

By Senator Garcia

39-852-01

1                                   A bill to be entitled  
2           An act relating to site rehabilitation of  
3           contaminated sites; creating s. 376.30701,  
4           F.S.; extending application of risk-based  
5           corrective-action principles to all  
6           contaminated sites resulting from a discharge  
7           of pollutants or hazardous substances;  
8           providing for contamination cleanup criteria  
9           that incorporate risk-based corrective-action  
10          principles to be adopted by rule; providing  
11          clarification that cleanup criteria do not  
12          apply to offsite relocation or treatment;  
13          specifying the conditions under which further  
14          rehabilitation may be required; creating s.  
15          376.30702, F.S.; creating the State-Owned Lands  
16          Cleanup Program to address site rehabilitation  
17          of contaminated state-owned lands; stating  
18          legislative findings and intent; directing the  
19          Department of Environmental Protection to use  
20          existing site-priority ranking and cleanup  
21          criteria; establishing liability protection;  
22          specifying conditions under which the  
23          department must seek cost recovery; providing  
24          exclusions; amending s. 199.1055, F.S.;  
25          providing for tax credits; providing a time  
26          period for use of tax credits; amending s.  
27          220.1845, F.S.; providing for tax credits;  
28          providing a time period for use of tax credits;  
29          allowing taxpayers to claim credit on a  
30          consolidated return up to the amount of the  
31          consolidated group's tax liability; amending s.

1           376.30781, F.S.; providing for tax credits;  
2           prescribing the tax-credit application time  
3           period; revising the deadline; prohibiting  
4           placeholder applications; cross-referencing  
5           sections governing transferability of tax  
6           credits; eliminating obsolete provisions;  
7           providing an effective date.

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

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11           Section 1. Section 376.30701, Florida Statutes, is  
12   created to read:

13           376.30701 Application of risk-based corrective-action  
14 principles to contaminated sites; applicability; legislative  
15 intent; rulemaking authority; contamination cleanup criteria;  
16 limitations; reopeners.--

17           (1) APPLICABILITY.--

18           (a) This section does not create or establish any new  
19 liability for site rehabilitation at contaminated sites. This  
20 section is intended to describe a risk-based corrective-action  
21 process to be applied at sites where legal responsibility for  
22 site rehabilitation exists pursuant to other provisions of  
23 chapter 376 or chapter 403.

24           (b) This section applies to all contaminated sites  
25 resulting from a discharge of pollutants or hazardous  
26 substances where legal responsibility for site rehabilitation  
27 exists pursuant to other provisions of chapter 376 or chapter  
28 403, except for those contaminated sites subject to the  
29 risk-based corrective-action cleanup criteria established for  
30 the petroleum, brownfields, and drycleaning programs pursuant  
31 to ss. 376.3071, 376.81, and 376.3078.

1       (c) This section applies to a variety of site  
2 rehabilitation scenarios including, but not limited to, site  
3 rehabilitation conducted voluntarily, conducted pursuant to  
4 the department's enforcement authority, or conducted as a  
5 state-managed cleanup by the department.

6       (d) This section, and any rules adopted pursuant  
7 thereto, shall apply retroactively to all existing  
8 contaminated sites where legal responsibility for site  
9 rehabilitation exists pursuant to other provisions of chapter  
10 376 or chapter 403, except to those sites for which cleanup  
11 target levels have been accepted by the department in an  
12 approved technical document, current permit, or other written  
13 agreement and to those sites that have received a No Further  
14 Action Order or a Site Rehabilitation Completion Order from  
15 the department. However, the person responsible for site  
16 rehabilitation may elect to have the provisions of this  
17 section, including cleanup target levels established pursuant  
18 thereto, apply in lieu of those in an approved technical  
19 document, current permit, or other written agreement.

20       (e) This section may not be construed to prohibit or  
21 delay actions to respond to a discharge of pollutants or  
22 hazardous substances before any contact with the department.  
23 The risk-based corrective-action process contemplates  
24 appropriate emergency-response action or initial remedial  
25 action before any formal application of the risk-based  
26 corrective-action process involving site assessment, and if  
27 required, subsequent remedial action. Any emergency response  
28 actions or initial remedial actions must be conducted in  
29 accordance with all applicable federal, state, and local laws  
30 and regulations.

