

STORAGE NAME: h1067s1.gg

DATE: April 16, 1997

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
GENERAL GOVERNMENT APPROPRIATIONS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 1067 and 955

RELATING TO: Brownfield redevelopment

SPONSOR(S): Committee on Environmental Protection and Representatives Constantine and Eggelletion

STATUTE(S) AFFECTED: Creates s. 376.77, 376.78, 376.79, 376.80, 376.81, 376.82, 376.83, and 376.84, F.S.

COMPANION BILL(S): HB 955(c), CS/CS/SB 1306 and 1934(s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) ENVIRONMENTAL PROTECTION YEAS 10 NAYS 2
- (2) BUSINESS DEVELOPMENT AND INTERNATIONAL TRADE (W/D)
- (3) COMMUNITY AFFAIRS (W/D)
- (4) FINANCE AND TAXATION (W/D)
- (5) GENERAL GOVERNMENT APPROPRIATIONS

I. SUMMARY:

This bill creates the Brownfields Redevelopment Act. Provides legislative intent and definitions. Provides for a brownfield program administration process. Provides that a brownfield must be designated by a local government by resolution. Provides notice requirements for a brownfields designation. Requires the person responsible for brownfield site rehabilitation to enter into a brownfield site rehabilitation agreement with the Department of Environmental Protection (DEP) or an approved local environmental program. Specifies what the agreement must include. Provides that contractors must meet certain qualifications. Provides that any professional engineer or geologist providing professional services relating to site rehabilitation must carry professional liability insurance with a specified coverage amount. Provides that certain immunity provisions may be revoked under certain circumstances. Provides for cleanup criteria. Provides eligibility criteria and liability protection under certain circumstances. Provides penalties for violations of this act.

This bill shall take effect July 1, 1997.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Broadly defined, "brownfields" are abandoned, idled, or underused industrial and commercial properties where expansion or redevelopment is complicated by real or perceived environmental contamination. Brownfields are a chronic problem for both urban and rural areas. The U.S. General Accounting Office estimates that there are between 130,000 and 450,000 brownfield sites with a price tag of over \$650 billion to clean up. Economic loss in jobs, loss of property taxes, and lender fear of financing the redevelopment of brownfields have resulted in support by the U.S. Environmental Protection Agency (EPA) and some twenty-two states with brownfield statutes.

Because of the cost of cleaning up a contaminated site and the potentially serious liability issues, it has been easier and more cost-effective for developers to ignore these sites in favor of developing open greenspace areas, even though many of the sites in a brownfield area may contain little or no actual environmental contamination. Concern over the rapid development of greenspace nationwide has prompted a great deal of interest in the redevelopment of brownfields.

In Florida, there are approximately 1,562 hazardous waste sites (not including sites which may contain contamination from petroleum products and drycleaning solvents) that are currently being managed by the Department of Environmental Protection's enforcement program. Also, there are 893 additional sites in Florida that are listed in the EPA's Environmental Response Compensation and Liability Information System (CERCLIS). The CERCLIS list is used by the EPA to track potentially contaminated sites evaluated under the federal Superfund program.

The EPA has launched the Brownfields Initiative to empower states, communities, and other stakeholders in economic redevelopment to work together in a timely manner to prevent, assess, safely cleanup, and sustainably reuse brownfields. The anticipated benefits of the Brownfields Initiative in the affected communities will be a cleaner environment, new jobs, an enhanced tax base, and a sense of optimism about the future. The EPA activities to help states implement and realize the benefits of the Brownfields Initiative include clarification of liability issues, partnership and outreach, brownfields pilot projects, and job development training. To date, Florida has two pilot projects receiving Brownfield Initiative funds from the EPA; these are located in Clearwater and Miami.

It is the uncertainty concerning the perceived risk or liability to the developer, purchaser, investor, or lender on such a transaction, as much as it is the contamination at the site, that is the main impediment to redevelopment. The threat of future and unlimited liability, property devaluation, reopens in "No Further Action" letters, stringent cleanup standards, and lender liability keeps potentially interested parties from recycling contaminated properties. In Florida, strict liability laws patterned after federal laws compel persons responsible for causing contamination from hazardous substances to be financially responsible for cleaning up the contaminated sites. Generally, these laws operate to hold everyone in the chain of title for a contaminated property jointly and severally responsible for the costs of cleanup and rehabilitation. These proceedings can be costly and drawn out over long periods of time.

Florida does not have a brownfields program. Cleanup of contaminated properties in Florida is completed by property owners and responsible parties pursuant to the DEP's enforcement authority provided in Chapter 403, F.S. A person who buys contaminated property is liable as an owner, even if the contamination resulted from the operations of a prior owner or tenant. The DEP usually requires parties to enter into a Consent Order, although the Department often waives formal enforcement actions and civil penalties on a case by case basis for parties that voluntarily complete a site cleanup.

For sites that pose immediate environmental and public health threats, Florida uses the Water Quality Assurance Trust Fund to respond while legal proceedings are under way to recover costs from responsible parties. This trust fund, however, serves a variety of needs and at the current rate of expenditures on brownfield sites, it will take decades to respond to the current list of potential brownfield sites.

A common feature of various Brownfield programs is the discretion to cleanup to less than prevailing target levels using Risk-Based Corrective Action (RBCA, pronounced Rebecca) principles. The RBCA principles allow use of engineering measures such as impermeable caps and institutional controls such as land use restrictions and deed notices in lieu of cleanups. Also, adjustments to cleanup target levels can be made based on industrial/commercial land use in contrast to residential land use. Target levels for cleanup in other states may be based on cancer risk management levels ranging from one in ten thousand to one in one million.

Based on 1996 legislation, the DEP has adopted RBCA principles for petroleum sites and is developing guidelines for the appropriate use of RBCA principles for non-petroleum sites. However, the contaminants at non-petroleum sites are often more hazardous and have different mobility and degradation rates than petroleum contaminants resulting in sites that are technically more complex and costly to cleanup. State law (s. 376.3071, F.S.) requires petroleum sites be managed at one in one million cancer risk level (10^{-6}) and a hazard index of 1 or less for non-carcinogens. The cleanup guidance criteria for non-petroleum sites are similarly based.

B. EFFECT OF PROPOSED CHANGES:

This bill creates the Brownfields Redevelopment Act

Section 1: Section 376.77, F.S., is created to provide that the act shall be cited as the "Brownfields Redevelopment Act."

Section 2: Section 376.78, F.S., is created to provide legislative intent with regard to brownfields. The reduction of public health and environmental hazards on existing commercial and industrial sites is vital to their use and reuse as sources of employment, housing, recreation, and open-space areas. The reuse of industrial land is an important component of sound land-use policy for productive urban purposes that will help prevent the premature development of farmland, open-space areas, and natural areas, and reduce public costs for installing new water, sewer, and highway infrastructure. Further, the abandonment or underuse of brownfield sites results in the inefficient use of public facilities and services, as well as land and other natural resources, extends conditions of blight in local communities, and contributes to concerns about environmental equity and the distribution of environmental risks across population groups.

Incentives should be put in place to encourage responsible persons to voluntarily develop and implement cleanup plans without the use of taxpayer funds or the need for enforcement actions by state and local governments. Site rehabilitation should be based on the actual risk that contamination on a site may pose to the environment and public health, taking into account its current and future use and the degree to which contamination may spread and expose the public or the environment to risk.

This section further provides intent and findings regarding environmental justice considerations and recognition that the environment is an important element of the quality of life in any community, including but not limited to minority and low-income communities. Environmental justice considerations, and the fair treatment of all people, should be inherent in meaningful public participation elements of a brownfields redevelopment program.

Cooperation among federal, state, and local agencies, local community development organizations, current owners, and prospective purchasers of brownfield sites is required to accomplish timely cleanup activities and the redevelopment or reuse of brownfield sites.

Section 3: Section 376.79, F.S., is created to define the following terms: “additive effects”, “antagonistic effects”, “brownfield”, “department”, “engineering controls”, “institutional controls”, “local pollution control program”, “natural attenuation”, “person responsible for brownfield site rehabilitation”, “person”, “site rehabilitation”, “source removal”, and “synergistic effects”.

