



Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #342

Transfer from Environmental Improvement Fund to Dry Cleaner Environmental Response Fund (Environmental Improvement Fund and DNR -- Air, Waste, and Contaminated Land)

[LFB 2009-11 Budget Summary: Page 247, #7 and Page 490, #12]

CURRENT LAW

The land recycling loan program was created within the environmental improvement fund in 1997 Act 27. It is authorized to provide a maximum of \$20,000,000 for financial assistance to certain local governments for the investigation and remediation of contaminated (brownfields) properties. The \$20 million comes from reallocation of repayments of clean water fund loans made with the proceeds of federal grants to the clean water fund program. If not used for the land recycling loan program, loan dollars would be used for clean water fund loans to upgrade or replace wastewater treatment plants to meet state and federal requirements. The program makes loans with a 0% interest rate.

The dry cleaner environmental response program (DERP) was created in 1997 Act 27 to provide reimbursement for a portion of the costs of cleaning up discharges of dry cleaning solvents. The program is funded from revenues that include: (a) a dry cleaning facility license fee paid by owners of dry cleaning facilities, equal to 2.8% of gross receipts from dry cleaning apparel and household fabrics (the fee was increased from 1.8% effective January 1, 2008, under 2007 Act 20); and (b) a dry cleaning solvents fee paid by persons who sell dry cleaning solvents to dry cleaners, equal to \$5.00 per gallon of perchloroethylene, or \$0.75 per gallon of other dry cleaning products.

Revenues received under DERP totaled \$11.6 million for 1997-98 through 2007-08 (including \$1,087,800 in 2007-08), and are anticipated to generate approximately \$1.17 million annually through 2010-11. Revenues are deposited in the segregated dry cleaner environmental response fund (DERF).

DNR is appropriated \$1,220,000 SEG each year in a biennial appropriation for financial assistance awards under the program. DNR expended \$488,700 SEG from the financial assistance appropriation in 2007-08 and will spend approximately \$1.1 million on claims in 2008-09 (because revenues are insufficient to spend the full appropriated amount). In 2008-09, DNR is appropriated \$240,300 SEG with 3.0 positions to administer cleanup and financial assistance requirements. The Department of Revenue is authorized \$61,300 SEG with 1.0 position in 2008-09 for administration of the revenues collected under the program.

GOVERNOR

Authorize the Secretary of DOA to determine whether the moneys available in the dry cleaner environmental response fund (DERF) are insufficient to pay awards under the dry cleaner environmental response program (DERP). If the Secretary of DOA makes such a determination, authorize the Secretary of DOA and the Secretary of DNR to enter into an agreement establishing terms and conditions for the transfer of moneys from the environmental improvement fund to the DERF. Require that the agreement include a maximum transfer amount and the repayment by DERF to the environmental improvement fund of the amount transferred plus interest when sufficient funds are available in the DERF. Specify that the maximum amount that could be transferred would be the lesser of \$6,200,000, or the difference between \$20,000,000 and the amount that has been expended for land recycling loans.

DISCUSSION POINTS

1. DNR and DOA jointly administer the land recycling loan program within the environmental improvement fund. As of April 1, 2009, the program had entered into financial assistance agreements totaling \$15,218,900 for 10 projects with nine municipalities. Of the total, \$1,433,200 was unused, and three projects remain open, for net program expenditures to date of \$13,785,700. Almost two-thirds of project assistance (\$8.8 million) has paid for cleanup work at six landfills.

2. A total of \$6,214,300 remains available for loans under the land recycling loan program. Under the bill, up to \$6,200,000 of this amount could be transferred to the dry cleaner environmental response fund. If the maximum amount of \$6,200,000 would be transferred from the environmental improvement fund to the dry cleaner environmental response fund, approximately \$14,300 would remain for land recycling loans.

3. A few municipalities are working with DNR on cleanup activities at potential land recycling loan sites, but none of them are ready to finalize a loan. Other programs may be available to provide financial assistance for these sites, such as a federal brownfields revolving loan program administered by DNR.

4. DNR paid the first dry cleaner environmental response financial assistance awards in 2000-01. As of April 1, 2009, DNR has paid a cumulative total of \$9,802,300 for partial or full

cleanup at 95 eligible dry cleaner facility sites. The Department had received but not yet paid \$1,882,300 in claims. This included \$1,484,600 in claims that had been reviewed and approved and will be paid as sufficient revenues are received by the program, and \$397,700 in claims that are in the process of being reviewed. DNR estimates that, based on a review of anticipated remedial action at known sites, future reimbursement claims will be submitted totaling \$23.4 million during the next 10 years, for potential total program reimbursement costs of approximately \$35.1 million.