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1           (2) INTENT; RULEMAKING AUTHORITY; CLEANUP  
2 CRITERIA.--It is the intent of the Legislature to protect the  
3 health of all people under actual circumstances of exposure.  
4 By July 1, 2002, the secretary of the department shall  
5 establish criteria by rule for the purpose of determining, on  
6 a site-specific basis, the rehabilitation program tasks that  
7 comprise a site rehabilitation program, including a voluntary  
8 site rehabilitation program, and the level at which a  
9 rehabilitation program task and a site rehabilitation program  
10 may be considered completed. In establishing these rules, the  
11 department shall apply, to the maximum extent feasible, a  
12 risk-based corrective-action process to achieve protection of  
13 human health and safety and the environment in a  
14 cost-effective manner based on the principles set forth in  
15 this subsection. These rules must prescribe a phased  
16 risk-based corrective-action process that is iterative and  
17 that tailors site rehabilitation tasks to site-specific  
18 conditions and risk. The department and the person responsible  
19 for site rehabilitation are encouraged to establish decision  
20 points at which risk-management decisions will be made. The  
21 department shall provide an early decision, when requested,  
22 regarding applicable exposure factors and a risk-management  
23 approach based on the current and future land use at the site.  
24 These rules must also include protocols for the use of natural  
25 attenuation, the use of institutional and engineering  
26 controls, and the issuance of "no further action" letters. The  
27 criteria for determining what constitutes a rehabilitation  
28 program task or completion of a site rehabilitation program  
29 task or site rehabilitation program, including a voluntary  
30 site rehabilitation program, must:  
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1           (a) Consider the current exposure and potential risk  
2 of exposure to humans and the environment, including multiple  
3 pathways of exposure. The physical, chemical, and biological  
4 characteristics of each contaminant must be considered in  
5 order to determine the feasibility of risk-based  
6 corrective-action assessment.

7           (b) Establish the point of compliance at the source of  
8 the contamination. However, the department may temporarily  
9 move the point of compliance to the boundary of the property,  
10 or to the edge of the plume when the plume is within the  
11 property boundary, while cleanup, including cleanup through  
12 natural attenuation processes in conjunction with appropriate  
13 monitoring, is proceeding. The department may also, pursuant  
14 to criteria provided for in this section, temporarily extend  
15 the point of compliance beyond the property boundary with  
16 appropriate monitoring, if such extension is needed to  
17 facilitate natural attenuation or to address the current  
18 conditions of the plume, provided that human health, public  
19 safety, and the environment are protected. When temporarily  
20 extending the point of compliance beyond the property  
21 boundary, it may not be extended further than the lateral  
22 extent of the plume, if known, at the time of execution of a  
23 cleanup agreement, if required, or the lateral extent of the  
24 plume as defined at the time of site assessment. Temporary  
25 extension of the point of compliance beyond the property  
26 boundary, as provided in this paragraph, must include actual  
27 notice by the person responsible for site rehabilitation to  
28 local governments and the owners of any property into which  
29 the point of compliance is allowed to extend and constructive  
30 notice to residents and business tenants of the property into  
31 which the point of compliance is allowed to extend. Persons

1 receiving notice pursuant to this paragraph must be given the  
2 opportunity to comment within 30 days after receipt of the  
3 notice.

4 (c) Ensure that the site-specific cleanup goal is that  
5 all contaminated sites being cleaned up under this section  
6 ultimately achieve the applicable cleanup target levels  
7 provided in this subsection. In the circumstances provided  
8 below, and after constructive notice and opportunity to  
9 comment within 30 days after receipt of the notice to local  
10 government, to owners of any property into which the point of  
11 compliance is allowed to extend, and to residents on any  
12 property into which the point of compliance is allowed to  
13 extend, the department may allow concentrations of  
14 contaminants to temporarily exceed the applicable cleanup  
15 target levels while cleanup, including cleanup through natural  
16 attenuation processes in conjunction with appropriate  
17 monitoring, is proceeding, if human health, public safety, and  
18 the environment are protected.

19 (d) Allow the use of institutional or engineering  
20 controls at contaminated sites being cleaned up under this  
21 section, where appropriate, to eliminate or control the  
22 potential exposure to contaminants of humans or the  
23 environment. The use of controls must be preapproved by the  
24 department and only after constructive notice and opportunity  
25 to comment within 30 days after receipt of notice is provided  
26 to local governments, to owners of any property into which the  
27 point of compliance is allowed to extend, and to residents on  
28 any property into which the point of compliance is allowed to  
29 extend. When institutional or engineering controls are  
30 implemented to control exposure, the removal of the controls  
31 must have prior department approval and must be accompanied by

1 the resumption of active cleanup, or other approved controls,  
2 unless cleanup target levels under this section have been  
3 achieved.

4 (e) Consider the additive effects of contaminants.  
5 The synergistic and antagonistic effects must also be  
6 considered when the scientific data become available.

7 (f) Take into consideration individual site  
8 characteristics, which includes, but is not limited to, the  
9 current and projected use of the affected groundwater and  
10 surface water in the vicinity of the site, current and  
11 projected land uses of the area affected by the contamination,  
12 the exposed population, the degree and extent of  
13 contamination, the rate of contaminant migration, the apparent  
14 or potential rate of contaminant degradation through natural  
15 attenuation processes, the location of the plume, and the  
16 potential for further migration in relation to site property  
17 boundaries.

