



HB 1123

2003
CS

CHAMBER ACTION

The Committee on Natural Resources recommends the following:

Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to site rehabilitation of contaminated sites; creating s. 376.30701, F.S.; extending application of risk-based corrective action principles to all contaminated sites resulting from a discharge of pollutants or hazardous substances; providing for contamination cleanup criteria that incorporate risk-based corrective action principles to be adopted by rule; providing clarification that cleanup criteria do not apply to offsite relocation or treatment; providing the conditions under which further rehabilitation may be required; amending s. 199.1055, F.S.; clarifying who may apply for tax credits; clarifying time period for use of tax credits; amending s. 220.1845, F.S.; clarifying who may apply for tax credits; clarifying time period for use of tax credits; allowing tax credit applicants to claim credit on a consolidated return up to the amount of the consolidated group's tax liability; amending s. 376.30781, F.S.; clarifying who may apply for tax credits; converting



29 tax credit application time period to calendar year;
 30 moving application deadline to January 15; clarifying that
 31 placeholder applications are prohibited; amending s.
 32 403.087, F.S.; limiting a hazardous waste corrective
 33 action permit fee; amending s. 403.722, F.S.; requiring a
 34 corrective action permit for certain actions affecting a
 35 hazardous waste disposal facility; conforming references
 36 governing transferability of tax credits; eliminating
 37 outdated language; providing an effective date.

38

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

40

41 Section 1. Section 376.30701, Florida Statutes, is created
 42 to read:

43 376.30701 Application of risk-based corrective action
 44 principles to contaminated sites; applicability; legislative
 45 intent; rulemaking authority; contamination cleanup criteria;
 46 limitations; reopeners.--

47 (1) APPLICABILITY.--

48 (a) This section shall not create or establish any new
 49 liability for site rehabilitation at contaminated sites. This
 50 section is intended to describe a risk-based corrective action
 51 process to be applied at sites where legal responsibility for
 52 site rehabilitation exists pursuant to other provisions of this
 53 chapter or chapter 403. An exceedance of any cleanup target
 54 level derived from the cleanup criteria established in
 55 subsection (2) shall not, at sites where legal responsibility
 56 for site rehabilitation does not exist pursuant to other



HB 1123

2003
CS

57 provisions of this chapter or chapter 403, create liability for
58 site rehabilitation. This section may also apply to other
59 contaminated sites at which a person conducting site
60 rehabilitation elects to have it apply, even where such person
61 does not have legal responsibility for site rehabilitation
62 pursuant to this chapter or chapter 403. This section and any
63 rules adopted pursuant thereto, including the cleanup criteria
64 described in subsection (2), shall not create additional
65 authority to prohibit or limit the legal placement of materials
66 or products on land.

67 (b) This section shall apply to all contaminated sites
68 resulting from a discharge of pollutants or hazardous substances
69 where legal responsibility for site rehabilitation exists
70 pursuant to other provisions of this chapter or chapter 403,
71 except for those contaminated sites subject to the risk-based
72 corrective action cleanup criteria established for the
73 petroleum, brownfields, and drycleaning programs pursuant to ss.
74 376.3071, 376.81, and 376.3078, respectively.

75 (c) This section shall apply to a variety of site
76 rehabilitation scenarios including, but not limited to, site
77 rehabilitation conducted voluntarily, site rehabilitation
78 conducted pursuant to the department's enforcement authority, or
79 site rehabilitation conducted as a state-managed cleanup by the
80 department.

81 (d) This section, and any rules adopted pursuant thereto,
82 shall apply retroactively to all existing contaminated sites
83 where legal responsibility for site rehabilitation exists
84 pursuant to other provisions of this chapter or chapter 403,



HB 1123

2003
CS

85 except those sites for which cleanup target levels have been
86 accepted by the department in an approved technical document,
87 current permit, or other written agreement and except at those
88 sites that have received a "No Further Action" order or a "Site
89 Rehabilitation Completion" order from the department. However,
90 the person responsible for site rehabilitation can elect to have
91 the provisions of this section, including cleanup target levels
92 established pursuant thereto, apply in lieu of those in an
93 approved technical document, current permit, or other written
94 agreement.

95 (e) Nothing in this section shall be construed to prohibit
96 or delay actions to respond to a discharge of pollutants or
97 hazardous substances prior to any contact with the department.
98 The risk-based corrective action process contemplates
99 appropriate emergency response action or initial remedial action
100 prior to any formal application of the risk-based corrective
101 action process involving site assessment and, if required,
102 subsequent remedial action. Any emergency response actions or
103 initial remedial actions must be conducted in accordance with
104 all applicable federal, state, and local laws and regulations.