5. A total of 230 owners or operators of dry cleaning facilities submitted a notification to DNR of the potential for submitting a claim under the program by the August 30, 2008, deadline. The notification was the first required step in the program and had to be done before conducting a site investigation or remedial action activity to cleanup an eligible contamination from dry cleaning products associated with their facility. Dry cleaning facilities where contamination is identified after August 30, 2008, are not eligible for the program.

6. As of April 1, 2009, 45 of the 230 sites in the program were closed. This includes 32 sites where \$3,261,700 in cleanup costs have been paid, approved for payment, or are in the process of being reviewed for payment. No reimbursement requests are anticipated for the other 13 closed sites because minimal or no cleanup work was needed. Of the 185 open sites, \$8,422,900 in cleanup costs have been paid, approved for payment, or are in the process of being reviewed for 79 sites. No reimbursement has been requested yet for 106 open sites. DNR anticipates claims will be received for most of the 106 sites.

7. The dry cleaner environmental response fund is expected to have a minimal balance on July 1, 2009. In the 2007-09 biennium, DERF revenues will total approximately \$2.3 million and administrative expenditures will total approximately \$0.6 million. This leaves approximately \$1.6 million to pay claims in 2007-09, which means DNR will have to hold claims expenditures to \$0.7 million less than the appropriated amount. As of April 1, 2009, DNR had paid \$1,138,500 in claims during the biennium, and will pay up to approximately \$500,000 in additional claims before the end of 2008-09 as revenues become available for payment. DNR anticipates that, under current law, dry cleaner claims received in April, 2009, will be paid in the summer of 2011.

8. In 2007 Act 20, the dry cleaner facility license fee was increased from 1.8% to 2.8% of gross receipts, effective with gross receipts received on January 1, 2008 (the April 25, 2008, quarterly payment). Actual revenue collections from the fee are lower than estimated during 2007-09 biennial budget deliberations, including actual gross receipts revenue of \$847,500 in 2007-08 (compared with the earlier estimate of \$1,150,000). Estimated gross receipts fee collections are \$1.1 million in 2008-09, compared with previous estimates of \$1.4 million. It is likely that a primary reason for the decrease in actual collections is the economic downturn.

9. The estimated fund condition during the 2009-11 biennium under the bill, excluding the effect of any transfers from the environmental improvement fund, is shown in Table 1. While current law revenues would be up to \$1.1 million annually, base level expenditures would exceed \$1.5 million. A reduction in expenditures of approximately \$763,200 would be required in order to maintain a positive fund balance at the end of the 2009-11 biennium if no transfer from EIF or additional revenue is provided for dry cleaner claims. A total of perhaps \$1.65 million in claims

could be paid during the biennium. A backlog of dry cleaner claims would continue to grow and any claims submitted during the 2009-11 biennium would not be paid until 2011-13.

TABLE 1

Dry Cleaner Environmental Response Fund Condition – AB 75, Excluding Transfer From Environmental Improvement Fund

	2007-08 <u>Actual</u>	2008-09 <u>Estimated</u>	2009-10 <u>Budgeted</u>	2010-11 <u>Budgeted</u>
Opening Balance, July 1	- \$112,400	\$201,800	\$0	- \$381,600
Revenue	<u>1,087,800</u>	<u>1,170,000</u>	<u>1,170,000</u>	<u>1,170,000</u>
Total Revenue Available	\$975,400	\$1,371,800	\$1,170,000	\$788,400
Expenditures				
Financial Assistance Awards	\$488,700	\$1,070,200	\$1,207,800	\$1,207,800
Administration	<u>284,900</u>	<u>301,600</u>	<u>328,600</u>	<u>328,600</u>
Total Expenditures	\$773,600	\$1,371,800	\$1,536,400	\$1,536,400
Transfer to General Fund	\$0	\$0	- \$15,200*	- \$15,200*
Closing Balance	\$201,800	\$0	- \$381,600	- \$763,200

*The Administration has indicated its intent to transfer the amount of the across the board 1% reductions to the general fund. The bill would have to be amended to accomplish this.

10. DNR anticipates that between \$5.5 million and \$11.8 million in claims might be submitted during the 2009-11 biennium if site owners complete work and submit costs in a timely manner. Department officials acknowledge that it is likely actual claim reimbursement requests will be closer to the low end than the high end of this range. During 2007-09 biennial budget deliberations, DNR estimated up to \$11.9 million in claims would be received during the biennium. The actual amount of claims received during the biennium is \$2.1 million as of April 1, 2009, and additional claims will be received during the remaining three months of 2008-09.

