

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB APC 23-09 Increase in the Brownfields Tax Credit Program

SPONSOR(S): Appropriations Committee

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Appropriations Committee		Davis	Pridgeon

SUMMARY ANALYSIS

The Voluntary Cleanup Tax Credit program (Brownfields Tax Credit) is a corporate income tax credit administered by the Department of Environmental Protection and used as an incentive for businesses to voluntarily rehabilitate brownfield properties and restore them to productive use. The current annual cap for the program is \$10 million in each state fiscal year. The demand for the program has consistently outpaced the available funds, leading to a rolling backlog for the program in most years. The bill increases the annual funding for the tax credit from \$10 million to \$36.1 million, beginning in FY 2023-24.

While the bill has not been reviewed by the Revenue Estimating Conference, it is estimated to have a negative recurring impact on General Revenue of \$26.1 million beginning in FY 2023-24.

The bill has an effective date of July 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

In 1998, the Legislature provided the Department of Environmental Protection (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.¹

The Voluntary Cleanup Tax Credit may be taken in the amount of 50 percent of the costs of voluntary cleanup activity that is integral to site rehabilitation at the following sites:

- A site eligible for state-funded cleanup under the Drycleaning Solvent Cleanup Program;²
- A drycleaning 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 drycleaning facility; or
- A brownfield site in a designated brownfield area.³

Eligible tax credit applicants may receive up to \$500,000 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, current law also provides a completion incentive in the form of an additional 25 percent supplemental tax credit for those applicants that completed site rehabilitation and received a Site Rehabilitation Completion Order from the DEP. This additional supplemental credit has a \$500,000 cap. Businesses are also allowed a one-time application for an additional 25 percent of the total site rehabilitation costs, up to \$500,000, for brownfield sites at which the land use is restricted to affordable housing. They may also submit a one-time application claiming 50 percent of the costs, up to \$500,000, for removal, transportation and disposal of solid waste at a brownfield site.

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 DEP is \$10 million annually. In the event that approved tax credit applications exceed the \$10 million annual authorization, the statute provides for remaining applications to roll over into the next FY to receive tax credits in first come, first served order from the next year's authorization. These tax credits may be applied toward corporate income 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.

Since 1998, the VCTC Program has approved approximately \$155.6 million in VCTCs.⁴ Since 2008, the tax credits approved have consistently exceeded the original \$2 million cap. The Legislature increased the cap from \$2 million to \$5 million in 2011, and then to \$10 million in 2017. The Legislature provided for a one-time increase in 2015 (from \$5 million to \$21.6 million) to clear the backlog at that time,⁵ and again in FY 2018-19 and FY 2021-22, when an additional \$8.5 million and \$17.5 million, respectively, were authorized.⁶

¹ Ch. 98-189, L.O.F.

² Section 376.30781, F.S.

³ Section 220.1845, F.S.

⁴ Florida Brownfields Redevelopment Program Annual Report August 2022, p. 6, available at https://floridadep.gov/sites/default/files/2021-2022_BF_Annual_Report-Final.pdf (last visited April 20, 2023).

⁵ *Id.*

⁶ Section. 220.1845(2)(f), F.S.

As of August 5, 2022, DEP had a backlog of \$8.7 million in approved tax credits that have not been funded.⁷ For the most recent year, \$23.2 million was requested, of which at least \$23 million is expected to be approved based on the average approval rate.⁸ The \$10 million annual amount for this year will cover last year's approved \$8.7 million in credits, but will only cover \$1.3 million of the credits requested in the most recent cycle. This will result in an estimated backlog of at least \$21.7 million for FY 2023-24.

Proposed Changes

The bill provides a permanent increase in funding for the Voluntary Cleanup Tax Credit Program from \$10 million to \$36.1 million per fiscal year beginning with FY 2023-34.

B. SECTION DIRECTORY:

Section 1: Amends s. 220.1845, F.S., to increase credit program cap.

Section 2: Amends s. 376.30781, F.S., to conform to increase of credit program cap.

Section 3: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

While the bill has not been reviewed by the Revenue Estimating Conference, it is estimated to have a negative recurring impact on General Revenue of \$26.1 million beginning in FY 2023-24.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may increase participation in the voluntary cleanup tax credit program.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

⁷ DEP, Voluntary Cleanup Tax Credit Backlog, https://floridadep.gov/sites/default/files/VCTC-Pending-Awards_2022-08_0.pdf (last visited April 20, 2023).

⁸ Email from Scott Sweeney, Voluntary Cleanup Tax Credit Program Manager at Florida Department of Environmental Protection, dated March 6, 2022 (on file with the staff of the Ways & Means Committee).

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES