

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promotes Personal Responsibility: This bill effectively re-opens the Drycleaning Solvent Cleanup Program (the DSC Program) for a person who owns or operates (or owned or operated) a dry cleaning facility and there is contamination at the site as a result of an accident.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Dry Cleaning Generally:

Dry cleaners are facilities engaged in the cleaning of fabrics in a nonaqueous solvent by means of one or more washes in a solvent, extraction of excess solvent by spinning, and drying by tumbling in an airstream. Such facilities include a washer, dryer, filter, and purification systems, emission control equipment, waste disposal systems, holding tanks, pumps and attendant piping and valves.

Dry cleaning facilities utilizing the solvent perchloroethylene, or "perc," which is considered an air toxic or hazardous pollutant, are eligible to operate as a business in Florida under the terms of a Title V air permit pursuant to the requirements of Chapter 62-213, Florida Administrative Code.

Drycleaning Solvent Cleanup Program History:

In 1994, the Legislature enacted Chapter 94-355, Laws of Florida., to provide a source of funding for rehabilitation of sites and drinking water supplies contaminated by dry cleaning solvents. The act provided for the establishment of a registration program under which dry cleaning facilities and wholesale suppliers were to register by June 30, 1995.

The Drycleaning Solvent Cleanup Program is administered by the DEP. Eligibility criteria for participation are as follows:

- The facility must have registered with the department.
- The facility was determined to have complied with department rules.
- The facility was not operated in a grossly negligent manner.
- The facility was not listed on the Federal "Superfund" list.
- The facility was not under orders from the U. S. Environmental Protection Agency (EPA) and was not required to have a hazardous waste permit.

Further, the real property owner or the owner or operator of the dry cleaning facility or the wholesale supply facility must not have willfully concealed the discharge of dry cleaning solvents, must have remitted all taxes due, must have provided evidence of contamination by dry cleaning solvents pursuant to DEP rules, and must have reported the contamination prior to December 31, 2005.

Generally, the program provides that the cleanup costs are to be absorbed at the expense of the dry cleaning funds available in the Water Quality Assurance Trust Fund. Deductibles are paid by the applicant as follows:

- For contamination reported by 6/30/97 -- \$1,000 per incident.
- For contamination reported from 7/1/97 thru 9/30/98 -- \$5,000 per incident.
- For contamination reported from 10/1/98 thru 12/31/98 -- \$10,000 per incident.

For contamination reported after December 31, 1998, no cleanup costs will be absorbed at the expense of the dry cleaning restoration funds. In other words, contamination reported after this date will be cleaned up at the expense of the reporting entity.

Liability Protection is Provided Under the Program:

Dry cleaning facility owners or operators, wholesale supply facilities, and real property owners are afforded certain liability protections and are not subject to administrative or judicial action brought by or on behalf of any person, or state or local government, for dry cleaning solvents discharges provided certain specified conditions are met. Each owner or operator of a currently operating dry cleaning facility must obtain third-party liability insurance for \$1 million.

A real property owner may conduct a voluntary cleanup pursuant to DEP rules whether or not the facility has been determined by the DEP to be eligible for the program. A real property owner or any other party that conducts such voluntary cleanup may not seek cost recovery from the program funds, but is immune from liability to any person, or state or local government, to compel site rehabilitation or pay for the cost of rehabilitation of environmental contamination, or to pay any fines or penalties regarding rehabilitation, so long as the real property owner complies with certain specified conditions.

Funding the Program

Funding for the program comes from three main sources:

- A two percent tax on gross receipts on businesses engaged in dry cleaning and laundering,
- A \$5 per gallon tax on perc sold to facilities in the state, a deductible payment based on the date of application for the program, and
- A \$100 registration fee collected from the facilities.

According to the DEP, the annual collections have averaged \$7.6 million. There are over 1,400 sites in the closed program and at the current rate of clean-up, it will take over 60 years to clean-up all sites.

Effect of Proposed Changes

The bill will effectively re-open the DSC Program for a person who owns or operates (or owned or operated) a dry cleaning facility where there is (or was) contamination at the site as a result of an accident which occurred prior to January 1, 1975. "Accident" is defined as an unplanned and unanticipated occurrence beyond the control of the owner or operator that resulted in (1) physical damage to the facility and (2) contamination of the site that may reasonably be determined to have been caused by, or exacerbated by, actions of responders to the occurrence.

The DSC Program would be re-opened to persons whether or not they filed an application of eligibility on or before December 31, 1998, which is the termination date of the program whereby no cleanup costs would be absorbed at the expense of the dry cleaning restoration funds.

Example 1: On April 6, 2004, a dump truck driver sets the parking brake and leaves the cab of his vehicle to check his load. The braking system fails and the truck rolls down a hill and crashes into the Pressed 4 Time dry-cleaning facility, extensively damaging the building and breaching the perc storage container. The spill is otherwise controlled by the containment system that was installed by the owner; however, the firemen responding to the accident hoses down the site which results in a perc contamination of the surrounding land area. Under the proposed law, the Pressed 4 Time owner/operator would not be permitted to submit the site for cleanup under the otherwise closed program.

Example 2: The same scenario as above, except the date of the accident occurred on April 6, 1974. The owner did not file an application under the program. Under the proposed law, the owner would be eligible for cleanup under the otherwise closed program.

Example 3: The same scenario as above, except that the responders do not hose down the site and do not exacerbate the spill. As such, the conditions do not permit eligibility into the program and any contamination will be the responsibility of the owner/operator.

C. SECTION DIRECTORY:

Section 1 Amends s. 376.3078, Florida Statutes, adding a new paragraph (i) to subsection (3), and redesignating all subsequent paragraphs, providing that a dry cleaning facility where there exists contamination as a result of an accident that occurred prior to January 1, 1975, is eligible under the Drycleaning Solvent Cleanup Program, regardless of whether an application for eligibility was filed on or before the termination date of the program. This section also provides a definition of the term "accident."

Section 2 Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Part II, Section D. Fiscal Comments.

2. Expenditures:

See Part II, Section D. Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill would re-open the Drycleaning Solvent Cleanup Program for an owner or operator of a dry cleaning facility with contamination that is the result of an accident that occurred prior to January 1, 1975, and which the contamination was caused or exacerbated by responders to the accident.

D. FISCAL COMMENTS:

The program originally provided for deductibles paid by the applicant. The deductible amounts varied in cost from \$1,000 to \$10,000, depending on the date the application was filed. The bill does not provide for deductibles so it is assumed that the entire cost of the cleanup would be borne by the trust fund.

Clean-up of a contaminated facility can range from approximately \$30,000 to \$2 million; the average cost being approximately \$475,000. The DEP knows of only one incident whereby an auto accident and the actions of responders exacerbated a spill of perc. The site in question is not currently eligible for inclusion in the program for clean-up. The DEP has no record of how many other potential sites may be affected by this proposed legislation. According to the DEP, if the program is not reopened as envisioned by the bill and under current funding levels, the clean-up will take approximately 60 years.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require cities or counties to spend funds or take actions requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

No rulemaking authority is required to implement the provisions of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES