denied access.  
286

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

289 (r)~~(g)~~ A person whose property becomes contaminated due to  
290 geophysical or hydrologic reasons from the operation of a nearby  
291 drycleaning or wholesale supply facility and whose property has  
292 never been occupied by a business that utilized or stored  
293 drycleaning solvents or similar constituents is not subject to  
294 administrative or judicial action brought by or on behalf of  
295 another to compel the rehabilitation of or the payment of the  
296 costs for the rehabilitation of sites contaminated by  
297 drycleaning solvents, provided that the person:

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298 | 1. Does not own and has never held an ownership interest  
 299 | in, or shared in the profits of, the drycleaning facility  
 300 | operated at the source location;

301 | 2. Did not participate in the operation or management of  
 302 | the drycleaning facility at the source location; and

303 | 3. Did not cause, contribute to, or exacerbate the release  
 304 | or threat of release of any hazardous substance through any act  
 305 | or omission.

306 |

307 | The defense provided by this paragraph does not apply to any  
 308 | liability under a federally delegated program.

309 | (s)~~(r)~~ Nothing in this subsection precludes the department  
 310 | from considering information and documentation provided by  
 311 | private consultants, local government programs, federal  
 312 | agencies, or any individual which is relevant to an eligibility  
 313 | determination if the department provides the applicant with  
 314 | reasonable access to the information and its origin.

315 | Section 2. This act shall take effect upon becoming a law.