11. DNR anticipates that the long-term projections of an estimated \$23.4 million in claims being submitted over the next 10 years is more accurate than the estimate of the amount of claims that might be submitted during 2009-11. DNR officials indicate that projected reimbursement requests might be submitted over a longer period of time than originally projected. Some site owners may be having difficulty obtaining bank financing of a cleanup project. In addition, remediation work at dry cleaner sites might be delayed or stopped while applicants wait for program reimbursement for an earlier phase of the cleanup project. DNR is aware of at least eight sites where work has stopped until the owner receives reimbursement for a claim submitted to DNR. There are probably other such sites, and work may resume at these sites after reimbursement

is received.

12. DNR and DOA plan to finalize an agreement transferring funds from EIF to DERF as soon as possible after enactment of the budget so that the backlog of approximately \$1.5 million in claims approved for payment could be paid soon after. Table 2 illustrates a potential scenario under the bill where \$4 million would be transferred from EIF to DERF. Claims of up to \$5.6 million could be paid during the 2009-11 biennium. This could include the \$1.5 million in claims currently approved for payment, \$0.4 million in received claims that are being processed, and approximately \$3.7 million in claims received during the 2009-11 biennium.

TABLE 2

Dry Cleaner Environmental Response Fund Condition – AB 75, Potential Scenario for Transfer From Environmental Improvement Fund

	2007-08 <u>Actual</u>	2008-09 <u>Estimated</u>	2009-10 <u>Budgeted</u>	2010-11 <u>Budgeted</u>
Opening Balance, July 1	- \$112,400	\$201,800	\$0	\$18,400
Revenue	1,087,800	1,170,000	1,170,000	1,170,000
Transfer from EIF	<u>0</u>	<u>0</u>	<u>4,000,000</u>	<u>0</u>
 Total Revenue Available	 \$975,400	 \$1,371,800	 \$5,170,000	 \$1,188,400
Expenditures				
Financial Assistance Awards	\$488,700	\$1,070,200	\$4,807,800	\$826,200
Administration	<u>284,900</u>	<u>301,600</u>	<u>328,600</u>	<u>328,600</u>
 Total Expenditures	 \$773,600	 \$1,371,800	 \$5,136,400	 \$1,154,800
Transfer to General Fund	\$0	\$0	- \$15,200	- \$15,200
 Closing Balance	 \$201,800	 \$0	 \$18,400	 \$18,400

13. It is unclear whether claim demand will be large enough during 2009-11 to need a transfer of the maximum \$6.2 million during the biennium. Any amount transferred but not expended would remain available for dry cleaner financial assistance in 2011-13. Alternatively, the bill could be amended to transfer a smaller amount, such as the \$4,000,000 illustrated in Table 2 (Alternative #A3). The \$2.2 million that would remain in the environmental improvement fund would remain available for loans under the land recycling loan program, or future legislation could be enacted to authorize another transfer to DERF.

14. If the transfer from EIF to DERF is approved, the dry cleaner financial assistance appropriation could be increased to an amount sufficient to meet potential claim demand and expend the funds transferred from EIF to DERF (Alternative #A2 or #A3). For example, under the scenario illustrated in Table 2, the bill appropriates \$2,415,600 (\$1,207,800 annually in a biennial

appropriation), but \$5,634,000 would be available for financial assistance. The bill could be amended to increase the financial assistance appropriation by \$3,600,000 in 2009-10 and decrease it by \$381,600 in 2010-11. If the bill would not be amended, it is likely DNR would spend the \$2,415,600 provided for the biennium under the bill in 2009-10. DNR could seek approval of an increase in expenditure authority under s. 13.10.

15. If up to \$23.4 million in claims are received during the next 10 years, it is unlikely the dry cleaner environmental response fund will be able to begin repaying any funds transferred from the environmental improvement fund until after that time. DOA and DNR officials indicate this is not a problem for administration of EIF. For the EIF, the transfer to DERF would be considered an investment, and any interest payments paid by DERF would provide a greater return to EIF than the current situation where EIF is holding funds available for land recycling loans at a 0% interest rate.

16. It can be anticipated revenues from the current 2.8% dry cleaning gross receipts fee will increase when the economy improves. However, it is unlikely the long-term revenues will be sufficient to pay the anticipated levels of claims and repay any funds transferred from EIF over the next decade or so. (The dry cleaning fees sunset in 2032.)

