

CHAMBER ACTION

1 The Committee on Natural Resources recommends the following:

2  
3 **Committee Substitute**

4 Remove the entire bill and insert:

5  
6 A bill to be entitled

7 An act relating to rehabilitation of contaminated sites;  
8 amending s. 376.30781, F.S.; increasing the tax credit for  
9 rehabilitation of drycleaning-solvent-contaminated sites  
10 and brownfield sites in designated brownfield areas;  
11 increasing the maximum amount that a tax credit applicant,  
12 or multiple tax credit applicants working jointly to clean  
13 up a single site, may be granted per year in tax credits  
14 for each site voluntarily rehabilitated; increasing the  
15 total annual amount of contaminated site rehabilitation  
16 tax credits allocated by the Department of Environmental  
17 Protection; amending ss. 199.1055 and 220.1845, F.S.;  
18 increasing the amount of the contaminated site  
19 rehabilitation tax credit; increasing the maximum amount  
20 that a tax credit applicant, or multiple tax credit  
21 applicants working jointly to clean up a single site, may  
22 be granted per year in tax credits for each site  
23 voluntarily rehabilitated; increasing the total annual

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24 amount a municipality, county, or other tax credit  
25 applicant which voluntarily rehabilitates a site may  
26 receive per year in tax credits which it can subsequently  
27 transfer to specified entities; increasing the total  
28 amount of tax credits which may be granted annually;  
29 amending s. 288.107, F.S.; revising the definition of  
30 "eligible business" with respect to brownfield  
31 redevelopment bonus refunds; authorizing the Office of  
32 Tourism, Trade, and Economic Development to waive the  
33 fixed capital investment requirement for an eligible  
34 business for specified projects; providing conditions and  
35 requirements with respect to such waiver; amending s.  
36 376.79, F.S.; revising the definition of "brownfield  
37 sites"; amending s. 376.80, F.S.; revising a condition  
38 under which a local government is required to designate a  
39 brownfield area; revising a required component of a  
40 brownfield site rehabilitation agreement; revising a  
41 requirement of a contractor performing site rehabilitation  
42 program tasks; revising contractor requirements that must  
43 be certified to the Department of Environmental  
44 Protection; revising and providing additional insurance  
45 requirements; amending s. 376.82, F.S.; revising  
46 terminology with respect to eligibility to participate in  
47 the brownfield rehabilitation program; providing an  
48 effective date.

49  
50 Be It Enacted by the Legislature of the State of Florida:  
51

52 Section 1. Paragraphs (a) and (b) of subsection (2) and  
53 subsections (3), (4), (7), and (9) of section 376.30781, Florida  
54 Statutes, are amended to read:

55 376.30781 Partial tax credits for rehabilitation of  
56 drycleaning-solvent-contaminated sites and brownfield sites in  
57 designated brownfield areas; application process; rulemaking  
58 authority; revocation authority.--

59 (2)(a) A credit in the amount of 40 ~~35~~ percent of the  
60 costs of voluntary cleanup activity that is integral to site  
61 rehabilitation at the following sites is allowed pursuant to ss.  
62 199.1055 and 220.1845:

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

65 2. A drycleaning-solvent-contaminated site at which  
66 cleanup is undertaken by the real property owner pursuant to s.  
67 376.3078(11), if the real property owner is not also, and has  
68 never been, the owner or operator of the drycleaning facility  
69 where the contamination exists; or

70 3. A brownfield site in a designated brownfield area under  
71 s. 376.80.

72 (b) A tax credit applicant, or multiple tax credit  
73 applicants working jointly to clean up a single site, may not be  
74 granted more than \$400,000 ~~\$250,000~~ per year in tax credits for  
75 each site voluntarily rehabilitated. Multiple tax credit  
76 applicants shall be granted tax credits in the same proportion  
77 as their contribution to payment of cleanup costs. Tax credits  
78 are available only for site rehabilitation conducted during the  
79 calendar year for which the tax credit application is submitted.

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80 (3) The Department of Environmental Protection shall be  
81 responsible for allocating the tax credits provided for in ss.  
82 199.1055 and 220.1845, not to exceed a total of \$5 ~~\$2~~ million in  
83 tax credits annually.