Section 4: Section 376.80, F.S., is created to provide for a brownfield program administration process. A local government with jurisdiction over the brownfield must notify the DEP of its decision to designate a brownfield for rehabilitation. The notification must include a resolution by the local government body to which is attached a map adequate to clearly designate exactly which parcels are to be included in the brownfield or a less detailed map which is accompanied by a legal description of the brownfield. Any property owner within a proposed brownfield may request in writing to have his property removed from the proposed designation and the local government is required to grant the request. The local government shall provide for public hearings and notice of the proposed designation.

If a local government proposes to designate a brownfield that is outside community redevelopment areas, enterprise zones, empowerment zones, or designated brownfield pilot project areas, the local government must conduct at least one public hearing in the area to be designated to provide an opportunity for public input on the size of the area, the objectives for rehabilitation, job opportunities and economic developments anticipated, neighborhood residents’ considerations, and other relevant local concerns. This section also provides the specifications for the notice of the public hearing requiring that the notice be at least 6 inches square in size, appear in ethnic newspapers or local community bulletins, be posted in the affected area, and be announced at a scheduled meeting of the local governing body before the actual public hearing.

The local government must consider the following in determining the area to be designated as a brownfield:

- Whether the brownfield warrants economic development and has a reasonable potential for such activities;
- Whether the proposed designation represents a reasonable, focused approach and is not overly large in geographic coverage;

- Whether the site has potential to interest the private sector in participating in rehabilitation; and

- Whether the site is suitable for limited recreational open space, cultural, or historical preservation purposes.

The designation of a brownfield and the identification of a person responsible for brownfield site rehabilitation simply entitles the identified person to negotiate a brownfield rehabilitation agreement with the department or approved local government.

A local government shall designate a brownfield under the provisions of this act provided that:

- A person who owns or controls a potential brownfield site is requesting the designation and has agreed to rehabilitate and redevelop the brownfield site;

- The rehabilitation and redevelopment of the proposed brownfield site will result in economic productivity of the area along with the creation of new jobs which are not associated with the implementation of the rehabilitation agreement;

- The redevelopment of the proposed brownfield site is consistent with the local comprehensive plan and is a permissible use under the applicable local land development regulations;

- Adjacent property owners and residents have been provided with the notice of the proposed rehabilitation and have been given an opportunity to give comments and suggestions about the site rehabilitation. This notice must be made in a newspaper of general circulation in the area, it must be at least 6 inches square in size, and it must also be posted in the affected area;

- An advisory committee has been established in order to improve public participation and receive public comments. It should include residents near the brownfield area, businesses operating in the brownfield area and others deemed appropriate; and

- The person proposing the area for designation has provided reasonable assurance that he or she has sufficient financial resources to implement and complete the rehabilitation agreement and development plan.

At the time of the adoption of the resolution, the local government must notify the DEP of the entity that it is designating as the person responsible for brownfield site rehabilitation. If the agency or person who will be responsible for the coordination changes during the brownfield site rehabilitation process, the DEP or the affected local pollution control program must notify the affected local government when the change occurs.

The person responsible for brownfield site rehabilitation must enter into a brownfield site rehabilitation agreement with DEP or an approved local pollution control program. The agreement must include:

- A brownfield rehabilitation schedule;
- A commitment to conduct site rehabilitation activities under the observation of professional engineers or geologists. Upon completion of the approved remedial action, the department shall require the professional engineer or professional geologist to certify that the corrective action was, to the best of his knowledge, completed in substantial conformance with the plans and specifications approved by the department;
- A commitment to conduct site rehabilitation in accordance with an approved comprehensive quality assurance plan under DEP rules;
- A commitment to conduct site rehabilitation consistent with federal, state, and local laws and consistent with the brownfield site contamination cleanup criteria specified in this bill;
- A commitment to secure site access for the department or approved local pollution control program to all brownfield sites within the eligible brownfield area for activities associated with rehabilitation;
- Other provisions that the person responsible for brownfield site rehabilitation and the DEP agree upon that will improve or enhance the brownfield site rehabilitation process; and
- An agreement to develop within two years an appropriate pollution prevention plan.

Contractors must meet certain qualifications.

Any professional engineer or geologist providing professional services relating to site rehabilitation program tasks must carry professional liability insurance with a coverage limit of at least \$1 million.