105 (2) INTENT; RULEMAKING AUTHORITY; CLEANUP CRITERIA.--It is
106 the intent of the Legislature to protect the health of all
107 people under actual circumstances of exposure. By July 1, 2004,
108 the secretary of the department shall establish criteria by rule
109 for the purpose of determining, on a site-specific basis, the
110 rehabilitation program tasks that comprise a site rehabilitation
111 program, including a voluntary site rehabilitation program, and
112 the level at which a rehabilitation program task and a site



HB 1123

2003
CS

113 rehabilitation program may be deemed completed. In establishing
114 these rules, the department shall apply, to the maximum extent
115 feasible, a risk-based corrective action process to achieve
116 protection of human health and safety and the environment in a
117 cost-effective manner based on the principles set forth in this
118 subsection. These rules shall prescribe a phased risk-based
119 corrective action process that is iterative and that tailors
120 site rehabilitation tasks to site-specific conditions and risks.
121 The department and the person responsible for site
122 rehabilitation are encouraged to establish decision points at
123 which risk management decisions will be made. The department
124 shall provide an early decision, when requested, regarding
125 applicable exposure factors and a risk management approach based
126 on the current and future land use at the site. These rules
127 shall also include protocols for the use of natural attenuation,
128 the use of institutional and engineering controls, and the
129 issuance of "No Further Action" orders. The criteria for
130 determining what constitutes a rehabilitation program task or
131 completion of a site rehabilitation program task or site
132 rehabilitation program, including a voluntary site
133 rehabilitation program, must:

134 (a) Consider the current exposure and potential risk of
135 exposure to humans and the environment, including multiple
136 pathways of exposure. The physical, chemical, and biological
137 characteristics of each contaminant must be considered in order
138 to determine the feasibility of a risk-based corrective action
139 assessment.



HB 1123

2003
CS

140 (b) Establish the point of compliance at the source of the
141 contamination. However, the department is authorized to
142 temporarily move the point of compliance to the boundary of the
143 property, or to the edge of the plume when the plume is within
144 the property boundary, while cleanup, including cleanup through
145 natural attenuation processes in conjunction with appropriate
146 monitoring, is proceeding. The department also is authorized,
147 pursuant to criteria provided in this section, to temporarily
148 extend the point of compliance beyond the property boundary with
149 appropriate monitoring, if such extension is needed to
150 facilitate natural attenuation or to address the current
151 conditions of the plume, provided human health, public safety,
152 and the environment are protected. When temporarily extending
153 the point of compliance beyond the property boundary, it cannot
154 be extended further than the lateral extent of the plume, if
155 known, at the time of execution of a cleanup agreement, if
156 required, or the lateral extent of the plume as defined at the
157 time of site assessment. Temporary extension of the point of
158 compliance beyond the property boundary, as provided in this
159 paragraph, must include actual notice by the person responsible
160 for site rehabilitation to local governments and the owners of
161 any property into which the point of compliance is allowed to
162 extend and constructive notice to residents and business tenants
163 of the property into which the point of compliance is allowed to
164 extend. Persons receiving notice pursuant to this paragraph
165 shall have the opportunity to comment within 30 days after
166 receipt of the notice. Additional notice concerning the status
167 of natural attenuation processes shall be similarly provided to



HB 1123

2003
CS

168 persons receiving notice pursuant to this paragraph every 5
169 years.

170 (c) Ensure that the site-specific cleanup goal is that all
171 contaminated sites being cleaned up pursuant to this section
172 ultimately achieve the applicable cleanup target levels provided
173 in this subsection. In the circumstances provided in this
174 subsection, and after constructive notice and opportunity to
175 comment within 30 days after receipt of the notice to local
176 government, owners of any property into which the point of
177 compliance is allowed to extend, and residents of any property
178 into which the point of compliance is allowed to extend, the
179 department may allow concentrations of contaminants to
180 temporarily exceed the applicable cleanup target levels while
181 cleanup, including cleanup through natural attenuation processes
182 in conjunction with appropriate monitoring, is proceeding, if
183 human health, public safety, and the environment are protected.

184 (d) Allow the use of institutional or engineering controls
185 at contaminated sites being cleaned up pursuant to this section,
186 where appropriate, to eliminate or control the potential
187 exposure to contaminants of humans or the environment. The use
188 of controls must be preapproved by the department and only after
189 constructive notice and opportunity to comment within 30 days
190 after receipt of notice is provided to local governments, owners
191 of any property into which the point of compliance is allowed to
192 extend, and residents on any property into which the point of
193 compliance is allowed to extend. When institutional or
194 engineering controls are implemented to control exposure, the
195 removal of the controls must have prior department approval and



HB 1123

2003
CS

196 must be accompanied by the resumption of active cleanup, or
197 other approved controls, unless cleanup target levels under this
198 section have been achieved.

199 (e) Consider the additive effects of contaminants. The
200 synergistic and antagonistic effects shall also be considered
201 when the scientific data become available.

202 (f) Take into consideration individual site
203 characteristics, which shall include, but not be limited to, the
204 current and projected use of the affected groundwater and
205 surface water in the vicinity of the site, current and projected
206 land uses of the area affected by the contamination, the exposed
207 population, the degree and extent of contamination, the rate of
208 contaminant migration, the apparent or potential rate of
209 contaminant degradation through natural attenuation processes,
210 the location of the plume, and the potential for further
211 migration in relation to site property boundaries.