84 (4) To claim the credit for site rehabilitation conducted  
85 during the current calendar year, each tax credit applicant must  
86 apply to the Department of Environmental Protection for an  
87 allocation of the \$5 ~~\$2~~ million annual credit by January 15 of  
88 the following year on a form developed by the Department of  
89 Environmental Protection in cooperation with the Department of  
90 Revenue. The form shall include an affidavit from each tax  
91 credit applicant certifying that all information contained in  
92 the application, including all records of costs incurred and  
93 claimed in the tax credit application, are true and correct. If  
94 the application is submitted pursuant to subparagraph (2)(a)2.,  
95 the form must include an affidavit signed by the real property  
96 owner stating that it is not, and has never been, the owner or  
97 operator of the drycleaning facility where the contamination  
98 exists. Approval of partial tax credits must be accomplished on  
99 a first-come, first-served basis based upon the date complete  
100 applications are received by the Division of Waste Management. A  
101 tax credit applicant shall submit only one complete application  
102 per site for each calendar year's site rehabilitation costs.  
103 Incomplete placeholder applications shall not be accepted and  
104 will not secure a place in the first-come, first-served  
105 application line. To be eligible for a tax credit, the tax  
106 credit applicant must:

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107 (a) Have entered into a voluntary cleanup agreement with  
 108 the Department of Environmental Protection for a drycleaning-  
 109 solvent-contaminated site or a Brownfield Site Rehabilitation  
 110 Agreement, as applicable; and

111 (b) Have paid all deductibles pursuant to s.  
 112 376.3078(3)(e) for eligible drycleaning-solvent-cleanup program  
 113 sites.

114 (7) The Department of Environmental Protection shall  
 115 review the tax credit application and any supplemental  
 116 documentation that the tax credit applicant may submit prior to  
 117 the annual application deadline in order to have the application  
 118 considered complete, for the purpose of verifying that the tax  
 119 credit applicant has met the qualifying criteria in subsections  
 120 (2) and (4) and has submitted all required documentation listed  
 121 in subsection (5). Upon verification that the tax credit  
 122 applicant has met these requirements, the department shall issue  
 123 a written decision granting eligibility for partial tax credits  
 124 (a tax credit certificate) in the amount of 40 ~~35~~ percent of the  
 125 total costs claimed, subject to the \$400,000 ~~\$250,000~~  
 126 limitation, for the calendar year for which the tax credit  
 127 application is submitted based on the report of the certified  
 128 public accountant and the certifications from the appropriate  
 129 registered technical professionals.

130 (9) If a tax credit applicant does not receive a tax  
 131 credit allocation due to an exhaustion of the \$5 ~~\$2~~ million  
 132 annual tax credit authorization, such application will then be  
 133 included in the same first-come, first-served order in the next

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134 year's annual tax credit allocation, if any, based on the prior  
135 year application.

136 Section 2. Paragraphs (a), (b), and (f) of subsection (1)  
137 of section 199.1055, Florida Statutes, are amended to read:

138 199.1055 Contaminated site rehabilitation tax credit.--

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

140 (a) A credit in the amount of 40 ~~35~~ percent of the costs  
141 of voluntary cleanup activity that is integral to site  
142 rehabilitation at the following sites is available against any  
143 tax due for a taxable year under s. 199.032, less any credit  
144 allowed by former s. 220.68 for that year:

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

147 2. A drycleaning-solvent-contaminated site at which  
148 cleanup is undertaken by the real property owner pursuant to s.  
149 376.3078(11), if the real property owner is not also, and has  
150 never been, the owner or operator of the drycleaning facility  
151 where the contamination exists; or

152 3. A brownfield site in a designated brownfield area under  
153 s. 376.80.

154 (b) A tax credit applicant, or multiple tax credit  
155 applicants working jointly to clean up a single site, may not be  
156 granted more than \$400,000 ~~\$250,000~~ per year in tax credits for  
157 each site voluntarily rehabilitated. Multiple tax credit  
158 applicants shall be granted tax credits in the same proportion  
159 as their contribution to payment of cleanup costs. Subject to  
160 the same conditions and limitations as provided in this section,  
161 a municipality, county, or other tax credit applicant which

162 voluntarily rehabilitates a site may receive not more than  
 163 \$400,000 ~~\$250,000~~ per year in tax credits which it can  
 164 subsequently transfer subject to the provisions in paragraph  
 165 (g).

