

## SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: April 15, 1998 Revised: \_\_\_\_\_

Subject: Contaminated Sites Rehabilitation Tax Credit

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Fournier</u>	<u>Beggs</u>	<u>WME</u>	<u>Favorable/PCS</u>
2.	<u>Fournier</u>	<u>Smith</u>	<u>WM</u>	<u>Favorable/CS</u>
3.	<u>                    </u>	<u>                    </u>	<u>CM</u>	<u>                    </u>
4.	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>
5.	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>

### I. Summary:

This bill provides for tax credits for rehabilitating sites contaminated by drycleaning solvents or brownfield sites. Credits can be taken against the intangible personal property tax or corporate income tax. Credits are capped at \$125,000 per site per year, and total credits authorized in a single year are capped at \$5,000,000. The Department of Environmental Protection must approve applications from owners or operators for cleanup of eligible drycleaning or brownfield sites, or real-property owners who voluntarily undertake cleanup of ineligible drycleaning solvent contaminated sites, and receipt of any tax credit is contingent upon this approval.

This bill substantially amends, creates, or repeals the following sections of the Florida Statutes: 199.1055, 213.053, 220.02, 220.1845, and 376.30781.

### II. Present Situation:

#### **Intangibles Tax**

Chapter 199, F.S., implements Florida's tax on intangible personal property. Florida's intangible tax was enacted in 1931 and is a tax on "all personal property which is not in itself intrinsically valuable, but which derives its chief value from that which it represents." (s. 199.023, F.S.) Taxable intangible personal property includes, among other things, stocks, bonds, notes, other obligations to pay money, and accounts receivable.

#### *Corporate Income Tax*

Chapter 220, F.S., implements Florida's Income Tax Code and provides for the taxation of corporations and other entities for the privilege of conducting business, deriving income, or

existing within this state. Furthermore, it provides that the tax levied by this code be construed to be an excise or privilege tax measured by net income and that such tax not be deemed or construed to be a property tax, or a tax measured by the value of property for any purpose.

Programs establishing credits to the tax liability of corporations can also be found in Chapter 220, F.S. For example, the community contribution tax credit is authorized in s. 220.183, F.S., as an incentive for corporations to make donations to approved community development projects in enterprise zones. The community contribution tax credit allows up to 50 percent of the donation amount to be credited against the tax liability of a corporation.

Section 220.02, F.S., provides for the order tax credits must be applied to corporate taxes or franchise taxes.

#### *Drycleaning Solvent Contamination Cleanup*

In 1994, the Legislature enacted ch. 94-355, L.O.F., which provided for the establishment of a drycleaning contamination cleanup program which was modeled after the underground storage tank cleanup program. However, unlike the underground storage tank cleanup program, there is no reimbursement provision. The cleanup and restoration of contaminated sites are done by the state through contracted cleanup contractors that have been selected through a bid process.

Pursuant to s. 376.3078(4), F.S., contaminated sites are prioritized considering factors that include, but are not limited to:

- The degree to which human health, safety, or welfare may be affected by exposure to the contamination.
- The size of the population or area affected by the contamination.
- The present and future uses of the affected aquifer or surface waters, with particular consideration as to the probability that the contamination is substantially affecting, or will migrate to and substantially affect, a known public or private source of potable water.
- The effect of the contamination on the environment.

The Water Quality Assurance Trust Fund provides the funding for the restoration of contaminated drycleaning sites. Funds deposited into this trust fund for this purpose come from three sources: a 2 percent tax on the gross sales receipts on each drycleaning facility; a \$5 per gallon tax levied on the sale of perchloroethylene sold to a drycleaning facility for drycleaning purposes; and annual registration fees of \$100 for each drycleaning facility and wholesale supply facility in operation.

Section 376.3078(3), F.S., provides an exemption from liability for cleanup for owners or operators of drycleaning facilities and wholesale supply facilities, and certain real property owners provided that certain conditions are met. The facility must be registered with the Department of

Environmental Protection (DEP); the facility must be in compliance with the DEP's rules; the facility has not been operated in a grossly negligent manner at any time after November 19, 1980; the facility is not on the Superfund's National Priority List; and the facility is not under an order from the EPA under the Resource Conservation and Recovery Act and is not required to obtain a permit under the federal Hazardous and Solid Waste Amendments of 1984.