18 (g) Apply state water quality standards as follows:  
19 1. Cleanup target levels for each contaminant found in  
20 groundwater must be the applicable state water quality  
21 standards. Where such standards do not exist, the cleanup  
22 target levels for groundwater must be based on the minimum  
23 criteria specified in department rule. The department shall  
24 apply the following, as appropriate, in establishing the  
25 applicable cleanup target levels: calculations using a  
26 lifetime cancer risk level of 1.0E-6; a hazard index of 1 or  
27 less; the best achievable detection limit; and nuisance,  
28 organoleptic, and aesthetic considerations. However, the  
29 department shall not require site rehabilitation to achieve a  
30 cleanup target level for any individual contaminant that is

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1 more stringent than the site-specific, naturally occurring  
2 background concentration for that contaminant.

3 2. Where surface waters are exposed to contaminated  
4 groundwater, the cleanup target levels for the contaminants  
5 must be based on the more protective of the groundwater or  
6 surface water standards as established by department rule. The  
7 point of measuring compliance with the surface water standards  
8 shall be in the groundwater immediately adjacent to the  
9 surface water body.

10 3. Using risk-based corrective-action principles, the  
11 department shall approve alternative cleanup target levels in  
12 conjunction with institutional and engineering controls, if  
13 needed, based upon an applicant's demonstration, using  
14 site-specific data, modeling results, risk-assessment studies,  
15 risk-reduction techniques, or a combination thereof, that  
16 human health, public safety, and the environment are protected  
17 to the same degree as provided in subparagraphs 1. and 2.  
18 When a state water-quality standard is applicable, a deviation  
19 may not result in the application of cleanup target levels  
20 more stringent than the standard. In determining whether it is  
21 appropriate to establish alternative cleanup target levels at  
22 a site, the department must consider the effectiveness of any  
23 source removal that has been completed at the site and the  
24 practical likelihood of the use of low yield or poor quality  
25 groundwater, the use of groundwater near marine surface water  
26 bodies, the current and projected use of the affected  
27 groundwater in the vicinity of the site, or the use of  
28 groundwater in the immediate vicinity of the contaminated  
29 area, where it has been demonstrated that the groundwater  
30 contamination is not migrating away from such localized

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1 source, provided human health, public safety, and the  
2 environment are protected.

3 (h) Provide for the department to issue a "no further  
4 action order," with conditions including, but not limited to,  
5 the use of institutional or engineering controls where  
6 appropriate, when alternative cleanup target levels  
7 established pursuant to subparagraph (g)3. have been achieved,  
8 or when the person responsible for site rehabilitation  
9 demonstrates that the cleanup target level is unachievable  
10 within available technologies. Before issuing such an order,  
11 the department shall consider the feasibility of an  
12 alternative site-rehabilitation technology at the contaminated  
13 site.

14 (i) Establish appropriate cleanup target levels for  
15 soils.

16 1. In establishing soil cleanup target levels for  
17 human exposure to each contaminant found in soils from the  
18 land surface to 2 feet below land surface, the department  
19 shall apply the following, as appropriate: calculations using  
20 a lifetime cancer risk level of 1.0E-6; a hazard index of 1 or  
21 less; and the best achievable detection limit. However, the  
22 department may not require site rehabilitation to achieve a  
23 cleanup target level for an individual contaminant which is  
24 more stringent than the site-specific, naturally occurring  
25 background concentration for that contaminant. Institutional  
26 controls or other methods must be used to prevent human  
27 exposure to contaminated soils more than 2 feet below the land  
28 surface. Any removal of such institutional controls requires  
29 that such contaminated soils be remediated.

30 2. Leachability-based soil target levels must be based  
31 on protection of the groundwater cleanup target levels or the

1 alternative cleanup target levels for groundwater established  
2 pursuant to this paragraph, as appropriate. Source removal and  
3 other cost-effective alternatives that are technologically  
4 feasible must be considered in achieving the leachability soil  
5 target levels established by the department. The leachability  
6 goals do not apply if the department determines, based upon  
7 individual site characteristics and in conjunction with  
8 institutional and engineering controls, if needed, that  
9 contaminants will not leach into the groundwater at levels  
10 that pose a threat to human health, public safety, or the  
11 environment.

12 3. Using risk-based corrective-action principles, the  
13 department shall approve alternative cleanup target levels in  
14 conjunction with institutional and engineering controls, if  
15 needed, based upon an applicant's demonstration, using  
16 site-specific data, modeling results, risk-assessment studies,  
17 risk-reduction techniques, or a combination thereof, that  
18 human health, public safety, and the environment are protected  
19 to the same degree as provided in subparagraphs 1. and 2.

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21 The department shall require source removal as a  
22 risk-reduction measure, if warranted and cost-effective. Once  
23 source removal at a site has been completed, the department  
24 shall reevaluate the site to determine the degree of active  
25 cleanup needed to continue. Further, the department shall  
26 determine whether the reevaluated site qualifies for  
27 monitoring only or if no further action is required to  
28 rehabilitate the site. If additional site rehabilitation is  
29 necessary to reach "no further action" status, the department  
30 is encouraged to use natural attenuation and monitoring where  
31 site conditions warrant.

