

Bill No. CS for SB 244

Amendment No.

<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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Senator McKay moved the following amendment:

Senate Amendment (with title amendment)

On page 2, between lines 29 and 30,

insert:

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

199.1055 Contaminated site rehabilitation tax credit.--

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

(a) A credit in the amount of 35 percent of the costs of voluntary cleanup activity that is integral to site rehabilitation at the following sites is allowed against any tax due for a taxable year under s. 199.032, less any credit allowed by s. 220.68 for that year:

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

2. A drycleaning-solvent-contaminated site at which cleanup is undertaken by the real property owner pursuant to s. 376.3078(11), if the real property owner is not also, and

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1 has never been, the owner or operator of the drycleaning
2 facility where the contamination exists; or
3 3. A brownfield site in a designated brownfield area
4 under s. 376.80.
5 (b) A taxpayer, or multiple taxpayers working jointly
6 to clean up a single site, may not receive more than \$250,000
7 per year in tax credits for each site voluntarily
8 rehabilitated. Multiple taxpayers shall receive tax credits in
9 the same proportion as their contribution to payment of
10 cleanup costs. Subject to the same conditions and limitations
11 as provided in this section a municipality or county which
12 voluntarily rehabilitates a site may receive not more than
13 \$250,000 per year in tax credits which it can subsequently
14 transfer subject to the provisions in (g).
15 (c) If the credit granted under this section is not
16 fully used in any one year because of insufficient tax
17 liability on the part of the taxpayer, the unused amount may
18 be carried forward for a period not to exceed 5 years.
19 (d) A taxpayer that receives a credit under s.
20 220.1845 is ineligible to receive credit under this section in
21 a given tax year.
22 (e) A taxpayer that receives state-funded site
23 rehabilitation pursuant to s. 376.3078(3) for rehabilitation
24 of a drycleaning-solvent-contaminated site is ineligible to
25 receive credit under this section for costs incurred by the
26 taxpayer in conjunction with the rehabilitation of that site
27 during the same time period that state-administered site
28 rehabilitation was underway.
29 (f) The total amount of the tax credits which may be
30 granted under this section and s. 220.1845 is \$5 million
31 annually.

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1 (g) 1. Tax credits that may be available under this
2 section to an entity eligible under s. 376.30781 may be
3 transferred after a merger or acquisition to the surviving or
4 acquiring entity and used in the same manner with the same
5 limitations.

6 2. The entity or its surviving or acquiring entity as
7 described in (g)1., may transfer any unused credit in whole or
8 in units of no less than 25 percent of the remaining credit.
9 The entity acquiring such credit may use it in the same manner
10 and with the same limitation as described in this section.
11 Such transferred credits may not be transferred again although
12 they may succeed to a surviving or acquiring entity subject to
13 the same conditions and limitations as described in this
14 section.

15 3. In the event the credit provided for under this
16 section is reduced either as a result of a determination by
17 the Department of Environmental Protection or an examination
18 or audit by the Department of Revenue, such tax deficiency
19 shall be recovered from the first entity, or the surviving or
20 acquiring entity, to have claimed such credit up to the amount
21 of credit taken. Any subsequent deficiencies shall be
22 assessed against any entity acquiring and claiming such
23 credit, or in the case of multiple succeeding entities in the
24 order of credit succession.

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

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

5 (3) ADMINISTRATION; AUDIT AUTHORITY; TAX CREDIT
6 FORFEITURE.--

7 (a) The Department of Revenue may adopt rules to
8 prescribe any necessary forms required to claim a tax credit
9 under this section and to provide the administrative
10 guidelines and procedures required to administer this section.

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

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

30 1. The taxpayer is responsible for returning forfeited
31 tax credits to the Department of Revenue and such funds shall

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1 be paid into the General Revenue Fund of the state.

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

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

23 4. Any taxpayer that fails to report and timely pay
24 any tax due as a result of the forfeiture of its tax credit is
25 in violation of this section and is subject to applicable
26 penalty and interest.

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

29 220.02 Legislative intent.--

30 (10) It is the intent of the Legislature that credits
31 against either the corporate income tax or the franchise tax

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1 be applied in the following order: those enumerated in s.
 2 220.68, those enumerated in s. 631.719(1), those enumerated in
 3 s. 631.705, those enumerated in s. 220.18, those enumerated in
 4 s. 631.828, those enumerated in s. 220.181, those enumerated
 5 in s. 220.183, those enumerated in s. 220.182, those
 6 enumerated in s. 220.1895, those enumerated in s. 221.02,
 7 those enumerated in s. 220.184, those enumerated in s.
 8 220.186, ~~and~~ those enumerated in s. 220.188, and those
 9 enumerated in s. 220.1845.

