

2003 DRAFTING REQUEST

Bill

Received: **08/26/2003**

Received By: **btradewe**

Wanted: **As time permits**

Identical to LRB:

For: **Neal Kedzie (608) 266-2635**

By/Representing:

This file may be shown to any legislator: **NO**

Drafter: **btradewe**

May Contact:

Addl. Drafters: **jkreye**

Subject: **Environment - env. cleanup**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Kedzie@legis.state.wi.us**

Carbon copy (CC:) to: **joseph.kreye@legis.state.wi.us**

Pre Topic:

No specific pre topic given

Topic:

Changes to dry cleaner environmental response program

Instructions:


See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	btradewe 08/27/2003	kfollett 09/03/2003		_____			State
	jkreye 09/03/2003	kfollett 09/09/2003		_____			
/1			pgreensl 09/09/2003	_____	sbasford 09/09/2003		State

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/2	btradewe 10/13/2003	kfollett 10/15/2003 kfollett 10/15/2003	jfrantze 10/16/2003	_____	mbarman 10/17/2003		State
/3	btradewe 11/10/2003	wjackson 11/10/2003	rschluet 11/10/2003	_____	lemery 11/10/2003	sbasford 11/14/2003 sbasford 11/14/2003	

FE Sent For:


 At
Intro.

<END>

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/1			pgreensl 09/09/2003	_____	sbasford 09/09/2003		State

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<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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		kfollett 10/15/2003		_____			

13 WJ 11/10

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Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

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/?	btradewe	1/1 kgf 9/9	9 /9 Pg	==			

FE Sent For:

<END>



State Senator

Neal J. Kedzie

11th Senate District

August 20, 2003

Legislative Reference Bureau
Attn: Rebecca Tradewell, Managing Attorney
100 N. Hamilton, 5th Floor

Dear Becky,

Please accept this correspondence as a formal request for statutory changes to Wisconsin's Drycleaner Environmental Response Fund (DERF). The Department of Revenue, Department of Natural Resources and the Wisconsin Fabricare Institute cooperated in preparing the enclosed revisions.

The first document is requested changes by the DNR; the next three are requested changes by the DOR. I trust the drafting instructions are clear and concise but if you have any questions, please contact Dan Johnson in my office.

Thank you for your attention to my request.

Sincerely,

A handwritten signature in cursive script that reads 'Neal Kedzie'.

Neal Kedzie
State Senator
11th Senate District

NJK: dj

DNR

2003-05 Statutory Language Proposals:

DIVISION:	Air and Waste
BUREAU:	Remediation and Redevelopment
ISSUE/TOPIC:	Dry Cleaning Statutory Language
PROPOSED CHANGE:	<p>Clarifying the definition of owner/operator, per 292.65(1)(h) and (i). The current language continues to cause confusion regarding eligibility. The language is inconsistent between dry cleaning facility owner and dry cleaning facility operator. Specifically, the operator definition does not address an operator who operated a licensed drycleaning facility that ceased operating <i>after</i> October 14, 1997. They should be covered, but as the statute currently reads, they are not eligible for this program unless they also qualify as an "owner" under the statute. In addition, the definition of owner should clarify that the eligibility of <i>property</i> owners (i.e., landlords who rent or rented land or buildings to dry cleaning businesses, as opposed to the owners of the dry cleaning business itself) is limited to those who own or owned the property <i>when there was a licensed facility operating at that location</i> – but subsequent property owners (i.e., buyers who acquire the land after a licensed dry cleaning facility is no longer present at the site) are not eligible for this program. The statute should also clarify that one cannot assign their rights to eligibility under this program to someone else – the agent provision addresses the issue of having someone else conduct the appropriate activities – but one's rights to apply for and obtain reimbursement under this program for costs of investigating and cleaning up the site cannot be assigned via a legal document.</p> <p>Notification of insurance claims and receipt of proceeds. Currently, s. 292.65(4)(m) specifies that an owner or operator shall notify the department of any insurance claim made to cover eligible costs, the status of the claim, and if the owner or operator has received any insurance proceeds arising from the claim, the amount of the proceeds. –In addition, sec. 292.65(8m) states that if, after the owner or operator receives an award under this section, the owner or operator receives payment from an insurance company arising out of a claim for payment of any eligible costs, the owner or operator shall pay to the department the amount by which the insurance payment exceeds the sum of the deductible and the amount by which the amount calculated under sub. (8)(e) exceeds the maximum award under sub. (8)(f), but not more than the amount of the award received. The statute should be broadened to include any reimbursement from any other source, including insurance claims, brownfields grants, or other source that would reimburse or pay for costs included as eligible costs for the purpose of the DERF program. TIF's would not be considered another source since they are repaid and not "grant" type monies.</p> <p>Past costs and application deadlines. Sec. 292.65(3) Duties of the department, specifies payment of awards for the program year 1999, 2000 and 2001. Those requirements have been met and should be deleted from the statute as they are no longer pertinent to the program.</p> <p>Eligible costs prior to October 14, 1997 Sec. 292.65(7)(c) excludes costs -that were incurred prior to January 1, 1991. Chapter NR 169, the rule implementing this program, established that costs incurred between 1/1/91 and 10/14/97 needed to be submitted to the Department by March 31, 2000 to be eligible for reimbursement. Therefore, the date for submitting these costs has expired and the statute should reflect the new date of 10/14/97.</p>

Award Deadlines

The current statute, in sec. 292.65(8) states that an owner or operator may not submit an application after August 30, 2005, if the application relates to a dry cleaning facility that ceased to operate before September 1, 1998. An owner or operator may not submit an application after August 20, 2008, if the application relates to any other dry cleaning facility. Two issues relate to this language. First is that these dates do not provide sufficient time for the response actions to have taken place – since this is a reimbursement program, the applications are submitted when the response action is complete and costs have been incurred, not before. Therefore, this implies that all cleanups must be completed by these dates. The industry and the department concur that it is reasonable to establish dates by which cleanups must be initiated, but we can't dictate when they must be completed. That depends on site-specific circumstances, including the extent of the contamination and the technology being used. This type of deadline implies that higher cost technologies would be preferentially chosen to be sure the cleanup is complete by the deadline so all costs can be reimbursed. A better alternative is to reword the language in the statute to stipulate that an owner or operator may not submit a potential claim notification form after August 30, 2008. This means they must have discovered a release prior to that date and the department will work with the individual eligible applicants to determine the best approach and timeliness of response for that particular site. .

The second issue regarding award deadlines is the differentiation between facilities that closed prior to September 1, 1998 and those that operated after that date. For the purpose of simplification and streamlining the program, the department and industry support having one deadline for all sites, regardless of whether they are operating or not and what date the business closed

Reimbursement of Environmental Fund Monies

Sec. 292.65(11) stipulates that if the department expends funds from the environmental fund because of a discharge of dry cleaning product at a dry cleaning facility, the department shall transfer from the dry cleaner fund to the environmental fund an amount equal to that expended by the environmental fund. After deliberation with department staff and industry, it was determined that this specific language is not completely consistent with the intent of the original agreement with industry on how the environmental fund would be used at dry cleaner sites. The language needs to be clarified so that the transfer of funds from the dry cleaner fund to the environmental fund only applies to dry cleaner sites where there is an eligible applicant, and does not include the cost of the deductible. Historic sites or sites without an eligible applicant would not be covered by this provision.

Changing 292.65(8)(d)7 to include the payment of fees, interest and penalties under ss. 77.9961, 77.9962, 77.9963 and 77.9964, Stats.

Based on discussions with the Department of Revenue, and changes that they are pursuing for collection of fees, interest and penalties, applications should be denied until the associated fees, interest and penalties are paid, or an agreed upon payment schedule has been negotiated with the Department of Revenue.

Revise the definition of drycleaning product

The current definition of drycleaning product refers to hazardous substances, which have a specific definition that is very effective in the spills and other response programs. However, in the drycleaner program, there has been confusion with respect to this terminology. After researching other states' definitions of drycleaning products, a majority of the states are using a definition of a drycleaning product as any nonaqueous solvent for use in the cleaning (other than laundering) of garments or other household fabrics, including but not limited to perchloroethylene and petroleum based solvents and the products into which dry cleaning solvents degrade. We believe this definition would provide more clarity and be easier to interpret for most involved with this program.

	<p>Support DOR proposals to streamline the licensing of drycleaners by issuing permits similar to seller's permits, and offering same provisions for penalties, fees, etc. The Department of Revenue is pursuing changes to the statute relating to licensing, penalties and interest payments, simplifying the way they implement this program and making it consistent with how they implement other similar programs, such as sellers permits, etc. These changes were recommended after discussions with both industry and the Departments of Revenue and Natural Resources, and should be endorsed by DNR as helping the program.</p> <p>Reduction of Awards Sec. 292.65(8)(j) addresses the completion of applications with ineligible costs included, and provides that if an owner or operator prepares the application the department calculates the award based on eligible costs and reduces that amount by 50% of the ineligible costs included in the application. In addition, this section also provides that if a <i>consultant</i> prepares an application that includes ineligible costs, the consultant shall pay to the department an amount equal to 50% of the ineligible costs included in the application. The consultant may not charge the owner or operator for any amount they are required to pay. The department believes this provision should be expanded to require anyone (other than the owner or operator) who prepares an application or otherwise submits ineligible costs for reimbursement to pay the Department an amount equal to 50% of such ineligible costs. Requiring this only of consultants allows third parties (attorneys or other agents, etc.) who become involved in the site investigation and cleanup after the application is submitted to submit ineligible costs at a later date and not subject to the provisions of this statute.</p>
EXPLANATORY NOTE:	
DESIRED EFFECTIVE DATE:	Effective with budget passage.
CONTACT PERSON:	Lance Potter, MB/5 (7-7418); Robin Schmidt, RR/3 (7-7569); Edwina Kavanaugh, LS/5 (4-8991)
NEW ISSUES 6/03	292.65(8)(d)7 – change specification of who pays fees to generic requirement that fees be paid prior to submittal of application or it will be denied. For many sites, there is someone other than the operator requesting reimbursement, and yet fees owed by the operator have not been paid. DNR cannot legally hold a third party responsible for fees owed by the operator at a facility, so a number of applications are being processed even though fees are owed to the DERF fund by the operator of the facility. This change would require fees to be paid before a reimbursement application is submitted, regardless of who paid them. Thus, a third party would have incentive to pay the back fees in order to get their reimbursement application processed, and generate the appropriate income into the fund.

DOR

**Legislative Proposal Summary
Wisconsin Department of Revenue
IS&E Division**

June 4, 2002

TITLE: Provide for automatic renewal of the dry cleaning license under sec. 77.9961(1), Wis. Stats. (1999-00). Provide for a possible security deposit for a dry cleaning license the same as the (sales tax) seller's permit under sec. 77.61(2), Wis. Stats. (1999-00). Provide for revocation of the dry cleaning license the same as revocation of the seller's permit under sec. 77.52(11), Wis. Stats. (1999-00). Provide a penalty for operating without a dry cleaning license the same as operating without a seller's permit under sec. 77.52(12), Wis. Stats. (1999-00), and eliminate the penalty under sec. 77.9961(4)(a), Wis. Stats. (1999-00). Eliminate the additional penalty for late payment of the dry cleaning license fee under sec. 77.9961(4)(b), Wis. Stats. (1999-00), which late payments are also subject to the penalties under sec. 71.83(1) to (3), Wis. Stats. (1999-00).

DESCRIPTION OF CURRENT LAW AND PROBLEM

Under sec. 77.9961(2), Wis. Stats. (1999-00), a person operating a dry cleaning facility in Wisconsin is issued a license after paying a license fee. The license fee is paid in installments on or before April 25, July 25, October 25 and January 25 equal to 1.8% of the gross receipts from the previous three months from dry cleaning apparel and household fabrics. The license issued after payment of the January 25 installment is valid for the year in which the January 25 installment is due. As a result of the last payment being due January 25, a person may be considered to be operating a dry cleaning facility without a license from January 1 to January 25, and therefore subject to the penalty of \$5 per day under sec. 77.9961(4)(a), Wis. Stats. (1999-00). Further, if the final installment is paid after January 25, this also results in the \$5 per day penalty for operating without a license under sec. 77.9961(4)(a), Wis. Stats. (1999-00), in addition to the late filing penalty of \$5 per day under sec. 77.9961(4)(b), Wis. Stats. (1999-00).

