

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

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1 Representative Evers offered the following:

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3 **Amendment (with title amendment)**

4 On page 21, between lines 6 and 7, insert:

5 Section 6. Subsection (3) of section 376.3078, Florida  
6 Statutes, is amended to read:

7 376.3078 Drycleaning facility restoration; funds; uses;  
8 liability; recovery of expenditures.--

9 (3) REHABILITATION LIABILITY.--

10 (a) In accordance with the eligibility provisions of this  
11 section, a real property owner, nearby real property owner, or  
12 person who owns or operates, or who otherwise could be liable as  
13 a result of the operation of, a drycleaning facility or a  
14 wholesale supply facility is not liable for or subject to  
15 administrative or judicial action brought by or on behalf of any

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

32 (b) With regard to drycleaning facilities or wholesale  
33 supply facilities that have operated as drycleaning facilities  
34 or wholesale supply facilities on or after October 1, 1994, any  
35 such drycleaning facility or wholesale supply facility at which  
36 there exists contamination by drycleaning solvents shall be  
37 eligible under this subsection regardless of when the  
38 drycleaning contamination was discovered, provided that the  
39 drycleaning facility or the wholesale supply facility:

- 40 1. Has been registered with the department;
- 41 2. Is determined by the department to be in compliance
- 42 with the department's rules regulating drycleaning solvents,

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43 drycleaning facilities, or wholesale supply facilities on or  
44 after November 19, 1980;

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

47 4. Has not been identified to qualify for listing, nor is  
48 listed, on the National Priority List pursuant to the  
49 Comprehensive Environmental Response, Compensation, and  
50 Liability Act of 1980 as amended by the Superfund Amendments and  
51 Reauthorization Act of 1986, and as subsequently amended;

52 5. Is not under an order from the United States  
53 Environmental Protection Agency pursuant to s. 3008(h) of the  
54 Resource Conservation and Recovery Act as amended (42 U.S.C.A.  
55 s. 6928(h)), or has not obtained and is not required to obtain a  
56 permit for the operation of a hazardous waste treatment,  
57 storage, or disposal facility, a postclosure permit, or a permit  
58 pursuant to the federal Hazardous and Solid Waste Amendments of  
59 1984;

60  
61 and provided that the real property owner or the owner or  
62 operator of the drycleaning facility or the wholesale supply  
63 facility has not willfully concealed the discharge of  
64 drycleaning solvents and has remitted all taxes due pursuant to  
65 ss. 376.70 and 376.75, has provided documented evidence of  
66 contamination by drycleaning solvents as required by the rules  
67 developed pursuant to this section, has reported the  
68 contamination prior to December 31, 1998, and has not denied the  
69 department access to the site.

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70 (c) With regard to drycleaning facilities or wholesale  
71 supply facilities that cease to be operated as drycleaning  
72 facilities or wholesale supply facilities prior to October 1,  
73 1994, such facilities, at which there exists contamination by  
74 drycleaning solvents, shall be eligible under this subsection  
75 regardless of when the contamination was discovered, provided  
76 that the drycleaning facility or wholesale supply facility:

77 1. Was not determined by the department, within a  
78 reasonable time after the department's discovery, to have been  
79 out of compliance with the department rules regulating  
80 drycleaning solvents, drycleaning facilities, or wholesale  
81 supply facilities implemented at any time on or after November  
82 19, 1980;

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

85 3. Has not been identified to qualify for listing, nor is  
86 listed, on the National Priority List pursuant to the  
87 Comprehensive Environmental Response, Compensation, and  
88 Liability Act of 1980, as amended by the Superfund Amendments  
89 and Reauthorization Act of 1986, and as subsequently amended;  
90 and

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

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

98  
99 and provided that the real property owner or the owner or  
100 operator of the drycleaning facility or the wholesale supply  
101 facility has not willfully concealed the discharge of  
102 drycleaning solvents, has provided documented evidence of  
103 contamination by drycleaning solvents as required by the rules  
104 developed pursuant to this section, has reported the  
105 contamination prior to December 31, 1998, and has not denied the  
106 department access to the site.

