

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 52, between lines 11 and 12,

insert:

Section 12. 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 25 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(10), 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 \$125,000
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.

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

15 (d) A taxpayer that receives a credit under s.
16 220.1845 is ineligible to receive credit under this section in
17 a given tax year.

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

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

28 (g) Tax credits that may be available under this
29 section to an entity eligible under s. 376.30781 may be
30 transferred after a merger or acquisition to the surviving or
31 acquiring entity and used in the same manner and with the same

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1 limitations.

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

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

13 (3) ADMINISTRATION; AUDIT AUTHORITY; TAX CREDIT
14 FORFEITURE.--

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

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

30 (c) It is grounds for forfeiture of previously claimed
31 and received tax credits if the Department of Revenue

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1 determines, as a result of either an audit or information
2 received from the Department of Environmental Protection, that
3 a taxpayer received tax credits under this section to which
4 the taxpayer was not entitled. In the case of fraud, the
5 taxpayer shall be prohibited from claiming any future tax
6 credits under this section or s. 220.1845.

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

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

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

31 4. Any taxpayer that fails to report and timely pay

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1 any tax due as a result of the forfeiture of its tax credit is
 2 in violation of this section and is subject to applicable
 3 penalty and interest.

4 Section 13. Subsection (10) of section 220.02, Florida
 5 Statutes, is amended to read:

6 220.02 Legislative intent.--

7 (10) It is the intent of the Legislature that credits
 8 against either the corporate income tax or the franchise tax
 9 be applied in the following order: those enumerated in s.
 10 220.68, those enumerated in s. 631.719(1), those enumerated in
 11 s. 631.705, those enumerated in s. 220.18, those enumerated in
 12 s. 631.828, those enumerated in s. 220.181, those enumerated
 13 in s. 220.183, those enumerated in s. 220.182, those
 14 enumerated in s. 220.1895, those enumerated in s. 221.02,
 15 those enumerated in s. 220.184, those enumerated in s.
 16 220.186, ~~and~~ those enumerated in s. 220.188, and those
 17 enumerated in s. 220.1845.

18 Section 14. Section 220.1845, Florida Statutes, is
 19 created to read:

20 220.1845 Contaminated site rehabilitation tax
 21 credit.--

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

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

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

29 2. A drycleaning-solvent-contaminated site at which
 30 cleanup is undertaken by the real property owner pursuant to
 31 s. 376.3078(10), 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 \$125,000
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.
11 (c) If the credit granted under this section is not
12 fully used in any one year because of insufficient tax
13 liability on the part of the corporation, the unused amount
14 may be carried forward for a period not to exceed 5 years. The
15 carryover credit may be used in a subsequent year when the tax
16 imposed by this chapter for that year exceeds the credit for
17 which the corporation is eligible in that year under this
18 section after applying the other credits and unused carryovers
19 in the order provided by s. 220.02(10).
20 (d) A taxpayer that files a consolidated return in
21 this state as a member of an affiliated group under s.
22 220.131(1) may be allowed the credit on a consolidated return
23 basis up to the amount of tax imposed upon and paid by the
24 taxpayer that incurred the rehabilitation costs.
25 (e) A taxpayer that receives credit under s. 199.1055
26 is ineligible to receive credit under this section in a given
27 tax year.
28 (f) A taxpayer that receives state-funded site
29 rehabilitation under s. 376.3078(3) for rehabilitation of a
30 drycleaning-solvent-contaminated site is ineligible to receive
31 credit under this section for costs incurred by the taxpayer

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1 in conjunction with the rehabilitation of that site during the
2 same time period that state-administered site rehabilitation
3 was underway.

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

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

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

19 (2) FILING REQUIREMENTS.--Any corporation that wishes
20 to obtain credit under this section must submit with its
21 return a tax credit certificate approving partial tax credits
22 issued by the Department of Environmental Protection under s.
23 376.30781.

24 (3) ADMINISTRATION; AUDIT AUTHORITY; TAX CREDIT
25 FORFEITURE.--

26 (a) The Department of Revenue may adopt rules to
27 prescribe any necessary forms required to claim a tax credit
28 under this section and to provide the administrative
29 guidelines and procedures required to administer this section.

30 (b) In addition to its existing audit and
31 investigation authority in chapters 199 and 220, the

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1 Department of Revenue may perform any additional financial and
2 technical audits and investigations, including examining the
3 accounts, books, or records of the tax credit applicant, which
4 are necessary to verify the site-rehabilitation costs included
5 in a tax credit return and to ensure compliance with this
6 section. The Department of Environmental Protection shall
7 provide technical assistance, when requested by the Department
8 of Revenue, on any technical audits performed pursuant to this
9 section.