To eliminate the confusion that a person may be considered to be operating without a license from January 1 to January 25, and to eliminate the duplication of penalties for persons filing the January installment late, a provision is desired for the license to be valid until either transferred or surrendered by the dry cleaner or revoked by the department. The license transfer is provided for in the current law, and the surrender and revocation provisions are present for the (sales and use tax) seller's permit in sec. 77.52(11) and (12), Wis. Stats. (1999-00).

The penalty for operating without a permit is also included in sec. 77.52(12), Wis. Stats. (1999-00), as it applies to persons operating without a seller's permit. If the penalty in sec. 77.52(12), Wis. Stats. (1999-00), is also applied to persons who operate a dry cleaning facility without a license, the \$5 per day penalty under sec. 77.9961(4)(a), Wis. Stats. (1999-00) would be unnecessary.

Also, the \$5 per day late filing penalty in sec. 77.9961(4)(b), Wis. Stats. (1999-00), is unnecessary because the late filing penalties in sec. 71.83, Wis. Stats. (1999-00), also apply to late dry cleaner fee installments.

ADMINISTRATIVE IMPACT

Eliminates uncertainty for taxpayers and the Department of Revenue.

FISCAL EFFECT

No fiscal effect. This proposal will clarify when a dry cleaner is operating without a dry cleaning license in sec. 77.9961(4)(a), Wis. Stats. (1999-00), and what penalties apply to dry cleaner fees paid late.

DRAFTING INSTRUCTIONS

Amend sec. 77.9961(1), Wis. Stats. (1999-00), to read:

"77.9961 License and fee. (1) (a) No person may operate a dry cleaning facility in this state unless the person completes and submits to the department an application for license on a form that the department prescribes, and pays to the department a fee for each dry cleaning facility that the person operates. The fee shall be paid in instalments, as provided in sub. (2), and each instalment is equal to 1.8% of the gross receipts from the previous 3 months from dry cleaning apparel and household fabrics, but not from formal wear the facility rents to the general public.

(b) Any person who submits an application for license under par. (a) may be requested by the department, before or after a license is issued, to provide a security deposit under s. 77.61(2) in the same manner as those provisions apply to persons who apply for, or hold a seller's permit.

(c) After compliance with pars. (a) and (b) by the applicant, the department shall issue a license to each person who submits the form under this section. If a dry cleaning facility is sold, the seller may transfer the license to the buyer. The license is valid until the license is either transferred or surrendered by the person to whom the license was issued or transferred, or the license is revoked by the department as provided for in par. (e). The license is valid only for the facility designated in it, and shall be prominently displayed in the facility to which it applies.

(d) Any person who operates a dry cleaning facility and who does not hold a license under this section is subject to the provisions of s. 77.52(12) as those provisions apply to persons who operate without a seller's permit.

(e) If any person fails to comply with any provision of this subchapter relating to the dry cleaning fees or any rule of the department relating to the dry cleaning fees adopted under this subchapter, is delinquent in respect to any tax imposed by the department or fails timely to file any return or report in respect to any tax under ch. 71, 72, 76, 77, 78 or 139 after having been requested to file that return or report, the license issued to that person under par. (c) may be revoked under the provisions of s. 77.52(11) as those provisions apply to the revocation of a seller's permit."

Repeal and recreate Sec. 77.9961(2), Wis. Stats. (1999-00), to read:

"77.9961 (2) Every person operating a dry cleaning facility must pay to the department a fee for each dry cleaning facility that the person operates. The fee shall be paid in instalments, as provided in sub. (3), and each instalment is equal to 1.8% of the gross receipts from the previous 3 months from dry cleaning apparel and household fabrics, but not from formal wear the facility rents to the general public."

Repeal and recreate Sec. 77.9961(3), Wis. Stats. (1999-00), to read:

"77.9961 (3) Persons who owe a fee under this section shall pay it in instalments on or before April 25, July 25, October 25 and January 25."

Repeal and recreate Sec. 77.9961(4), Wis. Stats. (1999-00), to read:

"77.9961 (4) The department shall mail to each dry cleaning facility of which it is aware a form on which to apply for a license under this section."

Amend sec. 77.9964(2), Wis. Stats. (1999-00), to read:

"77.9964 (2) Except as provided in s. 77.9961(4)(1)(b), (d) and (e), sections 71.74 (1) to (3), (7) and (9), 71.75 (1), (2), (6), (7), (9) and (10), 71.77 (1) and (4) to (8), 71.78 (1) to (4) and (5) to (8), 71.80 (1) (a) and (b), (4) to (6), (8) to (12), (14), (17) and (18), 71.82 (1) and (2) (a) and (b), 71.83 (1) (a) 1. and 2. and (b) 1., 2. and 6., (2) (a) 1. to 3. and (b) 1. to 3. and (3), 71.87, 71.88, 71.89, 71.90, 71.91 (1) (a), (2) and (4) to (6) and 71.93 as they apply to the taxes under ch. 71 apply to the fees under this subchapter."

EFFECTIVE DATE AND/OR INITIAL APPLICABILITY

The day after publication.

— how does this affect outstanding penalties?

*Assessed before
would be under old*

DOR CONTACT PERSON

Robert Little
Revenue Tax Specialist
(608) 266-7166

PREPARED BY

Robert Little

DOR

**Legislative Proposal Summary
Wisconsin Department of Revenue
IS&E Division**

May 9, 2002

TITLE: Define "gross receipts" for purposes of determining what gross receipts from dry cleaning are subject to the dry cleaning license fee under sec. 77.9961(1), Wis. Stats. (1999-00).

DESCRIPTION OF CURRENT LAW AND PROBLEM

Under sec. 77.9961(1), Wis. Stats. (1999-00), a person operating a dry cleaning facility in Wisconsin is required to pay a license fee equal to 1.8% of the "gross receipts" from the previous three months from dry cleaning apparel and household fabrics. For purposes of the dry cleaning fee, there are definitions in sec. 77.996, Wis. Stats. (1999-00), of "department", "dry cleaning facility", "dry cleaning solvent (now 'product' under 2001 Wis. Act 16)", "formal wear", and "formal wear rental firm", however there is no definition of "gross receipts". This presents many of the same problems that required a definition of "gross receipts" for purposes of the sales tax in ch. 77, Wis. Stats. (1999-00). For example, do "gross receipts" from dry cleaning include the pick-up and delivery of the items to be dry cleaned, or any other goods or services related to the dry cleaning such as hangers, apparel bags, pressing, fabric repair and button replacement? Do "gross receipts" include the sales tax which is imposed on dry cleaning services under sec. 77.52(2)(a)6., Wis. Stats. (1999-00)? Do "gross receipts" include the 1.8% fee under sec. 77.9961(1), Wis. Stats. (1999-00), if it is charged to the customer by the dry cleaner to get reimbursed for the dry cleaning fee?

Although there is a definition of "gross receipts" for purposes of the sales tax in sec. 77.51(4)(a), Wis. Stats. (1999-00), this section of the law does not apply to the dry cleaning fees, which, pursuant to sec. 77.9964(2), Wis. Stats. (1999-00), are administered under ch. 71, Wis. Stats. (1999-00), rather than ch. 77, Wis. Stats. (1999-00). There is no definition of "gross receipts" in ch. 71, Wis. Stats. (1999-00), the income and franchise tax statutes.

A definition of "gross receipts" for purposes of the dry cleaning fee is desired to avoid uncertainty as to what "gross receipts" are subject to the dry cleaning fee.

ADMINISTRATIVE IMPACT

Eliminates uncertainty for taxpayers and the Department of Revenue.

FISCAL EFFECT

No fiscal effect. This proposal will codify how the Department of Revenue currently administers what "gross receipts" are subject to the dry cleaning fees in sec. 77.9961(1), Wis. Stats. (1999-00).

DRAFTING INSTRUCTIONS

Create sec. 77.996(6), Wis. Stats., to read as follows: "(6) "Gross receipts" has the same meaning as defined in s. 77.51(4)(a), (b)1. and 5., (c)1. to 4. and (d), as it applies to the taxes in subch. III of ch. 77, but not including the license fee imposed in s. 77.9961(1) passed on to customers."

EFFECTIVE DATE AND/OR INITIAL APPLICABILITY

The day after publication.

DOR CONTACT PERSON

Robert Little
Revenue Tax Specialist
(608) 266-7166

PREPARED BY

Robert Little

*are these considered
gross receipts
for purposes of this
subchapter or not?*

excluded

DOR

**Legislative Proposal Summary
Wisconsin Department of Revenue
IS&E Division**

April 22, 2002

TITLE: Clarify when assessments of unpaid dry cleaning fees become delinquent under sec. 71.74(12), Wis. Stats. (1999-00), and allow for compromise, installment payment and other collection of delinquent dry cleaning fees under secs. 71.91 and 71.92, Wis. Stats. (1999-00).

DESCRIPTION OF CURRENT LAW AND PROBLEM

Under sec. 77.9964(2), Wis. Stats. (1999-00), the Department of Revenue can issue assessments under sec. 71.74, Wis. Stats. (1999-00), for unpaid dry cleaning fees, including interest and penalties under secs. 71.82 and 71.83, Wis. Stats. (1999-00). While unpaid dry cleaning fees are subject to delinquent interest under sec. 71.82(2), Wis. Stats. (1999-00), there is no provision in sec. 77.9964(2), Wis. Stats. (1999-00), that addresses when an assessment under sec. 71.74, Wis. Stats. (1999-00), becomes delinquent.

Under sec. 71.74(10) to (12), Wis. Stats. (1999-00), the Department of Revenue must provide notice to the taxpayer of an income or franchise tax assessment, which then becomes delinquent if not paid on or before the due date on the notice.

A reference in sec. 77.9964(2), Wis. Stats. (1999-00), to sec. 71.74(10) to (12), Wis. Stats. (1999-00), is desired to avoid uncertainty as to when assessments of unpaid dry cleaning fees become delinquent.

Further, there is no provision under sec. 77.9964(2), Wis. Stats. (1999-00), for payment of delinquent dry cleaning fees by installment, for the compromise of delinquent dry cleaning fees or for other collection remedies such as withholding from employees wages. There is only a reference in sec. 77.9964(2), Wis. Stats. (1999-00), to sec. 71.91(1)(a), (2) and (4) to (6), Wis. Stats. (1999-00), which includes sec. 71.91(5m), Wis. Stats. (1999-00), a provision for the compromise of personal property taxes to the extent that provision does not conflict with sec. 71.92, Wis. Stats. (1999-00). Section 71.92, Wis. Stats. (1999-00), provides for the compromise and installment payment of delinquent income and franchise taxes. However, no such provision for the compromise and installment payment of delinquent personal property taxes was found to exist in the property tax laws of either chs. 70 or 74, Wis. Stats. (1999-00). There is also no reference in sec. 77.9964(2), Wis. Stats. (1999-00), to the marital obligation provision in sec. 71.91(3), Wis. Stats. (1999-00), or employer withholding provision in sec. 71.91(7), Wis. Stats. (1999-00).

A reference in sec. 77.9964(2), Wis. Stats. (1999-00), to the collection remedies, compromise and installment payment provisions in secs. 71.91 and 71.92, Wis. Stats. (1999-00), is desired in order to avoid uncertainty as to whether these valuable collection remedies are available to taxpayers and the Department of Revenue.

ADMINISTRATIVE IMPACT

Eliminates uncertainty for taxpayers and the Department of Revenue.

FISCAL EFFECT

This proposal will clarify that the collection, compromise and installment payment remedies for delinquent taxes are available to taxpayers and the Department of Revenue for unpaid dry cleaning fees.