During the cleanup process, an eligible party may proceed from one phase or task of cleanup to the next prior to obtaining approval of the technical document for the next phase or task of cleanup. However, the eligible party will be required to complete any additional tasks identified by the department or local pollution control program found during the review.

If the person responsible for brownfield site rehabilitation fails to comply with the brownfield site rehabilitation agreement, DEP shall allow 90 days for that person to return to compliance to return to compliance with the provision at issue or to renegotiate a modification to the agreement with the DEP for good cause shown. If imminent hazard exists, the 90 grace period shall not apply. If the project is not returned to compliance with the agreement and a modification cannot be negotiated, the immunity provisions of s. 376.83, F.S. are revoked.

Any agreement to extend the completion date may not be for more than 180 days, one additional extension, not to exceed 180 days, may be granted if deemed appropriate by the department or the local pollution control program.

The DEP is authorized and encouraged to enter into delegation agreements with local pollution control programs.

Failure by the department or local pollution control program to adhere to site rehabilitation milestones shall constitute approval of the specific task. Exceptions include requests for "no further action," "monitoring only proposals," and feasibility studies.

Section 5: Section 376.81, F.S., provides brownfield redevelopment economic incentives. State and local governments are encouraged to offer redevelopment incentives to encourage the redevelopment of brownfield sites, and the bill delineates various examples of financial, regulatory, and technical assistance incentives that may be used to encourage redevelopment of brownfield sites.

Section 6: Creates section 376.82, F.S., directing the DEP to establish by rule for the purpose of determining, on a site-specific basis, the rehabilitation program tasks that comprise a site rehabilitation program and the level at which a rehabilitation program may be completed. The criteria for determining what constitutes a rehabilitation program task or completion of a site rehabilitation program task or site rehabilitation program must:

- Consider the current exposure and potential risk of exposure to humans and the environment, including multiple pathways of exposure.
- Establish the point of compliance at the source of the contamination.
- Ensure that the site-specific cleanup goal is that all contaminated brownfield sites and brownfield areas ultimately achieve the applicable cleanup target levels.
- Allow brownfield site and brownfield area rehabilitation programs to include the use of institutional or engineering controls to eliminate or control the potential exposure to contaminants to humans or the environment. Use of such controls must be preapproved by the department.
- Consider the synergistic, antagonistic, and additive effects of contaminants when the scientific data becomes available.
- Take into consideration individual site characteristics.
- Apply state water quality standards.
- Provide for the department to issue a "no further action order" when alternative cleanup target levels have been achieved or based upon the degree to which the desired cleanup target level is achievable and can be reasonably and cost effectively implemented.

- Establish appropriate cleanup target levels for soils.

The department shall require source removal, if warranted and cost effective. Once source removal at a site is complete, the department shall reevaluate the site to determine the degree of active cleanup needed to continue. The department shall determine if the reevaluated site qualifies for monitoring only or if "no further action" is required to rehabilitate the site.

Section 7: Creates section 376.83, F.S., to provide eligibility criteria and liability protection:

Eligibility criteria will be granted to:

- Any person who has not caused or contributed to the contamination of a brownfield site after July 1, 1997; and
- Persons who have not caused or contributed to the contamination of a brownfield site after July 1, 1997, and who, prior to the department's approval of a brownfield site rehabilitation agreement, are subject to ongoing corrective action or enforcement under state authority, including those persons subject to a pending consent orders with the state if:
 - * The proposed brownfield site is currently idle or underutilized as a result of contamination, and participation will immediately, after cleanup or sooner, result in increased economic productivity, including the creation of new jobs, whether permanent or part time, which are not associated with implementation of the brownfield site corrective action plan; and
 - * The person is complying in good faith with the terms of an existing consent order or department-approved corrective action plan, or responding in good faith to an enforcement action.

Liability protection criteria will be granted to:

- Any person, including his or her successors and assigns, who executes and implements to successful completion a brownfield site rehabilitation agreement, shall be relieved of further liability for remediation of the site to the state and to third parties.

The liability protection shall not:

- be construed as a limitation on the right of a third party other than the state to pursue an action for damages to property or person.
- affect the ability or authority to seek contribution from any person who may have liability with respect to the site and who did not receive cleanup liability protection.

