

By the Committee on Ways and Means and Senators McKay and Latvala

301-2013B-98

1 A bill to be entitled
 2 An act relating to contaminated site
 3 rehabilitation tax credits; creating s.
 4 199.1055, F.S.; providing for a contaminated
 5 site rehabilitation tax credit against the
 6 intangible personal property tax; authorizing
 7 the Department of Revenue to adopt rules;
 8 amending s. 220.02, F.S.; providing for an
 9 additional cross-reference; creating s.
 10 220.1845, F.S.; providing for a contaminated
 11 site rehabilitation tax credit against the
 12 corporate income tax; authorizing the
 13 Department of Revenue to adopt rules; creating
 14 s. 376.30781, F.S.; providing for a partial tax
 15 credit for the rehabilitation of
 16 drycleaning-solvent-contaminated sites and
 17 brownfield sites; providing for the Department
 18 of Environmental Protection to allocate such
 19 partial credits; providing procedures for
 20 application for tax credits; providing for a
 21 nonrefundable review fee; providing
 22 verification requirements; authorizing the
 23 Department of Environmental Protection to adopt
 24 rules; providing for revocation or modification
 25 of eligibility for tax credit under certain
 26 conditions; amending s. 213.053, F.S.;
 27 providing for information-sharing; providing an
 28 effective date.

30 Be It Enacted by the Legislature of the State of Florida:

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1 Section 1. Section 199.1055, Florida Statutes, is
2 created to read:

3 199.1055 Contaminated site rehabilitation tax
4 credit.--

5 (1) AUTHORIZATION FOR TAX CREDIT; LIMITATIONS.--

6 (a) A credit in the amount of 25 percent of the costs
7 of voluntary cleanup activity that is integral to site
8 rehabilitation at the following sites is allowed against any
9 tax due for a taxable year under s. 199.032, less any credit
10 allowed by s. 220.68 for that year:

11 1. A drycleaning-solvent-contaminated site eligible
12 for state-funded site rehabilitation under s. 376.3078(3);

13 2. A drycleaning-solvent-contaminated site at which
14 cleanup is undertaken by the real property owner pursuant to
15 s. 376.3078(10), if the real property owner is not also, and
16 has never been, the owner or operator of the drycleaning
17 facility where the contamination exists; or

18 3. A brownfield site in a designated brownfield area
19 under s. 376.80.

20 (b) A taxpayer, or multiple taxpayers working jointly
21 to clean up a single site, may not receive more than \$125,000
22 per year in tax credits for each site voluntarily
23 rehabilitated. Multiple taxpayers shall receive tax credits in
24 the same proportion as their contribution to payment of
25 cleanup costs.

26 (c) If the credit granted under this section is not
27 fully used in any one year because of insufficient tax
28 liability on the part of the taxpayer, the unused amount may
29 be carried forward for a period not to exceed 5 years.

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1 (d) A taxpayer that receives a credit under s.
2 220.1845 is ineligible to receive credit under this section in
3 a given tax year.

4 (e) A taxpayer that receives state-funded site
5 rehabilitation pursuant to s. 376.3078(3) for rehabilitation
6 of a drycleaning-solvent-contaminated site is ineligible to
7 receive credit under this section for costs incurred by the
8 taxpayer in conjunction with the rehabilitation of that site
9 during the same time period that state-administered site
10 rehabilitation was underway.

11 (f) The total amount of the tax credits which may be
12 granted under this section and s. 220.1845 is \$5 million
13 annually.

14 (g) Tax credits that may be available under this
15 section to an entity eligible under s. 376.30781 may be
16 transferred after a merger or acquisition to the surviving or
17 acquiring entity and used in the same manner and with the same
18 limitations.

19 (h) In order to encourage completion of site
20 rehabilitation at contaminated sites being voluntarily cleaned
21 up and eligible for a tax credit under this section, the
22 taxpayer may claim an additional 10 percent of the total
23 cleanup costs, not to exceed \$50,000, in the final year of
24 cleanup as evidenced by the Department of Environmental
25 Protection issuing a "No Further Action" order for that site.