DRAFTING INSTRUCTIONS

In sec. 77.9964(2), Wis. Stats. (1999-00), add secs. 71.74(10) to (12), 71.91(3) and (7) and 71.92, Wis. Stats., (1999-00), to the list of statute sections that apply to the dry cleaning fees.

EFFECTIVE DATE AND/OR INITIAL APPLICABILITY

The day after publication.

DOR CONTACT PERSON

Robert Little
Revenue Tax Specialist
(608) 266-7166

PREPARED BY

Robert Little

-3/67/1
LRB-044771
RCT:kjf&cmh
stays
+JK

DOA:.....Mawdsley - BB0138, Dry cleaning program changes
FOR 2003-05 BUDGET - NOT READY FOR INTRODUCTION

in 9-3-03

SOON

DNate

generates

1 AN ACT ...; relating to: ~~the budget~~ ^{the dry cleaner environmental response program} and the administration of ^{dry cleaning license fees}

Analysis by the Legislative Reference Bureau

ENVIRONMENT

HAZARDOUS SUBSTANCES AND ENVIRONMENTAL CLEANUP

the Department of Natural Resources

Under current law, (DNR) administers the Dry Cleaner Environmental Response Program (DERP), which provides reimbursement for a portion of the costs of responding to discharges of dry cleaning solvents. This bill makes several changes in DERP.

the Department of Revenue

Under current law, a person who operated a dry cleaning facility that has closed, but who does not own the property on which the facility was located, is eligible under DERP only if the facility closed before October 14, 1997. Under this bill, such a person is eligible if the facility closed after October 13, 1997, as long as the facility was licensed by (DOR) before it closed. Also, under current law, a person who owns property on which a dry cleaning facility that has closed was located, but who did not operate the facility, may be eligible under DERP if the dry cleaning facility was licensed by DOR before the facility closed. Under the bill, the dry cleaning facility must also have operated while the person owned the property.

Under current law, a person may not apply for DERP after August 30, 2005, if the dry cleaning facility to which the application applies closed before September 1, 1998, or after August 1, 2008, in any other case. This bill eliminates the application deadlines and instead provides that a person is not eligible for DERP if the person submits the required notice of a potential claim after August 30, 2008.

Under current law, an applicant for DERP must notify DNR of any insurance claim made to recover costs that are eligible under DERP and of any proceeds received. The award is reduced by the amount by which the insurance proceeds exceed the DERP deductible plus the eligible costs in excess of the DERP maximum payment. The bill expands these provisions so that they apply to other sources of reimbursement in addition to insurance proceeds.

Under current law, DNR may not make a DERP award if the applicant has not paid all of the license fees and other fees owed to DOR. This bill expands the prohibition so that it also applies to penalties and interest owed to DOR.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

INSERT
A

and allow DNR to make an award if anyone has paid the fees, penalty, and interest

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 SECTION 1. 77.996 (3) of the statutes is amended to read:

2 77.996 (3) "Dry cleaning product" means a ~~hazardous substance~~ nonaqueous
3 solvent used to clean in the cleaning, other than laundering, of apparel or household
4 fabrics, except a hazardous substance used to launder apparel or household
5 products.

INSERT
2-5

6 SECTION ~~2~~ 292.65 (1) (e) of the statutes is amended to read:

7 292.65 (1) (e) "Dry cleaning product" means a ~~hazardous substance~~
8 nonaqueous solvent used to clean in the cleaning, other than laundering, of apparel
9 or household fabrics, except for a hazardous substance used to launder apparel or
10 household fabrics.

11 SECTION ~~3~~ 292.65 (1) (h) 4. of the statutes is created to read:

12 292.65 (1) (h) 4. A person who operated a dry cleaning facility that ceased
13 operation after October 13, 1997, but that was licensed under s. 77.9961 (2) before
14 it ceased operation.

15 SECTION ~~4~~ 292.65 (1) (i) 3. b. of the statutes is amended to read:

1 292.65 (1) (i) 3. b. A dry cleaning facility that has ceased operation but that was
2 licensed under s. 77.9961 (2) before it ceased operation and was licensed and
3 operating while the person owned the property.

4 SECTION ~~5~~[✓] 292.65 (3) (am) 1. of the statutes is amended to read:

5 292.65 (3) (am) 1. The department shall establish a method for determining the
6 order in which it pays awards under this section. Except as provided in ~~subds. subd.~~
7 ~~2. and 3.~~, the method shall be based on environmental factors and on the order in
8 which applications are received.

9 SECTION ~~6~~[✓] 292.65 (3) (am) 2. of the statutes is amended to read:

10 292.65 (3) (am) 2. The department shall pay an award for immediate action
11 activities before it pays other awards.

12 SECTION ~~7~~[✓] 292.65 (3) (am) 3. of the statutes is repealed.

13 SECTION ~~8~~[✓] 292.65 (4) (m) of the statutes is amended to read:

14 292.65 (4) (m) *Notification of insurance claims applications and receipt of*
15 *proceeds funds. An owner or operator shall notify the department of any application,*
16 *including any insurance claim, made to obtain funds to cover eligible costs, the status*
17 *of the ~~claim~~ application, and, if the owner or operator has received any ~~insurance~~*
18 *proceeds funds arising from the ~~claim~~ application, the amount of the ~~proceeds funds~~*
19 *received.*

20 SECTION ~~9~~[✓] 292.65 (7) (c) 1. of the statutes is amended to read:

21 292.65 (7) (c) 1. Costs incurred before ~~January 1, 1991~~ October 14, 1997.

22 SECTION ~~10~~[✓] 292.65 (8) (a) (intro.) of the statutes is amended to read:

23 292.65 (8) (a) *Application.* (intro.) An owner or operator shall submit an
24 application on a form provided by the department. ~~An owner or operator may not~~
25 ~~submit an application before September 1, 1998. An owner or operator may not~~

1 ~~submit an application after August 30, 2005, if the application relates to a dry~~
2 ~~cleaning facility that ceased to operate before September 1, 1998.~~ An owner or
3 operator may not submit an application if the owner or operator submits the
4 notification of potential claim under sub. (4) (c) after August 20 30, 2008, if the
5 ~~application relates to any other dry cleaning facility.~~ The department shall authorize
6 owners and operators to apply for awards at stages in the process under sub. (4) that
7 the department specifies by rule. An application shall include all of the following
8 documentation of activities, plans, and expenditures associated with the eligible
9 costs incurred because of a dry cleaning product discharge from a dry cleaning
10 facility:

11 SECTION ~~11~~ [#] 292.65 (8) (a) 4m. of the statutes is amended to read:

12 292.65 (8) (a) 4m. If the owner or operator receives any ~~proceeds~~ funds arising
13 from an application, including an insurance claim, for any eligible costs, a record of
14 the payment.

15 SECTION ~~12~~ [#] 292.65 (8) (d) 7. of the statutes is amended to read:

16 292.65 (8) (d) 7. ~~The applicant has not paid all~~ ^{all} of the fees, interest, and
17 penalties due under ss. 77.9961 and, 77.9962, and 77.9964. have not been paid

18 SECTION ~~13~~ [#] 292.65 (8) (j) 2. of the statutes is amended to read:

19 292.65 (8) (j) 2. If a ~~consultant~~ person other than an owner or operator prepares
20 an application that is submitted by ~~an~~ the owner or operator and that includes
21 ineligible costs that are identified under subd. 3., the ~~consultant~~ person shall pay to
22 the department an amount equal to 50% of the ineligible costs identified under subd.
23 3. that are included in the application. A ~~consultant~~ person, other than an owner or
24 operator, who prepares an application may not charge the owner or operator for any
25 amount that the ~~consultant~~ person is required to pay under this subdivision.

1 Payments made under this subdivision shall be deposited in the dry cleaner
2 environmental response fund.

3 SECTION ~~14~~[#] 292.65 (8) (j) 4. of the statutes is amended to read:

4 292.65 (8) (j) 4. If, prior to receiving an award under this section, an owner or
5 operator receives payment from another person, including an insurance company,
6 arising out of ~~a claim~~ an application for payment of any eligible costs, the department
7 may not reimburse the owner or operator any amount that exceeds the difference
8 between the amount of the award calculated under subd. 1. or 2. and pars. (e) and
9 (f) and the amount by which the ~~insurance~~ payment exceeds the sum of the
10 deductible and the amount by which the amount calculated under par. (e) exceeds the
11 maximum award under par. (f).

12 SECTION ~~15~~[#] 292.65 (8m) of the statutes is amended to read:

13 292.65 (8m) REIMBURSEMENT OF ~~INSURANCE PROCEEDS~~ PAYMENTS. If, after the
14 owner or operator receives an award under this section, the owner or operator
15 receives payment from another person, including an insurance company, arising out
16 of ~~a claim~~ an application for payment of any eligible costs, the owner or operator shall
17 pay to the department the amount by which the ~~insurance~~ payment exceeds the sum
18 of the deductible and the amount by which the amount calculated under sub. (8) (e)
19 exceeds the maximum award under sub. (8) (f), but not more than the amount of the
20 award received. The amounts collected by the department under this subsection
21 shall be deposited in the dry cleaner environmental response fund.

22 SECTION ~~16~~[#] 292.65 (11) of the statutes is amended to read:

23 292.65 (11) ENVIRONMENTAL FUND REIMBURSEMENT. If the department expends
24 funds from the environmental fund under s. 292.11 (7) (a) or 292.31 (3) (b) because
25 of a discharge of dry cleaning product at a dry cleaning facility and there is an owner

1 or operator for the dry cleaning facility, the department shall transfer from the
2 appropriation account under s. 20.370 (6) (eq) to the environmental fund an amount
3 equal to the amount expended under s. 292.11 (7) (a) or 292.31 (3) (b). The
4 department shall make transfers under this subsection when the department
5 determines that sufficient funds are available in the appropriation account under s.
6 20.370 (6) (eq).

7 (END)

7
INSERT
6-6

Note

Insert A

Under current law, a person who operates a dry cleaning facility in this state must pay a license fee to ~~DOH~~. The license fee is paid in four installments and each installment is equal to 1.8^{percent}% of the person's gross receipts from the previous three months from dry cleaning apparel and household fabrics. Under current law, "gross receipts" with respect to the dry cleaning license fee is undefined. Under the bill, "gross receipts" has, generally, the same meaning as the meaning of "gross receipts" for sales and use tax purposes. In addition, under the bill, generally, the sales and use tax provisions under current law related to operating a business without a permit, revoking a permit, and collecting delinquent taxes apply to operating a dry cleaning facility without a license, revoking a license to operate a dry cleaning facility, and collecting delinquent license fees.

Insert 2 - 5

1 SECTION 1. 77.996 (6) of the statutes is created to read:

2 77.996 (6) "Gross receipts" has the meaning given in s. 77.51 (4) (a), (b) 1. and
3 5., (c) 1. to 4., and (d). "Gross receipts" does not include the license fee imposed under
4 s. 77.9661 (1m) that is passed on to customers.

5 SECTION 2. 77.9961 (title) of the statutes is amended to read:

6 **77.9961 (title) License and fee.**

History: 1997 a. 27; 1999 a. 9.

7 SECTION 3. 77.9961 (1) of the statutes is renumbered 77.9661 (1) (a) and
8 amended to read:

9 77.9661 (1) (a) No person may operate a dry cleaning facility in this state unless
10 the person completes and submits to the department an application for a license on
11 a form that the department prescribes and pays to the department a fee for each dry
12 cleaning facility that the person operates. The fee shall be paid in installments, as
13 provided in sub. (2), and each installment is equal to 1.8% of the gross receipts from
14 the previous 3 months from dry cleaning apparel and household fabrics, but not from
15 formal wear the facility rents to the general public.

History: 1997 a. 27; 1999 a. 9.

16 SECTION 4. 77.9961 (1) (b) of the statutes is created to read:

1 77.9961 (1) (b) The department may require, before or after the license is
2 issued, that any person who submits an application for a license under par. (a)
3 provide a security deposit to the department. For purposes of this paragraph, s.
4 77.61 (2), as it applies to a security deposit related to a seller's permit, applies to the
5 a security deposit required under this subsection.