212 (g) Apply state water quality standards as follows:

213 1. Cleanup target levels for each contaminant found in
214 groundwater shall be the applicable state water quality
215 standards. Where such standards do not exist, the cleanup target
216 levels for groundwater shall be based on the minimum criteria
217 specified in department rule. The department shall apply the
218 following, as appropriate, in establishing the applicable
219 cleanup target levels: calculations using a lifetime cancer risk
220 level of 1.0E-6; a hazard index of 1 or less; the best
221 achievable detection limit; and nuisance, organoleptic, and
222 aesthetic considerations. However, the department shall not
223 require site rehabilitation to achieve a cleanup target level



HB 1123

2003
CS

224 for any individual contaminant that is more stringent than the
225 site-specific, naturally occurring background concentration for
226 that contaminant.

227 2. Where surface waters are exposed to contaminated
228 groundwater, the cleanup target levels for the contaminants
229 shall be based on the more protective of the groundwater or
230 surface water standards as established by department rule. The
231 point of measuring compliance with the surface water standards
232 shall be in the groundwater immediately adjacent to the surface
233 water body.

234 3. Using risk-based corrective action principles, the
235 department shall approve alternative cleanup target levels in
236 conjunction with institutional and engineering controls, if
237 needed, based upon an applicant's demonstration, using site-
238 specific data, modeling results, risk assessment studies, risk
239 reduction techniques, or a combination thereof, that human
240 health, public safety, and the environment are protected to the
241 same degree as provided in subparagraphs 1. and 2. Where a state
242 water quality standard is applicable, a deviation may not result
243 in the application of cleanup target levels more stringent than
244 the standard. In determining whether it is appropriate to
245 establish alternative cleanup target levels at a site, the
246 department must consider the effectiveness of source removal, if
247 any, that has been completed at the site and the practical
248 likelihood of the use of low yield or poor quality groundwater,
249 the use of groundwater near marine surface water bodies, the
250 current and projected use of the affected groundwater in the
251 vicinity of the site, or the use of groundwater in the immediate



HB 1123

2003
CS

252 vicinity of the contaminated area, where it has been
253 demonstrated that the groundwater contamination is not migrating
254 away from such localized source, provided human health, public
255 safety, and the environment are protected. Groundwater resource
256 protection remains the ultimate goal of cleanup, particularly in
257 light of the state's continued growth and consequent demands for
258 drinking water resources. The Legislature recognizes the need
259 for a protective yet flexible cleanup approach that risk-based
260 corrective action provides. Only where it is appropriate on a
261 site-specific basis, using the criteria in this paragraph and
262 careful evaluation by the department, shall proposed alternative
263 cleanup target levels be approved.

264 (h) Provide for the department to issue a "No Further
265 Action" order, with conditions, including, but not limited to,
266 the use of institutional or engineering controls where
267 appropriate, when alternative cleanup target levels established
268 pursuant to subparagraph (g)3. have been achieved or when the
269 person responsible for site rehabilitation can demonstrate that
270 the cleanup target level is unachievable with the use of
271 available technologies. Prior to issuing such an order, the
272 department shall consider the feasibility of an alternative site
273 rehabilitation technology at the contaminated site.

274 (i) Establish appropriate cleanup target levels for soils.
275 Although there are existing state water quality standards, there
276 are no existing state soil quality standards. The Legislature
277 does not intend, through the adoption of this section, to create
278 such soil quality standards. The specific rulemaking authority
279 granted pursuant to this section merely authorizes the



HB 1123

2003
CS

280 department to establish appropriate soil cleanup target levels.
281 These soil cleanup target levels shall be applicable at sites
282 only after a determination as to legal responsibility for site
283 rehabilitation has been made pursuant to other provisions of
284 this chapter or chapter 403.

285 1. In establishing soil cleanup target levels for human
286 exposure to each contaminant found in soils from the land
287 surface to 2 feet below land surface, the department shall apply
288 the following, as appropriate: calculations using a lifetime
289 cancer risk level of 1.0E-6; a hazard index of 1 or less; and
290 the best achievable detection limit. However, the department
291 shall not require site rehabilitation to achieve a cleanup
292 target level for an individual contaminant that is more
293 stringent than the site-specific, naturally occurring background
294 concentration for that contaminant. Institutional controls or
295 other methods shall be used to prevent human exposure to
296 contaminated soils more than 2 feet below the land surface. Any
297 removal of such institutional controls shall require such
298 contaminated soils to be remediated.

299 2. Leachability-based soil cleanup target levels shall be
300 based on protection of the groundwater cleanup target levels or
301 the alternate cleanup target levels for groundwater established
302 pursuant to this paragraph, as appropriate. Source removal and
303 other cost-effective alternatives that are technologically
304 feasible shall be considered in achieving the leachability soil
305 cleanup target levels established by the department. The
306 leachability goals shall not be applicable if the department
307 determines, based upon individual site characteristics, and in



HB 1123

2003
CS

308 conjunction with institutional and engineering controls, if
309 needed, that contaminants will not leach into the groundwater at
310 levels that pose a threat to human health, public safety, and
311 the environment.

