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 HB 1155

2006 Legislature

1 A bill to be entitled
 2 An act relating to contaminated drycleaning facilities;
 3 amending s. 376.3078, F.S.; providing that contaminated
 4 drycleaning facilities damaged by accident prior to a
 5 specified date are eligible for state-funded site
 6 rehabilitation; defining the term "accident"; providing an
 7 effective date.

8
 9 Be It Enacted by the Legislature of the State of Florida:

10
 11 Section 1. Subsection (3) of section 376.3078, Florida
 12 Statutes, is amended to read:

13 376.3078 Drycleaning facility restoration; funds; uses;
 14 liability; recovery of expenditures.--

15 (3) REHABILITATION LIABILITY.--

16 (a) In accordance with the eligibility provisions of this
 17 section, a real property owner, nearby real property owner, or
 18 person who owns or operates, or who otherwise could be liable as
 19 a result of the operation of, a drycleaning facility or a
 20 wholesale supply facility is not liable for or subject to
 21 administrative or judicial action brought by or on behalf of any
 22 state or local government or agency thereof or by or on behalf
 23 of any person to compel rehabilitation or pay for the costs of
 24 rehabilitation of environmental contamination resulting from the
 25 discharge of drycleaning solvents. Subject to the delays that
 26 may occur as a result of the prioritization of sites under this
 27 section for any qualified site, costs for activities described
 28 in paragraph (2)(b) shall be absorbed at the expense of the

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29 drycleaning facility restoration funds, without recourse to
30 reimbursement or recovery from the real property owner, nearby
31 real property owner, or owner or operator of the drycleaning
32 facility or the wholesale supply facility. Notwithstanding any
33 other provision of this chapter, this subsection applies to
34 causes of action accruing on or after the effective date of this
35 act and applies retroactively to causes of action accruing
36 before the effective date of this act for which a lawsuit has
37 not been filed before the effective date of this act.

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

- 46 1. Has been registered with the department;
- 47 2. Is determined by the department to be in compliance
48 with the department's rules regulating drycleaning solvents,
49 drycleaning facilities, or wholesale supply facilities on or
50 after November 19, 1980;
- 51 3. Has not been operated in a grossly negligent manner at
52 any time on or after November 19, 1980;
- 53 4. Has not been identified to qualify for listing, nor is
54 listed, on the National Priority List pursuant to the
55 Comprehensive Environmental Response, Compensation, and
56 Liability Act of 1980 as amended by the Superfund Amendments and

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57 Reauthorization Act of 1986, and as subsequently amended;
58 5. Is not under an order from the United States
59 Environmental Protection Agency pursuant to s. 3008(h) of the
60 Resource Conservation and Recovery Act as amended (42 U.S.C.A.
61 s. 6928(h)), or has not obtained and is not required to obtain a
62 permit for the operation of a hazardous waste treatment,
63 storage, or disposal facility, a postclosure permit, or a permit
64 pursuant to the federal Hazardous and Solid Waste Amendments of
65 1984;

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

76 (c) With regard to drycleaning facilities or wholesale
77 supply facilities that cease to be operated as drycleaning
78 facilities or wholesale supply facilities prior to October 1,
79 1994, such facilities, at which there exists contamination by
80 drycleaning solvents, shall be eligible under this subsection
81 regardless of when the contamination was discovered, provided
82 that the drycleaning facility or wholesale supply facility:

83 1. Was not determined by the department, within a
84 reasonable time after the department's discovery, to have been

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85 out of compliance with the department rules regulating
86 drycleaning solvents, drycleaning facilities, or wholesale
87 supply facilities implemented at any time on or after November
88 19, 1980;

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

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

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

104

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

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113 (d) For purposes of determining eligibility, a drycleaning
 114 facility or wholesale supply facility was operated in a grossly
 115 negligent manner if the department determines that the owner or
 116 operator of the drycleaning facility or the wholesale supply
 117 facility:

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

123 2. Willfully concealed a discharge of drycleaning solvents
 124 with the knowledge, intent, and purpose that the concealment
 125 would result in harm to the environment or to public health or
 126 result in a violation of the law; or

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

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

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

148 3. For contamination reported to the department as part of
149 a completed application as required by the rules developed
150 pursuant to this section from October 1, 1998, through December
151 31, 1998, the costs shall be absorbed at the expense of the
152 drycleaning facility restoration funds, less a \$10,000
153 deductible per incident. The deductible shall be paid within 60
154 days after receipt of billing by the department.

155 4. For contamination reported after December 31, 1998, no
156 costs will be absorbed at the expense of the drycleaning
157 facility restoration funds.

