



## Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #492

### Dry Cleaner Environmental Response Program (DNR -- Environmental Quality)

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#### CURRENT LAW

The dry cleaner environmental response program (DERP) was created in 1997 Act 27 to provide financial assistance awards for reimbursement of certain eligible costs of investigation and remediation of contamination from discharges of dry cleaning solvents at current and certain former dry cleaning facilities. The program is funded from revenues that include: (a) a dry cleaning facility license fee paid by owners of dry cleaning facilities, equal to 2.8% of gross receipts from dry cleaning apparel and household fabrics; and (b) a dry cleaning solvents fee paid by persons who sell dry cleaning solvents to dry cleaners, equal to \$5.00 per gallon of perchloroethylene, or \$0.75 per gallon of other dry cleaning products. Revenues are deposited in the segregated dry cleaner environmental response fund (DERF) to pay for awards and administration. Revenues totaled \$17.2 million for 1997-98 through 2013-14 (including \$772,000 in 2013-14).

#### GOVERNOR

Maintain base funding of \$763,300 SEG annually for dry cleaner environmental response program awards. Maintain adjusted base funding plus standard budget adjustments of \$326,800 SEG annually with 3.0 positions for administration, including: (a) \$307,900 with 3.0 positions in the Department of Natural Resources (DNR) for administration of the financial assistance and remediation components of the program; and (b) \$18,900 in the Department of Revenue (DOR) to collect revenues under the program, which is allocated among a portion of several limited-term employee positions and associated supplies.

## DISCUSSION POINTS

1. DNR received 230 notices of the potential for submitting a claim under the program by the August 30, 2008, deadline for establishing eligibility. As of March 18, 2015, DNR has paid \$19,569,700 for partial or full cleanup at 161 eligible dry cleaner facilities. Of the 161 sites, 56 sites have received final reimbursement for cleanup work, and 105 sites have received partial payment. Of the 230 potential sites, 69 have not filed an initial claim, 14 of which are closed, and five are not closed but have been determined to require no further remedial action. DNR anticipates the potential cumulative cost of the program will be approximately \$38.9 million. It is probable that sites will continue to be cleaned up under the program for the next 17 years, until the program and fees sunset under the statutory end date of June 30, 2032 (35 years after creation of the program).

2. Under 2009 Act 28, the Department of Administration (DOA) was authorized to transfer up to \$6.2 million in unallocated funds, as a loan from the land recycling loan program (LRLP) within the environmental improvement fund (EIF) to the DERF to pay awards. All of the \$6.2 million was transferred between 2009-10 and 2013-14. Under the July 30, 2009, memorandum of understanding between DOA and DNR to transfer the funds, as approved by the U.S. Environmental Protection Agency (EPA) (because of the federal funding component of the environmental improvement fund), the dry cleaner environmental response fund is required to repay the environmental improvement fund at least \$1,000 per year, and is assessed interest that totaled \$4,900 in 2013-14. The DERF owed the EIF a total of \$6,220,600 as of June 30, 2014.

3. In January, 2014, DNR notified potential applicants under DERP that revenue is expected to be insufficient to pay some anticipated claims during the remainder of the 2013-15 biennium. As of April, 2014, DNR placed approved claims in line to be paid in the order they are approved, on a quarterly basis, as quarterly revenues are received under the program.

4. In 2014-15, DNR has paid awards totaling \$418,100 as of March 31, 2015, almost all of which were received in 2013-14. DNR had approved an additional 14 claims for \$462,700, for payment when funds are available in late 2015 or 2016, and was in the process of reviewing 10 other claims totaling \$189,300. DNR anticipates that claims being reviewed in the spring of 2015 will be paid in late 2016 or early 2017, based on the timing of receipt of anticipated revenues.

5. DNR has paid \$6.1 million in drycleaner financial assistance awards in the past four years 2010-11 through 2013-14, with payments averaging \$1.5 million annually. DNR is expected to receive approximately \$1.1 million in claims during 2014-15, which would include approximately \$680,000 in claims received as of March, 2015, and an anticipated \$400,000 in the remaining three months, based on the five-year average for the fourth quarter.

6. The table shows the estimated dry cleaner environmental response fund condition through 2016-17 under the bill. It is anticipated revenues will decline approximately 5% per year to approximately \$661,900 in 2016-17. Available revenues will not be sufficient to fund anticipated claim demand that could be expected to total \$1.1 million or more annually. In addition, authorized expenditures will exceed estimated revenues by over \$400,000 in each year of the 2015-17 biennium. If no additional revenues or appropriation reductions are made in the bill, authorized expenditures from the fund will need to be reduced by approximately 40% to remain within available revenue, and a lengthy backlog of submitted claims waiting to be paid will develop.