6 **SECTION 5.** 77.9961 (1) (c) of the statutes is created to read:

7 77.9961 (1) (c) Subject to par. (b), the department shall issue a license to each
8 person who completes and submits an application for a license under par. (a). If a dry
9 cleaning facility is sold, the seller may transfer the license to the buyer. A license is
10 valid until the license is surrendered by the person to whom the license was issued
11 or transferred or until the license is revoked by the department as provided in par.
12 (e). A license is valid only for the facility designated by the license and the license
13 holder shall display the license prominently in the facility to which the license
14 applies.

15 **SECTION 6.** 77.9961 (1) (d) of the statutes is created to read:

16 77.9961 (1) (d) Section 77.52 (12), as it applies to a person who operates as a
17 seller without a seller's permit, applies to a person who operates a dry cleaning
18 facility without a license issued under this subsection.

19 **SECTION 7.** 77.9961 (1) (e) of the statutes is created to read:

20 77.9961 (1) (e) The department may revoke a license issued under this
21 subsection, if the person who holds the license fails to comply with any provision of
22 this subchapter related to the fees imposed under this subchapter or any rule
23 promulgated by the department related to the fees imposed under this subchapter,
24 is delinquent with respect to taxes imposed by the department, or fails to timely file
25 a return or report with respect to taxes imposed under chs. 71, 72, 76, 77, 78, or 139

1 after having been requested to file the return or report. Section 77.52 (11), as it
2 applies to revoking a seller's permit, applies to revoking a license issued under this
3 subsection.

4 SECTION 8. 77.9961 (1m) of the statutes is created to read:

5 77.9961 (1m) Every person operating a dry cleaning facility shall pay to the
6 department a fee for each dry cleaning facility that the person operates. The fee shall
7 be paid in installments, as provided in sub. (2), and each installment is equal to 1.8%
8 of the gross receipts from the previous 3 months from dry cleaning apparel and
9 household fabrics, but not from formal wear the facility rents to the general public.

10 SECTION 9. 77.9961 (2) of the statutes is amended to read:

11 77.9961 (2) Persons who owe a fee under this section shall pay it in
12 installments on or before April 25, July 25, October 25 and January 25. The
13 department shall issue a license to each person who pays the January 25 installment
14 and the previous 3 installments and submits the form under this section. The license
15 is valid for the year in which the January 25 installment is due. If a dry cleaning
16 facility is sold, the seller may transfer the license to the buyer. Each holder of a
17 license under this section shall display it prominently in the facility to which it
18 applies.

19 History: 1997 a. 27; 1999 a. 9.

20 SECTION 10. 77.9961 (3) of the statutes is amended to read:

21 77.9961 (3) ~~On or before December 15, the~~ The department shall mail to each
22 dry cleaning facility of which it is aware a form on which to apply for a license under
this section.

23 History: 1997 a. 27; 1999 a. 9.

24 SECTION 11. 77.9961 (4) of the statutes is repealed.

SECTION 12. 77.9964 (2) of the statutes is amended to read:

1 77.9964 (2) Except as provided in s. 77.9961 (4) (1) (b), (d), and (e), sections 77.9961 (1) to (3), (7) and (9), and (10) to (12), 71.75 (1), (2), (6), (7), (9), and (10), 71.77 (1) and (4) to (8), 71.78 (1) to (4) and (5) to (8), 71.80 (1) (a) and (b), (4) to (6), (8) to (12), (14), (17), and (18), 71.82 (1) and (2) (a) and (b), 71.83 (1) (a) 1. and 2. and (b) 1., 2., and 6., (2) (a) 1. to 3. and (b) 1. to 3., and (3), 71.87, 71.88, 71.89, 71.90, 71.91 (1) (a), (2), (3), and (4) to (6) (7), 71.92, and 71.93 as they apply to the taxes under ch. 71 apply to the fees under this subchapter.

History: 1997 a. 27; 1999 a. 9.

Insert 6 - 6

8 **SECTION 13. Initial applicability.**

9 (1) The treatment of section 77.996 (6) of the statutes first applies to the license
10 fee installment that is due after the effective date of this subsection.

11 (2) The treatment of sections 77.9961 (1) (d) and 77.9961 (4) of the statutes first
12 applies to penalties assessed on the effective date of this subsection.

77.9964(2)

(2) Except as provided in s. 77.9961 ~~(4)~~, sections ^{(1), (b), (d), and (e), ss.} 71.74 (1) to (3), (7) and (9), 71.75 (1), (2), (6), (7), (9) and (10), 71.77 (1) and (4) to (8), 71.78 (1) to (4) and (5) to (8), 71.80 (1) (a) and (b), (4) to (6), (8) to (12), (14), (17) and (18), 71.82 (1) and (2) (a) and (b), 71.83 (1) (a) 1. and 2. and (b) 1., 2. and 6., (2) (a) 1. to 3. and (b) 1. to 3. and (3), 71.87, 71.88, 71.89, 71.90, 71.91 (1) (a), (2) and (4) to (6) and 71.93 as they apply to the taxes under ch. 71 apply to the fees under this subchapter.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

3167/
LRB-0447/1dn

RCT:kjfir

~~November 5, 2002~~ Date

~~Kate Mawdsley.~~

This draft makes changes in the Dry Cleaner Environmental Response Program.

Changing the definition of "dry cleaning product", as this draft does, may change the substances for which fees are required to be paid to DOR under s. 77.9962. If so, the draft should probably have an initial applicability provision, which would say that the change first applies to sales made or fees due on a specified date. ~~By the way, the definition was changed last session.~~ I thought that the reason was that some

* substances that are now being used for dry cleaning are not solvents, but I may be misremembering. *If some of the substances that are being used are not solvents, this change in the definition will exclude them.*

The instructions from DNR indicated that the statute "should also clarify that one cannot assign their rights to eligibility under this program to someone else." I am not sure what the concern is here. I cannot see any other programs that include such a provision. It seems to me that either you are eligible for a program or you are not and that if you are not, you could not apply or get a payment under the program, except for one thing. Section 292.65 (8) (i) allows an owner or operator to assign the right to get a payment to a lender. This is patterned on a provision in PECFA (leaky underground storage tank program) and it helps applicants get the loans they need to finance a cleanup until they get payment from DNR. I do not know whether DNR wants to repeal s. 292.65 (8) (i). Please let me know if you want to pursue this. ~~If you would like me~~

* to discuss this with DNR, ~~please let me know.~~ *or*

* ~~If you have questions or redraft instructions, please let me know.~~

of "dry cleaning product"

Rebecca C. Tradewell
Managing Attorney
Phone: (608) 266-7290
E-mail: becky.tradewell@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3167/1dn
RCT:kjf:pg

September 9, 2003

This draft makes changes in the Dry Cleaner Environmental Response Program.

Changing the definition of "dry cleaning product," as this draft does, may change the substances for which fees are required to be paid to DOR under s. 77.9962. If so, the draft should probably have an initial applicability provision, which would say that the change first applies to sales made or fees due on a specified date. The definition of "dry cleaning product" was changed last session. I thought that the reason was that some substances that are now being used for dry cleaning are not solvents, but I may be misremembering. If some of the substances that are being used are not solvents, this change in the definition will exclude them.

The instructions from DNR indicated that the statute "should also clarify that one cannot assign their rights to eligibility under this program to someone else." I am not sure what the concern is here. I cannot see any other programs that include such a provision. It seems to me that either you are eligible for a program or you are not and that if you are not, you could not apply or get a payment under the program, except for one thing. Section 292.65 (8) (i) allows an owner or operator to assign the right to get a payment to a lender. This is patterned on a provision in PECFA (leaky underground storage tank program) and it helps applicants get the loans they need to finance a cleanup until they get payment from DNR. I do not know whether DNR wants to repeal s. 292.65 (8) (i). Please let me know if you want to pursue this or if you would like me to discuss this with DNR.

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Tradewell, Becky

From: Johnson, Dan (Legislature)
Sent: Thursday, October 02, 2003 9:04 AM
To: Tradewell, Becky
Subject: LRB 3167 revisions

Hi Becky,

After reviewing LRB 3167 and the drafter's note, the DNR has submitted the following suggestions for revisions. The Wisconsin Fabricare Industry is comfortable with the revisions and worked closely with the DNR to craft them.

Thank you and please contact me if you have any questions, or you may contact Robin Schmidt at the DNR (267-7569).

Dan Johnson
State Senator Neal Kedzie
11th Senate District
(608) 266-2635



lrb-3167 DNR
comments.doc

**WDNR comments on Draft Statutory Changes for the
Dry Cleaner Environmental Response Fund (DERF) Program
October 1, 2003**

✓ **1. Notification of Applications and receipt of funds (Sections 20 and 27)**

In Section 20, we recommend that the title be changed to state "Notification of applications and receipts of funds *and credits*". The language then needs to be modified to state "An owner, operator *or agent* shall notify the department of any application, including any insurance claim, made to obtain funds *or credits* to cover eligible costs, the status of the application, and, if the owner, operator *or agent* has received any funds or credits arising from the application, the amount of the funds *or credits* received.

Per Rebin-
credit =
tax credits

Then, Section 27 should be modified as follows. The title should be changed to "Reimbursement of Payments and Credits". We would prefer that this section be simplified, if at all possible. Our intent with this section is to stipulate that if an owner, operator, or agent receives a reimbursement or credit for activities that the drycleaner fund has already reimbursed them for, they need to pay the fund back, minus the deductible they paid. However, it is important to note that if they get reimbursed for environmental activities that would be considered "eligible" but were not reimbursed by the fund (i.e. they were beyond the \$500,000 maximum), they can keep that money. So the terminology currently used in the statute "...payment of any eligible costs..." is not really accurate. The following is suggested revised language for this section:

"If, after the owner, operator, *or agent* receives an award under this section, the owner, operator *or agent* receives payment *or credit* from another person, including an insurance company, arising out of an application for payment of, *or credit based upon*, any eligible cost *already reimbursed from the fund*, the owner, operator, *or agent* shall pay to the department the amount by which the payment *or credit exceeds the deductible paid by the owner, operator, or agent, as calculated under sub. (8)(e)*. The amounts collected by the department under this subsection shall be deposited in the dry cleaner environmental response fund."

✓ **2. Payment schedule (Section 24)**

Section 24 (page 8), s. 292.65(8)(d) 7 should include a caveat that reimbursement would be made if a payment schedule with the Department of Revenue to pay all of the fees, interest, and penalties due under ss. 77.9961, 77.9962 and 77.9964 has been negotiated.

✓ **3. Environmental Fund Changes (Section 28)**

In Section 28 (page 9), s. 292.65(11) the DNR recommends the following change: "and there is an owner or operator for the drycleaning facility" should be changed to say "and there is an **otherwise eligible applicant** for the drycleaning facility". This way the DERF fund won't be reimbursing the environmental fund for a site that would otherwise not be eligible for DERF funding.

✓ In addition, the question of the deductible should be addressed in this section. We recommend that a modification be made to this section that indicates that the DERF will reimburse for all costs *minus the deductible*. The environmental fund will be responsible for dealing with the deductible from the responsible party.

✓ **4. Questions from Drafters Note**

In response to the questions from Ms. Tradewell regarding the requested language change for dry cleaning product, we agree that this change could affect how alternative products are assessed fees. Therefore, we retract our request to change the definition, and recommend that the current language remain. After numerous discussions, we concur that it is not our intent to change the status of current drycleaning facilities or the fees which they are assessed. However, we do believe adding a definition of laundering would be helpful. We recommend the following definition be added to the statute:

✓ "Laundering" means to use water and detergent as the main process to clean apparel or household fabric. Also known as professional wet-cleaning.

With respect to her last comment, DNR has consistently supported there be an eligible applicant for a site to qualify for this program. Some have argued that in certain transactions they can assign someone else that right. We believe that the provisions in the agent agreement will address this issue, and further clarification is not necessary at this time.