312 3. Using risk-based corrective action principles, the
313 department shall approve alternative cleanup target levels in
314 conjunction with institutional and engineering controls, if
315 needed, based upon an applicant's demonstration, using site-
316 specific data, modeling results, risk assessment studies, risk
317 reduction techniques, or a combination thereof, that human
318 health, public safety, and the environment are protected to the
319 same degree as provided in subparagraphs 1. and 2.

320
321 The department shall require source removal as a risk reduction
322 measure if warranted and cost-effective. Once source removal at
323 a site is complete, the department shall reevaluate the site to
324 determine the degree of active cleanup needed to continue.
325 Further, the department shall determine if the reevaluated site
326 qualifies for monitoring only or if no further action is
327 required to rehabilitate the site. If additional site
328 rehabilitation is necessary to reach "No Further Action" status,
329 the department is encouraged to utilize natural attenuation and
330 monitoring where site conditions warrant.

331 (3) LIMITATIONS.--The cleanup criteria established
332 pursuant to this section govern only site rehabilitation
333 activities occurring at the contaminated site. Removal of
334 contaminated media from a site for offsite relocation or



HB 1123

2003
CS

335 treatment must be in accordance with all applicable federal,
336 state, and local laws and regulations.

337 (4) REOPENERS.--Upon completion of site rehabilitation in
338 compliance with subsection (2), additional site rehabilitation
339 is not required unless it is demonstrated that:

340 (a) Fraud was committed in demonstrating site conditions
341 or completion of site rehabilitation;

342 (b) New information confirms the existence of an area of
343 previously unknown contamination which exceeds the site-specific
344 rehabilitation levels established in accordance with subsection
345 (2), or which otherwise poses the threat of real and substantial
346 harm to public health, safety, or the environment;

347 (c) The remediation efforts failed to achieve the site
348 rehabilitation criteria established under this section;

349 (d) The level of risk is increased beyond the acceptable
350 risk established under subsection (2) due to substantial changes
351 in exposure conditions, such as a change in land use from
352 nonresidential to residential use. Any person who changes the
353 land use of the site, thereby causing the level of risk to
354 increase beyond the acceptable risk level, may be required by
355 the department to undertake additional remediation measures to
356 ensure that human health, public safety, and the environment are
357 protected consistent with this section; or

358 (e) A new discharge of pollutants or hazardous substances
359 occurs at the site subsequent to the issuance of a "No Further
360 Action" order or a "Site Rehabilitation Completion" order
361 associated with the original contamination being addressed
362 pursuant to this section.



363 Section 2. Subsection (1) of section 199.1055, Florida
364 Statutes, is amended to read:

365 199.1055 Contaminated site rehabilitation tax credit.--

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

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

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

374 2. A drycleaning-solvent-contaminated site at which
375 cleanup is undertaken by the real property owner pursuant to s.
376 376.3078(11), if the real property owner is not also, and has
377 never been, the owner or operator of the drycleaning facility
378 where the contamination exists; or

379 3. A brownfield site in a designated brownfield area under
380 s. 376.80.

381 (b) A tax credit applicant, or multiple tax credit
382 applicants ~~taxpayer, or multiple taxpayers~~ working jointly to
383 clean up a single site, may not be granted ~~receive~~ more than
384 \$250,000 per year in tax credits for each site voluntarily
385 rehabilitated. Multiple tax credit applicants ~~taxpayers~~ shall be
386 granted ~~receive~~ tax credits in the same proportion as their
387 contribution to payment of cleanup costs. Subject to the same
388 conditions and limitations as provided in this section, a
389 municipality, ~~or~~ county, or other tax credit applicant which
390 voluntarily rehabilitates a site may receive not more than



HB 1123

2003
CS

391 | \$250,000 per year in tax credits which it can subsequently
392 | transfer subject to the provisions in paragraph (g).

393 | (c) If the credit granted under this section is not fully
394 | used in any one year because of insufficient tax liability on
395 | the part of the tax credit applicant ~~taxpayer~~, the unused amount
396 | may be carried forward for a period not to exceed 5 years. Five
397 | years after the date a credit is granted under this section,
398 | such credit expires and may not be used. However, if during the
399 | 5-year period the credit is transferred, in whole or in part,
400 | pursuant to paragraph (g), each transferee has 5 years after the
401 | date of transfer to use its credit.

402 | (d) A taxpayer that receives a credit under s. 220.1845 is
403 | ineligible to receive credit under this section in a given tax
404 | year.

405 | (e) A tax credit applicant ~~taxpayer~~ that receives state-
406 | funded site rehabilitation pursuant to s. 376.3078(3) for
407 | rehabilitation of a drycleaning-solvent-contaminated site is
408 | ineligible to receive credit under this section for costs
409 | incurred by the tax credit applicant ~~taxpayer~~ in conjunction
410 | with the rehabilitation of that site during the same time period
411 | that state-administered site rehabilitation was underway.

412 | (f) The total amount of the tax credits which may be
413 | granted under this section and s. 220.1845 is \$2 million
414 | annually.

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



419 2. The entity or its surviving or acquiring entity as
 420 described in subparagraph 1., may transfer any unused credit in
 421 whole or in units of no less than 25 percent of the remaining
 422 credit. The entity acquiring such credit may use it in the same
 423 manner and with the same limitation as described in this
 424 section. Such transferred credits may not be transferred again
 425 although they may succeed to a surviving or acquiring entity
 426 subject to the same conditions and limitations as described in
 427 this section.

428 3. In the event the credit provided for under this section
 429 is reduced either as a result of a determination by the
 430 Department of Environmental Protection or an examination or
 431 audit by the Department of Revenue, such tax deficiency shall be
 432 recovered from the first entity, or the surviving or acquiring
 433 entity, to have claimed such credit up to the amount of credit
 434 taken. Any subsequent deficiencies shall be assessed against any
 435 entity acquiring and claiming such credit, or in the case of
 436 multiple succeeding entities in the order of credit succession.

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

444 Section 3. Subsection (1) of section 220.1845, Florida
 445 Statutes, is amended to read:

446 220.1845 Contaminated site rehabilitation tax credit.--



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

448 (a) A credit in the amount of 35 percent of the costs of

449 voluntary cleanup activity that is integral to site

450 rehabilitation at the following sites is available ~~allowed~~

451 against any tax due for a taxable year under this chapter:

452 1. A drycleaning-solvent-contaminated site eligible for

453 state-funded site rehabilitation under s. 376.3078(3);

454 2. A drycleaning-solvent-contaminated site at which

455 cleanup is undertaken by the real property owner pursuant to s.

456 376.3078(11), if the real property owner is not also, and has

457 never been, the owner or operator of the drycleaning facility

458 where the contamination exists; or

459 3. A brownfield site in a designated brownfield area under

460 s. 376.80.

461 (b) A tax credit applicant, or multiple tax credit

462 applicants taxpayer, or multiple taxpayers working jointly to

463 clean up a single site, may not be granted ~~receive~~ more than

464 \$250,000 per year in tax credits for each site voluntarily

465 rehabilitated. Multiple tax credit applicants taxpayers shall be

466 granted ~~receive~~ tax credits in the same proportion as their

467 contribution to payment of cleanup costs. Subject to the same

468 conditions and limitations as provided in this section, a

469 municipality, ~~or~~ county, or other tax credit applicant which

470 voluntarily rehabilitates a site may receive not more than

471 \$250,000 per year in tax credits which it can subsequently

472 transfer subject to the provisions in paragraph (h).

473 (c) If the credit granted under this section is not fully

474 used in any one year because of insufficient tax liability on



HB 1123

2003
CS

475 the part of the corporation, the unused amount may be carried
476 forward for a period not to exceed 5 years. The carryover credit
477 may be used in a subsequent year when the tax imposed by this
478 chapter for that year exceeds the credit for which the
479 corporation is eligible in that year under this section after
480 applying the other credits and unused carryovers in the order
481 provided by s. 220.02(8). Five years after the date a credit is
482 granted under this section, such credit expires and may not be
483 used. However, if during the 5-year period the credit is
484 transferred, in whole or in part, pursuant to paragraph (h),
485 each transferee has 5 years after the date of transfer to use
486 its credit.

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

492 (e) A taxpayer that receives credit under s. 199.1055 is
493 ineligible to receive credit under this section in a given tax
494 year.

495 (f) A tax credit applicant ~~taxpayer~~ that receives state-
496 funded site rehabilitation under s. 376.3078(3) for
497 rehabilitation of a drycleaning-solvent-contaminated site is
498 ineligible to receive credit under this section for costs
499 incurred by the tax credit applicant ~~taxpayer~~ in conjunction
500 with the rehabilitation of that site during the same time period
501 that state-administered site rehabilitation was underway.



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

505 (h)1. Tax credits that may be available under this section
506 to an entity eligible under s. 376.30781 may be transferred
507 after a merger or acquisition to the surviving or acquiring
508 entity and used in the same manner and with the same
509 limitations.

510 2. The entity or its surviving or acquiring entity as
511 described in subparagraph 1., may transfer any unused credit in
512 whole or in units of no less than 25 percent of the remaining
513 credit. The entity acquiring such credit may use it in the same
514 manner and with the same limitation as described in this
515 section. Such transferred credits may not be transferred again
516 although they may succeed to a surviving or acquiring entity
517 subject to the same conditions and limitations as described in
518 this section.

519 3. In the event the credit provided for under this section
520 is reduced either as a result of a determination by the
521 Department of Environmental Protection or an examination or
522 audit by the Department of Revenue, such tax deficiency shall be
523 recovered from the first entity, or the surviving or acquiring
524 entity, to have claimed such credit up to the amount of credit
525 taken. Any subsequent deficiencies shall be assessed against any
526 entity acquiring and claiming such credit, or in the case of
527 multiple succeeding entities in the order of credit succession.

528 (i) In order to encourage completion of site
529 rehabilitation at contaminated sites being voluntarily cleaned



HB 1123

2003
CS

530 up and eligible for a tax credit under this section, the tax
531 credit applicant ~~taxpayer~~ may claim an additional 10 percent of
532 the total cleanup costs, not to exceed \$50,000, in the final
533 year of cleanup as evidenced by the Department of Environmental
534 Protection issuing a "No Further Action" order for that site.

535 Section 4. Section 376.30781, Florida Statutes, is amended
536 to read:

537 376.30781 Partial tax credits for rehabilitation of
538 drycleaning-solvent-contaminated sites and brownfield sites in
539 designated brownfield areas; application process; rulemaking
540 authority; revocation authority.--

541 (1) The Legislature finds that:

542 (a) To facilitate property transactions and economic
543 growth and development, it is in the interest of the state to
544 encourage the cleanup, at the earliest possible time, of
545 drycleaning-solvent-contaminated sites and brownfield sites in
546 designated brownfield areas.

547 (b) It is the intent of the Legislature to encourage the
548 voluntary cleanup of drycleaning-solvent-contaminated sites and
549 brownfield sites in designated brownfield areas by providing a
550 partial tax credit for the restoration of such property in
551 specified circumstances.

552 (2)(a) A credit in the amount of 35 percent of the costs
553 of voluntary cleanup activity that is integral to site
554 rehabilitation at the following sites is allowed pursuant to ss.
555 199.1055 and 220.1845:

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



558 2. A drycleaning-solvent-contaminated site at which
559 cleanup is undertaken by the real property owner pursuant to s.
560 376.3078(11), if the real property owner is not also, and has
561 never been, the owner or operator of the drycleaning facility
562 where the contamination exists; or

563 3. A brownfield site in a designated brownfield area under
564 s. 376.80.

565 (b) A tax credit applicant taxpayer, or multiple tax
566 credit applicants taxpayers working jointly to clean up a single
567 site, may not be granted ~~receive~~ more than \$250,000 per year in
568 tax credits for each site voluntarily rehabilitated. Multiple
569 tax credit applicants taxpayers shall be granted ~~receive~~ tax
570 credits in the same proportion as their contribution to payment
571 of cleanup costs. Tax credits are available only for site
572 rehabilitation conducted during the calendar tax year for in
573 which the tax credit application is submitted.

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

582 (3) The Department of Environmental Protection shall be
583 responsible for allocating the tax credits provided for in ss.
584 199.1055 and 220.1845, not to exceed a total of \$2 million in
585 tax credits annually.



HB 1123

2003
CS

586 (4) To claim the credit for site rehabilitation conducted
587 during the current calendar year, each tax credit applicant must
588 apply to the Department of Environmental Protection for an
589 allocation of the \$2 million annual credit by January 15 of the
590 following year ~~December 31~~ on a form developed by the Department
591 of Environmental Protection in cooperation with the Department
592 of Revenue. The form shall include an affidavit from each tax
593 credit applicant certifying that all information contained in
594 the application, including all records of costs incurred and
595 claimed in the tax credit application, are true and correct. If
596 the application is submitted pursuant to subparagraph (2)(a)2.,
597 the form must include an affidavit signed by the real property
598 owner stating that it is not, and has never been, the owner or
599 operator of the drycleaning facility where the contamination
600 exists. Approval of partial tax credits must be accomplished on
601 a first-come, first-served basis based upon the date complete
602 applications are received by the Division of Waste Management. A
603 tax credit ~~An~~ applicant shall submit only one complete
604 application per site for each calendar year's site
605 rehabilitation costs. Incomplete placeholder applications shall
606 not be accepted and will not secure a place in the first-come,
607 first-served application line ~~per year~~. To be eligible for a tax
608 credit the tax credit applicant must:

609 (a) Have entered into a voluntary cleanup agreement with
610 the Department of Environmental Protection for a drycleaning-
611 solvent-contaminated site or a Brownfield Site Rehabilitation
612 Agreement, as applicable; and



HB 1123

2003
CS

613 (b) Have paid all deductibles pursuant to s.
614 376.3078(3)(d) for eligible drycleaning-solvent-cleanup program
615 sites.