107 (d) For purposes of determining eligibility, a drycleaning  
108 facility or wholesale supply facility was operated in a grossly  
109 negligent manner if the department determines that the owner or  
110 operator of the drycleaning facility or the wholesale supply  
111 facility:

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

117 2. Willfully concealed a discharge of drycleaning solvents  
118 with the knowledge, intent, and purpose that the concealment  
119 would result in harm to the environment or to public health or  
120 result in a violation of the law; or

121 3. Willfully violated a local, state, or federal law or  
122 rule regulating the operation of drycleaning facilities or

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123 wholesale supply facilities with the knowledge, intent, and  
124 purpose that the act would result in harm to the environment or  
125 to public health or result in a violation of the law.

126 (e)1. With respect to eligible drycleaning solvent  
127 contamination reported to the department as part of a completed  
128 application as required by the rules developed pursuant to this  
129 section by June 30, 1997, the costs of activities described in  
130 paragraph (2)(b) shall be absorbed at the expense of the  
131 drycleaning facility restoration funds, less a \$1,000 deductible  
132 per incident, which shall be paid by the applicant or current  
133 property owner. The deductible shall be paid within 60 days  
134 after receipt of billing by the department.

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

142 3. For contamination reported to the department as part of  
143 a completed application as required by the rules developed  
144 pursuant to this section from October 1, 1998, through December  
145 31, 1998, the costs shall be absorbed at the expense of the  
146 drycleaning facility restoration funds, less a \$10,000  
147 deductible per incident. The deductible shall be paid within 60  
148 days after receipt of billing by the department.

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149           4. For contamination reported after December 31, 1998, no  
150 costs will be absorbed at the expense of the drycleaning  
151 facility restoration funds.

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

155           (g) In order to identify those drycleaning facilities and  
156 wholesale supply facilities that have experienced contamination  
157 resulting from the discharge of drycleaning solvents and to  
158 ensure the most expedient rehabilitation of such sites, the  
159 owners and operators of drycleaning facilities and wholesale  
160 supply facilities are encouraged to detect and report  
161 contamination from drycleaning solvents related to the operation  
162 of drycleaning facilities and wholesale supply facilities. The  
163 department shall establish reasonable guidelines for the written  
164 reporting of drycleaning contamination and shall distribute  
165 forms to registrants under s. 376.303(1)(d), and to other  
166 interested parties upon request, to be used for such purpose.

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

173           (i) A drycleaning facility at which contamination by  
174 drycleaning solvents exists and which was damaged by accident  
175 prior to January 1, 1975, is eligible under this subsection,

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176 regardless of whether an application for eligibility was filed  
177 on or before December 31, 1998. As used in this paragraph, the  
178 term "accident" means an unplanned and unanticipated occurrence  
179 beyond the control of the owner or operator of a drycleaning  
180 facility which resulted in physical damage to the facility when  
181 the actions of responders to such occurrence could reasonably be  
182 determined to have caused or exacerbated contamination by  
183 drycleaning solvents at such facility.

184 (j)(i) ~~The provisions of This subsection does shall~~ not  
185 apply to drycleaning facilities owned or operated by the state  
186 or Federal Government.

187 (k)(j) Due to the value of Florida's potable water, it is  
188 the intent of the Legislature that the department initiate and  
189 facilitate as many cleanups as possible utilizing the resources  
190 of the state, local governments, and the private sector. The  
191 department is authorized to adopt necessary rules and enter into  
192 contracts to carry out the intent of this subsection and to  
193 limit or prevent future contamination from the operation of  
194 drycleaning facilities and wholesale supply facilities.

195 (l)(k) It is not the intent of the Legislature that the  
196 state become the owner or operator of a drycleaning facility or  
197 wholesale supply facility by engaging in state-conducted  
198 cleanup.

199 (m)(l) The owner, operator, and either the real property  
200 owner or agent of the real property owner may apply for the  
201 Drycleaning Contamination Cleanup Program by jointly submitting  
202 a completed application package to the department pursuant to

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203 the rules that shall be adopted by the department. If the  
204 application cannot be jointly submitted, then the applicant  
205 shall provide notice of the application to other interested  
206 parties. After reviewing the completed application package, the  
207 department shall notify the applicant in writing as to whether  
208 the drycleaning facility or wholesale supply facility is  
209 eligible for the program. If the department denies eligibility  
210 for a completed application package, the notice of denial shall  
211 specify the reasons for the denial, including specific and  
212 substantive findings of fact, and shall constitute agency action  
213 subject to the provisions of chapter 120. For the purposes of  
214 ss. 120.569 and 120.57, the real property owner and the owner  
215 and operator of a drycleaning facility or wholesale supply  
216 facility which is the subject of a decision by the department  
217 with regard to eligibility shall be deemed to be parties whose  
218 substantial interests are determined by the department's  
219 decision to approve or deny eligibility.