✓5. Agent Agreement Change

WFI requested DNR concurrence on one additional statutory change regarding agent agreements. Currently, Section 292.65(4)(k) provides:

"Agents. An owner or operator may enter into a written agreement with another person under which that other person acts as an agent for the owner or operator in conducting the activities required under par. (j). The owner or operator and the agent shall jointly submit the application for an award under this section."

WFI has requested that the requirement for *joint submittal* of applications be deleted from the statute. We concur with this recommendation, and recommend language such as "*An agent may solely submit an application for an award under this section*" would meet that need. In addition, we recommend the agent not be limited to conducting only activities under par. (j), but should be able to conduct all activities from par. (e) through par. (j).

When these changes are made, we ask the drafters to consider whether an agent then has the explicit ability to conduct other activities throughout the statute that reference the "owner or operator" or whether the statute should be changed to read "owner, operator, or agent" whenever those references are made. For example, s. 292.65(7)(a) states "...eligible costs for an award under this section include reasonable and necessary costs **incurred by the owner or operator** of a dry cleaning facility..." Does this need to be changed to "...the owner, operator *or their agent*, if applicable"? And s. 292.65(8)(a) states: "An **owner or operator** shall submit an application on a form provided by the department." Should this then be modified to allow the agent, as well, to submit the application?

We want to be sure that it is understood that the determination of "eligible applicant" remains based on the already existing statutory language of "owner" and "operator". The determination of eligible applicant is typically made at the time that the potential claim notification form is submitted (as required in 292.65(4)(c), and this form must be signed by an **eligible applicant**. That is why we adjusted the agent agreement starting at par. (e) and not earlier. Agent information has been incorporated into that form, so the eligible applicant can include this information if it is known at the time that the notification is made. .

I hope this helps in finalizing these important changes for the DERF program. We continue to work with the Wisconsin Fabricare Institute to find ways to enhance the continued success of this program. These statutory changes are critical for it's continued success.



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-3167~~4~~ 2

RCT&JK:kjf&cmh

SOON (in 10/13)

rmy

2003 BILL

DN

Regen

1 AN ACT *to repeal* 77.9961 (4) and 292.65 (3) (am) 3.; *to renumber and amend*
2 77.9961 (1); *to amend* 77.996 (3), 77.9961 (title), 77.9961 (2), 77.9961 (3),
3 77.9964 (2), 292.65 (1) (e), 292.65 (1) (i) 3. b., 292.65 (3) (am) 1., 292.65 (3) (am)
4 2., 292.65 (4) (m), 292.65 (7) (c) 1., 292.65 (8) (a) (intro.), 292.65 (8) (a) 4m.,
5 292.65 (8) (d) 7., 292.65 (8) (j) 2., 292.65 (8) (j) 4., 292.65 (8m) and 292.65 (11);
6 and *to create* 77.996 (6), 77.9961 (1) (b), 77.9961 (1) (c), 77.9961 (1) (d), 77.9961
7 (1) (e), 77.9961 (1m) and 292.65 (1) (h) 4. of the statutes; **relating to:** the Dry
8 Cleaner Environmental Response Program and the administration of dry
9 cleaning license fees.

Analysis by the Legislative Reference Bureau

Under current law, the Department of Natural Resources (DNR) administers the Dry Cleaner Environmental Response Program (DERP), which provides reimbursement for a portion of the costs of responding to discharges of dry cleaning solvents. This bill makes several changes in DERP.

Under current law, a person who operated a dry cleaning facility that has closed, but who does not own the property on which the facility was located, is eligible under DERP only if the facility closed before October 14, 1997. Under this bill, such

BILL

or if an agreement has been entered into with DOR establishing a payment schedule

a person is eligible if the facility closed after October 13, 1997, as long as the facility was licensed by the Department of Revenue (DOR) before it closed. Also, under current law, a person who owns property on which a dry cleaning facility that has closed was located, but who did not operate the facility, may be eligible under DERP if the dry cleaning facility was licensed by DOR before the facility closed. Under the bill, the dry cleaning facility must also have operated while the person owned the property.

Under current law, a person may not apply for DERP after August 30, 2005, if the dry cleaning facility to which the application applies closed before September 1, 1998, or after August 1, 2008, in any other case. This bill eliminates the application deadlines and instead provides that a person is not eligible for DERP if the person submits the required notice of a potential claim after August 30, 2008.

Under current law, an applicant for DERP must notify DNR of any insurance claim made to recover costs that are eligible under DERP and of any proceeds received. The award is reduced by the amount by which the insurance proceeds exceed the DERP deductible plus the eligible costs in excess of the DERP maximum payment. The bill expands these provisions so that they apply to other sources of reimbursement *in addition to insurance proceeds.*

and for tax refunds
*

Under current law, DNR may not make a DERP award if the applicant has not paid all of the license fees and other fees owed to DOR. This bill expands the prohibition so that it also applies to penalties and interest owed to DOR and allows DNR to make an award if anyone has paid the fees, penalty, and interest.

Under current law, a person who operates a dry cleaning facility in this state must pay a license fee to DOR. The license fee is paid in four installments and each installment is equal to 1.8 percent of the person's gross receipts from the previous three months from dry cleaning apparel and household fabrics. Under current law, "gross receipts" with respect to the dry cleaning license fee is undefined. Under the bill, "gross receipts" has, generally, the same meaning as the meaning of "gross receipts" for sales and use tax purposes. In addition, under the bill, generally, the sales and use tax provisions under current law related to operating a business without a permit, revoking a permit, and collecting delinquent taxes apply to operating a dry cleaning facility without a license, revoking a license to operate a dry cleaning facility, and collecting delinquent license fees.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 SECTION 1. 77.996 (3) of the statutes is amended to read:

2 77.996 (3) "Dry cleaning product" means a hazardous substance nonaqueous
3 solvent used to clean in the cleaning, other than laundering, of apparel or household

BILL

1 fabrics, ~~except a hazardous substance used to launder apparel or household~~
2 ~~products.~~

3 SECTION ~~7~~[✓] 77.996 (6) of the statutes is created to read:

4 77.996 (6) "Gross receipts" has the meaning given in s. 77.51 (4) (a), (b) 1. and
5 5., (c) 1. to 4., and (d). "Gross receipts" does not include the license fee imposed under
6 s. 77.9661 (1m) that is passed on to customers.

7 SECTION ~~7~~[✓] 77.9961 (title) of the statutes is amended to read:

8 **77.9961 (title) License and fee.**

9 SECTION ~~7~~[✓] 77.9961 (1) of the statutes is renumbered 77.9661 (1) (a) and
10 amended to read:

11 77.9661 (1) (a) No person may operate a dry cleaning facility in this state unless
12 the person completes and submits to the department an application for a license on
13 a form that the department prescribes and ~~pays to the department a fee for each dry~~
14 ~~cleaning facility that the person operates. The fee shall be paid in installments, as~~
15 ~~provided in sub. (2), and each installment is equal to 1.8% of the gross receipts from~~
16 ~~the previous 3 months from dry cleaning apparel and household fabrics, but not from~~
17 ~~formal wear the facility rents to the general public.~~

18 SECTION ~~5~~[✓] 77.9961 (1) (b) of the statutes is created to read:

19 77.9961 (1) (b) The department may require, before or after the license is
20 issued, that any person who submits an application for a license under par. (a)
21 provide a security deposit to the department. For purposes of this paragraph, s.
22 77.61 (2), as it applies to a security deposit related to a seller's permit, applies to the
23 a security deposit required under this subsection.

24 SECTION ~~6~~[✓] 77.9961 (1) (c) of the statutes is created to read:

BILL

1 77.9961 (1) (c) Subject to par. (b), the department shall issue a license to each
2 person who completes and submits an application for a license under par. (a). If a
3 dry cleaning facility is sold, the seller may transfer the license to the buyer. A license
4 is valid until the license is surrendered by the person to whom the license was issued
5 or transferred or until the license is revoked by the department as provided in par.
6 (e). A license is valid only for the facility designated by the license and the license
7 holder shall display the license prominently in the facility to which the license
8 applies.

9 SECTION ~~§~~ 77.9961 (1) (d) of the statutes is created to read:

10 77.9961 (1) (d) Section 77.52 (12), as it applies to a person who operates as a
11 seller without a seller's permit, applies to a person who operates a dry cleaning
12 facility without a license issued under this subsection.

13 SECTION ~~§~~ 77.9961 (1) (e) of the statutes is created to read:

14 77.9961 (1) (e) The department may revoke a license issued under this
15 subsection, if the person who holds the license fails to comply with any provision of
16 this subchapter related to the fees imposed under this subchapter or any rule
17 promulgated by the department related to the fees imposed under this subchapter,
18 is delinquent with respect to taxes imposed by the department, or fails to timely file
19 a return or report with respect to taxes imposed under chs. 71, 72, 76, 77, 78, or 139
20 after having been requested to file the return or report. Section 77.52 (11), as it
21 applies to revoking a seller's permit, applies to revoking a license issued under this
22 subsection.

23 SECTION ~~§~~ 77.9961 (1m) of the statutes is created to read:

24 77.9961 (1m) Every person operating a dry cleaning facility shall pay to the
25 department a fee for each dry cleaning facility that the person operates. The fee shall

BILL

1 be paid in installments, as provided in sub. (2), and each installment is equal to 1.8%
2 of the gross receipts from the previous 3 months from dry cleaning apparel and
3 household fabrics, but not from formal wear the facility rents to the general public.

4 ~~SECTION 10.~~ 77.9961[✓] (2) of the statutes is amended to read:

5 77.9961 (2) Persons who owe a fee under this section shall pay it in
6 installments on or before April 25, July 25, October 25 and January 25. ~~The~~
7 ~~department shall issue a license to each person who pays the January 25 installment~~
8 ~~and the previous 3 installments and submits the form under this section. The license~~
9 ~~is valid for the year in which the January 25 installment is due. If a dry cleaning~~
10 ~~facility is sold, the seller may transfer the license to the buyer. Each holder of a~~
11 ~~license under this section shall display it prominently in the facility to which it~~
12 ~~applies.~~

13 ~~SECTION 11.~~ 77.9961[✓] (3) of the statutes is amended to read:

14 77.9961 (3) ~~On or before December 15, the~~ The department shall mail to each
15 dry cleaning facility of which it is aware a form on which to apply for a license under
16 this section.

17 ~~SECTION 12.~~ 77.9961[✓] (4) of the statutes is repealed.

18 ~~SECTION 13.~~ 77.9964[✓] (2) of the statutes is amended to read:

19 77.9964 (2) Except as provided in s. 77.9961 (4), sections (1) (b), (d), and (e), ss.
20 71.74 (1) to (3), (7) and, (9), and (10) to (12), 71.75 (1), (2), (6), (7), (9), and (10), 71.77
21 (1) and (4) to (8), 71.78 (1) to (4) and (5) to (8), 71.80 (1) (a) and (b), (4) to (6), (8) to
22 (12), (14), (17), and (18), 71.82 (1) and (2) (a) and (b), 71.83 (1) (a) 1. and 2. and (b)
23 1., 2., and 6., (2) (a) 1. to 3. and (b) 1. to 3., and (3), 71.87, 71.88, 71.89, 71.90, 71.91
24 (1) (a), (2), (3), and (4) to (6) (7), 71.92, and 71.93 as they apply to the taxes under ch.
25 71 apply to the fees under this subchapter.

BILL

SECTION 14. 292.65 (1) (e) of the statutes is amended to read:

292.65 (1) (e) "Dry cleaning product" means a ~~hazardous substance~~
nonaqueous solvent used to clean in the cleaning, other than laundering, of apparel
or household fabrics, ~~except for a hazardous substance used to launder apparel or~~
household fabrics.

Insert → SECTION ~~15~~ 292.65 (1) (h) 4. of the statutes is created to read:

292.65 (1) (h) 4. A person who operated a dry cleaning facility that ceased
operation after October 13, 1997, but that was licensed under s. 77.9961 (2) before
it ceased operation.