17. The Committee could consider a dry cleaning gross receipts fee increase to provide additional revenues to meet anticipated claims demand and to increase the potential for repayment by DERF to the environmental improvement fund. For example, if the gross receipts fee would be increased from 2.8% to 4.0%, effective with gross receipts received as of January 1, 2010, (the April 25, 2010, quarterly payment), revenues from the fee increase would equal approximately \$236,000 in 2009-10 and \$472,000 in 2010-11, for a total of \$708,000 in additional revenues during the 2009-11 biennium. The awards appropriation could be increased by the same amount (Alternative #B1).

18. If the gross receipts fee would be increased from 2.8% to 5.0%, effective with gross receipts received as of January 1, 2010, revenues from the fee increase would equal approximately \$432,000 in 2009-10 and \$865,000 in 2010-11, for a total of \$1,297,000 during the 2009-11 biennium (Alternative #B2). The financial assistance appropriation could be increased by \$432,000 in 2009-10 and \$865,000 in 2010-11. If the transfer from EIF would also be made, this would provide a total of \$6.9 million for dry cleaner awards during the biennium.

19. If a 5% fee is combined with an EIF transfer, all anticipated claims though at least the 2009-11 biennium could be paid. However, depending on ongoing claim demand, it is uncertain whether revenues would be sufficient to allow repayment of the EIF loan over the next ten years. Another option may be to sunset the fee increase after 10 years (December 31, 2019), and have the fee revert to 2.8% effective with January 1, 2020, gross receipts. This would allow program needs to be reevaluated at that time (Alternative #B3). The amount available for awards between 2009-10 and 2014-15 would be approximately \$16.3 million. Table 3 illustrates this scenario.

TABLE 3

**Dry Cleaner Environmental Response Fund - Potential Scenario for
Transfer from Environmental Improvement Fund and
Fee Increase to 5% on January 1, 2010**

	2009-10 <u>Estimated</u>	2010-11 <u>Estimated</u>	2011-12 <u>Estimated</u>	2012-13 <u>Estimated</u>	2013-14 <u>Estimated</u>	2014-15 <u>Estimated</u>
Opening Balance, July 1	\$0	\$18,400	\$18,400	\$14,000	\$15,100	\$15,500
Revenue - Current Law	1,170,000	1,170,000	1,190,000	1,210,000	1,235,000	1,260,000
Revenue - Fee Increase	432,000	865,000	880,000	900,000	920,000	935,000
Transfer from EIF	<u>4,000,000</u>	<u>0</u>	<u>2,200,000</u>	<u>0</u>	<u>0</u>	<u>0</u>
Total Revenue Available	\$5,602,000	\$2,053,400	\$4,288,400	\$2,129,000	\$2,170,100	\$2,210,500
Expenditures						
Financial Assistance Awards *	\$5,239,800	\$1,691,200	\$3,939,200	\$1,772,200	\$1,806,200	\$1,842,200
Administration	<u>328,600</u>	<u>328,600</u>	<u>335,200</u>	<u>341,700</u>	<u>348,400</u>	<u>355,200</u>
Total Expenditures	\$5,568,400	\$2,019,800	\$4,274,400	\$2,113,900	\$2,154,600	\$2,197,400
Transfer to General Fund	-\$15,200	-\$15,200	\$0	\$0	\$0	\$0
Closing Balance, June 30	\$18,400	\$18,400	\$14,000	\$15,100	\$15,500	\$13,100

*Amount expected to be available for financial assistance awards and repayment of the EIF loan.

20. Any fee increase would likely be passed along to customers by dry cleaning facilities. Some might view a fee increase as a burden on dry cleaning businesses during a period of economic downturn when dry cleaning receipts are lower than a few years ago. Others might view a fee increase as a necessary way of providing additional revenues to the dry cleaner program to pay the current claims backlog, meet anticipated claim demand, and begin to repay any funds transferred from the environmental improvement fund.

21. If a revenue source is not provided to fund anticipated claim demand, dry cleaner businesses may have a difficult time obtaining or repaying loans for the cleanup costs if a backlog of claims continues to significantly delay reimbursement of cleanup costs. It is probable that additional dry cleaners will stop or delay cleanups if they have to wait for state reimbursement for long periods of time. However, the hazardous substances spills statute requires the party that caused the contamination to clean it up, and a potential shortfall in state funds to reimburse cleanup costs would not remove that requirement.

