

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Environmental Preservation and Conservation Committee

BILL: SB 842

INTRODUCER: Senator Latvala

SUBJECT: Tax Credits/Rehabilitation of Contaminated Sites

DATE: March 21, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiggins	Yeatman	EP	Favorable
2.			BC	
3.				
4.				
5.				
6.				

I. Summary:

The Voluntary Cleanup Tax Credit Program (VCTC) was created to conduct voluntary cleanup of certain dry-cleaning solvent contaminated sites and brownfield sites in designated brownfield areas. The VCTC can apply toward corporate income taxes. The amount of the credit is 50 percent of the cost of voluntary cleanup activities integral to site rehabilitation, up to \$500,000 per site. If the credit is not fully used in any one year because of insufficient tax liability on the part of the tax credit applicant, the unused amount may be carried forward for a period not to exceed 5 years. The total amount of the tax credit that may be granted each year under the program is \$2 million. The Florida Department of Environmental Protection (DEP) is responsible for allocating the credits. The bill increases the cap on the total amount of tax credits that DEP can issue from \$2 million to \$4 million annually.

The bill amends ss. 220.1845 and 376.30781 of the Florida Statutes.

II. Present Situation:

Brownfield sites are real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.¹ The Brownfields Tax Incentives was passed by Congress as part of the Taxpayer Relief Act of 1997, and codified through Section 198(a) of the Internal Revenue Code. The incentive allows a taxpayer to fully deduct the costs associated of environmental cleanups in the year the costs were incurred rather than spreading them over a period of years. DEP receives its funding for its state response program (SRP) from the Environmental Protection Agency (EPA).

¹ Florida Department of Environmental Protection Summary of State Brownfields and Voluntary Response Programs.

A portion of these funds are used to fund site-specific assessments and limited cleanup of source areas for eligible applicants. Sites that receive these services are also encouraged to participate in the state Brownfields redevelopment Program.

In 1998, the Legislature provided DEP the direction and authority to issue tax credits as an additional incentive to encourage site rehabilitation in brownfield areas and to encourage voluntary cleanup of certain other types of contaminated sites.

The Legislature created a tax credit in the amount of 35% of the costs of voluntary cleanup activity that is integral to site rehabilitation at the following sites:

- 1) a site eligible for state-funded cleanup under the Drycleaning Solvent Cleanup Program (DSCP);
- 2) a dry-cleaning solvent contaminated site at which the real property owner undertakes voluntary cleanup, provided that the real property owner has never been the owner or operator of the dry-cleaning facility; or
- 3) a brownfield site in a designated brownfield area.

At that time, an eligible tax credit applicant could receive up to \$250,000 per site per year in tax credits. Due to concern that some participants in a voluntary cleanup might only conduct enough work to eliminate or minimize their exposure to third party lawsuits (i.e. ensure that their neighbor cannot sue them for personal injury or diminished property value), the VCTC statute also provided a completion incentive in the form of an additional 10% supplemental tax credit for those applicants that completed site rehabilitation and received a Site Rehabilitation Completion Order (SRCO) from DEP. This additional supplemental credit was 10% of the total cost of cleanup over the life of the project, with a \$50,000 cap. Site rehabilitation tax credit applications must be complete and submitted by January 31 of each year. The total amount of tax credits for all sites that may be granted by the DEP is \$2 million annually. In the event that approved tax credit applications exceed the \$2 million annual authorization, the statute provides for remaining applications to roll over into the next fiscal year to receive tax credits in first come, first served order from the next year's authorization. When the VCTC program was created, these tax credits could be applied toward corporate income tax or intangible personal property tax in Florida. The tax credits may be transferred one time, although they may succeed to a surviving or acquiring entity after merger or acquisition.²

In 2006, amendments were made to VCTC provisions in s. 220.1845, F.S., (Corporate Income Tax) and s. 376.30781, F.S., (Pollutant Discharge Prevention and Removal) to allow costs incurred prior to the brownfield area designation to be claimed, as long as the brownfield area designation is made in the same calendar year as when the first VCTC costs are claimed. Additional amendments were adopted to increase the amount and percentage of costs of voluntary cleanup activity that is integral to site rehabilitation from 35% to 50% and from \$250,000 to \$500,000; to increase the percentage and value of the completion incentive tax credit from 10% to 25% and from \$50,000 to \$500,000; to allow a one-time application for an additional 25% of the total site rehabilitation costs, up to \$500,000, for brownfield sites at which the land use is restricted to affordable housing; to allow an eligible applicant to submit a one-

² Department of Environmental Protection, *Senate Bill 842 Fiscal Analysis* (February 22, 2011)(on file with the Senate Committee on Environmental Preservation and Conservation).

time application claiming 50% of the costs, up to \$500,000, for removal, transportation and disposal of solid waste at a brownfield site; and to amend subsection (9) of section 376.30781, F.S., to extend the review and certificate issuance period from March 1 to March 31. The 2006 legislature also repealed s199.1055, F.S., the Intangible Personal Property Tax provision. Therefore, the VCTC can now only be applied against Florida corporate income tax.³

In 2008, the Legislature clarified the eligibility requirements and procedures for claiming the solid waste VCTC; to extend the review and certificate issuance period from March 31 to May 1; to allow a one-time application for an additional 25% of the total site rehabilitation costs, up to \$500,000, for brownfield sites at which the redevelopment results in a health care facility or health care provider; and changed the deadline for submittal of tax credit applications to January 31 of the year following the year the costs were incurred and paid.⁴

In 2009, the Legislature extended the time period for payment of site rehabilitation costs up until the applicant submitted their application but prior to January 31 of the year following the calendar year for which costs are being claimed.⁵

The tax credit program continues to be a strong incentive for voluntary cleanup of contaminated sites in Florida. The annual authorization for VCTC is \$2 million. Beginning in 2006, the requests for tax credits have met or exceeded that authorization. Section 376.30781, F.S., states that eligible tax credits will be awarded as each authorization becomes available. All tax credit authorizations have been exhausted to date and tax credit awards for costs incurred as far in the past as calendar year 2008 are still pending. The current backlog of approved, unawarded tax credits is \$7,379,777.⁶

According to DEP, VCTC applications for 2010 costs were due on January 31, 2011. DEP received 52 applications requesting \$5,647,779.96 in tax credits. The applications are being reviewed for eligibility.

III. Effect of Proposed Changes:

Section 1 amends s. 220.1845, F.S., to increase the total amount of tax credits which may be granted annually from \$2 million to \$4 million.

Section 2 amends s. 376.30781, F. S., to increase the total amount of tax credits that DEP may allocate annually from \$2 million to \$4 million.

Section 3 provides an effective date of July 1, 2011.

³ Department of Environmental Protections, *Senate Bill 842 Fiscal Analysis* (February 22, 2011)(on file with the Senate Committee on Environmental Preservation and Conservations).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The increase in the total annual authorization amount will allow some businesses to receive their tax credit certificates sooner and may spark further site rehabilitation and redevelopment activity. The state may experience job creation and redevelopment of brownfield and eligible dry-cleaning sites.

C. Government Sector Impact:

According to DEP, for FY 2010-2011, of the \$2,000,000 available, \$530,810 was approved for payment as of February 15, 2011. An additional \$5,116,969 in tax credits has also been requested.

DEP will be required to amend existing rules detailing the tax credit application process. There will be minimal fiscal impacts associated with the cost of rulemaking related to publishing rule drafts and conducting public workshops for rule development.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