### Dry Cleaner Environmental Response Fund Condition – AB 21 / SB 21

	2013-14 <u>Actual</u>	2014-15 <u>Estimated</u>	2015-16 <u>Bill</u>	2016-17 <u>Bill</u>
Opening Balance, July 1	\$238,800	\$347,200	\$400	\$0
Revenue				
Program Fees	772,000	733,300	696,700	661,900
Loan from Environmental Improvement Fund	<u>1,248,300</u>	<u>0</u>	<u>0</u>	<u>0</u>
Total Revenue	\$2,020,300			
 Total Revenue Available	 \$2,259,100	 \$1,080,500	 \$697,100	 \$661,900
 <b>Expenditures</b>				
Financial Assistance Awards	\$1,667,200	\$783,000	\$763,300	\$763,300
Administration	238,800	290,100	326,800	326,800
Repayment to Environmental Improvement Fund	<u>5,900</u>	<u>7,000</u>	<u>7,000</u>	<u>7,000</u>
 Actual or Authorized Expenditures	 \$1,911,900	 \$1,080,100	 \$1,097,400	 \$1,097,400
 Expenditure Reductions Needed to Maintain Positive Fund Balance	 \$0	 \$0	 - \$400,300	 - \$435,500
 Closing Balance	 \$347,200	 \$400	 \$0	 \$0

7. DNR officials indicate the Department plans to maintain a positive balance in the fund by first paying administrative expenses, then using remaining revenues to pay drycleaners claims. The Department plans to continue its current practice, during 2015-17, of paying claims in the order they are received, on a quarterly basis as quarterly revenues are received. This will allow payment of up to approximately \$350,000 in claims in each of 2015-16 and 2016-17. This would be significantly less than the anticipated claim submittal of \$1.1 million or more in each year.

8. Of authorized expenditures from the DERF, the awards appropriation, at \$763,600 annually, includes 70%, and the DNR administrative appropriations include 28% of authorized expenditures under the bill (\$224,900 with 2.0 positions in the Remediation and Redevelopment program and \$83,000 with 1.0 position in the Community Financial Assistance program). The remaining 2% is authorized in a DOR appropriation with \$18,900 annually to collect fees under the program. Prior to 2011-12, the DOR appropriation was authorized \$66,000 annually with 1.0 position, and the 2011-13 biennial budget deleted the position and associated funding with the deletion of other long-term vacancies in state agencies.

9. The Committee could choose to maintain a positive balance in the fund by establishing appropriation amounts that do not exceed anticipated revenues. For example, the Committee could reduce DNR appropriations from the DERF by approximately 40% to remain within currently anticipated revenues. A 40% appropriation reduction could be accomplished in a few different ways. First, the entire 40% reduction could be made in the awards appropriation, as

DNR is currently managing expenditures from the fund, to reduce it by \$428,600, to \$335,000 annually, to provide \$670,000 for awards during the biennium [Alternative A1a].

10. Another way of reducing DNR appropriations would be to reduce them according to their proportion of the total DNR appropriations from the fund, with annual reductions as follows: (a) the awards appropriation could be reduced by \$305,400, from \$763,600 to \$458,200, to provide \$916,400 for DERP awards during the biennium; and (b) the DNR administrative appropriations could be reduced by \$123,200 and 1.2 positions (\$90,000 and 0.8 position in the Remediation and Redevelopment program, and \$33,200 and 0.4 position in the Community Financial Assistance program) [Alternative A1b]. Under this option, 1.8 DNR positions would remain to administer the program, including 1.2 positions for administration of cleanup at dry cleaner sites and 0.6 position for grants administration.

11. It is possible that, under currently available revenues, the backlog of claims waiting to be paid on June 30, 2015, will be almost \$0.5 million. If claim demand is \$2.2 million or more during the 2015-17 biennium, payment of \$0.7 to \$0.9 million in claims during the biennium would result in a backlog of claims waiting to be paid on June 30, 2017, of approximately \$2.0 million. This means owners of eligible sites could have to wait up to approximately six years for reimbursement of eligible cleanup costs under the program.

12. The state hazardous substances spills statutes require responsible parties to clean up the contamination, whether or not state financial assistance is available. It is uncertain whether owners who are cleaning up eligible dry cleaning facilities will slow or stop their site remediation work while waiting for reimbursement of costs from earlier phases of the remediation project. It is possible that a multi-year wait for reimbursement of cleanup costs under DERP could slow remediation work at some sites, and present a hardship for some owners who are trying to settle estates, transfer ownership, or redevelop properties.

