

**STORAGE NAME:** h0955.ep  
**DATE:** April 2, 1997

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
ENVIRONMENTAL PROTECTION  
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

**BILL #:** HB 955

**RELATING TO:** Environmental Equity

**SPONSOR(S):** Representative Eggelletion

**STATUTE(S) AFFECTED:** ss. 220.03 and 220.02, F.S. and creates s. 220.185, F.S.

**COMPANION BILL(S):** HB 1067 (c), CS/CS/SB 1306, and SB 1934

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

- (1) ENVIRONMENTAL PROTECTION
- (2) BUSINESS DEVELOPMENT & INTERNATIONAL TRADE
- (3) COMMUNITY AFFAIRS
- (4) FINANCE & TAXATION
- (5) GENERAL GOVERNMENT APPROPRIATIONS

---

**I. SUMMARY:**

**This bill research document is based upon the remove and insert amendment.**

HB 955 creates the Brownfields Community Revitalization Act. It establishes the Brownfields Community Revitalization Program (program), which is to be administered by the Brownfields Community Revitalization Coordinating Council (Council). The Council is created within the Department of Community Affairs, and is composed of the Secretary of Community Affairs, the Secretary of Environmental Protection, the Secretary of Health, and the Attorney General. The Council shall facilitate the acquisition of state and federal funding, provide technical assistance to local governments, coordinate health care delivery to low-income persons, ensure public participation, and promote pollution prevention. Contaminated sites that are not petroleum or dry-cleaning sites and meet additional criteria will be eligible to participate in the program. The cleanup levels for contaminants at participating sites shall be a cancer risk level of  $1.0 E^{-6}$  and a hazard index of less than 1. Brownfields sites will be rehabilitated subject to an agreement between the person responsible for the Site and the Department of Environmental Protection (DEP) or an approved local program. Participation by local residents is to be ensured through development and implementation of a community participation plan. Site cleanup must be conducted under the supervision of a professional engineer or geologist meeting additional qualifications specified in the bill. Any person who has not caused or contributed to the contamination of a site and successfully completes site cleanup pursuant to a brownfield site rehabilitation agreement, shall be eligible for protection from liability for additional cleanup. However, the bill also provides for "reopeners," such as fraud or changes in the level of risk, which can compel additional cleanup. State and local governments are authorized to provide various financial, regulatory, and technical assistance incentives to promote redevelopment of brownfield sites. Tax credits against the corporate income tax are extended to persons who successfully rehabilitate brownfield sites.

The bill appropriates \$5 million in general revenue for brownfields rehabilitation pilot projects and \$425,000 from the Water Quality Assurance Trust Fund to the Department of Community Affairs to administer the program.

The bill provides that the act 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 cleanup. 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 DEP 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:

HB 955 creates the Brownfields Community Revitalization Act.

The bill includes the following legislative findings:

- o Elimination of public health and environmental hazards on abandoned or idle industrial sites is necessary for their use and reuse and such reuse contributes to sound land-use policy, preventing development of green spaces and reducing public costs of new infrastructure;
- o Degraded, hazardous physical environments are characteristic of contaminated sites and have contributed to numerous public health, economic, and social problems;
- o Abandonment or underuse of brownfield sites results in inefficient use of public facilities and services as well as land and other natural resources, extends conditions of blight, and contributes to concern regarding environmental equity and justice.

- o Minority and low-income communities are disproportionately impacted by targeted hazardous environmental sites, and lack access to health care information regarding associated risks; and
- o Environmental justice provides a framework for addressing Florida's urban crisis, and combined with community revitalization can help resolve urban problems through partnerships between government, developers, and environmentally overburdened communities.

"Brownfield" is defined by the bill as a "land area that contains one or more contaminated sites, that was last used for nonagricultural purposes, is currently undeveloped, abandoned, or underutilized, and is located within a planned urban development area, community redevelopment area, empowerment zone, enterprise zone, or federally designated brownfield pilot project area." Definitions are also provided for "contaminated site," "environmental justice," and "fair treatment."

A Brownfields Community Revitalization Program (program) is created, which will be administered by the Brownfields Community Revitalization Interagency Coordinating Council (Council). The Council will be composed of the Secretary of Community Affairs, the Secretary of Environmental Protection, the Secretary of Health, and the Attorney General, or their respective designees. An ombudsman will be created by the Council to serve as an intermediary among the various parties involved in or affected by brownfields redevelopment. Duties of the Council will include:

- o Facilitating site assessment through acquisition of financial and technical assistance from the United States Environmental Protection agency (EPA) and the DEP;
- o Providing technical assistance to local governments, potential developers, lending institutions, and affected communities participating in the program;
- o Coordinating delivery of health care services to low-income individuals living in or adjacent to contaminated sites;
- o Ensuring participation by individuals living adjacent to or near a contaminated site in decisions affecting revitalization of the site; and
- o Promoting the use of pollution prevention measures for new facilities in the community.