10 Section 3. Section 220.1845, Florida Statutes, is
 11 created to read:

12 220.1845 Contaminated site rehabilitation tax
 13 credit.--

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

15 (a) A credit in the amount of 35 percent of the costs
 16 of voluntary cleanup activity that is integral to site
 17 rehabilitation at the following sites is allowed against any
 18 tax due for a taxable year under this chapter:

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

21 2. A drycleaning-solvent-contaminated site at which
 22 cleanup is undertaken by the real property owner pursuant to
 23 s. 376.3078(11), if the real property owner is not also, and
 24 has never been, the owner or operator of the drycleaning
 25 facility where the contamination exists; or

26 3. A brownfield site in a designated brownfield area
 27 under s. 376.80.

28 (b) A taxpayer, or multiple taxpayers working jointly
 29 to clean up a single site, may not receive more than \$250,000
 30 per year in tax credits for each site voluntarily
 31 rehabilitated. Multiple taxpayers shall receive tax credits in

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1 the same proportion as their contribution to payment of
2 cleanup costs. Subject to the same conditions and limitations
3 as provided in this section a municipality or county which
4 voluntarily rehabilitates a site may receive not more than
5 \$250,000 per year in tax credits which it can subsequently
6 transfer subject to the provisions in (h).

7 (c) If the credit granted under this section is not
8 fully used in any one year because of insufficient tax
9 liability on the part of the corporation, the unused amount
10 may be carried forward for a period not to exceed 5 years. The
11 carryover credit may be used in a subsequent year when the tax
12 imposed by this chapter for that year exceeds the credit for
13 which the corporation is eligible in that year under this
14 section after applying the other credits and unused carryovers
15 in the order provided by s. 220.02(10).

16 (d) A taxpayer that files a consolidated return in
17 this state as a member of an affiliated group under s.
18 220.131(1) may be allowed the credit on a consolidated return
19 basis up to the amount of tax imposed upon and paid by the
20 taxpayer that incurred the rehabilitation costs.

21 (e) A taxpayer that receives credit under s. 199.1055
22 is ineligible to receive credit under this section in a given
23 tax year.

24 (f) A taxpayer that receives state-funded site
25 rehabilitation under s. 376.3078(3) for rehabilitation of a
26 drycleaning-solvent-contaminated site is ineligible to receive
27 credit under this section for costs incurred by the taxpayer
28 in conjunction with the rehabilitation of that site during the
29 same time period that state-administered site rehabilitation
30 was underway.

31 (g) The total amount of the tax credits which may be

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1 granted under this section and s. 199.1055 is \$5 million
2 annually.

3 (h) 1. Tax credits that may be available under this
4 section to an entity eligible under s. 376.30781 may be
5 transferred after a merger or acquisition to the surviving or
6 acquiring entity and used in the same manner and with the same
7 limitations.

8 2. The entity or its surviving or acquiring entity as
9 described in (h)1., may transfer any unused credit in whole or
10 in units of no less than 25 percent of the remaining credit.
11 The entity acquiring such credit may use it in the same manner
12 and with the same limitation as described in this section.
13 Such transferred credits may not be transferred again although
14 they may succeed to a surviving or acquiring entity subject to
15 the same conditions and limitations as described in this
16 section.

17 3. In the event the credit provided for under this
18 section is reduced either as a result of a determination by
19 the Department of Environmental Protection or an examination
20 or audit by the Department of Revenue, such tax deficiency
21 shall be recovered from the first entity, or the surviving or
22 acquiring entity, to have claimed such credit up to the amount
23 of credit taken. Any subsequent deficiencies shall be
24 assessed against any entity acquiring and claiming such
25 credit, or in the case of multiple succeeding entities in the
26 order of credit succession.

27 (i) In order to encourage completion of site
28 rehabilitation at contaminated sites being voluntarily cleaned
29 up and eligible for a tax credit under this section, the
30 taxpayer may claim an additional 10 percent of the total
31 cleanup costs, not to exceed \$50,000, in the final year of

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1 cleanup as evidenced by the Department of Environmental
 2 Protection issuing a "No Further Action" order for that site.

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

8 (3) ADMINISTRATION; AUDIT AUTHORITY; TAX CREDIT
 9 FORFEITURE.--

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

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

25 (c) It is grounds for forfeiture of previously claimed
 26 and received tax credits if the Department of Revenue
 27 determines, as a result of either an audit or information
 28 received from the Department of Environmental Protection, that
 29 a taxpayer received tax credits pursuant to this section to
 30 which the taxpayer was not entitled. In the case of fraud, the
 31 taxpayer shall be prohibited from claiming any future tax

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1 credits under this section or s. 199.1055.

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

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

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

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

30 Section 4. Section 376.30781, Florida Statutes, is
31 created to read:

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1 376.30781 Partial tax credits for rehabilitation of
2 drycleaning-solvent-contaminated sites and brownfield sites in
3 designated brownfield areas; application process; rulemaking
4 authority; revocation authority.--

5 (1) The Legislature finds that:

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

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

16 (2)(a) A credit in the amount of 35 percent of the
17 costs of voluntary cleanup activity that is integral to site
18 rehabilitation at the following sites is allowed pursuant to
19 ss. 199.1055 and 220.1845:

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

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

27 3. A brownfield site in a designated brownfield area
28 under s. 376.80.

