

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 641 Contaminated Site Rehabilitation Tax Credit

**SPONSOR(S):** Mayfield

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 842

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	15 Y, 0 N	Deslatte	Blalock
2) Finance & Tax Committee	22 Y, 0 N, As CS	Wilson	Langston
3) State Affairs Committee			

### SUMMARY ANALYSIS

The Voluntary Cleanup Tax Credit Program (VCTC) was created to conduct voluntary cleanup of certain drycleaning 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 per year. If the credits are 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 credits that may be granted each year under the program is \$2 million. The 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 \$5 million annually.

Staff estimates that this bill will have a recurring negative \$3 million impact on state General Revenue, beginning in FY 2011-12.

This bill shall take effect July 1, 2011.

## 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. 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:

- A site eligible for state-funded cleanup under the Drycleaning Solvent Cleanup Program (DSCP);
- 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.

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, 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 the department. 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.

In 2006, amendments were made to VCTC provisions in section 220.1845, F.S., (Corporate Income Tax) and section 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 also adopted that:

- 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;
- Increase the percentage and value of the completion incentive tax credit from 10% to 25% and from \$50,000 to \$500,000;
- Allows 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;
- Allows an eligible applicant to submit a one-time application claiming 50% of the costs, up to \$500,000, for removal, transportation and disposal of solid waste at a brownfield site; and
- Extends the review and certificate issuance period from March 1 to March 31.

The 2006 legislature also repealed section 199.1055, F.S., the Intangible Personal Property Tax provision. Therefore, the VCTC can now only be applied against Florida corporate income tax.

According to DEP's analysis<sup>1</sup>, the requests for tax credits have met or exceeded the annual \$2 million authorization since 2006. All tax credit authorizations have been exhausted to date and tax credit awards for costs incurred as far as 2008 are still pending, with a current backlog of approved, un-awarded tax credits at \$7,379,777.26. For 2010, DEP received 52 applications requesting \$5,647,779.96 in tax credits. Those applications are currently being reviewed for eligibility.

### **Effect of Proposed Changes**

The bill increases the cap on the total amount of tax credits that DEP can issue from \$2 million to \$5 million annually.

#### **B. SECTION DIRECTORY:**

Section 1. Amends s. 220.1845, F.S., increasing the annual contaminated site rehabilitation tax credit cap.

Section 2. Amends s. 376.30781, F.S., conforming references.

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

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

##### **1. Revenues:**

By increasing the cap on the total amount of tax credits that DEP can issue from \$2 million to \$5 million annually, staff estimates that the bill will have a recurring negative \$3 million impact on state General Revenues. Also see FISCAL COMMENTS.

##### **2. Expenditures:**

None.

#### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

##### **1. Revenues:**

None

##### **2. Expenditures:**

None

#### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The increase in the amount of tax credits available in the bill may allow some businesses to receive their tax credit certificates sooner. This may further spur site rehabilitation and redevelopment activity.

#### **D. FISCAL COMMENTS:**

According to DEP, if applications continue to be submitted at the same rate as in the past two years, the increase in authorization will not reduce the size of the backlog of approved, un-awarded tax credits, but it will slow the rate at which the backlog grows<sup>1</sup>.

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<sup>1</sup> 2011 Department of Environmental Protection Bill Analysis – HB 641 (on file with Agriculture & Natural Resources Subcommittee in the House of Representatives – last viewed March 22, 2011)

<u>Fiscal Year</u>	<u>Total \$ Issued</u>	<u>Certificates to be Awarded Pending Legislative Authorization</u>
FY 1998-1999	\$30,228.13	
FY 1999-2000	\$118,438.25	
FY 2000-2001	\$213,851.71	
FY 2001-2002	\$494,193.72	
FY 2002-2003	\$1,068,049.30	
FY 2003-2004	\$1,093,319.13	
FY 2004-2005	\$1,190,541.87	
FY 2005-2006	\$1,315,058.87	
FY 2006-2007	\$1,999,999.70	
FY 2007-2008	\$2,000,000.00	
FY 2008-2009	\$2,000,000.00	\$1,191,168.36
FY 2009-2010	\$2,000,000.00	\$5,657,798.63
FY 2010-2011	\$2,000,000.00	Eligibility determinations in progress; \$530,810.27 approved as of 2/15/11. An additional \$5,116,969.69 in tax credits requested.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

##### 2. Other:

None

#### B. RULE-MAKING AUTHORITY:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 24, 2011, the Finance & Tax Committee adopted a strike-all amendment that increased the Voluntary Cleanup Tax Credit amount from \$4 million, found in HB 641, to \$5 million in CS/HB 641.

The analysis has been updated to reflect the committee substitute.