Contaminated sites would be eligible for program participation if they have existing contamination; if they are not subject to ongoing corrective action or enforcement pursuant to federal authority under specified federal laws; if they are not petroleum sites or dry-cleaning sites; if they are subject to ongoing corrective action or enforcement pursuant to state authority and satisfy additional conditions, including good faith effort by the responsible person; if the parties responsible for the contamination are financially unable to undertake site remediation; if they are located in urban areas with significant deterioration; if they are an integral part of a local development plan; and if the current owners have the ability to execute a remediation plan.

Under the program, the cleanup level for eligible sites shall be a cancer risk level of  $1.0 \times 10^{-6}$  and a hazard index of less than 1. In addition, a notice of intent to initiate cleanup and an approximate commencement date must be submitted to the DEP; monthly remediation progress reports must be provided to the DEP; pollution prevention measures shall be adopted by existing or new facilities on the site; community participation shall be provided for through development and implementation of a community participation plan; and additional public participation procedures must be provided.

The person responsible for cleanup of a brownfield site must have a contractual right or obligation over the site for completing brownfield site rehabilitation and enter into an agreement with the DEP or an approved local program. The agreement must include posting of a performance bond; a rehabilitation schedule; a commitment to supervision of the site rehabilitation by a professional engineer or geologists meeting specified qualifications; a commitment to conduct rehabilitation in accordance with a comprehensive quality assurance plan; a commitment to conducting rehabilitation consistent with applicable local, state, and federal laws, and the DEP's risk based corrective action rules and guidelines; time frames for review and approval of reports and plans; and other necessary provisions. A pollution prevention plan must also be developed. The responsible person must demonstrate the financial ability to construct a locally approved urban redevelopment or urban infill project. Finally, the responsible person must demonstrate that certain economic benefits will result from rehabilitation of the site.

Any person who has not caused or contributed to contamination of a site and who participates in the program, shall be eligible for liability protection. Upon successful completion of a brownfield site rehabilitation agreement, the eligible person is relieved of further liability for remediation of the site to the state or a third party. Third parties, other than the state, retain the right to pursue an action for damages. There is no limitation placed on the ability or authority to seek contribution from any person who may have liability with respect to the site and who has not received liability protection under the program. Exceptional conditions, under which a person that received such liability protection may be compelled to undertake additional remediation include commission of fraud related to the cleanup by that person, discovery of additional contamination exceeding the standards applied during remediation, failure to achieve the cleanup standards or protection levels established for the program, an unacceptable change in the risk level due to substantial changes in exposure conditions, and occurrence of a new release at the brownfield site. Lenders, trustees, personal representatives, or any other fiduciary are eligible for liability protection under the program if they have not caused or contributed to a release of a contaminant at the site.

Legislative intent is provided that redevelopment activities be viewed as opportunities to significantly improve the utilization, general condition, and appearance of older or unused structures and sites. As a result, different standards than are applied to new development should be used to encourage redevelopment of brownfield sites. State and local agencies are authorized to offer redevelopment incentives, and the bill delineates various examples of financial, regulatory, and technical assistance incentives that may be used to encourage redevelopment of brownfield sites.

As an additional incentive, the bill creates a brownfield site development tax credit. The developer of a brownfield site administered by the program is eligible for a credit against

the corporate income tax equal to 10 percent of the cost of demolition, construction, restoration, alteration, and renovation of the brownfield site. If the tax credit is not fully used in a single year due to insufficient tax liability in that year, the unused portion of the tax credit may be carried forward to subsequent years for a period not to exceed five years.

The Council 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, information regarding brownfield redevelopment incentives that have been offered by local governments, and the number of sites redeveloped with a list of jobs created at those sites.

The Council is directed to establish pilot projects for the rehabilitation of brownfield areas. Criteria are to be established by the Council for the purposes selecting such pilot projects. A total of \$5 million is appropriated from the General Revenue Fund for FY 1997-98 to the Department of Community Affairs for the Council to fund the pilot projects. Of the \$5 million appropriation, \$500,000 must be allocated to areas where the EPA has already designated pilot projects. A total of \$425,000 is appropriated from the Water Quality Assurance Trust Fund and seven positions are authorized for FY 1997-98 for the Department of Community Affairs to carry out its responsibilities under the act.