SECTION ~~16~~ 292.65 (1) (i) 3. b. of the statutes is amended to read:

292.65 (1) (i) 3. b. A dry cleaning facility that has ceased operation but that was
licensed under s. 77.9961 (2) before it ceased operation and was licensed and
operating while the person owned the property.

SECTION ~~17~~ 292.65 (3) (am) 1. of the statutes is amended to read:

292.65 (3) (am) 1. The department shall establish a method for determining the
order in which it pays awards under this section. ~~Except as provided in subds. subd.~~
2. ~~and 3.~~, the method shall be based on environmental factors and on the order in
which applications are received.

SECTION ~~18~~ 292.65 (3) (am) 2. of the statutes is amended to read:

292.65 (3) (am) 2. The department shall pay an award for immediate action
activities before it pays other awards.

Insert → SECTION ~~19~~ 292.65 (3) (am) 3. of the statutes is repealed.

SECTION ~~20~~ 292.65 (4) (m) of the statutes is amended to read:

292.65 (4) (m) ~~Notification of insurance claims~~ applications and receipt of
proceeds funds. An owner or operator shall notify the department of any application,

(25)

BILL

or to obtain a tax credit based on eligible costs

1 including any insurance claim, made to obtain funds to cover eligible costs, the status

2 of the claim application, and, if the owner or operator has received any insurance

3 proceeds funds, *or any tax credit* arising from the claim application, the amount of the proceeds funds

4 *or tax credit* received.

5 SECTION ~~21~~ 292.65 (7) (c) 1. of the statutes is amended to read:

6 292.65 (7) (c) 1. Costs incurred before ~~January 1, 1991~~ October 14, 1997.

7 SECTION ~~22~~ 292.65 (8) (a) (intro.) of the statutes is amended to read:

8 292.65 (8) (a) *Application*. (intro.) An owner or operator shall submit an

9 application on a form provided by the department. ~~An owner or operator may not~~

10 ~~submit an application before September 1, 1998. An owner or operator may not~~

11 ~~submit an application after August 30, 2005, if the application relates to a dry~~

12 ~~cleaning facility that ceased to operate before September 1, 1998. An owner or~~

13 operator may not submit an application if the owner or operator submits the

14 notification of potential claim under sub. (4) (c) after August 20 30, 2008, if the

15 ~~application relates to any other dry cleaning facility.~~ The department shall authorize

16 owners and operators to apply for awards at stages in the process under sub. (4) that

17 the department specifies by rule. An application shall include all of the following

18 documentation of activities, plans, and expenditures associated with the eligible

19 costs incurred because of a dry cleaning product discharge from a dry cleaning

20 facility:

21 SECTION ~~23~~ 292.65 (8) (a) 4m. of the statutes is amended to read:

22 292.65 (8) (a) 4m. If the owner or operator receives any proceeds funds arising

23 from an application, including an insurance claim, for any eligible costs, *or a tax credit based on eligible costs*, a record of

24 the payment.

25 SECTION ~~24~~ 292.65 (8) (d) 7. of the statutes is amended to read:

BILL

SECTION 24

Score → Unless an agreement has been entered into with the department of revenue establishing a payment schedule for all of the fees, interest, and penalties due

interest and penalties due

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292.65 (8) (d) 7. The applicant has not paid all All of the fees, interest, and penalties due under ss. 77.9961 and, 77.9962, and 77.9964 have not been paid.

~~SECTION 25.~~ 292.65 (8) (j) 2. of the statutes is amended to read:

292.65 (8) (j) 2. If a consultant person other than an owner or operator prepares an application that is submitted by ~~an~~ the owner or operator and that includes ineligible costs that are identified under subd. 3., the consultant person shall pay to the department an amount equal to 50% of the ineligible costs identified under subd. 3. that are included in the application. A consultant person, other than an owner or operator, who prepares an application may not charge the owner or operator for any amount that the consultant person is required to pay under this subdivision. Payments made under this subdivision shall be deposited in the dry cleaner environmental response fund.

~~SECTION 26.~~ 292.65 (8) (j) 4. of the statutes is amended to read:

292.65 (8) (j) 4. If, prior to receiving an award under this section, an owner or operator receives payment from another person, including an insurance company, arising out of ~~a claim~~ an application for payment of any eligible costs, the department may not reimburse the owner or operator any amount that exceeds the difference between the amount of the award calculated under subd. 1. or 2. and pars. (e) and (f) and the amount by which the insurance payment exceeds the sum of the deductible and the amount by which the amount calculated under par. (e) exceeds the maximum award under par. (f).

~~SECTION 27.~~ 292.65 (8m) of the statutes is amended to read:

292.65 (8m) REIMBURSEMENT OF INSURANCE PROCEEDS PAYMENTS. If, after ~~the~~ an owner or operator receives an award under this section, the owner or operator receives payment from another person, including an insurance company, arising out

(CS) and tax credits

BILL

Insert 9-1

1 of a claim an application for payment of any eligible costs, the owner or operator shall
 2 pay to the department the amount by which the insurance payment, ^{or tax credit} exceeds the ~~sum~~
 3 ~~of the deductible and the amount by which the amount calculated under sub. (8) (e)~~
 4 ~~exceeds the maximum award under sub. (8) (f)~~, ^{amount of eligible costs that were not covered} but not more than the amount of the ^{by the} award
 5 award received. The amounts collected by the department under this subsection
 6 shall be deposited in the dry cleaner environmental response fund.

7 SECTION ~~28~~ 292.65 (11) of the statutes is amended to read:

8 292.65 (11) ENVIRONMENTAL FUND REIMBURSEMENT. If the department expends
 9 funds from the environmental fund under s. 292.11 (7) (a) or 292.31 (3) (b) because
 10 of a discharge of dry cleaning product at a dry cleaning facility ^{a person who would be} and there is an owner
 11 ^{under this section} or operator for the dry cleaning facility, the department shall transfer from the ^{eligible}
 12 appropriation account under s. 20.370 (6) (eq) to the environmental fund an amount
 13 equal to the amount expended under s. 292.11 (7) (a) or 292.31 (3) (b). The
 14 department shall make transfers under this subsection when the department
 15 determines that sufficient funds are available in the appropriation account under s.
 16 20.370 (6) (eq).

17 SECTION ~~29~~ Initial applicability.

18 (1) The treatment of section 77.996 (6) of the statutes first applies to the license
 19 fee installment that is due after the effective date of this subsection.

20 (2) The treatment of sections 77.9961 (1) (d) and (4) of the statutes first applies
 21 to penalties assessed on the effective date of this subsection.

22 (END)

DNote

less the applicable deductible under sub. (8) (e)

2003-2004 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3167/2ins
RCT:.....

Insert 3-6

SECTION ~~1~~[#] 77.996 (7) of the statutes is created to read:

77.996 (7) "Laundry" means to use water and detergent as the main process for cleaning apparel or household fabrics.

Insert 6-5

SECTION ~~2~~[#] 292.65 (1) (gv) of the statutes is created to read:

292.65 (1) (gv) "Laundry" means to use water and detergent as the main process for cleaning apparel or household fabrics.

Insert 6-22

SECTION ~~3~~[#] 292.65 (4) (k) of the statutes is amended to read:

292.65 (4) (k) *Agents*. An owner or operator may enter into a written agreement with another person under which that other person acts as an agent for the owner or operator in conducting the activities required under par. par. (e) to (j). If an agreement is entered into under this paragraph, all requirements applicable to an owner or operator under par. (m) and subs. (8) (a), (8m), and (12) apply to the agent. The owner or operator and or the agent shall jointly may submit the application for an award under this section.

History: 1997 a. 27; 1999 a. 9, 185 ss. 143 to 145, 188 to 190; 2001 a. 16.

Insert 8-16

or receives a tax credit based on any eligible costs

Insert 9-1

or receives a tax credit based on any eligible costs and the amount of the payment or tax credit exceeds the amount of eligible costs that were not covered by the award.

underline

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3167/2dn
RCT:K: [Signature]

Date

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This is the redraft of the Dry Cleaner Environmental Response Program draft.

Regarding DNR's concerns about agents acting on behalf of owners and operators, I believe that the changes to s. 292.65 (4) (k) are sufficient to accomplish what is wanted.

As I discussed with Robin Schmidt,

I changed the language of s. 292.65 (8m) in a different way than was suggested by DNR.

I do not think that there is any way to make this language simple, because the calculation is complex, but I hope that this is more clear.

Rebecca C. Tradewell
Managing Attorney
Phone: (608) 266-7290
E-mail: becky.tradewell@legis.state.wi.us

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3167/2dn
RCT:kjf:jf

October 16, 2003

This is the redraft of the Dry Cleaner Environmental Response Program draft.

Regarding DNR's concerns about agents acting on behalf of owners and operators, I believe that the changes to s. 292.65 (4) (k) are sufficient to accomplish what is wanted.

As I discussed with Robin Schmidt, I changed the language of s. 292.65 (8m) in a different way than was suggested by DNR. I do not think that there is any way to make this language simple, because the calculation is complex, but I hope that this is more clear.

Rebecca C. Tradewell
Managing Attorney
Phone: (608) 266-7290
E-mail: becky.tradewell@legis.state.wi.us

Tradewell, Becky

From: Johnson, Dan (Legislature)
Sent: Wednesday, October 22, 2003 8:52 AM
To: Tradewell, Becky
Subject: LRB 3167 - DERF revisions-corrections needed

October 22, 2003

Hi Becky,

Robin Schmidt of the DNR and Brian Swingle of Drycleaners Association believe a change needs to be made in Section 28. 292.65(8m) of the LRB 3167/2.

According to Robin and Brian, if an owner/operator receives insurance payments or TIF monies, or any kind of tax credit for work that was reimbursed by a DNR DERF award, only the amount of the payment received minus the owner/operator's deductible would be paid back to the DERF fund, up to the maximum amount that was reimbursed by the DERF fund. There may be a case in which a drycleaner receives payment for "eligible" costs under the DERF program, but the drycleaner did not seek reimbursement for these costs and used the insurance money to cover the costs directly.

Thus, they don't want to take away insurance or tax credit monies from a drycleaner that they are using to clean up a site, or continue a cleanup that exceeded the maximum DERF reimbursement of \$500,000. These may be "eligible costs", but have not been reimbursed by DERF. They just want the cleaner to reimburse ONLY the amount of DERF reimbursement they received minus their deductible.

Therefore, they suggest the following modification to LRB 3167/2:

292.65 (8m) REIMBURSEMENT OF INSURANCE PROCEEDS PAYMENTS AND TAX CREDITS.

If, after an owner or operator receives an award under this section, the owner or operator receives payment from another person, including an insurance company arising out of an application for payment for any reimbursed costs or receives a tax credit based on any reimbursed costs and the amount of the payment or tax credit exceeds the amount of the deductible, the owner or operator shall pay to the department the amount by which the payment or tax credit exceeds the deductible, but not more than the amount of the award received. The amounts collected by the department under this subsection shall be deposited in the dry cleaner environmental response fund.

Also one additional correction...Page 8, line 25 to Page 9, line 1 - "or receives a tax credit based on any eligible costs," is new text and should be underscored.

If you have any questions, Robin or Brian would be more than happy to discuss with you at anytime. Thank you very much.

Dan Johnson
State Senator Neal Kedzie
11th Senate District
(608) 266-2635

Tradewell, Becky

From: Tradewell, Becky
Sent: Friday, November 07, 2003 9:54 AM
To: Schmidt, Robin R
Subject: RE: DERF statutory language changes

Robin,

I am sorry not to have gotten back to you sooner on this, but it has been a very busy week.

Please look this over and then please call me so that we can discuss it. Dan Johnson has indicated a need to wrap this up soon.

My understanding of your intent is that the owner should be allowed to be made whole, but once the owner is made whole, any additional money should be paid back to the state, up to the amount of the award.

Perhaps one point of confusion in our discussion is this: When I read s. 292.65 (8) (f), I understand it to mean that the biggest award that DNR may pay out is \$500,000. So, if a cleanup cost \$2,000,000 (all eligible costs) the award would be \$500,000 and the amount of the deductible (\$186,000) is really irrelevant. The owner would be out \$1,500,000 and if the owner got a \$1,500,000 insurance payment, the owner would not have to pay anything to DNR, but if the owner got \$1,600,000, the owner would have to pay \$100,000. Again, the amount of the deductible would not be relevant.