26 (2) FILING REQUIREMENTS.--Any taxpayer that wishes to
27 obtain credit under this section must submit with its return a
28 tax credit certificate approving partial tax credits issued by
29 the Department of Environmental Protection under s. 376.30781.

30 (3) ADMINISTRATION; AUDIT AUTHORITY; TAX CREDIT
31 FORFEITURE.--

1 (a) The Department of Revenue may adopt rules to
2 prescribe any necessary forms required to claim a tax credit
3 under this section and to provide the administrative
4 guidelines and procedures required to administer this section.

5 (b) In addition to its existing audit and
6 investigation authority in chapters 199 and 220, the
7 Department of Revenue may perform any additional financial and
8 technical audits and investigations, including examining the
9 accounts, books, or records of the tax credit applicant, which
10 are necessary to verify the site-rehabilitation costs included
11 in a tax credit return and to ensure compliance with this
12 section. The Department of Environmental Protection shall
13 provide technical assistance, when requested by the Department
14 of Revenue, on any technical audits performed under this
15 section.

16 (c) It is grounds for forfeiture of previously claimed
17 and received tax credits if the Department of Revenue
18 determines, as a result of either an audit or information
19 received from the Department of Environmental Protection, that
20 a taxpayer received tax credits under this section to which
21 the taxpayer was not entitled. In the case of fraud, the
22 taxpayer shall be prohibited from claiming any future tax
23 credits under this section or s. 220.1845.

24 1. The taxpayer is responsible for returning forfeited
25 tax credits to the Department of Revenue and such funds shall
26 be paid into the General Revenue Fund of the state.

27 2. The taxpayer shall file with the Department of
28 Revenue an amended tax return or such other report as the
29 Department of Revenue prescribes by rule and shall pay any
30 required tax within 60 days after the taxpayer receives
31 notification from the Department of Environmental Protection

1 pursuant to s. 376.30781 that previously approved tax credits
2 have been revoked or modified, if uncontested, or within 60
3 days after a final order is issued following proceedings
4 involving a contested revocation or modification order.

5 3. A notice of deficiency may be issued by the
6 Department of Revenue at any time within 5 years after the
7 date the taxpayer receives notification from the Department of
8 Environmental Protection pursuant to s. 376.30781 that
9 previously approved tax credits have been revoked or modified.
10 If a taxpayer fails to notify the Department of Revenue of any
11 change in its tax credit claimed, a notice of deficiency may
12 be issued at any time. In either case, the amount of any
13 proposed assessment set forth in such notice of deficiency
14 shall be limited to the amount of any deficiency resulting
15 under this section from the recomputation of the taxpayer's
16 tax for the taxable year.

17 4. Any taxpayer that fails to report and timely pay
18 any tax due as a result of the forfeiture of its tax credit is
19 in violation of this section and is subject to applicable
20 penalty and interest.

21 Section 2. Subsection (10) of section 220.02, Florida
22 Statutes, is amended to read:

23 220.02 Legislative intent.--

24 (10) It is the intent of the Legislature that credits
25 against either the corporate income tax or the franchise tax
26 be applied in the following order: those enumerated in s.
27 220.68, those enumerated in s. 631.719(1), those enumerated in
28 s. 631.705, those enumerated in s. 220.18, those enumerated in
29 s. 631.828, those enumerated in s. 220.181, those enumerated
30 in s. 220.183, those enumerated in s. 220.182, those
31 enumerated in s. 220.1895, those enumerated in s. 221.02,

1 those enumerated in s. 220.184, those enumerated in s.
2 220.186, ~~and~~ those enumerated in s. 220.188, and those
3 enumerated in s. 220.1845.