According to the DEP, there may be approximately 2,800 potential cleanup sites. Cleanup costs for such sites range from \$500,000 to \$2 million per site. Using the \$500,000 per site figure, the total cleanup costs are estimated to be \$1.4 billion. The drycleaning industry had estimated that the program would generate annual revenues for the cleanup program of \$12 to \$15 million. Using these revenue projections, it will take 93 years to complete the cleanup at all of the sites. However, the actual revenues have been far less than projected. The Department of Revenue indicates that the annual revenue for this program is about \$6.1 million. At this rate, it will take approximately 230 years to complete the cleanups. The DEP does, however, intend to use Risk Based Corrective Action principles where applicable to reduce the cleanup costs.

### *Brownfields Redevelopment*

In 1997, the Legislature passed the Brownfields Redevelopment Act to provide incentives for the private sector to redevelop abandoned, idled, or under used industrial and commercial properties where expansion or redevelopment is complicated by real or perceived environmental contamination.

The stated intent of the act was that the reduction of public health and environmental hazards on existing commercial and industrial sites is vital to use and reuse and that there should be incentives to encourage voluntary cleanup. Further, minority and low-income communities are disproportionately impacted by targeted environmentally hazardous sites and that environmental justice considerations should be inherent in meaningful public participation elements of a brownfields program. Cooperation among federal, state, and local agencies, local redevelopment organizations, current owners, and prospective purchasers of brownfield sites is required to accomplish timely cleanup activities and the redevelopment and reuse of brownfield sites.

A local government must designate a brownfield area through the passage of a local resolution. The local government must notify the Department of Environmental Protection (DEP) and attach a map adequate to clearly delineate exactly which parcels are to be included in the brownfield area, or alternatively, provide a detailed legal description. A property owner within the proposed designated area may request in writing that his property be removed from the proposed designation.

The act further specified the duties of local governments regarding the designation of brownfield areas. The local government must conduct certain public hearings and the notice requirements for such hearing are specified. The criteria the local government must consider in designating a brownfield area are provided. There must also be a person responsible for brownfield site rehabilitation identified and the local government must establish an advisory committee for the

purpose of improving public participation and receiving public comments on rehabilitation and redevelopment of the brownfield area, future land use, local employment opportunities, community safety, and environmental justice.

The person responsible for brownfield rehabilitation must enter into a brownfield site rehabilitation agreement with the DEP or an approved local program. The act specifies what the agreement must include.

Local governments are encouraged to use the full range of economic and tax incentives available to facilitate and promote the rehabilitation of brownfield areas.

The act required that by July 1, 1998, the DEP must establish criteria by rule to determine on a site-specific basis the rehabilitation program tasks that comprise a site rehabilitation program and the level at which a rehabilitation program task and a site rehabilitation program may be deemed completed. In establishing the rule, the DEP shall incorporate, to the maximum extent feasible, risk-based corrective-action principles to achieve protection of human health and safety and the environment in a cost-effective manner. The rule shall also include protocols for the use of natural attenuation and the issuance of “no further action” letters.

The act provided that any person who has not caused or contributed to the contamination of a brownfield site after July 1, 1997, is eligible to participate in the brownfield rehabilitation program. Certain specified sites are not eligible.

Petroleum and dry-cleaning contamination sites cannot receive both restoration funding assistance available for the discharge under ch. 376, F.S., and any state assistance available under s. 288.107, F.S., relating to bonus refunds.

Immunity and liability protection for further future remediation is provided under certain circumstances. This does not impair third party rights for damages. Purchasers of brownfield sites who are nonprofit conservation organizations acting for the public interest and who did not cause or contribute to the release of contamination on the site are provided liability protection. Additional liability protection for lenders was also provided.