Based on this understanding, I do not think that it is necessary to refer to the deductible at all in this statutory provision and referring to it makes a complicated provision even more complicated. There are three numbers that seem to be relevant to the calculation of how much would have to be paid to DNR: the total amount of the eligible costs (E), the amount of the award (A), and the amount of the payment or credit (P). In LRB-3167/2, when I used the phrase "amount of eligible costs that were not covered by the award", I meant eligible costs minus the award (E minus A). My logic was that the award does not "cover" the deductible. So, E minus A would consist of the deductible and any costs in excess of the maximum award. I think that this would have the effect that you want in every situation. The owner or operator would pay to DNR the amount of the payment or credit minus the amount by which total eligible costs exceed the amount of the award: P minus (E minus A), but not more than the amount of the award.

Because this was not clear, I now propose a different solution:

292.65 (8m) Reimbursement of payments and tax credits. If, after the owner or operator receives an award under this section, the owner or operator receives payment from another person, including an insurance company, arising out of an application for payment of any eligible costs or receives a tax credit based on any eligible costs, the owner or operator **shall pay to the department any amount by which the payment or credit exceeds the difference between the total amount of eligible costs and the amount of the award, but not more than the amount of the award.** The amounts collected by the department under this subsection shall be deposited in the dry cleaner environmental response fund.

This accomplishes what I think that you want in each of the situations that you describe. It allows the owner to be made whole, but once the owner is made whole, DNR gets the rest of the money, up to the total amount of the award. If I am still misunderstanding what you want, I am sorry and please let me know.

Becky Tradewell
6-7290

-----Original Message-----

From: Schmidt, Robin R
Sent: Tuesday, November 04, 2003 6:55 AM
To: Tradewell, Becky
Cc: 'brian swingle'; Soellner, Jeffrey K
Subject: DERF statutory language changes

Ms. Tradewell (Becky):

Thank you for putting so much time into this section. We realize this is a relatively complex portion of the statute. In re-thinking this, we want the statute to cover 4 different scenarios that could occur. These scenarios are identified below. We are not sure that the language currently proposed accomplishes this. To ease review of this section, we are providing you with the language you proposed, followed by two alternatives for you to consider. Please feel free to call me if you wish to discuss, and I appreciate your time in reviewing this again.

4 scenarios:

1. Cost of cleanup is less than the maximum (\$500,000). Tax credit or insurance pays all or a portion of the total cleanup costs. All monies received from the insurance or tax credit minus the deductible is reimbursed back into DERF.
2. Cost of the cleanup is more than the maximum (\$500,000), for this example, costs are \$800,000. Tax credit or insurance pays for \$250,000. Since that amount is less than what was paid out-of-pocket to finish the cleanup, no monies are reimbursed back to the DERF fund.
3. Cost of the cleanup is more than the maximum (\$500,000), for this example, costs are \$800,000. Insurance policy pays for \$250,000 and tax credit is \$100,000. A total of \$50,000 minus the deductible must be paid back to the DERF fund.
4. Cost of the cleanup is more than the maximum (\$500,000), for this example, costs are \$800,000. Tax credit or insurance pays for the entire cleanup cost of \$800,000. \$500,000 minus the deductible is reimbursed back to the DERF fund.

Current proposed language:

SECTION 28. 292.65 (8m) of the statutes is amended to read:

292.65 (8m) REIMBURSEMENT OF ~~INSURANCE PROCEEDS~~ PAYMENTS AND TAX CREDITS.

If, after ~~the~~ an owner or operator receives an award under this section, the owner or operator receives payment from another person, including an insurance company, arising out of ~~a claim~~ an application for payment of any eligible costs or receives a tax credit based on any eligible costs and the amount of the payment or tax credit exceeds the amount of eligible costs that were not covered by the award, the owner or operator shall pay to the department the amount by which the ~~insurance~~ payment or tax credit exceeds the ~~sum of the deductible and the amount by which the amount calculated under sub. (8) (e) exceeds the maximum award under sub. (8) (f)~~ amount of eligible costs that were not covered by the award, but not more than the amount of the award received. The amounts collected by the department under this subsection shall be deposited in the dry cleaner environmental response fund.

Alternative 1 (changes to current proposal highlighted in yellow):

SECTION 28. 292.65 (8m) of the statutes is amended to read:

292.65 (8m) REIMBURSEMENT OF ~~INSURANCE PROCEEDS~~ PAYMENTS AND TAX CREDITS.

If, after ~~the~~ an owner or operator receives an award under this section, the owner or operator receives payment from another person, including an insurance company, arising out of ~~a claim~~ an application for payment of any eligible costs or receives a tax credit based on any eligible costs and the amount of the payment or tax credit exceeds the amount of eligible costs that were not covered by the award, the owner or operator shall pay to the department the amount by which the ~~insurance~~ payment or tax credit exceeds the ~~sum of the deductible and the amount by which the amount calculated under sub. (8) (e) exceeds the maximum award under sub. (8) (f)~~ amount of eligible costs that were not covered by the award, but not more than the amount of the award received. The amounts collected by the department under this subsection shall be deposited in the dry cleaner environmental response fund.

(note: we are not sure alternative #1 meets the criteria in scenario 4)

Alternative 2:

SECTION 28. 292.65 (8m) of the statutes is amended to read:

292.65 (8m) REIMBURSEMENT OF ~~INSURANCE PROCEEDS~~ PAYMENTS AND TAX CREDITS.

If, after ~~the~~ an owner or operator receives an award under this section, the owner or operator receives payment from another person, including an insurance company, arising out of a ~~claim~~ an application for payment of any eligible costs or receives a tax credit based on any eligible costs, the owner or operator shall pay to the department the amount as calculated under 8(m)1, 2, or 3 below.

8(m)1. If eligible costs exceed the maximum award, but the payment is less than the maximum award, the owner or operator shall pay to the department the amount received that exceeds the sum of the deductible and the amount of eligible costs not covered by the award. (scenario 2 and 3)

8(m)2 If eligible costs exceed the maximum award and the payment exceeds the maximum award, the owner or operator shall pay to the department the maximum award minus the deductible. (scenario 4)

8(m) 3. If eligible costs do not exceed the maximum award, the owner or operator shall pay to the department the amount received which exceeds the deductible. (scenario 1)

Robin Schmidt

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State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-31671-3
RCT&JK:kjf&cmh:jf
EWLj
VMV

Today

2003 BILL

see pp 849

REGEN

1 AN ACT *to repeal* 77.9961 (4) and 292.65 (3) (am) 3.; *to renumber and amend*
2 77.9961 (1); *to amend* 77.9961 (title), 77.9961 (2), 77.9961 (3), 77.9964 (2),
3 292.65 (1) (i) 3. b., 292.65 (3) (am) 1., 292.65 (3) (am) 2., 292.65 (4) (k), 292.65
4 (4) (m), 292.65 (7) (c) 1., 292.65 (8) (a) (intro.), 292.65 (8) (a) 4m., 292.65 (8) (d)
5 7., 292.65 (8) (j) 2., 292.65 (8) (j) 4., 292.65 (8m) and 292.65 (11); and *to create*
6 77.996 (6), 77.996 (7), 77.9961 (1) (b), 77.9961 (1) (c), 77.9961 (1) (d), 77.9961 (1)
7 (e), 77.9961 (1m), 292.65 (1) (gv) and 292.65 (1) (h) 4. of the statutes; **relating**
8 **to:** the Dry Cleaner Environmental Response Program and the administration
9 of dry cleaning license fees.

Analysis by the Legislative Reference Bureau

Under current law, the Department of Natural Resources (DNR) administers the Dry Cleaner Environmental Response Program (DERP), which provides reimbursement for a portion of the costs of responding to discharges of dry cleaning solvents. This bill makes several changes in DERP.

Under current law, a person who operated a dry cleaning facility that has closed, but who does not own the property on which the facility was located, is eligible under DERP only if the facility closed before October 14, 1997. Under this bill, such

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a person is eligible if the facility closed after October 13, 1997, as long as the facility was licensed by the Department of Revenue (DOR) before it closed. Also, under current law, a person who owns property on which a dry cleaning facility that has closed was located, but who did not operate the facility, may be eligible under DERP if the dry cleaning facility was licensed by DOR before the facility closed. Under the bill, the dry cleaning facility must also have operated while the person owned the property.

Under current law, a person may not apply for DERP after August 30, 2005, if the dry cleaning facility to which the application applies closed before September 1, 1998, or after August 1, 2008, in any other case. This bill eliminates the application deadlines and instead provides that a person is not eligible for DERP if the person submits the required notice of a potential claim after August 30, 2008.

Under current law, an applicant for DERP must notify DNR of any insurance claim made to recover costs that are eligible under DERP and of any proceeds received. The award is reduced by the amount by which the insurance proceeds exceed the DERP deductible plus the eligible costs in excess of the DERP maximum payment. The bill expands these provisions so that they apply to other sources of reimbursement and to tax refunds in addition to insurance proceeds.

Under current law, DNR may not make a DERP award if the applicant has not paid all of the license fees and other fees owed to DOR. This bill expands the prohibition so that it also applies to penalties and interest owed to DOR and allows DNR to make an award if anyone has paid the fees, penalty, and interest or if an agreement has been entered into with DOR establishing a payment schedule.

Under current law, a person who operates a dry cleaning facility in this state must pay a license fee to DOR. The license fee is paid in four installments and each installment is equal to 1.8 percent of the person's gross receipts from the previous three months from dry cleaning apparel and household fabrics. Under current law, "gross receipts" with respect to the dry cleaning license fee is undefined. Under the bill, "gross receipts" has, generally, the same meaning as the meaning of "gross receipts" for sales and use tax purposes. In addition, under the bill, generally, the sales and use tax provisions under current law related to operating a business without a permit, revoking a permit, and collecting delinquent taxes apply to operating a dry cleaning facility without a license, revoking a license to operate a dry cleaning facility, and collecting delinquent license fees.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 77.996 (6) of the statutes is created to read:

BILL

1 77.996 (6) “Gross receipts” has the meaning given in s. 77.51 (4) (a), (b) 1. and
2 5., (c) 1. to 4., and (d). “Gross receipts” does not include the license fee imposed under
3 s. 77.9661 (1m) that is passed on to customers.

4 **SECTION 2.** 77.996 (7) of the statutes is created to read:

5 77.996 (7) “Laundry” means to use water and detergent as the main process
6 for cleaning apparel or household fabrics.

7 **SECTION 3.** 77.9961 (title) of the statutes is amended to read:

8 **77.9961 (title) License and fee.**

9 **SECTION 4.** 77.9961 (1) of the statutes is renumbered 77.9661 (1) (a) and
10 amended to read:

11 77.9661 (1) (a) No person may operate a dry cleaning facility in this state unless
12 the person completes and submits to the department an application for a license on
13 a form that the department prescribes and ~~pays to the department a fee for each dry~~
14 ~~cleaning facility that the person operates. The fee shall be paid in installments, as~~
15 ~~provided in sub. (2), and each installment is equal to 1.8% of the gross receipts from~~
16 ~~the previous 3 months from dry cleaning apparel and household fabrics, but not from~~
17 ~~formal wear the facility rents to the general public.~~

18 **SECTION 5.** 77.9961 (1) (b) of the statutes is created to read:

19 77.9961 (1) (b) The department may require, before or after the license is
20 issued, that any person who submits an application for a license under par. (a)
21 provide a security deposit to the department. For purposes of this paragraph, s.
22 77.61 (2), as it applies to a security deposit related to a seller’s permit, applies to the
23 a security deposit required under this subsection.