166 (f) The total amount of the tax credits which may be  
 167 granted under this section and s. 220.1845 is \$5 ~~\$2~~ million  
 168 annually.

169 Section 3. Paragraphs (a), (b), and (g) of subsection (1)  
 170 of section 220.1845, Florida Statutes, are amended to read:

171 220.1845 Contaminated site rehabilitation tax credit.--

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

173 (a) A credit in the amount of 40 ~~35~~ percent of the costs  
 174 of voluntary cleanup activity that is integral to site  
 175 rehabilitation at the following sites is available against any  
 176 tax due for a taxable year under this chapter:

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

179 2. A drycleaning-solvent-contaminated site at which  
 180 cleanup is undertaken by the real property owner pursuant to s.  
 181 376.3078(11), if the real property owner is not also, and has  
 182 never been, the owner or operator of the drycleaning facility  
 183 where the contamination exists; or

184 3. A brownfield site in a designated brownfield area under  
 185 s. 376.80.

186 (b) A tax credit applicant, or multiple tax credit  
 187 applicants working jointly to clean up a single site, may not be  
 188 granted more than \$400,000 ~~\$250,000~~ per year in tax credits for  
 189 each site voluntarily rehabilitated. Multiple tax credit

190 applicants shall be granted tax credits in the same proportion  
 191 as their contribution to payment of cleanup costs. Subject to  
 192 the same conditions and limitations as provided in this section,  
 193 a municipality, county, or other tax credit applicant which  
 194 voluntarily rehabilitates a site may receive not more than  
 195 \$400,000 ~~\$250,000~~ per year in tax credits which it can  
 196 subsequently transfer subject to the provisions in paragraph  
 197 (h).

198 (g) The total amount of the tax credits which may be  
 199 granted under this section and s. 199.1055 is \$5 ~~\$2~~ million  
 200 annually.

201 Section 4. Paragraph (e) of subsection (1) and paragraph  
 202 (b) of subsection (3) of section 288.107, Florida Statutes, are  
 203 amended to read:

204 288.107 Brownfield redevelopment bonus refunds.--

205 (1) DEFINITIONS.--As used in this section:

206 (e) "Eligible business" means:

207 1. A qualified target industry business as defined in s.  
 208 288.106(1)(o); or

209 2. A business that can demonstrate a fixed capital  
 210 investment of at least \$2 million in mixed-use business  
 211 activities, including multiunit housing, commercial, retail, and  
 212 industrial in brownfield areas and which provides benefits to  
 213 its employees, unless the fixed capital investment requirement  
 214 is waived pursuant to paragraph (3)(b).

215 (3) CRITERIA.--The minimum criteria for participation in  
 216 the brownfield redevelopment bonus refund are:



217 (b) The completion of a fixed capital investment of at  
 218 least \$2 million in mixed-use business activities, including  
 219 multiunit housing, commercial, retail, and industrial in  
 220 brownfield areas, by an eligible business applying for a refund  
 221 under paragraph (2)(b) which provides benefits to its employees.  
 222 The office may waive the fixed capital investment requirement at  
 223 the request of the local governing body recommending the project  
 224 and Enterprise Florida, Inc. The fixed capital investment  
 225 requirement may only be waived for a project located in a rural  
 226 city or county, community redevelopment area, enterprise zone,  
 227 or empowerment zone, and only when the merits of the individual  
 228 project or the specific circumstances in the community in  
 229 relationship to the project warrant such action. If the local  
 230 governing body and Enterprise Florida, Inc., make such a  
 231 recommendation, it must be transmitted in writing and the  
 232 specific justification for the waiver recommendation must be  
 233 explained. If the director elects to waive the fixed capital  
 234 investment requirement, the waiver must be stated in writing and  
 235 the reasons for granting the waiver must be explained.

236 Section 5. Subsection (3) of section 376.79, Florida  
 237 Statutes, is amended to read:

238 376.79 Definitions relating to Brownfields Redevelopment  
 239 Act.--As used in ss. 376.77-376.85, the term:

240 (3) "Brownfield sites" means real property, the expansion,  
 241 redevelopment, or reuse of which may be ~~sites that are generally~~  
 242 ~~abandoned, idled, or underused industrial and commercial~~  
 243 ~~properties where expansion or redevelopment is complicated by~~  
 244 actual or perceived environmental contamination.