1           (3) LIMITATIONS.--The cleanup criteria established  
2 under this section govern only site rehabilitation activities  
3 occurring at the contaminated site. Removal of contaminated  
4 media from a site for offsite relocation or treatment must be  
5 in accordance with all applicable federal, state, and local  
6 laws and regulations.

7           (4) REOPENERS.--Upon completion of site rehabilitation  
8 in compliance with subsection (2), additional site  
9 rehabilitation is not required unless it is demonstrated:

10           (a) That fraud was committed in demonstrating site  
11 conditions or completion of site rehabilitation;

12           (b) That new information confirms the existence of an  
13 area of previously unknown contamination that exceeds the  
14 site-specific rehabilitation levels established in accordance  
15 with subsection (2), or that otherwise poses the threat of  
16 real and substantial harm to public health, safety, or the  
17 environment;

18           (c) That the remediation efforts failed to achieve the  
19 site rehabilitation criteria established under this section;

20           (d) That the level of risk is increased beyond the  
21 acceptable risk established under subsection (2) due to  
22 substantial changes in exposure conditions, such as a change  
23 in land use from nonresidential to residential use. Any person  
24 who changes the land use of the site, thus causing the level  
25 of risk to increase beyond the acceptable risk level, may be  
26 required by the department to undertake additional remediation  
27 measures to assure that human health, public safety, and the  
28 environment are protected consistent with this section; or

29           (e) That a new discharge of pollutants or hazardous  
30 substances or disposal of solid waste or hazardous waste  
31 occurs at the site subsequent to the issuance of a "no further

1 action" letter or site rehabilitation completion order  
2 associated with the original contamination being addressed  
3 under this section.

4 Section 2. Section 376.30702, Florida Statutes, is  
5 created to read:

6 376.30702 State-Owned-Lands Cleanup Program; findings;  
7 intent; purpose; program requirements; limited liability  
8 protection; cost recovery; exclusions.--

9 (1) FINDINGS; INTENT.--In addition to the legislative  
10 findings set forth in s. 376.30, the Legislature finds and  
11 declares that:

12 (a) Significant quantities of pollutants or hazardous  
13 substances have been discharged in the past on state-owned  
14 lands. Generally, these discharges have occurred as part of  
15 the normal operation of facilities that existed on the  
16 property. Many of these discharges occurred prior to the state  
17 acquiring title to the property, or the discharges resulted  
18 from the acts of tenants or lessees of the state-owned lands.

19 (b) These discharges of pollutants and hazardous  
20 substances on state-owned lands may pose a significant threat  
21 to the quality of the groundwaters and inland surface waters  
22 of this state.

23 (c) Where contamination of the groundwater or surface  
24 water has occurred, remedial measures have often been delayed  
25 for long periods while determinations as to liability and the  
26 extent of liability have been made, and such delays have  
27 resulted in the continuation and intensification of the threat  
28 to the public health, safety, and welfare; in greater damage  
29 to the environment; and in potentially higher costs to contain  
30 and remove the contamination.

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1           (d) Adequate financial resources must be readily  
2 available to provide for the expeditious supply of safe and  
3 reliable alternative sources of potable water to affected  
4 persons and to provide a means for investigation and  
5 rehabilitation without delay of contaminated sites on  
6 state-owned lands.

7           (e) Site rehabilitation at contaminated sites on  
8 state-owned lands should be based on the actual risk that  
9 contamination may pose to the environment and public health,  
10 taking into account current and future land and water use and  
11 the degree to which contamination may spread and place the  
12 public or the environment at risk.

13           (2) CREATION; PURPOSES OF PROGRAM.--

14           (a) There is created the Florida State-Owned-Lands  
15 Cleanup Program to be administered by the department. To  
16 encourage detection, reporting, and cleanup of contamination  
17 on state-owned lands, the department shall, within the  
18 guidelines established in this section, implement a cleanup  
19 program to provide state-funded and state-managed site  
20 rehabilitation for all state-owned property contaminated by  
21 discharges of pollutants or hazardous substances that are  
22 reported to the department. It is not the intent of this  
23 program to provide funding for environmental compliance for  
24 ongoing operations on state-owned lands.

25           (b) Continuation of this program is subject to an  
26 annual appropriation from the Legislature. Continued state  
27 funding will not be considered an entitlement or a vested  
28 right under this section. The department shall not obligate  
29 funds in excess of the annual appropriation for this program.