22. If additional revenues are not provided to the dry cleaner environmental response fund, there will be insufficient revenue to maintain the level of expenditures authorized in the bill. If the transfer is not approved, the Committee could decrease the amounts authorized for expenditures by the fund. For example, the financial assistance appropriation under the program

could be decreased by \$381,600 annually, to provide \$826,200 annually for dry cleaner awards (Alternative #A4). A backlog of claims would be expected to grow rapidly under this alternative, and owners of dry cleaning facilities who are working on site cleanups could experience increased financing costs (which are not eligible costs under the program) as they wait to receive a claim reimbursement. If the financial assistance appropriation would not be decreased, DNR would have to reduce expenditures for financial assistance and administration, and DOR would have to reduce expenditures for administration, below appropriated levels to maintain a positive balance in the fund.

ALTERNATIVES

A. Transfer from EIF to DERF

1. Approve the Governor's recommendation to: (a) authorize the Secretary of DOA to determine whether the moneys available in the dry cleaner environmental response fund (DERF) are insufficient to pay awards under the dry cleaner environmental response program (DERP); (b) authorize the Secretary of DOA and the Secretary of DNR to enter into an agreement establishing terms and conditions for the transfer of moneys from the environmental improvement fund to the DERF; (c) require that the agreement include a maximum transfer amount and the repayment by DERF to the environmental improvement fund of the amount transferred plus interest when sufficient funds are available in the DERF; and (d) specify that the maximum amount that could be transferred would be the lesser of \$6,200,000, or the difference between \$20,000,000 and the amount that has been expended for land recycling loans.

2. Approve the Governor's recommendation, and, in addition, increase the dry cleaner environmental response financial assistance appropriation by \$3,600,000 SEG in 2009-10 and decrease it by \$381,600 in 2010-11, to provide a total of \$5,634,000 for dry cleaner awards during the 2009-11 biennium.

ALT A2	Change to Bill
	Funding
SEG	\$3,218,400

3. Modify the Governor's recommendation to approve a maximum transfer of \$4,000,000 from the environmental improvement fund to the dry cleaner environmental response fund. In addition, increase the dry cleaner environmental response financial assistance appropriation by \$3,600,000 SEG in 2009-10 and decrease it by \$381,600 in 2010-11, to provide a total of \$5,634,000 for dry cleaner awards during the 2009-11 biennium.

ALT A3	Change to Bill
	Funding
SEG	\$3,218,400

4. Delete provision (maintain current law), and, in addition, decrease the dry cleaner environmental response financial assistance appropriation (to reflect anticipated revenues) by

\$381,600 SEG annually, from \$1,207,800 to \$826,200 in each year, to provide a total of \$1,652,000 for dry cleaner awards during the 2009-11 biennium.

ALT A4	Change to Bill	
	Revenue	Funding
SEG		-\$763,200

B. Dry Cleaning Gross Receipts Fee

1. Approve an increase in the dry cleaning fee imposed on dry cleaning facilities from 2.8% to 4% of the gross receipts from dry cleaning apparel and household fabrics, effective with gross receipts received as of January 1, 2010 (the quarterly payment due on April 25, 2010). This would provide additional revenue of approximately \$236,000 in 2009-10 and \$472,000 in 2010-11. In addition, provide an increase in the dry cleaner financial assistance appropriation of \$236,000 in 2009-10 and \$472,000 in 2010-11.

ALT B1	Change to Bill	
	Revenue	Funding
SEG	\$708,000	\$708,000

2. Approve an increase in the dry cleaning fee imposed on dry cleaning facilities from 2.8% to 5% of the gross receipts from dry cleaning apparel and household fabrics, effective with gross receipts received as of January 1, 2010 (the quarterly payment due on April 25, 2010). This would provide additional revenue of approximately \$432,000 in 2009-10 and \$865,000 in 2010-11. In addition, provide an increase in the dry cleaner financial assistance appropriation of \$432,000 in 2009-10 and \$865,000 in 2010-11.

ALT B2	Change to Bill	
	Revenue	Funding
SEG	\$1,297,000	\$1,297,000

3. Adopt Alternative B2, but sunset the increase for gross receipts received after December 31, 2019. Specify that the fee would revert to 2.8% beginning with gross receipts received as of January 1, 2020 (the quarterly payment due on April 25, 2020).

ALT B3	Change to Bill	
	Revenue	Funding
SEG	\$1,297,000	\$1,297,000

4. Take no action (maintain the current 2.8% dry cleaning fee).

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