Liability protection will become effective upon execution of a brownfield site rehabilitation agreement and will remain effective, provided the person responsible for brownfield site rehabilitation complies with the terms of the agreement.

Completion of the performance of the remediation obligations at the brownfield site will be evidenced by a site rehabilitation completion letter or a "no further action" letter issued by the department.

Reopener criteria:

-Upon completion of site rehabilitation in compliance with the act no additional site rehabilitation shall be required unless it is demonstrated that: fraud was committed; new information confirms the existence of an area of previously unknown contamination that poses an imminent threat to human health and the environment; the remedial efforts failed to achieve the site rehabilitation goals; the level of risk is increased beyond the acceptable risk established; or a new release occurs.

Additional liability for lenders is also provided in this section.

Section 8: Creates section 376.84, F.S., establishing violations and penalties. Any person who willingly commits a violation is guilty of a misdemeanor of the first degree, punishable by a fine of not more than \$10,000 or six months in jail, or both, for each offense.

Section 9: The DEP is required to prepare an annual report to the Legislature, beginning in December 1998. The report shall include the number of sites remediated, the number of sites undergoing remediation, the number and size of brownfield sites or areas that have been designated, the number of sites that have utilized site-specific criteria, information regarding the relationship between the program and the EPA's brownfields program, and information regarding brownfield redevelopment incentives that have been offered by local governments.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

Rule authority increases for the department as it relates to developing RBCA tables and guidelines for application to new forms of contaminants.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Local governments will be required to designate by resolution brownfield sites or areas.

(3) any entitlement to a government service or benefit?

No

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No

b. Does the bill require or authorize an increase in any fees?

No

c. Does the bill reduce total taxes, both rates and revenues?

No

d. Does the bill reduce total fees, both rates and revenues?

No

e. Does the bill authorize any fee or tax increase by any local government?

No

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Yes

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. SECTION-BY-SECTION RESEARCH:

See "Effect of Proposed Changes"

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

Some administrative cost will occur for the department as it relates to the processing of brownfield designations and negotiations related to site rehabilitation plans.

2. Recurring Effects:

The department will have additional workloads for ongoing review and monitoring of the implementation of brownfield site agreements and utilization of RBCA cleanups. The amount is indeterminate and will be directly related to the number and size of brownfields.

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

See A.1. and A.2.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

Local governments will absorb portions of the costs associated with designation of brownfields, these include: noticing requirements, participation in negotiating site rehabilitation agreements, and additional administrative costs associated with adopting a resolution.

2. Recurring Effects:

None

3. Long Run Effects Other Than Normal Growth:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Persons choosing to seek the brownfield designation would incur costs associated with: noticing provisions contained in the bill; and the cleanup of contaminated sites.

2. Direct Private Sector Benefits:

Cost associated with rehabilitation of brownfield sites would be reduced under provisions of the bill.

3. Effects on Competition, Private Enterprise and Employment Markets:

The redevelopment of brownfield sites should contribute to economic revitalization, spurring business competition and additional employment opportunities in areas that have been economically depressed.

D. FISCAL COMMENTS:

Direct costs for any parties participating in this program are indeterminate due to their relationship to the size of the brownfield and the complexity of any cleanups.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority that municipalities or counties have to raise revenues.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the percentage of state tax shared with counties and municipalities.

V. COMMENTS:

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Ten amendments were adopted. Specifically they: provide legislative intent related to environmental justice; combine the definitions of brownfield sites and brownfield areas; direct that persons responsible for brownfield site rehabilitation shall adopt an appropriate pollution prevention plan within two years; provide that the designation of a brownfield only permits the person responsible to seek an agreement with the department or approved local program; provide that site rehabilitation completion deadline may be automatically extended for a period of 180 days and that an additional 180 day extension may be granted by the department; require local governments and persons responsible for site rehabilitations to form an advisory group for the purpose of improving public participation; replace the definitions of additive effects, antagonistic effects and synergistic effects; and, provide that the revocation of immunity is statutory.

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VII. SIGNATURES:

COMMITTEE ON ENVIRONMENTAL PROTECTION:

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AS FURTHER REVISED BY THE COMMITTEE ON GENERAL GOVERNMENT
APPROPRIATIONS:

Prepared by:

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