616 (5) To obtain the tax credit certificate, a tax credit an
617 applicant must annually file an application for certification,
618 which must be received by the Division of Waste Management of
619 the Department of Environmental Protection by January 15 of the
620 year following the calendar year for which site rehabilitation
621 costs are being claimed in a tax credit application ~~December 31~~.
622 The tax credit applicant must provide all pertinent information
623 requested on the tax credit application form, including, at a
624 minimum, the name and address of the tax credit applicant and
625 the address and tracking identification number of the eligible
626 site. Along with the tax credit application form, the tax credit
627 applicant must submit the following:

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

632 (b) Copies of contracts and documentation of contract
633 negotiations, accounts, invoices, sales tickets, or other
634 payment records from purchases, sales, leases, or other
635 transactions involving actual costs incurred for that tax year
636 related to site rehabilitation, as that term is defined in ss.
637 376.301 and 376.79;

638 (c) Proof that the documentation submitted pursuant to
639 paragraph (b) has been reviewed and verified by an independent
640 certified public accountant in accordance with standards



HB 1123

2003
CS

641 established by the American Institute of Certified Public
642 Accountants. Specifically, the certified public accountant must
643 attest to the accuracy and validity of the costs incurred and
644 paid by conducting an independent review of the data presented
645 by the tax credit applicant. Accuracy and validity of costs
646 incurred and paid would be determined once the level of effort
647 was certified by an appropriate professional registered in this
648 state in each contributing technical discipline. The certified
649 public accountant's report would also attest that the costs
650 included in the application form are not duplicated within the
651 application. A copy of the accountant's report shall be
652 submitted to the Department of Environmental Protection with the
653 tax credit application; and

654 (d) A certification form stating that site rehabilitation
655 activities associated with the documentation submitted pursuant
656 to paragraph (b) have been conducted under the observation of,
657 and related technical documents have been signed and sealed by,
658 an appropriate professional registered in this state in each
659 contributing technical discipline. The certification form shall
660 be signed and sealed by the appropriate registered professionals
661 stating that the costs incurred were integral, necessary, and
662 required for site rehabilitation, as that term is defined in ss.
663 376.301 and 376.79.

664 (6) The certified public accountant and appropriate
665 registered professionals submitting forms as part of a tax
666 credit application must verify such forms. Verification must be
667 accomplished as provided in s. 92.525(1)(b) and subject to the
668 provisions of s. 92.525(3).



HB 1123

2003
CS

669 (7) The Department of Environmental Protection shall
670 review the tax credit application and any supplemental
671 documentation that the tax credit applicant may submit prior to
672 the annual application deadline in order to have the application
673 considered complete ~~submitted by each applicant~~, for the purpose
674 of verifying that the tax credit applicant has met the
675 qualifying criteria in subsections (2) and (4) and has submitted
676 all required documentation listed in subsection (5). Upon
677 verification that the tax credit applicant has met these
678 requirements, the department shall issue a written decision
679 granting eligibility for partial tax credits (a tax credit
680 certificate) in the amount of 35 percent of the total costs
681 claimed, subject to the \$250,000 limitation, for the calendar
682 ~~tax~~ year for ~~in~~ which the tax credit application is submitted
683 based on the report of the certified public accountant and the
684 certifications from the appropriate registered technical
685 professionals.

686 (8) On or before March 1, the Department of Environmental
687 Protection shall inform each eligible tax credit applicant of
688 the amount of its partial tax credit and provide each eligible
689 tax credit applicant with a tax credit certificate that must be
690 submitted with its tax return to the Department of Revenue to
691 claim the tax credit or be transferred pursuant to s.
692 199.1055(1)(g) or s. 220.1845(1)(h). Credits will not result in
693 the payment of refunds if total credits exceed the amount of tax
694 owed.

695 (9) If a tax credit ~~an~~ applicant does not receive a tax
696 credit allocation due to an exhaustion of the \$2 million annual



HB 1123

2003
CS

697 tax credit authorization, such application will then be included
 698 in the same first-come, first-served order in the next year's
 699 annual tax credit allocation, if any, based on the prior year
 700 application.

701 (10) The Department of Environmental Protection may adopt
 702 rules to prescribe the necessary forms required to claim tax
 703 credits under this section and to provide the administrative
 704 guidelines and procedures required to administer this section.
 705 ~~Prior to the adoption of rules regulating the tax credit~~
 706 ~~application, the department shall, by September 1, 1998,~~
 707 ~~establish reasonable interim application requirements and forms.~~

708 (11) The Department of Environmental Protection may revoke
 709 or modify any written decision granting eligibility for partial
 710 tax credits under this section if it is discovered that the tax
 711 credit applicant submitted any false statement, representation,
 712 or certification in any application, record, report, plan, or
 713 other document filed in an attempt to receive partial tax
 714 credits under this section. The Department of Environmental
 715 Protection shall immediately notify the Department of Revenue of
 716 any revoked or modified orders affecting previously granted
 717 partial tax credits. Additionally, the tax credit applicant
 718 ~~taxpayer~~ must notify the Department of Revenue of any change in
 719 its tax credit claimed.

720 (12) A tax credit applicant ~~An owner, operator, or real~~
 721 ~~property owner~~ who receives state-funded site rehabilitation
 722 under s. 376.3078(3) for rehabilitation of a drycleaning-
 723 solvent-contaminated site is ineligible to receive a tax credit
 724 under s. 199.1055 or s. 220.1845 for costs incurred by the tax



HB 1123

2003
CS

725 credit applicant taxpayer in conjunction with the rehabilitation
 726 of that site during the same time period that state-administered
 727 site rehabilitation was underway.