30           (c) Whenever, in its determination, incidents of  
31 contamination on state-owned lands caused by pollutants or

1 hazardous substances may pose a threat to the environment or  
2 the public health, safety, or welfare, the department shall  
3 obligate moneys available under this section to provide for:  
4       1. Prompt investigation and assessment of the  
5 contaminated site.  
6       2. Expeditious treatment, restoration, or replacement  
7 of potable water supplies as provided in s. 376.30(3)(c)1.  
8       3. Rehabilitation of contaminated sites, which shall  
9 consist of rehabilitation of affected soil, groundwater,  
10 sediment and surface waters, using the most cost-effective  
11 alternative that is technologically feasible and reliable and  
12 that provides adequate protection of the public health,  
13 safety, and welfare and minimizes environmental damage, in  
14 accordance with the rehabilitation criteria established by the  
15 department under s. 376.30701, except that this subsection  
16 must not be construed to authorize the department to obligate  
17 funds for payment of costs that may be associated with, but  
18 are not integral to, site rehabilitation.  
19       4. Maintenance and monitoring of contaminated sites.  
20       5. Inspection and supervision of activities described  
21 in this subsection.  
22       6. Payment of expenses incurred by the department in  
23 its efforts to obtain from responsible parties the payment or  
24 recovery of reasonable costs resulting from the activities  
25 described in this subsection.  
26       7. Payment of any other reasonable costs of  
27 administration, including those administrative costs incurred  
28 by the Department of Health in providing field and laboratory  
29 services, toxicological risk assessment, and other assistance  
30 to the department in the investigation of drinking water  
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1 contamination complaints and costs associated with public  
2 information and education activities.

3 8. Reasonable costs of restoring property as nearly as  
4 practicable to the conditions that existed prior to activities  
5 associated with contamination assessment or remedial action.

6 (3) SITE PRIORITY RANKING AND CLEANUP CRITERIA.--

7 (a) The department shall determine the priority ranking  
8 of all known contaminated sites on state-owned lands using the  
9 criteria listed in s. 376.3078(7) and (8), except for s.  
10 376.3078(7)(e). In applying s. 376.3078(8)(h), the department  
11 shall consider all pollutants and hazardous substances. It is  
12 the intent of the Legislature that site rehabilitation be  
13 conducted first at those sites that pose the greatest threat  
14 to human health and the environment, within the availability  
15 of funds appropriated annually for this program. However, this  
16 subsection must not be construed to restrict the department  
17 from modifying the priority status of a rehabilitation site  
18 where conditions warrant, taking into consideration the actual  
19 distance between the contamination site and groundwater or  
20 surface water receptors or other factors that affect the risk  
21 of exposure to pollutants and hazardous substances.

22 (b) The department shall conduct site rehabilitation  
23 at contaminated sites being cleaned up under this program  
24 using the cleanup criteria established in s. 376.30701 and  
25 chapter 62-777, Florida Administrative Code, as that chapter  
26 may hereafter be amended.

27 (c) It is recognized that restoration of groundwater  
28 resources contaminated with pollutants or hazardous substances  
29 may not be achievable using currently available technology. If  
30 the use of available technology is not expected to achieve  
31 water quality standards, the department may use innovative

1 technology that has been field-tested and that has engineering  
2 and cost data available.

3 (d) This subsection may not be construed to restrict  
4 the department from temporarily postponing completion of any  
5 site rehabilitation activities at a contaminated site on  
6 state-owned lands for which funds are being expended under  
7 this section whenever the postponement is considered necessary  
8 in order to make funds available for rehabilitation of another  
9 contamination site on state-owned lands having a higher  
10 priority status.

11 (e) Regardless of a site's priority ranking, the  
12 department may temporarily postpone site rehabilitation at a  
13 contaminated site on state-owned lands for which federal  
14 funding may be available pursuant to the Formerly Used Defense  
15 Sites Program. The department, at its discretion, may proceed  
16 with state-funded cleanup of such sites if the likelihood of  
17 timely federal response is low.

18 (4) LIMITED LIABILITY PROTECTION.--

19 (a) Except at contaminated sites subject to site  
20 rehabilitation requirements under a federally delegated  
21 program, the department may not compel any state agency that  
22 controls or manages state-owned lands that are contaminated  
23 with pollutants or hazardous substances to conduct site  
24 rehabilitation at a contaminated site that has been reported  
25 to the department pursuant to paragraph (2)(a). Further,  
26 notwithstanding subsection (5), the department may not pursue  
27 cost recovery from any state agency for site rehabilitation  
28 costs incurred to clean up state-owned lands that are  
29 contaminated with pollutants or hazardous substances.

30 (b) Except as provided in paragraph (a), this section  
31 does not affect the department's ability or authority to



1 pursue enforcement against any person who may be liable for  
2 site rehabilitation with respect to a contaminated site on  
3 state-owned lands.

4 (c) This subsection does not affect the ability or  
5 authority to seek contribution from any person who may be  
6 liable with respect to a contaminated site on state-owned  
7 lands.

8 (d) This section does not subject the department to  
9 liability for any action that may be required of the property  
10 owner or the owner or operator of a facility on state-owned  
11 lands by any private party or any local, state, or Federal  
12 Government entity.