24 **SECTION 6.** 77.9961 (1) (c) of the statutes is created to read:

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1 77.9961 (1) (c) Subject to par. (b), the department shall issue a license to each
2 person who completes and submits an application for a license under par. (a). If a
3 dry cleaning facility is sold, the seller may transfer the license to the buyer. A license
4 is valid until the license is surrendered by the person to whom the license was issued
5 or transferred or until the license is revoked by the department as provided in par.
6 (e). A license is valid only for the facility designated by the license and the license
7 holder shall display the license prominently in the facility to which the license
8 applies.

9 **SECTION 7.** 77.9961 (1) (d) of the statutes is created to read:

10 77.9961 (1) (d) Section 77.52 (12), as it applies to a person who operates as a
11 seller without a seller's permit, applies to a person who operates a dry cleaning
12 facility without a license issued under this subsection.

13 **SECTION 8.** 77.9961 (1) (e) of the statutes is created to read:

14 77.9961 (1) (e) The department may revoke a license issued under this
15 subsection, if the person who holds the license fails to comply with any provision of
16 this subchapter related to the fees imposed under this subchapter or any rule
17 promulgated by the department related to the fees imposed under this subchapter,
18 is delinquent with respect to taxes imposed by the department, or fails to timely file
19 a return or report with respect to taxes imposed under chs. 71, 72, 76, 77, 78, or 139
20 after having been requested to file the return or report. Section 77.52 (11), as it
21 applies to revoking a seller's permit, applies to revoking a license issued under this
22 subsection.

23 **SECTION 9.** 77.9961 (1m) of the statutes is created to read:

24 77.9961 (1m) Every person operating a dry cleaning facility shall pay to the
25 department a fee for each dry cleaning facility that the person operates. The fee shall

BILL

1 be paid in installments, as provided in sub. (2), and each installment is equal to 1.8%
2 of the gross receipts from the previous 3 months from dry cleaning apparel and
3 household fabrics, but not from formal wear the facility rents to the general public.

4 **SECTION 10.** 77.9961 (2) of the statutes is amended to read:

5 77.9961 (2) Persons who owe a fee under this section shall pay it in
6 installments on or before April 25, July 25, October 25 and January 25. The
7 ~~department shall issue a license to each person who pays the January 25 installment~~
8 ~~and the previous 3 installments and submits the form under this section. The license~~
9 ~~is valid for the year in which the January 25 installment is due. If a dry cleaning~~
10 ~~facility is sold, the seller may transfer the license to the buyer. Each holder of a~~
11 ~~license under this section shall display it prominently in the facility to which it~~
12 ~~applies.~~

13 **SECTION 11.** 77.9961 (3) of the statutes is amended to read:

14 77.9961 (3) ~~On or before December 15, the~~ The department shall mail to each
15 dry cleaning facility of which it is aware a form on which to apply for a license under
16 this section.

17 **SECTION 12.** 77.9961 (4) of the statutes is repealed.

18 **SECTION 13.** 77.9964 (2) of the statutes is amended to read:

19 77.9964 (2) Except as provided in s. 77.9961 ~~(4)~~, sections (1) (b), (d), and (e), ss.
20 71.74 (1) to (3), (7) and (9), and (10) to (12), 71.75 (1), (2), (6), (7), (9), and (10), 71.77
21 (1) and (4) to (8), 71.78 (1) to (4) and (5) to (8), 71.80 (1) (a) and (b), (4) to (6), (8) to
22 (12), (14), (17), and (18), 71.82 (1) and (2) (a) and (b), 71.83 (1) (a) 1. and 2. and (b)
23 1., 2., and 6., (2) (a) 1. to 3. and (b) 1. to 3., and (3), 71.87, 71.88, 71.89, 71.90, 71.91
24 (1) (a), (2), (3), and (4) to (6) (7), 71.92, and 71.93 as they apply to the taxes under ch.
25 71 apply to the fees under this subchapter.

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1 **SECTION 14.** 292.65 (1) (gv) of the statutes is created to read:

2 292.65 (1) (gv) "Launder" means to use water and detergent as the main
3 process for cleaning apparel or household fabrics.

4 **SECTION 15.** 292.65 (1) (h) 4. of the statutes is created to read:

5 292.65 (1) (h) 4. A person who operated a dry cleaning facility that ceased
6 operation after October 13, 1997, but that was licensed under s. 77.9961 (2) before
7 it ceased operation.

8 **SECTION 16.** 292.65 (1) (i) 3. b. of the statutes is amended to read:

9 292.65 (1) (i) 3. b. A dry cleaning facility that has ceased operation but that was
10 licensed under s. 77.9961 (2) before it ceased operation and was licensed and
11 operating while the person owned the property.

12 **SECTION 17.** 292.65 (3) (am) 1. of the statutes is amended to read:

13 292.65 (3) (am) 1. The department shall establish a method for determining the
14 order in which it pays awards under this section. Except as provided in ~~subds.~~ subd.
15 2. ~~and 3.~~, the method shall be based on environmental factors and on the order in
16 which applications are received.

17 **SECTION 18.** 292.65 (3) (am) 2. of the statutes is amended to read:

18 292.65 (3) (am) 2. The department shall pay an award for immediate action
19 activities before it pays other awards.

20 **SECTION 19.** 292.65 (3) (am) 3. of the statutes is repealed.

21 **SECTION 20.** 292.65 (4) (k) of the statutes is amended to read:

22 292.65 (4) (k) *Agents.* An owner or operator may enter into a written agreement
23 with another person under which that other person acts as an agent for the owner
24 or operator in conducting the activities required under ~~par.~~ pars. (e) to (j). If an
25 agreement is entered into under this paragraph, all requirements applicable to an

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1 owner or operator under par. (m) and subs. (8) (a), (8m), and (12) apply to the agent.

2 The owner or operator ~~and or~~ the agent shall jointly may submit the application for
3 an award under this section.

4 **SECTION 21.** 292.65 (4) (m) of the statutes is amended to read:

5 292.65 (4) (m) *Notification of insurance claims applications and receipt of*
6 *proceeds funds.* An owner or operator shall notify the department of any application,
7 including any insurance claim, made to obtain funds to cover eligible costs or to
8 obtain a tax credit based on eligible costs, the status of the claim application, and,
9 if the owner or operator has received any ~~insurance proceeds funds or any tax credit~~
10 arising from the claim application, the amount of the ~~proceeds funds or tax credit~~
11 received.

12 **SECTION 22.** 292.65 (7) (c) 1. of the statutes is amended to read:

13 292.65 (7) (c) 1. Costs incurred before ~~January 1, 1991~~ October 14, 1997.

14 **SECTION 23.** 292.65 (8) (a) (intro.) of the statutes is amended to read:

15 292.65 (8) (a) *Application.* (intro.) An owner or operator shall submit an
16 application on a form provided by the department. ~~An owner or operator may not~~
17 ~~submit an application before September 1, 1998. An owner or operator may not~~
18 ~~submit an application after August 30, 2005, if the application relates to a dry~~
19 ~~cleaning facility that ceased to operate before September 1, 1998.~~ An owner or
20 operator may not submit an application if the owner or operator submits the
21 notification of potential claim under sub. (4) (c) after August 20 30, 2008, if the
22 ~~application relates to any other dry cleaning facility.~~ The department shall authorize
23 owners and operators to apply for awards at stages in the process under sub. (4) that
24 the department specifies by rule. An application shall include all of the following
25 documentation of activities, plans, and expenditures associated with the eligible

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1 costs incurred because of a dry cleaning product discharge from a dry cleaning
2 facility:

3 **SECTION 24.** 292.65 (8) (a) 4m. of the statutes is amended to read:

4 292.65 (8) (a) 4m. If the owner or operator receives any ~~proceeds~~ funds arising
5 from an application, including an insurance claim, for any eligible costs or a tax
6 credit based on eligible costs, a record of the payment.

7 **SECTION 25.** 292.65 (8) (d) 7. of the statutes is amended to read:

8 292.65 (8) (d) 7. ~~The applicant has not paid all~~ All of the fees, interest, and
9 penalties due under ss. 77.9961 and, 77.9962, and 77.9964 have not been paid unless
10 an agreement has been entered into with the department of revenue establishing a
11 payment schedule for all of the fees, interest, and penalties due.

12 **SECTION 26.** 292.65 (8) (j) 2. of the statutes is amended to read:

13 292.65 (8) (j) 2. If ~~a consultant person other than an owner or operator~~ prepares
14 an application that is submitted by ~~an~~ the owner or operator and that includes
15 ineligible costs that are identified under subd. 3., the ~~consultant person~~ shall pay to
16 the department an amount equal to 50% of the ineligible costs identified under subd.
17 3. that are included in the application. A consultant person, other than an owner or
18 operator, who prepares an application may not charge the owner or operator for any
19 amount that the ~~consultant person~~ person is required to pay under this subdivision.
20 Payments made under this subdivision shall be deposited in the dry cleaner
21 environmental response fund.

22 **SECTION 27.** 292.65 (8) (j) 4. of the statutes is amended to read:

23 292.65 (8) (j) 4. If, prior to receiving an award under this section, an owner or
24 operator receives payment from another person, including an insurance company,
25 arising out of ~~a claim~~ an application for payment of any eligible costs ^{scife} or receives a

LPS: please
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plain comma

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1 tax credit based on any eligible costs, the department may not reimburse the owner
 2 or operator any amount that exceeds the difference between the amount of the award
 3 calculated under subd. 1. or 2. and pars. (e) and (f) and the amount by which the
 4 insurance payment exceeds the sum of the deductible and the amount by which the
 5 amount calculated under par. (e) exceeds the maximum award under par. (f).

6 **SECTION 28.** 292.65 (8m) of the statutes is amended to read:

7 292.65 (8m) REIMBURSEMENT OF INSURANCE PROCEEDS PAYMENTS AND TAX CREDITS.

8 If, after the an owner or operator receives an award under this section, the owner or
 9 operator receives payment from another person, including an insurance company,
 10 arising out of ~~a claim~~ an application for payment of any eligible costs or receives a
 11 tax credit based on any eligible costs and the amount of the payment or tax credit
 12 exceeds the amount of eligible costs that were not covered by the award, the owner
 13 or operator shall pay to the department ~~the~~ ^{any} amount by which the insurance payment
 14 or tax credit exceeds the sum of the deductible and the amount by which the amount
 15 calculated under sub. (8) (e) exceeds the maximum award under sub. (8) (f) amount
 16 of eligible costs that were not covered by the award, but not more than the amount
 17 of the award ~~received~~. The amounts collected by the department under this
 18 subsection shall be deposited in the dry cleaner environmental response fund.

19 **SECTION 29.** 292.65 (11) of the statutes is amended to read:

20 292.65 (11) ENVIRONMENTAL FUND REIMBURSEMENT. If the department expends
 21 funds from the environmental fund under s. 292.11 (7) (a) or 292.31 (3) (b) because
 22 of a discharge of dry cleaning product at a dry cleaning facility and there is a person
 23 who would be an eligible owner or operator under this section for the dry cleaning
 24 facility, the department shall transfer from the appropriation account under s.
 25 20.370 (6) (eq) to the environmental fund an amount equal to the amount expended

difference between the total amount of eligible costs and the amount of the award

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1 under s. 292.11 (7) (a) or 292.31 (3) (b) less the applicable deductible under sub. (8)
2 (e). The department shall make transfers under this subsection when the
3 department determines that sufficient funds are available in the appropriation
4 account under s. 20.370 (6) (eq).

5 **SECTION 30. Initial applicability.**

6 (1) The treatment of section 77.996 (6) of the statutes first applies to the license
7 fee installment that is due after the effective date of this subsection.

8 (2) The treatment of sections 77.9961 (1) (d) and (4) of the statutes first applies
9 to penalties assessed on the effective date of this subsection.

10

(END)

Emery, Lynn

From: Johnson, Dan (Legislature)
Sent: Friday, November 14, 2003 9:01 AM
To: LRB.Legal
Subject: Draft review: LRB 03-3167/3 Topic: Changes to dry cleaner environmental response program

It has been requested by <Johnson, Dan (Legislature)> that the following draft be jacketed for the SENATE:

Draft review: LRB 03-3167/3 Topic: Changes to dry cleaner environmental response program