4 Section 3. Section 220.1845, Florida Statutes, is
5 created to read:

6 220.1845 Contaminated site rehabilitation tax
7 credit.--

8 (1) AUTHORIZATION FOR TAX CREDIT; LIMITATIONS.--

9 (a) A credit in the amount of 25 percent of the costs
10 of voluntary cleanup activity that is integral to site
11 rehabilitation at the following sites is allowed against any
12 tax due for a taxable year under this chapter:

13 1. A drycleaning-solvent-contaminated site eligible
14 for state-funded site rehabilitation under s. 376.3078(3);

15 2. A drycleaning-solvent-contaminated site at which
16 cleanup is undertaken by the real property owner pursuant to
17 s. 376.3078(10), if the real property owner is not also, and
18 has never been, the owner or operator of the drycleaning
19 facility where the contamination exists; or

20 3. A brownfield site in a designated brownfield area
21 under s. 376.80.

22 (b) A taxpayer, or multiple taxpayers working jointly
23 to clean up a single site, may not receive more than \$125,000
24 per year in tax credits for each site voluntarily
25 rehabilitated. Multiple taxpayers shall receive tax credits in
26 the same proportion as their contribution to payment of
27 cleanup costs.

28 (c) If the credit granted under this section is not
29 fully used in any one year because of insufficient tax
30 liability on the part of the corporation, the unused amount
31 may be carried forward for a period not to exceed 5 years. The

1 carryover credit may be used in a subsequent year when the tax
2 imposed by this chapter for that year exceeds the credit for
3 which the corporation is eligible in that year under this
4 section after applying the other credits and unused carryovers
5 in the order provided by s. 220.02(10).

6 (d) A taxpayer that files a consolidated return in
7 this state as a member of an affiliated group under s.
8 220.131(1) may be allowed the credit on a consolidated return
9 basis up to the amount of tax imposed upon and paid by the
10 taxpayer that incurred the rehabilitation costs.

11 (e) A taxpayer that receives credit under s. 199.1055
12 is ineligible to receive credit under this section in a given
13 tax year.

14 (f) A taxpayer that receives state-funded site
15 rehabilitation under s. 376.3078(3) for rehabilitation of a
16 drycleaning-solvent-contaminated site is ineligible to receive
17 credit under this section for costs incurred by the taxpayer
18 in conjunction with the rehabilitation of that site during the
19 same time period that state-administered site rehabilitation
20 was underway.

21 (g) The total amount of the tax credits which may be
22 granted under this section and s. 199.1055 is \$5 million
23 annually.

24 (h) Tax credits that may be available under this
25 section to an entity eligible under s. 376.30781 may be
26 transferred after a merger or acquisition to the surviving or
27 acquiring entity and used in the same manner and with the same
28 limitations.

29 (i) In order to encourage completion of site
30 rehabilitation at contaminated sites being voluntarily cleaned
31 up and eligible for a tax credit under this section, the

1 taxpayer may claim an additional 10 percent of the total
2 cleanup costs, not to exceed \$50,000, in the final year of
3 cleanup as evidenced by the Department of Environmental
4 Protection issuing a "No Further Action" order for that site.

5 (2) FILING REQUIREMENTS.--Any corporation that wishes
6 to obtain credit under this section must submit with its
7 return a tax credit certificate approving partial tax credits
8 issued by the Department of Environmental Protection under s.
9 376.30781.

10 (3) ADMINISTRATION; AUDIT AUTHORITY; TAX CREDIT
11 FORFEITURE.--

12 (a) The Department of Revenue may adopt rules to
13 prescribe any necessary forms required to claim a tax credit
14 under this section and to provide the administrative
15 guidelines and procedures required to administer this section.

16 (b) In addition to its existing audit and
17 investigation authority in chapters 199 and 220, the
18 Department of Revenue may perform any additional financial and
19 technical audits and investigations, including examining the
20 accounts, books, or records of the tax credit applicant, which
21 are necessary to verify the site-rehabilitation costs included
22 in a tax credit return and to ensure compliance with this
23 section. The Department of Environmental Protection shall
24 provide technical assistance, when requested by the Department
25 of Revenue, on any technical audits performed pursuant to this
26 section.