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

161 (g) In order to identify those drycleaning facilities and
162 wholesale supply facilities that have experienced contamination
163 resulting from the discharge of drycleaning solvents and to
164 ensure the most expedient rehabilitation of such sites, the
165 owners and operators of drycleaning facilities and wholesale
166 supply facilities are encouraged to detect and report
167 contamination from drycleaning solvents related to the operation
168 of drycleaning facilities and wholesale supply facilities. The

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169 department shall establish reasonable guidelines for the written
 170 reporting of drycleaning contamination and shall distribute
 171 forms to registrants under s. 376.303(1)(d), and to other
 172 interested parties upon request, to be used for such purpose.

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

179 (i) A drycleaning facility at which contamination by
 180 drycleaning solvents exists and which was damaged by accident
 181 prior to January 1, 1975, is eligible under this subsection,
 182 regardless of whether an application for eligibility was filed
 183 on or before December 31, 1998. As used in this paragraph, the
 184 term "accident" means an unplanned and unanticipated occurrence
 185 beyond the control of the owner or operator of a drycleaning
 186 facility which resulted in physical damage to the facility when
 187 the actions of responders to such occurrence could reasonably be
 188 determined to have caused or exacerbated contamination by
 189 drycleaning solvents at such facility.

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

193 (k)~~(j)~~ Due to the value of Florida's potable water, it is
 194 the intent of the Legislature that the department initiate and
 195 facilitate as many cleanups as possible utilizing the resources
 196 of the state, local governments, and the private sector. The

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197 department is authorized to adopt necessary rules and enter into
198 contracts to carry out the intent of this subsection and to
199 limit or prevent future contamination from the operation of
200 drycleaning facilities and wholesale supply facilities.

201 (l)~~(k)~~ It is not the intent of the Legislature that the
202 state become the owner or operator of a drycleaning facility or
203 wholesale supply facility by engaging in state-conducted
204 cleanup.

205 (m)~~(l)~~ The owner, operator, and either the real property
206 owner or agent of the real property owner may apply for the
207 Drycleaning Contamination Cleanup Program by jointly submitting
208 a completed application package to the department pursuant to
209 the rules that shall be adopted by the department. If the
210 application cannot be jointly submitted, then the applicant
211 shall provide notice of the application to other interested
212 parties. After reviewing the completed application package, the
213 department shall notify the applicant in writing as to whether
214 the drycleaning facility or wholesale supply facility is
215 eligible for the program. If the department denies eligibility
216 for a completed application package, the notice of denial shall
217 specify the reasons for the denial, including specific and
218 substantive findings of fact, and shall constitute agency action
219 subject to the provisions of chapter 120. For the purposes of
220 ss. 120.569 and 120.57, the real property owner and the owner
221 and operator of a drycleaning facility or wholesale supply
222 facility which is the subject of a decision by the department
223 with regard to eligibility shall be deemed to be parties whose
224 substantial interests are determined by the department's

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225 decision to approve or deny eligibility.

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

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

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

250 2. If the program eligibility of a drycleaning facility or
 251 wholesale supply facility is subject to cancellation pursuant to
 252 this section, then the department shall notify the applicant in

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253 writing of its intent to cancel program eligibility and shall
 254 state the reason or reasons for cancellation. The applicant
 255 shall have 45 days to resolve the reason or reasons for
 256 cancellation to the satisfaction of the department. If, after 45
 257 days, the applicant has not resolved the reason or reasons for
 258 cancellation to the satisfaction of the department, the order of
 259 cancellation shall become final and shall be subject to the
 260 provisions of chapter 120.

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

268 1. The real property owner had ownership in the property
 269 at the time of the gross negligence or violation of department
 270 rules and did not cause or contribute to contamination on the
 271 property;

272 2. The real property owner was a distinct and separate
 273 entity from the owner and operator of the drycleaning facility,
 274 and did not have an ownership interest in or share in the
 275 profits of the drycleaning facility;

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

278 4. The real property owner complied with all discharge
 279 reporting requirements, and did not conceal any contamination;
 280 and

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281 5. The department has not been denied access.

282
 283 The defense provided by this paragraph does not apply to any
 284 liability under a federally delegated program.

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

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

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

299 3. Did not cause, contribute to, or exacerbate the release
 300 or threat of release of any hazardous substance through any act
 301 or omission.

302
 303 The defense provided by this paragraph does not apply to any
 304 liability under a federally delegated program.

305 (s)~~(r)~~ Nothing in this subsection precludes the department
 306 from considering information and documentation provided by
 307 private consultants, local government programs, federal
 308 agencies, or any individual which is relevant to an eligibility

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309 | determination if the department provides the applicant with
310 | reasonable access to the information and its origin.

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