245 Section 6. Paragraph (b) of subsection (2), paragraph (c)  
 246 of subsection (5), paragraph (b) of subsection (6), and  
 247 subsection (7) of section 376.80, Florida Statutes, are amended  
 248 to read:

249 376.80 Brownfield program administration process.--

250 (2)

251 (b) A local government shall designate a brownfield area  
 252 under the provisions of this act provided that:

253 1. A person who owns or controls a potential brownfield  
 254 site is requesting the designation and has agreed to  
 255 rehabilitate and redevelop the brownfield site;

256 2. The rehabilitation and redevelopment of the proposed  
 257 brownfield site will result in economic productivity of the  
 258 area, along with the creation of at least 10 new permanent jobs  
 259 at the brownfield site, whether full-time or part-time, which  
 260 are not associated with the implementation of the brownfield  
 261 site rehabilitation agreement and are not associated with  
 262 redevelopment project demolition or construction activities  
 263 pursuant to the redevelopment agreement required under paragraph  
 264 (5)(i) or an agreement, between the person responsible for site  
 265 rehabilitation and the local government with jurisdiction, which  
 266 contains terms for the redevelopment of the brownfield site or  
 267 brownfield area;

268 3. The redevelopment of the proposed brownfield site is  
 269 consistent with the local comprehensive plan and is a  
 270 permittable use under the applicable local land development  
 271 regulations;

272 4. Notice of the proposed rehabilitation of the brownfield  
 273 area has been provided to neighbors and nearby residents of the  
 274 proposed area to be designated, and the person proposing the  
 275 area for designation has afforded to those receiving notice the  
 276 opportunity for comments and suggestions about rehabilitation.  
 277 Notice pursuant to this subsection must be made in a newspaper  
 278 of general circulation in the area, at least 16 square inches in  
 279 size, and the notice must be posted in the affected area; and

280 5. The person proposing the area for designation has  
 281 provided reasonable assurance that he or she has sufficient  
 282 financial resources to implement and complete the rehabilitation  
 283 agreement and redevelopment plan.

284 (5) The person responsible for brownfield site  
 285 rehabilitation must enter into a brownfield site rehabilitation  
 286 agreement with the department or an approved local pollution  
 287 control program if actual contamination exists at the brownfield  
 288 site. The brownfield site rehabilitation agreement must include:

289 (c) A commitment to conduct site rehabilitation in  
 290 accordance with department quality assurance rules ~~an approved~~  
 291 ~~comprehensive quality assurance plan under department rules;~~

292 (6) Any contractor performing site rehabilitation program  
 293 tasks must demonstrate to the department that the contractor:

294 (b) Has obtained the necessary approvals for conducting  
 295 sample collection and analyses pursuant to approval for the  
 296 ~~comprehensive quality assurance plan prepared under department~~  
 297 rules.

298 (7) The contractor who is performing the majority of the  
 299 site rehabilitation program tasks pursuant to a brownfield site

300 rehabilitation agreement or supervising the performance of such  
 301 tasks by licensed subcontractors in accordance with the  
 302 provisions of s. 489.113(9) must certify to the department that  
 303 the contractor:

304 (a) Complies with applicable OSHA regulations.

305 (b) Maintains workers' compensation insurance for all  
 306 employees as required by the Florida Workers' Compensation Law.

307 (c) Maintains comprehensive general liability coverage  
 308 with limits of not less than \$1 million per occurrence and \$2  
 309 million general aggregate for bodily injury and property damage  
 310 and comprehensive automobile liability coverage insurance with  
 311 ~~minimum~~ limits of not less than at least \$2 \$1 million combined  
 312 single limit. The contractor shall also maintain pollution  
 313 liability coverage with limits of not less than \$3 million  
 314 aggregate for personal injury or death, \$1 million per  
 315 occurrence for personal injury or death, and \$1 million per  
 316 occurrence for property damage. The contractor's certificate of  
 317 insurance shall name per claim and \$1 million annual aggregate,  
 318 ~~sufficient to protect it from claims for damage for personal~~  
 319 ~~injury, including accidental death, as well as claims for~~  
 320 ~~property damage which may arise from performance of work under~~  
 321 ~~the program, designating the state as an additional insured~~  
 322 party.

323 (d) Maintains professional liability insurance of at least  
 324 \$1 million per claim ~~occurrence~~ and \$1 million annual aggregate.