220 (n)~~(m)~~ Eligibility under this subsection applies to the  
221 drycleaning facility or wholesale supply facility, and attendant  
222 site rehabilitation applies to such facilities and to any place  
223 where drycleaning-solvent contamination migrating from the  
224 eligible facility is found. A determination of eligibility or  
225 ineligibility shall not be affected by any conveyance of the  
226 ownership of the drycleaning facility, wholesale supply  
227 facility, or the real property on which such facility is  
228 located. Nothing contained in this chapter shall be construed to  
229 allow a drycleaning facility or wholesale supply facility which

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230 would not be eligible under this subsection to become eligible  
231 as a result of the conveyance of the ownership of the ineligible  
232 drycleaning facility or wholesale supply facility to another  
233 owner.

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

237 ~~(p)(e)~~1. The department shall have the authority to cancel  
238 the eligibility of any drycleaning facility or wholesale supply  
239 facility that submits fraudulent information in the application  
240 package or that fails to continuously comply with the conditions  
241 of eligibility set forth in this subsection, or has not remitted  
242 all fees pursuant to s. 376.303(1)(d), or has not remitted the  
243 deductible payments pursuant to paragraph (e).

244 2. If the program eligibility of a drycleaning facility or  
245 wholesale supply facility is subject to cancellation pursuant to  
246 this section, then the department shall notify the applicant in  
247 writing of its intent to cancel program eligibility and shall  
248 state the reason or reasons for cancellation. The applicant  
249 shall have 45 days to resolve the reason or reasons for  
250 cancellation to the satisfaction of the department. If, after 45  
251 days, the applicant has not resolved the reason or reasons for  
252 cancellation to the satisfaction of the department, the order of  
253 cancellation shall become final and shall be subject to the  
254 provisions of chapter 120.

255 ~~(q)(p)~~ A real property owner shall not be subject to  
256 administrative or judicial action brought by or on behalf of any

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257 person or local or state government, or agency thereof, for  
258 gross negligence or violations of department rules prior to  
259 January 1, 1990, which resulted from the operation of a  
260 drycleaning facility, provided that the real property owner  
261 demonstrates that:

262 1. The real property owner had ownership in the property  
263 at the time of the gross negligence or violation of department  
264 rules and did not cause or contribute to contamination on the  
265 property;

266 2. The real property owner was a distinct and separate  
267 entity from the owner and operator of the drycleaning facility,  
268 and did not have an ownership interest in or share in the  
269 profits of the drycleaning facility;

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

272 4. The real property owner complied with all discharge  
273 reporting requirements, and did not conceal any contamination;  
274 and

275 5. The department has not been denied access.

276  
277 The defense provided by this paragraph does not apply to any  
278 liability under a federally delegated program.

279 ~~(r)(q)~~ A person whose property becomes contaminated due to  
280 geophysical or hydrologic reasons from the operation of a nearby  
281 drycleaning or wholesale supply facility and whose property has  
282 never been occupied by a business that utilized or stored  
283 drycleaning solvents or similar constituents is not subject to

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284 administrative or judicial action brought by or on behalf of  
285 another to compel the rehabilitation of or the payment of the  
286 costs for the rehabilitation of sites contaminated by  
287 drycleaning solvents, provided that the person:

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

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

293 3. Did not cause, contribute to, or exacerbate the release  
294 or threat of release of any hazardous substance through any act  
295 or omission.

296  
297 The defense provided by this paragraph does not apply to any  
298 liability under a federally delegated program.

299 (s)~~(r)~~ Nothing in this subsection precludes the department  
300 from considering information and documentation provided by  
301 private consultants, local government programs, federal  
302 agencies, or any individual which is relevant to an eligibility  
303 determination if the department provides the applicant with  
304 reasonable access to the information and its origin.

305  
306 ===== T I T L E A M E N D M E N T =====

307 On page 1, remove line 17, and insert:  
308 brownfield areas; amending s. 376.3078, F.S.; providing  
309 that a drycleaning facility where an accident caused or  
310 exacerbated contamination is eligible for an exemption

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HOUSE AMENDMENT

Bill No. SB 1448

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311 | from liability; defining the term "accident"; repealing  
312 | ss. 376.87 and

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