27 (c) It is grounds for forfeiture of previously claimed
28 and received tax credits if the Department of Revenue
29 determines, as a result of either an audit or information
30 received from the Department of Environmental Protection, that
31 a taxpayer received tax credits pursuant to this section to

1 which the taxpayer was not entitled. In the case of fraud, the
2 taxpayer shall be prohibited from claiming any future tax
3 credits under this section or s. 199.1055.

4 1. The taxpayer is responsible for returning forfeited
5 tax credits to the Department of Revenue and such funds shall
6 be paid into the General Revenue Fund of the state.

7 2. The taxpayer shall file with the Department of
8 Revenue an amended tax return or such other report as the
9 Department of Revenue prescribes by rule and shall pay any
10 required tax within 60 days after the taxpayer receives
11 notification from the Department of Environmental Protection
12 pursuant to s. 376.30781 that previously approved tax credits
13 have been revoked or modified, if uncontested, or within 60
14 days after a final order is issued following proceedings
15 involving a contested revocation or modification order.

16 3. A notice of deficiency may be issued by the
17 Department of Revenue at any time within 5 years after the
18 date the taxpayer receives notification from the Department of
19 Environmental Protection pursuant to s. 376.30781 that
20 previously approved tax credits have been revoked or modified.
21 If a taxpayer fails to notify the Department of Revenue of any
22 change in its tax credit claimed, a notice of deficiency may
23 be issued at any time. In either case, the amount of any
24 proposed assessment set forth in such notice of deficiency
25 shall be limited to the amount of any deficiency resulting
26 under this section from the recomputation of the taxpayer's
27 tax for the taxable year.

28 4. Any taxpayer that fails to report and timely pay
29 any tax due as a result of the forfeiture of its tax credit is
30 in violation of this section and is subject to applicable
31 penalty and interest.

1 Section 4. Section 376.30781, Florida Statutes, is
2 created to read:

3 376.30781 Partial tax credits for rehabilitation of
4 drycleaning-solvent-contaminated sites and brownfield sites in
5 designated brownfield areas; application process; rulemaking
6 authority; revocation authority.--

7 (1) The Legislature finds that:

8 (a) To facilitate property transactions and economic
9 growth and development, it is in the interest of the state to
10 encourage the cleanup, at the earliest possible time, of
11 drycleaning-solvent-contaminated sites and brownfield sites in
12 designated brownfield areas.

13 (b) It is the intent of the Legislature to encourage
14 the voluntary cleanup of drycleaning-solvent-contaminated
15 sites and brownfield sites in designated brownfield areas by
16 providing a partial tax credit for the restoration of such
17 property in specified circumstances.

18 (2)(a) A credit in the amount of 25 percent of the
19 costs of voluntary cleanup activity that is integral to site
20 rehabilitation at the following sites is allowed pursuant to
21 ss. 199.1055 and 220.1845:

22 1. A drycleaning-solvent-contaminated site eligible
23 for state-funded site rehabilitation under s. 376.3078(3);

24 2. A drycleaning-solvent-contaminated site at which
25 cleanup is undertaken by the real property owner pursuant to
26 s. 376.3078(10), if the real property owner is not also, and
27 has never been, the owner or operator of the drycleaning
28 facility where the contamination exists; or

29 3. A brownfield site in a designated brownfield area
30 under s. 376.80.

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1 (b) A taxpayer, or multiple taxpayers working jointly
2 to clean up a single site, may not receive more than \$125,000
3 per year in tax credits for each site voluntarily
4 rehabilitated. Multiple taxpayers shall receive tax credits in
5 the same proportion as their contribution to payment of
6 cleanup costs. Tax credits are available only for site
7 rehabilitation conducted during the tax year in which the tax
8 credit application is submitted.

9 (c) In order to encourage completion of site
10 rehabilitation at contaminated sites that are being
11 voluntarily cleaned up and that are eligible for a tax credit
12 under this section, the tax credit applicant may claim an
13 additional 10 percent of the total cleanup costs, not to
14 exceed \$50,000, in the final year of cleanup as evidenced by
15 the Department of Environmental Protection issuing a "No
16 Further Action" order for that site.