13. DNR administers a state-funded response appropriation through the segregated environmental management account. DNR uses the appropriation for cleanup of contamination at sites where responsible parties do not have financial resources to pay for a cleanup. The Department prioritizes use of the appropriation for sites of high environmental priority, such as the state share at certain Superfund site cleanups and highly-contaminated sites. DNR is authorized to seek reimbursement of its cleanup costs if it finds a responsible party for sites cleaned up with funds from the state-funded response appropriation.

14. The statutes authorize use of the state-funded response appropriation to pay for remediation at eligible drycleaner program sites if the owners are unable to do so. The Department used the appropriation to pay \$698,500 in investigation and cleanup costs at five drycleaner sites eligible under DERP, where the owners were unable to pay for the cleanup. The Statutes require the drycleaner fund to reimburse the environmental management account at an indefinite future time when funds are available to do so.

15. If the Committee wishes to decrease or minimize the length of time owners of eligible DERP sites have to wait for reimbursement of cleanup costs, it could provide additional revenues to the dry cleaner fund. For example, a one-time transfer of \$1,000,000 could be made to the DERF

in each of 2015-16 and 2016-17 from another source, such as the general fund or petroleum inspection fund [Alternatives A2a or A2b]. Under these alternatives, the bill could be amended to provide an additional \$1,100,000 in expenditure authority for awards, for total awards of \$2,627,200 during the 2015-17 biennium. It is anticipated this would be sufficient to fund claim demand of approximately \$1.1 million annually, the anticipated June 30, 2015, \$0.5 million claim backlog, and authorized base administrative expenditures under the bill. The awards appropriation is biennial, and the additional expenditure authority could be provided in 2015-16 for use in either year of the biennium.

16. There are also other budgetary demands for each of those funding sources. The petroleum inspection fund, which is funded from the 2¢ per gallon petroleum inspection fee on most petroleum products in the state, primarily funds the PECFA (petroleum environmental cleanup fund award) program, debt service on revenue obligations issued 10 to 15 years ago to fund PECFA awards, transportation programs, and other environmental programs. A separate budget paper describes the PECFA program and estimated petroleum inspection fund balance.

17. Another option for providing additional revenue to the DERF would be to increase current fees under the program. For example, if the dry cleaning facility license fee paid by owners of dry cleaning facilities, currently equal to 2.8% of gross receipts from dry cleaning apparel and household fabrics, would be increased by 25%, to 3.5% of gross receipts as of September 1, 2015, it would generate approximately an additional \$276,000 during the 2015-17 biennium, including \$122,000 in 2015-16 and \$155,000 in 2016-17. Dry cleaning facilities generally pass the cost of the gross receipts license fee on to customers. Under this example, a 25% fee increase would not provide sufficient additional revenues to fully fund authorized expenditures or to significantly reduce the anticipated backlog. Appropriations would still need to be reduced by 26% (instead of 40% under the bill) to maintain a positive balance. The awards appropriation could be reduced by \$280,000 annually, to provide \$483,600 annually for awards, or \$967,200 during the biennium [Alternative A3].

18. If no action is taken to bring program expenditures into balance with available revenues, DNR will have to reduce expenditures by approximately 40%, to remain within available revenues [Alternative A4]. A backlog of DERP claims waiting to be paid will grow during the 2015-17 biennium, and owners of eligible sites will wait for reimbursement under the program for an increasing length of time. By the end of the biennium, this wait could approach six years.

19. It is unknown if or when funds will be available in the DERF to repay the environmental improvement fund (EIF) loan current balance of \$6,220,600. Under the terms of the loan from EIF to DERF, the loan must be repaid. The Committee could consider using a portion of the available balance in the petroleum inspection fund to repay the loan. Under current law, repayment of the loan would restore the availability of funds for the current land recycling loan program, which provides financial assistance to local governments for the investigation and remediation at former landfills and certain other contaminated sites [Alternative B1a]. The land recycling loan program is authorized to lend up to \$20 million, provided financial assistance totaling \$13.5 million to nine municipalities prior to June 30, 2008, and has not loaned other funds since then. Another option would be to repay the loan to EIF, and eliminate the land recycling loan

program [Alternative B1b]. This would recognize that there had been minimal demand for the land recycling loan program for several years, which had made funds available for transferring to DERF. It would also restore the funds to the original funding source of the land recycling loan program, which was the clean water fund program. This would make the funds available for financial assistance to local governments for wastewater projects under the clean water fund program. While the state has no obligation, during the 2015-17 biennium, to fully repay the loan from EIF to DERF, the state will have to repay the clean water fund at some future date to meet federal requirements for use of those funds.