325 ~~(e) Has the capacity to perform or directly supervise the~~  
 326 ~~majority of the work at a site in accordance with s. 489.113(9).~~

327 Section 7. Subsection (1) of section 376.82, Florida  
328 Statutes, is amended to read:

329 376.82 Eligibility criteria and liability protection.--

330 (1) ELIGIBILITY.--Any person who has not caused or  
331 contributed to the contamination of a brownfield site on or  
332 after July 1, 1997, is eligible to participate in the brownfield  
333 ~~rehabilitation~~ program established in ss. 376.77-376.85, subject  
334 to the following:

335 (a) Potential brownfield sites that are subject to an  
336 ongoing formal judicial or administrative enforcement action or  
337 corrective action pursuant to federal authority, including, but  
338 not limited to, the Comprehensive Environmental Response  
339 Compensation and Liability Act, 42 U.S.C. ss. 9601 et seq., as  
340 amended; the Safe Drinking Water Act, 42 U.S.C. ss. 300f-300i,  
341 as amended; the Clean Water Act, 33 U.S.C. ss. 1251-1387, as  
342 amended; or under an order from the United States Environmental  
343 Protection Agency pursuant to s. 3008(h) of the Resource  
344 Conservation and Recovery Act, as amended (42 U.S.C.A. s.  
345 6928(h)); or that have obtained or are required to obtain a  
346 permit for the operation of a hazardous waste treatment,  
347 storage, or disposal facility; a postclosure permit; or a permit  
348 pursuant to the federal Hazardous and Solid Waste Amendments of  
349 1984, are not eligible for participation unless specific  
350 exemptions are secured by a memorandum of agreement with the  
351 United States Environmental Protection Agency pursuant to  
352 paragraph (2)(g). A brownfield site within an eligible  
353 brownfield area that subsequently becomes subject to formal  
354 judicial or administrative enforcement action or corrective

355 | action under such federal authority shall have its eligibility  
 356 | revoked unless specific exemptions are secured by a memorandum  
 357 | of agreement with the United States Environmental Protection  
 358 | Agency pursuant to paragraph (2)(g).

359 |       (b) Persons who have not caused or contributed to the  
 360 | contamination of a brownfield site on or after July 1, 1997, and  
 361 | who, prior to the department's approval of a brownfield site  
 362 | rehabilitation agreement, are subject to ongoing corrective  
 363 | action or enforcement under state authority established in this  
 364 | chapter or chapter 403, including those persons subject to a  
 365 | pending consent order with the state, are eligible for  
 366 | participation in a brownfield site rehabilitation agreement  
 367 | ~~corrective action~~ if:

368 |       1. The proposed brownfield site is currently idle or  
 369 | underutilized as a result of the contamination, and  
 370 | participation in the brownfield program will immediately, after  
 371 | cleanup or sooner, result in increased economic productivity at  
 372 | the site, including at a minimum the creation of 10 new  
 373 | permanent jobs, whether full-time or part-time, which are not  
 374 | associated with implementation of the brownfield site  
 375 | rehabilitation agreement ~~corrective action plan~~; and

376 |       2. The person is complying in good faith with the terms of  
 377 | an existing consent order or department-approved corrective  
 378 | action plan, or responding in good faith to an enforcement  
 379 | action, as evidenced by a determination issued by the department  
 380 | or an approved local pollution control program.

381 |       (c) Potential brownfield sites owned by the state or a  
 382 | local government which contain contamination for which a

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383 governmental entity is potentially responsible and which are  
384 already designated as federal brownfield pilot projects or have  
385 filed an application for designation to the United States  
386 Environmental Protection Agency are eligible for participation  
387 in a brownfield site rehabilitation agreement ~~corrective action~~.

388 (d) After July 1, 1997, petroleum and drycleaning  
389 contamination sites shall not receive both restoration funding  
390 assistance available for the discharge under this chapter and  
391 any state assistance available under s. 288.107. Nothing in this  
392 act shall affect the cleanup criteria, priority ranking, and  
393 other rights and obligations inherent in petroleum contamination  
394 and drycleaning contamination site rehabilitation under ss.  
395 376.30-376.319, or the availability of economic incentives  
396 otherwise provided for by law.

397 Section 8. This act shall take effect July 1, 2004.