13 (5) DEPARTMENTAL DUTY TO SEEK RECOVERY AND  
14 REIMBURSEMENT.--

15 (a) Except as provided in subsection (4) and as  
16 otherwise provided by law, the department shall recover from  
17 any person causing or having caused the discharge of  
18 pollutants or hazardous substances on state-owned lands,  
19 jointly and severally pursuant to s. 376.308, all sums owed or  
20 expended for site rehabilitation at a site being cleaned up in  
21 the State-Owned Lands Cleanup Program, except that the  
22 department may decline to pursue such recovery if it finds  
23 that the amount involved is too small or the likelihood of  
24 recovery is too uncertain.

25 (b) Except as provided in subsection (4) and as  
26 otherwise provided by law, it is the duty of the department in  
27 administering the State-Owned Lands Cleanup Program to  
28 diligently pursue the recovery of any sum expended from the  
29 fund for site rehabilitation in accordance with the provisions  
30 of this section, unless the department finds that the amount  
31 involved is too small or the likelihood of recovery is too

1 uncertain. For the purposes of s. 95.11, the limitation period  
2 within which to institute an action to recover such sums  
3 begins on the last date on which any such sums were expended  
4 and not the date that the discharge occurred.

5 (c) In any action brought under this subsection, a  
6 person against whom the department pursues cost recovery is  
7 not required to reimburse the department for that percentage  
8 of the site rehabilitation costs which the presiding judicial  
9 officer apportions to a state agency that has received limited  
10 liability protection pursuant to subsection (4).

11 (6) EXCLUSIONS.--This section does not apply to the  
12 abatement of phosphorus pollution that the state is addressing  
13 under ss. 373.4592, 373.4595, and 373.461.

14 Section 3. Subsection (1) of section 199.1055, Florida  
15 Statutes, is amended to read:

16 199.1055 Contaminated site rehabilitation tax  
17 credit.--

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

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

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

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

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1           3. A brownfield site in a designated brownfield area  
2 under s. 376.80.

3           (b) A tax credit applicant taxpayer, or multiple tax  
4 credit applicants taxpayers working jointly to clean up a  
5 single site, may not be granted ~~receive~~ more than \$250,000 per  
6 year in tax credits for each site voluntarily rehabilitated.  
7 Multiple tax credit applicants taxpayers shall be granted  
8 ~~receive~~ tax credits in the same proportion as their  
9 contribution to payment of cleanup costs. Subject to the same  
10 conditions and limitations as provided in this section, a  
11 municipality, ~~or~~ county, or other tax credit applicant that  
12 ~~which~~ voluntarily rehabilitates a site may receive not more  
13 than \$250,000 per year in tax credits which it can  
14 subsequently transfer subject to the provisions in paragraph  
15 (g).

16           (c) If the credit granted under this section is not  
17 fully used in any one year because of insufficient tax  
18 liability on the part of the tax credit applicant taxpayer,  
19 the unused amount may be carried forward for a period not to  
20 exceed 5 years. The credit expires 5 years after the date the  
21 credit is granted under this section and may not thereafter be  
22 used. However, if during the 5-year period the credit is  
23 transferred, in whole or in part, under paragraph (g), each  
24 transferee has 5 years from the date of transfer to use its  
25 credit.

26           (d) A taxpayer that receives a credit under s.  
27 220.1845 is ineligible to receive credit under this section in  
28 a given tax year.

29           (e) A tax credit applicant taxpayer that receives  
30 state-funded site rehabilitation pursuant to s. 376.3078(3)  
31 for rehabilitation of a drycleaning-solvent-contaminated site

1 is ineligible to receive credit under this section for costs  
2 incurred by the tax credit applicant ~~taxpayer~~ in conjunction  
3 with the rehabilitation of that site during the same time  
4 period that state-administered site rehabilitation was  
5 underway.

6 (f) The total amount of the tax credits which may be  
7 granted under this section and s. 220.1845 is \$2 million  
8 annually.

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

14 2. The entity or its surviving or acquiring entity as  
15 described in subparagraph 1., may transfer any unused credit  
16 in whole or in units of no less than 25 percent of the  
17 remaining credit. The entity acquiring such credit may use it  
18 in the same manner and with the same limitation as described  
19 in this section. Such transferred credits may not be  
20 transferred again although they may succeed to a surviving or  
21 acquiring entity subject to the same conditions and  
22 limitations as described in this section.

23 3. In the event the credit provided for under this  
24 section is reduced either as a result of a determination by  
25 the Department of Environmental Protection or an examination  
26 or audit by the Department of Revenue, such tax deficiency  
27 shall be recovered from the first entity, or the surviving or  
28 acquiring entity, to have claimed such credit up to the amount  
29 of credit taken. Any subsequent deficiencies shall be  
30 assessed against any entity acquiring and claiming such  
31

1 credit, or in the case of multiple succeeding entities in the  
2 order of credit succession.

