

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: General Government Appropriations Committee

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BILL: SB 2174

INTRODUCER: Senator Peaden

SUBJECT: Contaminated Drycleaning

DATE: April 18, 2006

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Branning</u>	<u>Kiger</u>	<u>EP</u>	<b>Favorable</b>
2.	<u>Chinn</u>	<u>Maclure</u>	<u>JU</u>	<b>Favorable</b>
3.	<u>DeLoach</u>	<u>Hayes</u>	<u>GA</u>	<b>Favorable</b>
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## I. Summary:

This bill would allow a drycleaning facility at which contamination by drycleaning solvents exists and which was damaged by accident before January 1, 1975 to be eligible for the drycleaning solvent cleanup program, regardless of whether an application for eligibility was filed on or before December 31, 1998.

This bill substantially amends section 376.3078, Florida Statutes.

## II. Present Situation:

In 1994, serious concerns were expressed about the contamination and potential health and environmental risks that can result from the discharge of solvents commonly used in the drycleaning process. Due to the persistent nature of drycleaning solvents, cleanup of sites contaminated with these solvents was expected to be both difficult and costly. As a result, small, independent owners of drycleaning facilities may not have the financial resources to investigate, clean up, and monitor these sites.

Drycleaning solvents are considered to be hazardous substances under both state and federal laws. The solvent of choice for drycleaners is perchloroethylene, or PERC. It is a colorless, nonflammable liquid. The drycleaning industry is the largest user of PERC in the United States; however, there are a variety of other uses, as in vapor degreasing and metal cleaning operations; as an additive to aerosol formulations and solvent soaps; for printing inks, adhesives, sealants, polishes, lubricants, and silicones; and as an ingredient in shoe polish.

PERC evaporates when exposed to air and dissolves only slightly when mixed with water. Most releases of PERC into the environment are into the air. Pursuant to the federal Clean Air Act

Amendments of 1990, the U.S. Environmental Protection Agency regulates the emission of PERC as one of 189 toxic chemicals.<sup>1</sup> When a PERC release occurs on the ground, it does not bind well with the soil and can move through the ground and into the ground water, making cleanup costly and difficult.

In 1994, the Legislature enacted the drycleaning contamination cleanup program, which was modeled somewhat after the underground petroleum storage tank cleanup program.<sup>2</sup> The drycleaning solvent cleanup program is a prior-approval program, meaning all of the drycleaning site rehabilitation work is conducted by state contractors who must have prior approval before any work is started. The program is funded primarily from a 2 percent gross receipts tax that is levied on drycleaning facilities, and a \$5-per-gallon tax on PERC used by drycleaners. The total estimated annual collections from the gross receipts tax, the tax on PERC, and the registration fee<sup>3</sup> collections are \$10.8 million.<sup>4</sup> These tax revenues are deposited into the Water Quality Assurance Trust Fund.

When the program was enacted, the eligibility period for applying for inclusion in the program would have closed on December 31, 2005. However, the 1998 Legislature amended the eligibility date and closed the program on December 31, 1998.<sup>5</sup> The eligibility period was shortened to provide predictability to the number of sites requiring rehabilitation; to bring some closure to the program; and to ensure that the state is committed to cleaning up only contamination that has occurred prior to the requirements for secondary containment, rather than new spills that may be the result of negligence or failure to install such measures.<sup>6,7</sup>

The cleanup program has been closed for registering eligible sites since 1998. Recently, a site has been identified that is contaminated and would have qualified for the program, but application for inclusion in the program was not made by the December 31, 1998 deadline. The site was damaged in 1974 when a vehicle drove into the drycleaning facility. The police and fire departments responded and, because solvents were involved (PERC), the fire department was concerned that the solvents might ignite and start a fire. The fire department sprayed the facility with chemicals to prevent such an occurrence. In doing so, the chemicals and the PERC were washed into the ground surrounding the facility and down the storm sewers. The owners of the drycleaning facility subsequently rebuilt a new drycleaning facility nearby, away from the damaged site. When the drycleaning cleanup program was enacted, the owners applied for eligibility into the program for the rebuilt site, but an application was never filed for the damaged site.