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?

No.

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

The bill creates the Brownfields Community Revitalization Interagency Coordinating Council within the Department of Community Affairs to administer the Brownfields Community Revitalization Program. The DEP would have new responsibilities related to the development of brownfield site rehabilitation agreements and monitoring implementation of those agreements.

(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?

Not applicable.

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

Not applicable.

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

Not applicable.

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?

No.

- 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?

Not applicable.

- (2) Who makes the decisions?

Not applicable.

- (3) Are private alternatives permitted?

Not applicable.

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

Not applicable.



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

Not applicable.

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

No.

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?

Not applicable.

(2) service providers?

Not applicable.

(3) government employees/agencies?

Not applicable.

**D. SECTION-BY-SECTION RESEARCH:**

Section 1: Provides a short title, "Brownfields Community Revitalization Act."

Section 2: Provides legislative findings.

Section 3: Provides definitions for "brownfield," "contaminated site," "environmental justice," and "fair treatment."

Section 4: Creates the Brownfields Community Revitalization Interagency Coordinating Council.

Section 5: Provides eligibility criteria for the Brownfields Community Revitalization Program.

Section 6: Provides additional eligibility criteria.

Section 7: Provides criteria for persons responsible for brownfield site rehabilitation.

Section 8: Provides eligibility criteria for liability protection for persons participating in the Brownfields Community Revitalization Program; specifies circumstances under which a person that has completed rehabilitation of a brownfield site can be required to

undertake additional remedial action, and provides liability protection for lenders under specified circumstances.

Section 9: Provides legislative intent regarding incentives for redevelopment of brownfield sites and authorizes financial, regulatory, and technical assistance incentives.

Section 10: Creates s. 220.185, F.S., authorizing a corporate income tax credit for developers of brownfield sites.

Section 11: Amends s. 220.03, F.S., providing definitions for "brownfield," "Brownfields Community Revitalization Interagency Coordinating Council," and "contaminated site."

Section 12: Amends s. 220.02, F.S., providing legislative intent regarding the order in which either corporate income tax credits or franchise tax credits are applied.

Section 13: Provides legislative finding and intent regarding pilot projects for redevelopment of brownfield areas and directs the Brownfields Community Revitalization Interagency Coordinating Council to establish such pilot projects.

Section 14: Provides for an annual report by the Brownfields Community Revitalization Interagency Coordinating Council.

Section 15: Provides an appropriation of \$5 million from the General Revenue Fund for FY 1997-98 to the Department of Community Affairs for the Brownfields Community Revitalization Interagency Coordinating Council; specifies the use of such funds; and provides an appropriation of \$425,000 from the Water Quality Assurance Trust Fund and seven positions for FY 1997-98 for the Department of Community Affairs to perform its responsibilities under the act.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

	<u>FY 1997-98</u>
<u>Revenues:</u>	Indeterminate*
<u>Expenditures:</u>	
General Revenues	\$5,000,000
Water Quality Assurance TF	\$425,000**

\* An indeterminate reduction in revenues from the corporate income tax results from the brownfields site development tax credit. Because the number of brownfield sites to be successfully rehabilitated is unknown, this impact cannot be estimated.

\*\*The \$425,000 appropriation from the Water Quality Assurance Trust Fund is accompanied by an authorization for seven positions for the Department of Community Affairs to carry out its responsibilities under the act.

2. Recurring Effects:

A recurring obligation results from the seven positions, though the bill only provides an appropriation to support those positions in FY 1997-98. In addition, there will be an indeterminate, recurring reduction in revenues from the corporate income tax resulting from the brownfields site development tax credit. Because the number of brownfield sites to be successfully rehabilitated is unknown, this impact cannot be estimated

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

See A.1.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

FY 1997-98

Revenues: \$5,000,000

Revenues provided to selected brownfields rehabilitation pilot projects.

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:

None.

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. Those receiving the most immediate benefit are communities and businesses participating in the brownfields pilot projects.

D. FISCAL COMMENTS:

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The 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:

**STORAGE NAME:** h0955.ep

**DATE:** April 2, 1997

**PAGE 13**

VII. SIGNATURES:

COMMITTEE ON ENVIRONMENTAL PROTECTION:

Prepared by:

Legislative Research Director:

---

W. Ray Scott

---

Wayne S. Kiger