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

11 Section 4. Subsection (1) of section 220.1845, Florida  
12 Statutes, is amended to read:

13 220.1845 Contaminated site rehabilitation tax  
14 credit.--

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

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

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(11), 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 tax credit applicant ~~taxpayer~~, or multiple tax  
30 credit applicants ~~taxpayers~~ working jointly to clean up a  
31 single site, may not be granted ~~receive~~ more than \$250,000 per

1 year in tax credits for each site voluntarily rehabilitated.  
2 Multiple tax credit applicants ~~taxpayers~~ shall be granted  
3 ~~receive~~ tax credits in the same proportion as their  
4 contribution to payment of cleanup costs. Subject to the same  
5 conditions and limitations as provided in this section, a  
6 municipality, ~~or~~ county, or other tax credit applicant that  
7 ~~which~~ voluntarily rehabilitates a site may receive not more  
8 than \$250,000 per year in tax credits which it can  
9 subsequently transfer subject to the provisions in paragraph  
10 (h).

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(8). The credit expires 5  
20 years after the date the credit is granted under this section  
21 and may not thereafter be used. However, if during the 5-year  
22 period the credit is transferred, in whole or in part, under  
23 paragraph (h), each transferee has 5 years from the date of  
24 transfer to use its credit.

25 (d) A taxpayer that files a consolidated return in  
26 this state as a member of an affiliated group under s.  
27 220.131(1) may be allowed the credit on a consolidated return  
28 basis up to the amount of tax imposed upon the consolidated  
29 group and paid by the taxpayer that incurred the  
30 ~~rehabilitation costs.~~

31

1           (e) A taxpayer that receives credit under s. 199.1055  
2 is ineligible to receive credit under this section in a given  
3 tax year.

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

12           (g) The total amount of the tax credits which may be  
13 granted under this section and s. 199.1055 is \$2 million  
14 annually.

15           (h)1. Tax credits that may be available under this  
16 section to an entity eligible under s. 376.30781 may be  
17 transferred after a merger or acquisition to the surviving or  
18 acquiring entity and used in the same manner and with the same  
19 limitations.

20           2. The entity or its surviving or acquiring entity as  
21 described in subparagraph 1., may transfer any unused credit  
22 in whole or in units of no less than 25 percent of the  
23 remaining credit. The entity acquiring such credit may use it  
24 in the same manner and with the same limitation as described  
25 in this section. Such transferred credits may not be  
26 transferred again although they may succeed to a surviving or  
27 acquiring entity subject to the same conditions and  
28 limitations as described in this section.

29           3. In the event the credit provided for under this  
30 section is reduced either as a result of a determination by  
31 the Department of Environmental Protection or an examination

1 or audit by the Department of Revenue, such tax deficiency  
2 shall be recovered from the first entity, or the surviving or  
3 acquiring entity, to have claimed such credit up to the amount  
4 of credit taken. Any subsequent deficiencies shall be  
5 assessed against any entity acquiring and claiming such  
6 credit, or in the case of multiple succeeding entities in the  
7 order of credit succession.

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

16 Section 5. Section 376.30781, Florida Statutes, is  
17 amended to read:

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

22 (1) The Legislature finds that:

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

28 (b) It is the intent of the Legislature to encourage  
29 the voluntary cleanup of drycleaning-solvent-contaminated  
30 sites and brownfield sites in designated brownfield areas by  
31



1 providing a partial tax credit for the restoration of such  
2 property in specified circumstances.

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

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

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

14 3. A brownfield site in a designated brownfield area  
15 under s. 376.80.

16 (b) A tax credit applicant taxpayer, or multiple tax  
17 credit applicants taxpayers working jointly to clean up a  
18 single site, may not be granted ~~receive~~ more than \$250,000 per  
19 year in tax credits for each site voluntarily rehabilitated.  
20 Multiple tax credit applicants taxpayers shall be granted  
21 ~~receive~~ tax credits in the same proportion as their  
22 contribution to payment of cleanup costs. Tax credits are  
23 available only for site rehabilitation conducted during the  
24 calendar tax year for in which the tax credit application is  
25 submitted.

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

1 the Department of Environmental Protection issuing a "no  
2 further action" order for that site.

3 (3) The Department of Environmental Protection shall  
4 be responsible for allocating the tax credits provided for in  
5 ss. 199.1055 and 220.1845, not to exceed a total of \$2 million  
6 in tax credits annually.