29 (b) A taxpayer, or multiple taxpayers working jointly
30 to clean up a single site, may not receive more than \$250,000
31 per year in tax credits for each site voluntarily

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1 rehabilitated. Multiple taxpayers shall receive tax credits in
2 the same proportion as their contribution to payment of
3 cleanup costs. Tax credits are available only for site
4 rehabilitation conducted during the tax year in which the tax
5 credit application is submitted.

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

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

18 (4) To claim the credit, each applicant must apply to
19 the Department of Environmental Protection for an allocation
20 of the \$5 million annual credit by December 31 on a form
21 developed by the Department of Environmental Protection in
22 cooperation with the Department of Revenue. The form shall
23 include an affidavit from each applicant certifying that all
24 information contained in the application, including all
25 records of costs incurred and claimed in the tax credit
26 application, are true and correct. If the application is
27 submitted pursuant to subparagraph (2)(a)2., the form must
28 include an affidavit signed by the real property owner stating
29 that it is not, and has never been, the owner or operator of
30 the drycleaning facility where the contamination exists.
31 Approval of partial tax credits must be accomplished on a

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- 1 first-come, first-served basis based upon the date complete
2 applications are received by the Division of Waste Management.
3 An applicant shall submit only one application per site per
4 year. To be eligible for a tax credit the applicant must:
5 (a) Have entered into a voluntary cleanup agreement
6 with the Department of Environmental Protection for a
7 drycleaning-solvent-contaminated site or a Brownfield Site
8 Rehabilitation Agreement, as applicable; and
9 (b) Have paid all deductibles pursuant to s.
10 376.3078(3)(d) for eligible drycleaning-solvent-cleanup
11 program sites.
12 (5) To obtain the tax credit certificate, an applicant
13 must annually file an application for certification, which
14 must be received by the Department of Environmental Protection
15 by December 31. The applicant must provide all pertinent
16 information requested on the tax credit application form,
17 including, at a minimum, the name and address of the applicant
18 and the address and tracking identification number of the
19 eligible site. Along with the application form, the applicant
20 must submit the following:
21 (a) A nonrefundable review fee of \$250 made payable to
22 the Water Quality Assurance Trust Fund to cover the
23 administrative costs associated with the department's review
24 of the tax credit application;
25 (b) Copies of contracts and documentation of contract
26 negotiations, accounts, invoices, sales tickets, or other
27 payment records from purchases, sales, leases, or other
28 transactions involving actual costs incurred for that tax year
29 related to site rehabilitation, as that term is defined in ss.
30 376.301 and 376.79;
31 (c) Proof that the documentation submitted pursuant to

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1 paragraph (b) has been reviewed and verified by an independent
2 certified public accountant in accordance with standards
3 established by the American Institute of Certified Public
4 Accountants. Specifically, the certified public accountant
5 must attest to the accuracy and validity of the costs incurred
6 and paid by conducting an independent review of the data
7 presented by the applicant. Accuracy and validity of costs
8 incurred and paid would be determined once the level of effort
9 was certified by an appropriate professional registered in
10 this state in each contributing technical discipline. The
11 certified public accountant's report would also attest that
12 the costs included in the application form are not duplicated
13 within the application. A copy of the accountant's report
14 shall be submitted to the Department of Environmental
15 Protection with the tax credit application; and

16 (d) A certification form stating that site
17 rehabilitation activities associated with the documentation
18 submitted pursuant to paragraph (b) have been conducted under
19 the observation of, and related technical documents have been
20 signed and sealed by, an appropriate professional registered
21 in this state in each contributing technical discipline. The
22 certification form shall be signed and sealed by the
23 appropriate registered professionals stating that the costs
24 incurred were integral, necessary, and required for site
25 rehabilitation, as that term is defined in ss. 376.301 and
26 376.79.

27 (6) The certified public accountant and appropriate
28 registered professionals submitting forms as part of a tax
29 credit application must verify such forms. Verification must
30 be accomplished as provided in s. 92.525(1)(b) and subject to
31 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 35 percent
10 of the total costs claimed, subject to the \$250,000
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

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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.

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

(Redesignate subsequent sections.)

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

On page 1, between lines 2 and 3,

insert:

creating s. 199.1055, F.S.; providing for a contaminated site rehabilitation tax credit against the intangible personal property tax; authorizing the Department of Revenue to adopt rules; amending s. 220.02, F.S.; providing for an additional cross-reference; creating s. 220.1845, F.S.; providing for a contaminated site rehabilitation tax credit against the corporate income tax; authorizing the Department of Revenue to adopt rules; creating s. 376.30781, F.S.; providing for a partial tax credit for the rehabilitation of drycleaning-solvent-contaminated sites and brownfield sites; providing for the Department

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1 of Environmental Protection to allocate such
 2 partial credits; providing procedures for
 3 application for tax credits; providing for a
 4 nonrefundable review fee; providing
 5 verification requirements; authorizing the
 6 Department of Environmental Protection to adopt
 7 rules; providing for revocation or modification
 8 of eligibility for tax credit under certain
 9 conditions; amending s. 213.053, F.S.;
 10 providing for information-sharing;

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