10 (c) It is grounds for forfeiture of previously claimed
11 and received tax credits if the Department of Revenue
12 determines, as a result of either an audit or information
13 received from the Department of Environmental Protection, that
14 a taxpayer received tax credits pursuant to this section to
15 which the taxpayer was not entitled. In the case of fraud, the
16 taxpayer shall be prohibited from claiming any future tax
17 credits under this section or s. 199.1055.

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

21 2. The taxpayer shall file with the Department of
22 Revenue an amended tax return or such other report as the
23 Department of Revenue prescribes by rule and shall pay any
24 required tax within 60 days after the taxpayer receives
25 notification from the Department of Environmental Protection
26 pursuant to s. 376.30781 that previously approved tax credits
27 have been revoked or modified, if uncontested, or within 60
28 days after a final order is issued following proceedings
29 involving a contested revocation or modification order.

30 3. A notice of deficiency may be issued by the
31 Department of Revenue at any time within 5 years after the

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

11 4. Any taxpayer that fails to report and timely pay
12 any tax due as a result of the forfeiture of its tax credit is
13 in violation of this section and is subject to applicable
14 penalty and interest.

15 Section 15. Section 376.30781, Florida Statutes, is
16 created to read:

17 376.30781 Partial tax credits for rehabilitation of
18 drycleaning-solvent-contaminated sites and brownfield sites in
19 designated brownfield areas; application process; rulemaking
20 authority; revocation authority.--

21 (1) The Legislature finds that:

22 (a) To facilitate property transactions and economic
23 growth and development, it is in the interest of the state to
24 encourage the cleanup, at the earliest possible time, of
25 drycleaning-solvent-contaminated sites and brownfield sites in
26 designated brownfield areas.

27 (b) It is the intent of the Legislature to encourage
28 the voluntary cleanup of drycleaning-solvent-contaminated
29 sites and brownfield sites in designated brownfield areas by
30 providing a partial tax credit for the restoration of such
31 property in specified circumstances.

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

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

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

12 3. A brownfield site in a designated brownfield area
13 under s. 376.80.

14 (b) A taxpayer, or multiple taxpayers working jointly
15 to clean up a single site, may not receive more than \$125,000
16 per year in tax credits for each site voluntarily
17 rehabilitated. Multiple taxpayers shall receive tax credits in
18 the same proportion as their contribution to payment of
19 cleanup costs. Tax credits are available only for site
20 rehabilitation conducted during the tax year in which the tax
21 credit application is submitted.

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

30 (3) The Department of Environmental Protection shall
31 be responsible for allocating the tax credits provided for in

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1 ss. 199.1055 and 220.1845, not to exceed a total of \$5 million
2 in tax credits annually.

3 (4) To claim the credit, each applicant must apply to
4 the Department of Environmental Protection for an allocation
5 of the \$5 million annual credit by December 31 on a form
6 developed by the Department of Environmental Protection in
7 cooperation with the Department of Revenue. The form shall
8 include an affidavit from each applicant certifying that all
9 information contained in the application, including all
10 records of costs incurred and claimed in the tax credit
11 application, are true and correct. If the application is
12 submitted pursuant to subparagraph (2)(a)2., the form must
13 include an affidavit signed by the real property owner stating
14 that it is not, and has never been, the owner or operator of
15 the drycleaning facility where the contamination exists.
16 Approval of partial tax credits must be accomplished on a
17 first-come, first-served basis based upon the date complete
18 applications are received by the Division of Waste Management.
19 An applicant shall submit only one application per site per
20 year. To be eligible for a tax credit the applicant must:

21 (a) Have entered into a voluntary cleanup agreement
22 with the Department of Environmental Protection for a
23 drycleaning-solvent-contaminated site or a Brownfield Site
24 Rehabilitation Agreement, as applicable; and

25 (b) Have paid all deductibles pursuant to s.
26 376.3078(3)(d) for eligible drycleaning-solvent-cleanup
27 program sites.

28 (5) To obtain the tax credit certificate, an applicant
29 must annually file an application for certification, which
30 must be received by the Department of Environmental Protection
31 by December 31. The applicant must provide all pertinent

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1 information requested on the tax credit application form,
2 including, at a minimum, the name and address of the applicant
3 and the address and tracking identification number of the
4 eligible site. Along with the application form, the applicant
5 must submit the following:

6 (a) A nonrefundable review fee of \$250 made payable to
7 the Water Quality Assurance Trust Fund to cover the
8 administrative costs associated with the department's review
9 of the tax credit application;

10 (b) Copies of contracts and documentation of contract
11 negotiations, accounts, invoices, sales tickets, or other
12 payment records from purchases, sales, leases, or other
13 transactions involving actual costs incurred for that tax year
14 related to site rehabilitation, as that term is defined in ss.
15 376.301 and 376.79;