7 (4) To claim the credit for site rehabilitation  
8 conducted during the current calendar year, each tax credit  
9 applicant must apply to the Department of Environmental  
10 Protection for an allocation of the \$2 million annual credit  
11 by January 15 of the following year ~~December 31~~ on a form  
12 developed by the Department of Environmental Protection in  
13 cooperation with the Department of Revenue. The form shall  
14 include an affidavit from each tax credit applicant certifying  
15 that all information contained in the application, including  
16 all records of costs incurred and claimed in the tax credit  
17 application, are true and correct. If the application is  
18 submitted pursuant to subparagraph (2)(a)2., the form must  
19 include an affidavit signed by the real property owner stating  
20 that it is not, and has never been, the owner or operator of  
21 the drycleaning facility where the contamination exists.  
22 Approval of partial tax credits must be accomplished on a  
23 first-come, first-served basis based upon the date complete  
24 applications are received by the Division of Waste Management.  
25 A tax credit ~~An~~ applicant shall submit only one complete  
26 application per site for each calendar year's site  
27 rehabilitation costs per year. Incomplete placeholder  
28 applications may not be accepted and will not secure a place  
29 in the first-come, first-served application line.To be  
30 eligible for a tax credit the tax credit applicant must:  
31

1           (a) Have entered into a voluntary cleanup agreement  
2 with the Department of Environmental Protection for a  
3 drycleaning-solvent-contaminated site or a Brownfield Site  
4 Rehabilitation Agreement, as applicable; and

5           (b) Have paid all deductibles pursuant to s.  
6 376.3078(3)(d) for eligible drycleaning-solvent-cleanup  
7 program sites.

8           (5) To obtain the tax credit certificate, a tax credit  
9 ~~an~~ applicant must annually file an application for  
10 certification, which must be received by the Department of  
11 Environmental Protection's Division of Waste Management  
12 ~~Protection~~ by January 15 of the year following the calendar  
13 year for which site rehabilitation costs are being claimed in  
14 a tax credit application ~~December 31~~. The tax credit applicant  
15 must provide all pertinent information requested on the tax  
16 credit application form, including, at a minimum, the name and  
17 address of the applicant and the address and tracking  
18 identification number of the eligible site. Along with the  
19 application form, the applicant must submit the following:

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

24           (b) Copies of contracts and documentation of contract  
25 negotiations, accounts, invoices, sales tickets, or other  
26 payment records from purchases, sales, leases, or other  
27 transactions involving actual costs incurred for that tax year  
28 related to site rehabilitation, as that term is defined in ss.  
29 376.301 and 376.79;

30           (c) Proof that the documentation submitted pursuant to  
31 paragraph (b) has been reviewed and verified by an independent

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

31

1           (7) The Department of Environmental Protection shall  
2 review the tax credit application and any supplemental  
3 documentation that the tax credit applicant may submit before  
4 the annual application deadline in order to have the  
5 application considered complete ~~submitted by each applicant~~,  
6 for the purpose of verifying that the tax credit applicant has  
7 met the qualifying criteria in subsections (2) and (4) and has  
8 submitted all required documentation listed in subsection (5).  
9 Upon verification that the tax credit applicant has met these  
10 requirements, the department shall issue a written decision  
11 granting eligibility for partial tax credits (a tax credit  
12 certificate) in the amount of 35 percent of the total costs  
13 claimed, subject to the \$250,000 limitation, for the calendar  
14 ~~tax~~ year for ~~in~~ which the tax credit application is submitted  
15 based on the report of the certified public accountant and the  
16 certifications from the appropriate registered technical  
17 professionals.

18           (8) On or before March 1, the Department of  
19 Environmental Protection shall inform each eligible tax credit  
20 applicant of the amount of its partial tax credit and provide  
21 each eligible tax credit applicant with a tax credit  
22 certificate that must be submitted with its tax return to the  
23 Department of Revenue to claim the tax credit or be  
24 transferred under s. 199.1055(g) or s. 220.1845(h). Credits  
25 will not result in the payment of refunds if total credits  
26 exceed the amount of tax owed.

27           (9) If a tax credit ~~an~~ applicant does not receive a  
28 tax credit allocation due to an exhaustion of the \$2 million  
29 annual tax credit authorization, such application will then be  
30 included in the same first-come, first-served order in the  
31

1 next year's annual tax credit allocation, if any, based on the  
2 prior year application.

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

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

24 (12) A tax credit applicant ~~An owner, operator, or~~  
25 ~~real property owner~~ who receives state-funded site  
26 rehabilitation under s. 376.3078(3) for rehabilitation of a  
27 drycleaning-solvent-contaminated site is ineligible to receive  
28 a tax credit under s. 199.1055 or s. 220.1845 for costs  
29 incurred by the tax credit applicant ~~taxpayer~~ in conjunction  
30 with the rehabilitation of that site during the same time

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1 period that state-administered site rehabilitation was  
2 underway.

3 Section 6. This act shall take effect upon becoming a  
4 law.

5  
6 \*\*\*\*\*

7 SENATE SUMMARY

8 Provides for the application of risk-based  
9 corrective-action principles to specified sites that are  
10 contaminated by the discharge of pollutants and hazardous  
11 substances. Creates the Florida State-Owned-Lands Cleanup  
12 Program to be administered by the Department of  
13 Environmental Protection. Revises the process for  
14 obtaining credits from the intangible personal property  
15 tax and the corporation income tax for the voluntary  
16 cleanup of contaminated sites.

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