728 Section 5. Paragraph (a) of subsection (6) of section
 729 403.087, Florida Statutes, is amended to read:

730 403.087 Permits; general issuance; denial; revocation;
 731 prohibition; penalty.--

732 (6)(a) The department shall require a processing fee in an
 733 amount sufficient, to the greatest extent possible, to cover the
 734 costs of reviewing and acting upon any application for a permit
 735 or request for site-specific alternative criteria or for an
 736 exemption from water quality criteria and to cover the costs of
 737 surveillance and other field services and related support
 738 activities associated with any permit or plan approval issued
 739 pursuant to this chapter. However, when an application is
 740 received without the required fee, the department shall
 741 acknowledge receipt of the application and shall immediately
 742 return the unprocessed application to the applicant and shall
 743 take no further action until the application is received with
 744 the appropriate fee. The department shall adopt a schedule of
 745 fees by rule, subject to the following limitations:

- 746 1. The fee for any of the following may not exceed
- 747 \$32,500:
 - 748 a. Hazardous waste, construction permit.
 - 749 b. Hazardous waste, operation permit.
 - 750 c. Hazardous waste, postclosure permit, or clean closure
 - 751 plan approval.
 - 752 d. Hazardous waste, corrective action permit.



753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
780

- 2. The permit fee for a Class I injection well construction permit may not exceed \$12,500.
- 3. The permit fee for any of the following permits may not exceed \$10,000:
 - a. Solid waste, construction permit.
 - b. Solid waste, operation permit.
 - c. Class I injection well, operation permit.
- 4. The permit fee for any of the following permits may not exceed \$7,500:
 - a. Air pollution, construction permit.
 - b. Solid waste, closure permit.
 - c. Drinking water, construction or operation permit.
 - d. Domestic waste residuals, construction or operation permit.
 - e. Industrial waste, operation permit.
 - f. Industrial waste, construction permit.
- 5. The permit fee for any of the following permits may not exceed \$5,000:
 - a. Domestic waste, operation permit.
 - b. Domestic waste, construction permit.
- 6. The permit fee for any of the following permits may not exceed \$4,000:
 - a. Wetlands resource management--(dredge and fill), standard form permit.
 - b. Hazardous waste, research and development permit.
 - c. Air pollution, operation permit, for sources not subject to s. 403.0872.



781 d. Class III injection well, construction, operation, or
782 abandonment permits.

783 7. The permit fee for Class V injection wells,
784 construction, operation, and abandonment permits may not exceed
785 \$750.

786 8. The permit fee for any of the following permits may not
787 exceed \$500:

788 a. Domestic waste, collection system permits.

789 b. Wetlands resource management--(dredge and fill and
790 mangrove alterations), short permit form.

791 c. Drinking water, distribution system permit.

792 9. The permit fee for stormwater operation permits may not
793 exceed \$100.

794 10. The general permit fees for permits that require
795 certification by a registered professional engineer or
796 professional geologist may not exceed \$500. The general permit
797 fee for other permit types may not exceed \$100.

798 11. The fee for a permit issued pursuant to s. 403.816 is
799 \$5,000, and the fee for any modification of such permit
800 requested by the applicant is \$1,000.

801 12. The regulatory program and surveillance fees for
802 facilities permitted pursuant to s. 403.088 or s. 403.0885, or
803 for facilities permitted pursuant to s. 402 of the Clean Water
804 Act, as amended, 33 U.S.C. ss. 1251 et seq., and for which the
805 department has been granted administrative authority, shall be
806 limited as follows:

807 a. The fees for domestic wastewater facilities shall not
808 exceed \$7,500 annually. The department shall establish a sliding



HB 1123

2003
CS

809 scale of fees based on the permitted capacity and shall ensure
810 smaller domestic waste dischargers do not bear an inordinate
811 share of costs of the program.

812 b. The annual fees for industrial waste facilities shall
813 not exceed \$11,500. The department shall establish a sliding
814 scale of fees based upon the volume, concentration, or nature of
815 the industrial waste discharge and shall ensure smaller
816 industrial waste dischargers do not bear an inordinate share of
817 costs of the program.

818 c. The department may establish a fee, not to exceed the
819 amounts in subparagraphs 4. and 5., to cover additional costs of
820 review required for permit modification or construction
821 engineering plans.

822 Section 6. Subsection (1) of section 403.722, Florida
823 Statutes, is amended to read:

824 403.722 Permits; hazardous waste disposal, storage, and
825 treatment facilities.--

826 (1) Each person who intends to construct, modify, operate,
827 or close a hazardous waste disposal, storage, or treatment
828 facility shall obtain a construction permit, operation permit,
829 postclosure permit, ~~or~~ clean closure plan approval, or
830 corrective action permit from the department prior to
831 constructing, modifying, operating, or closing the facility. By
832 rule, the department may provide for the issuance of a single
833 permit instead of any two or more hazardous waste facility
834 permits.

835 Section 7. This act shall take effect upon becoming a law.