16 (c) Proof that the documentation submitted pursuant to
17 paragraph (b) has been reviewed and verified by an independent
18 certified public accountant in accordance with standards
19 established by the American Institute of Certified Public
20 Accountants. Specifically, the certified public accountant
21 must attest to the accuracy and validity of the costs incurred
22 and paid by conducting an independent review of the data
23 presented by the applicant, as well as reporting on whether
24 the applicant's accounting control procedures have ensured
25 that such costs are paid only once. A copy of the accountant's
26 report shall be submitted to the Department of Environmental
27 Protection with the tax credit application; and

28 (d) A certification form stating that site
29 rehabilitation activities associated with the documentation
30 submitted pursuant to paragraph (b) have been conducted under
31 the observation of, and related technical documents have been

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1 signed and sealed by, an appropriate professional registered
2 in this state in each contributing technical discipline. The
3 certification form shall be signed and sealed by the
4 appropriate registered professionals stating that the costs
5 incurred were integral, necessary, and required for site
6 rehabilitation, as that term is defined in ss. 376.301 and
7 376.79.

8 (6) The certified public accountant and appropriate
9 registered professionals submitting forms as part of a tax
10 credit application must verify such forms. Verification must
11 be accomplished as provided in s. 92.525(1)(b) and subject to
12 the provisions of s. 92.525(3).

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

27 (8) On or before March 1, the Department of
28 Environmental Protection shall inform each eligible applicant
29 of the amount of its partial tax credit and provide each
30 eligible applicant with a tax credit certificate that must be
31 submitted with its tax return to the Department of Revenue to

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1 claim the tax credit. Credits will not result in the payment
2 of refunds if total credits exceed the amount of tax owed.

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

8 (10) The Department of Environmental Protection may
9 adopt rules to prescribe the necessary forms required to claim
10 tax credits under this section and to provide the
11 administrative guidelines and procedures required to
12 administer this section. Prior to the adoption of rules
13 regulating the tax credit application, the department shall,
14 by September 1, 1998, establish reasonable interim application
15 requirements and forms.

16 (11) The Department of Environmental Protection may
17 revoke or modify any written decision granting eligibility for
18 partial tax credits under this section if it is discovered
19 that the tax credit applicant submitted any false statement,
20 representation, or certification in any application, record,
21 report, plan, or other document filed in an attempt to receive
22 partial tax credits under this section. The Department of
23 Environmental Protection shall immediately notify the
24 Department of Revenue of any revoked or modified orders
25 affecting previously granted partial tax credits.
26 Additionally, the taxpayer must notify the Department of
27 Revenue of any change in its tax credit claimed.

28 (12) An owner, operator, or real property owner who
29 receives state-funded site rehabilitation under s. 376.3078(3)
30 for rehabilitation of a drycleaning-solvent-contaminated site
31 is ineligible to receive a tax credit under s. 199.1055 or s.

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1 220.1845 for costs incurred by the taxpayer in conjunction
2 with the rehabilitation of that site during the same time
3 period that state-administered site rehabilitation was
4 underway.

5 Section 16. Paragraph (o) is added to subsection (7)
6 of section 213.053, Florida Statutes, to read:

7 213.053 Confidentiality and information sharing.--

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

10 (o) Information relative to ss. 199.1055, 220.1845,
11 and 376.30781 to the Department of Environmental Protection in
12 the conduct of its official business.

13
14 Disclosure of information under this subsection shall be
15 pursuant to a written agreement between the executive director
16 and the agency. Such agencies, governmental or
17 nongovernmental, shall be bound by the same requirements of
18 confidentiality as the Department of Revenue. Breach of
19 confidentiality is a misdemeanor of the first degree,
20 punishable as provided by s. 775.082 or s. 775.083.

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22
23 ===== T I T L E A M E N D M E N T =====

24 And the title is amended as follows:

25 On page 2, line 26, after the semicolon
26
27 insert:
28 creating s. 199.1055, F.S.; providing for a
29 contaminated site rehabilitation tax credit
30 against the intangible personal property tax;
31 authorizing the Department of Revenue to adopt

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1 rules; amending s. 220.02, F.S.; providing for
2 an additional cross-reference; creating s.
3 220.1845, F.S.; providing for a contaminated
4 site rehabilitation tax credit against the
5 corporate income tax; authorizing the
6 Department of Revenue to adopt rules; creating
7 s. 376.30781, F.S.; providing for a partial tax
8 credit for the rehabilitation of
9 drycleaning-solvent-contaminated sites and
10 brownfield sites; providing for the Department
11 of Environmental Protection to allocate such
12 partial credits; providing procedures for
13 application for tax credits; providing for a
14 nonrefundable review fee; providing
15 verification requirements; authorizing the
16 Department of Environmental Protection to adopt
17 rules; providing for revocation or modification
18 of eligibility for tax credit under certain
19 conditions; amending s. 213.053, F.S.;
20 providing for information-sharing;

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