A significant feature of the act was the emphasis on redevelopment and economic incentives to encourage the private sector to redevelop these often blighted urban properties. State and local governments were encouraged to offer redevelopment incentives which may include financial, regulatory, and technical assistance. In addition, the act provided for brownfield redevelopment bonus refunds. Any qualified target industry business could be eligible for a \$2,500 bonus refund for each new Florida job created in a brownfield which is claimed on the qualified target business's annual refund claim authorized in s. 288.106(6), F.S., and which is approved by the director of the Office of Tourism, Trade, and Economic Development.

The 1997 legislation provided for grants to certain local governments to be used to set up and implement a program which promotes brownfield redevelopment.

### **III. Effect of Proposed Changes:**

In order to encourage the cleanup, at the earliest possible time, of drycleaning solvent contaminated sites and brownfield sites, SB 1114 provides tax credits of 25 percent of the actual cost of cleanup activity against the intangibles tax or corporate income tax. An owner or operator of a drycleaning solvent contaminated site eligible for state funding assistance under s. 376.3078, F.S., or a brownfield site in a brownfield area designated under s. 376.80, F.S., or a real-property owner who undertakes voluntary site rehabilitation at an ineligible site under certain conditions, is eligible for a tax credit up to a maximum of \$125,000 for each tax year. Multiple taxpayers may work jointly to clean up a single site, and credits up to \$125,000 per site shall be shared among them in the same proportion as their payments for cleanup. In order to encourage the completion of site rehabilitation, the tax credit applicant may claim an additional 10 percent of the total cleanup costs, not to exceed \$50,000 in the final year of cleanup. The maximum total credits allowed each year is \$5 million.

A taxpayer may use credits granted under this program toward either corporate income tax or intangibles tax. Unused credits may be carried forward for up to five years. A taxpayer that receives funding under s. 376.3078(3) is not eligible to credit under this program during the same time period that state-administered rehabilitation was underway.

The Department of Revenue may adopt rules to administer this program. It is also given authority to conduct financial and technical audits to verify the site rehabilitation costs included in a tax credit return. The Department of Environmental Protection shall provide technical assistance when requested by the Department of Revenue. Provisions are also made for the recovery of credits to which a taxpayer was not entitled.

Section 376.30781, F.S. is created to provide that the Department of Environmental Protection may approve a total of \$5 million in credits per year, and approval is on a first-come, first served basis based upon the date on which complete applications are received. Applicants must pay a nonrefundable review fee of \$250 to cover the administrative costs associated with reviewing the application. In order to receive the partial tax credit, a taxpayer enters into a voluntary cleanup agreement with the Department of Environmental Protection. The taxpayer must provide copies of contracts and documentation of contract negotiations, accounts, invoices, sales tickets, or other payment records from purchases, sales, leases or other transactions involving actual costs incurred in the site cleanup. This documentation must be verified by an independent certified public accountant. Site rehabilitation activities must be certified by an appropriate professional registered in Florida in each contributing technical discipline.

The Department of Environmental Protection is authorized to adopt rules to implement this program, and must establish reasonable interim application requirements and forms by September 1, 1998. The Department of Environmental Protection is authorized to revoke or modify decisions granting eligibility if it is discovered that the taxpayer submitted false information.

Section 213.053, F.S., is amended to allow the Department of Revenue to share information with the Department of Environmental Protection with respect to this program.

**IV. Constitutional Issues:**

**A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**V. Economic Impact and Fiscal Note:**

**A. Tax/Fee Issues:**

Issue/Fund	General Revenue		Trust		Local		Total	
	1st Year	Recurring	1st Year	Recurring	1st Year	Recurring	1st Year	Recurring
	(\$3.5)	(\$4.7)	0.0	0.0	(\$0.3)	(\$0.3)	(\$3.8)	(\$5.0)

\* Insignificant

\*\* Indeterminate

**B. Private Sector Impact:**

Private property owners and others will receive a tax incentive to voluntarily undertake cleanup of contaminated sites.

**C. Government Sector Impact:**

To the extent contaminated sites are rehabilitated by private efforts, the state's backlog of contaminated sites will be reduced.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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