20. It is unknown if and when revenues will be available in the DERF to fulfill the obligation it has to repay the environmental management account for \$698,500 it owes for costs of cleanup at five sites eligible under DERP. Separate budget papers discuss the expenditure reductions made under the bill in appropriations from the environmental management account. The Committee could consider using up to \$698,500 of the available balance in the petroleum inspection fund to repay the funds the DERF owes the environmental management account [Alternative B2]. This would resolve the current obligation of DERF towards the environmental management account. The \$698,500 would also improve the balance of the environmental management account and be available for appropriation to any of the appropriations from the environmental management account.

## ALTERNATIVES

### A. Program Funding

1. Reduce expenditure authority in DNR appropriations from the dry cleaner environmental response fund by \$428,600 annually, in one of the following ways:

a. Reduce the dry cleaner environmental response awards appropriation by \$428,600, from \$763,600 to \$335,000, to provide \$670,000 for claims during the biennium.

ALT A1a		Change to Bill
SEG		- \$857,200

b. Reduce the dry cleaner environmental response awards appropriation by \$305,400, from \$763,600 to \$458,200, to provide \$916,400 for claims during the biennium. Reduce the DNR administrative appropriations by \$123,200 and 1.2 positions (\$90,000 and 0.8 position in the Remediation and Redevelopment program, and \$33,200 and 0.4 position in the Community Financial Assistance program). [1.8 DNR dry cleaner positions would remain.]

ALT A1b		Change to Bill	
		Funding	Positions
SEG		- \$857,200	- 1.20

2. Transfer \$1,000,000 in each of 2015-16 and 2016-17, on a one-time basis, to the dry cleaner environmental response fund, from one of the following funds. In addition, provide \$1,100,000 for the dry cleaner environmental response awards appropriation in 2015-16, to provide \$2,627,200 for awards during 2015-17.

a. General fund

<b>ALT A2a</b>	<b>Change to Bill</b>
GPR-REV	- \$2,000,000
SEG-REV DERF	<u>2,000,000</u>
Total	\$0
SEG	\$1,100,000

b. Segregated petroleum inspection fund

<b>ALT A2b</b>	<b>Change to Bill</b>
SEG-REV PIF	- \$2,000,000
SEG-REV DERF	<u>2,000,000</u>
Total	\$0
SEG	\$1,100,000

3. Effective September 1, 2015, increase the dry cleaning facility license fee paid by owners of dry cleaning facilities, to 3.5%, from 2.8%, of gross receipts from dry cleaning apparel and household fabrics, to provide additional revenue of approximately \$276,000 during the biennium, including \$122,000 in 2015-16 and \$155,000 in 2016-17. Decrease the dry cleaners awards appropriation by \$280,000 annually, to \$483,600, to provide \$967,200 for awards in 2015-17.

<b>ALT A3</b>	<b>Change to Bill</b>
SEG-REV	\$276,000
SEG	- \$560,000

4. Take no action (DNR would be required to reduce authorized expenditures by approximately 40%).

**B. Repayment of Loans**

1. Transfer \$6,220,600 from the balance of the petroleum inspection fund to the environmental improvement fund to repay the loan from the EIF to the dry cleaner environmental response fund, in one of the following ways:

a. Maintain the current law authorization for the land recycling loan program to provide up to \$20,000,000 in financial assistance for currently-eligible uses.

<b>ALT B1a</b>	<b>Change to Bill</b>
SEG-REV PIF	- \$6,220,600
SEG-REV EIF	<u>6,220,600</u>
Total	\$0

b. Repeal the land recycling loan program, which would make the funds available for eligible wastewater funding uses under the clean water fund program.

<b>ALT B1b</b>	<b>Change to Bill</b>
SEG-REV PIF	- \$6,220,600
SEG-REV EIF	<u>6,220,600</u>
Total	\$0

2. Transfer \$698,500 from the balance of the petroleum inspection fund to the environmental management account to repay funds spent by the account for the dry cleaner environmental response program.

<b>ALT B2</b>	<b>Change to Bill</b>
SEG-REV PIF	- \$698,500
SEG-REV EMA	<u>698,500</u>
Total	\$0

3. Take no action.

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