17 (3) The Department of Environmental Protection shall
18 be responsible for allocating the tax credits provided for in
19 ss. 199.1055 and 220.1845, not to exceed a total of \$5 million
20 in tax credits annually.

21 (4) To claim the credit, each applicant must apply to
22 the Department of Environmental Protection for an allocation
23 of the \$5 million annual credit by December 31 on a form
24 developed by the Department of Environmental Protection in
25 cooperation with the Department of Revenue. The form shall
26 include an affidavit from each applicant certifying that all
27 information contained in the application, including all
28 records of costs incurred and claimed in the tax credit
29 application, are true and correct. If the application is
30 submitted pursuant to subparagraph (2)(a)2., the form must
31 include an affidavit signed by the real property owner stating

1 that it is not, and has never been, the owner or operator of
2 the drycleaning facility where the contamination exists.
3 Approval of partial tax credits must be accomplished on a
4 first-come, first-served basis based upon the date complete
5 applications are received by the Division of Waste Management.
6 An applicant shall submit only one application per site per
7 year. To be eligible for a tax credit the applicant must:
8 (a) Have entered into a voluntary cleanup agreement
9 with the Department of Environmental Protection for a
10 drycleaning-solvent-contaminated site or a Brownfield Site
11 Rehabilitation Agreement, as applicable; and
12 (b) Have paid all deductibles pursuant to s.
13 376.3078(3)(d) for eligible drycleaning-solvent-cleanup
14 program sites.
15 (5) To obtain the tax credit certificate, an applicant
16 must annually file an application for certification, which
17 must be received by the Department of Environmental Protection
18 by December 31. The applicant must provide all pertinent
19 information requested on the tax credit application form,
20 including, at a minimum, the name and address of the applicant
21 and the address and tracking identification number of the
22 eligible site. Along with the application form, the applicant
23 must submit the following:
24 (a) A nonrefundable review fee of \$250 made payable to
25 the Water Quality Assurance Trust Fund to cover the
26 administrative costs associated with the department's review
27 of the tax credit application;
28 (b) Copies of contracts and documentation of contract
29 negotiations, accounts, invoices, sales tickets, or other
30 payment records from purchases, sales, leases, or other
31 transactions involving actual costs incurred for that tax year

1 related to site rehabilitation, as that term is defined in ss.
2 376.301 and 376.79;

3 (c) Proof that the documentation submitted pursuant to
4 paragraph (b) has been reviewed and verified by an independent
5 certified public accountant in accordance with standards
6 established by the American Institute of Certified Public
7 Accountants. Specifically, the certified public accountant
8 must attest to the accuracy and validity of the costs incurred
9 and paid by conducting an independent review of the data
10 presented by the applicant, as well as reporting on whether
11 the applicant's accounting control procedures have ensured
12 that such costs are paid only once. A copy of the accountant's
13 report shall be submitted to the Department of Environmental
14 Protection with the tax credit application; and

15 (d) A certification form stating that site
16 rehabilitation activities associated with the documentation
17 submitted pursuant to paragraph (b) have been conducted under
18 the observation of, and related technical documents have been
19 signed and sealed by, an appropriate professional registered
20 in this state in each contributing technical discipline. The
21 certification form shall be signed and sealed by the
22 appropriate registered professionals stating that the costs
23 incurred were integral, necessary, and required for site
24 rehabilitation, as that term is defined in ss. 376.301 and
25 376.79.

26 (6) The certified public accountant and appropriate
27 registered professionals submitting forms as part of a tax
28 credit application must verify such forms. Verification must
29 be accomplished as provided in s. 92.525(1)(b) and subject to
30 the provisions of s. 92.525(3).

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1 (7) The Department of Environmental Protection shall
2 review the tax credit application and any supplemental
3 documentation submitted by each applicant, for the purpose of
4 verifying that the applicant has met the qualifying criteria
5 in subsections (2) and (4) and has submitted all required
6 documentation listed in subsection (5). Upon verification that
7 the applicant has met these requirements, the department shall
8 issue a written decision granting eligibility for partial tax
9 credits (a tax credit certificate) in the amount of 25 percent
10 of the total costs claimed, subject to the \$125,000
11 limitation, for the tax year in which the tax credit
12 application is submitted based on the report of the certified
13 public accountant and the certifications from the appropriate
14 registered technical professionals.