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<sup>1</sup> Clean Air Act Amendments of 1990, Pub.L. 101-549, November 15, 1990, 104 Stat. 2399.

<sup>2</sup> Section 6, ch. 94-355, L.O.F.

<sup>3</sup> Section 376.303(1)(d), F.S., provides that owners of drycleaning facilities and wholesale supply facilities shall submit an initial registration fee of \$100 and an annual renewal registration fee of \$100 for each drycleaning facility or wholesale supply facility owned and in operation.

<sup>4</sup> 2006 Florida Tax Handbook, p. 54.

<sup>5</sup> Section 10, ch. 98-189, L.O.F.

<sup>6</sup> Committee on Natural Resources, The Florida Senate, *Review of the State's Drycleaning Site Cleanup Program*, Interim Project Report 97-P-16, September 1997, page 7.

<sup>7</sup> Drycleaning facilities are now required to use an additional, secondary container around the solvent container (containing PERC) to prevent solvent leakage; the program is not supposed to apply to facilities that fail to use this second container.

Section 376.3078, F.S., is Florida's law pertaining to the drycleaning site rehabilitation program. The program is administered by the Department of Environmental Protection. This section, among other things, provides the eligibility requirements, rehabilitation criteria, a priority scoring system, and insurance requirements. The section also provides that it is the intent of the Legislature that the Department of Environmental Protection initiate and facilitate as many cleanups as possible to protect the state's potable water supply.<sup>8</sup>

### **III. Effect of Proposed Changes:**

This bill amends s. 376.3078(3), F.S., to provide that a drycleaning facility at which contamination by drycleaning solvents exists and which was damaged by accident before January 1, 1975, is eligible for the drycleaning solvent cleanup program, regardless of whether an application for eligibility was filed on or before December 31, 1998. The term "accident" is defined as an unplanned and unanticipated occurrence beyond the control of the owner or operator of a drycleaning facility which resulted in physical damage to the facility when the actions of responders to the occurrence could reasonably be determined to have caused or exacerbated contamination by drycleaning solvents at the facility.

The bill provides an effective date of upon becoming a law.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

None.

### **V. Economic Impact and Fiscal Note:**

#### **A. Tax/Fee Issues:**

None.

#### **B. Private Sector Impact:**

If a contaminated drycleaning site owner can show that the contamination was caused by an accident that took place before January 1, 1975, the site would be eligible for state funded cleanup, whether or not the site filed an application for the program on or before December 31, 1998. According to the Department of Environmental Protection, the average cost of a cleanup of a contaminated drycleaning site is \$475,000. It is not known

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<sup>8</sup> Section 376.3078(3)(j), F.S.

how many such sites would become eligible for the program under the bill's accident criteria, but restricting applicability to accidents occurring before January 1, 1975, could limit the number of facilities that are eligible under the proposed legislation.

**C. Government Sector Impact:**

Currently, there is a backlog of sites to be cleaned up in the drycleaning solvent cleanup program. The tax and fee revenues that support this program are estimated to be \$10.8 million annually.<sup>9</sup> The average cost to clean up a contaminated site is \$475,000. For Fiscal Year 2005-2006, \$2 million in interest earnings are anticipated to be transferred from the Inland Protection Trust Fund to the Water Quality Assurance Trust Fund to help support the drycleaning cleanup program. It is estimated that, for the 1,334 sites currently eligible for the program, it will be 50 years or more before the sites can be addressed and cleaned up, due to funding limitations. This bill will likely add at least one more site to the list of eligible sites and would be handled with current revenues and budget.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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<sup>9</sup> 2006 Florida Tax Handbook, p. 54.

## **VIII. Summary of Amendments:**

None.

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