15 (8) On or before March 1, the Department of
16 Environmental Protection shall inform each eligible applicant
17 of the amount of its partial tax credit and provide each
18 eligible applicant with a tax credit certificate that must be
19 submitted with its tax return to the Department of Revenue to
20 claim the tax credit. Credits will not result in the payment
21 of refunds if total credits exceed the amount of tax owed.

22 (9) If an applicant does not receive a tax credit
23 allocation due to an exhaustion of the \$5-million annual tax
24 credit authorization, such application will then be included
25 in the same first-come, first-served order in the next year's
26 annual tax credit allocation, if any.

27 (10) The Department of Environmental Protection may
28 adopt rules to prescribe the necessary forms required to claim
29 tax credits under this section and to provide the
30 administrative guidelines and procedures required to
31 administer this section. Prior to the adoption of rules

1 regulating the tax credit application, the department shall,
2 by September 1, 1998, establish reasonable interim application
3 requirements and forms.

4 (11) The Department of Environmental Protection may
5 revoke or modify any written decision granting eligibility for
6 partial tax credits under this section if it is discovered
7 that the tax credit applicant submitted any false statement,
8 representation, or certification in any application, record,
9 report, plan, or other document filed in an attempt to receive
10 partial tax credits under this section. The Department of
11 Environmental Protection shall immediately notify the
12 Department of Revenue of any revoked or modified orders
13 affecting previously granted partial tax credits.
14 Additionally, the taxpayer must notify the Department of
15 Revenue of any change in its tax credit claimed.

16 (12) An owner, operator, or real property owner who
17 receives state-funded site rehabilitation under s. 376.3078(3)
18 for rehabilitation of a drycleaning-solvent-contaminated site
19 is ineligible to receive a tax credit under s. 199.1055 or s.
20 220.1845 for costs incurred by the taxpayer in conjunction
21 with the rehabilitation of that site during the same time
22 period that state-administered site rehabilitation was
23 underway.

24 Section 5. Paragraph (o) is added to subsection (7) of
25 section 213.053, Florida Statutes, to read:

26 213.053 Confidentiality and information sharing.--

27 (7) Notwithstanding any other provision of this
28 section, the department may provide:

29 (o) Information relative to ss. 199.1055, 220.1845,
30 and 376.30781 to the Department of Environmental Protection in
31 the conduct of its official business.

1
2 Disclosure of information under this subsection shall be
3 pursuant to a written agreement between the executive director
4 and the agency. Such agencies, governmental or
5 nongovernmental, shall be bound by the same requirements of
6 confidentiality as the Department of Revenue. Breach of
7 confidentiality is a misdemeanor of the first degree,
8 punishable as provided by s. 775.082 or s. 775.083.

9 Section 6. This act shall take effect July 1, 1998.

10
11 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
12 COMMITTEE SUBSTITUTE FOR
13 SB 1114

14 The committee substitute changes the number of the newly
15 created section from s. 376.30714, F.S., to s. 376.30781, F.S.
16 This located the new tax credit provision within existing
17 drycleaning program statute. The previous designation placed
18 this section among the sections of statute governing the
19 petroleum cleanup program.

20 Real property owners eligible to receive credit for cleanup of
21 contaminated drycleaning sites under this program are limited
22 to those who are not, and never have been, the owner or
23 operator of the drycleaning facility where the contamination
24 exists. Such applicants must sign an affidavit stating that
25 this is the case.

26 The requirement that an applicant for credit under this
27 program must have obtained site eligibility under s.
28 376.3078(3), F.S., under the drycleaning solvent program or
29 brownfield area designation under s. 376.80, F.S., was
30 removed. The types of sites eligible for the tax credit are
31 clearly described in subsection (2) of s. 376.30781, F.S.