

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 0485 w/CS Rehabilitation of Contaminated Sites

SPONSOR(S): Benson

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Environmental Regulation (Sub)</u>	<u>5 Y, 0 N</u>	<u>Perkins</u>	<u>Lotspeich</u>
2) <u>Natural Resources</u>	<u>15 Y, 0 N w/CS</u>	<u>Perkins</u>	<u>Lotspeich</u>
3) <u>Finance & Tax</u>	<u>24 Y, 0 N w/CS</u>	<u>Overton</u>	<u>Diez-Arguelles</u>
4) <u>Agriculture & Environment Appropriations</u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

The bill amends portions of the Brownfields Redevelopment Act established by the Legislature in 1997. The Brownfields Redevelopment Act is designed to encourage local governments and responsible persons to voluntarily cleanup and redevelop abandoned and underused commercial and industrial sites. The Brownfields Redevelopment Act provides specific statutory incentives to encourage the cleanup and redevelopment of these sites.

The bill enhances existing incentives to encourage additional participation in the cleanup and redevelopment of brownfields. Tax credits against intangible tax or corporate income tax is given as an incentive to encourage voluntary cleanup of drycleaning solvent contaminated sites and brownfield sites in designated brownfield areas. The bill increases the tax credit amount from 35% to 40% of the costs that are integral to site rehabilitation; increases the per-site limit from \$250,000 to \$400,000; and increases the overall amount of tax credits allocated by the DEP from \$2 million annually to \$3.5 million.

The bill also amends the law governing the Brownfields Job Bonus Refund by modifying the definition of an "eligible business" to provide a waiver provision for the fixed capital investment requirement. Additionally, the bill provides a number of glitch fixes to the existing Brownfields Redevelopment Act including a revised definition of "brownfield sites" and clarification of job creation requirements, contractor requirements, and insurance requirements.

The bill provides that the Inland Protection Trust Fund will be used for the Brownfield Areas Loan Guarantee Program instead of the Nonmandatory Land Reclamation Trust Fund. Not more than \$5 million of the balance of the Inland Protection Trust Fund in a fiscal year may be at risk at any time on loan guarantees or as loan loss reserves.

The sections of the bill dealing with tax credits are estimated to have a negative fiscal impact of \$0.3 for FY 04-05 and a recurring negative fiscal impact of \$1.5 million. The section providing a waiver for fixed capital investment will have an indeterminate impact.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0485a.ft.doc

DATE: April 5, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

B. EFFECT OF PROPOSED CHANGES:

GENERAL BACKGROUND ON BROWNFIELDS

Sections 376.77-376.85, F.S., is known as the “Brownfield Redevelopment Act.” The Brownfield Redevelopment Act was established in 1997 by the Legislature to assist local governments and responsible persons to achieve the voluntary cleanup and redevelopment of properties within designated brownfield areas.¹ A brownfield area is defined as a contiguous area of one or more brownfield sites, some of which may not be contaminated, and which has been designated by a local government by resolution.² A brownfield site is defined as a site which is generally abandoned, idled, or underused industrial and commercial property where expansion or redevelopment is complicated by actual or perceived environmental contamination.³ The Brownfield Redevelopment Act provides the framework for the Brownfields Redevelopment program to facilitate the redevelopment of properties within designated brownfield areas while also providing for environmental cleanup and protection of the public health and the environment.⁴ Local governments are primarily responsible for the identification, delineation, and designation of properties for inclusion in a brownfield area.⁵ Currently 83 brownfield areas exist in Florida.⁶

Another element of the Brownfields Redevelopment program is the voluntary execution of a “Brownfield Site Rehabilitation Agreement,” between the person responsible for the brownfield site rehabilitation and the Department of Environmental Protection (DEP). For an agreement to be executed a brownfield area must be designated by a local government resolution and a responsible person must be identified by the local government. The identified responsible person then enters into negotiations for an agreement with DEP. The agreement provides DEP the public assurances that site rehabilitation will be conducted in accordance with the statute and the Brownfields Cleanup Criteria rule (Chapter 62-785, F.A.C.), and it provides liability protection for the responsible person.⁷

¹ *Florida Brownfields Redevelopment Program 2003 Annual Report*, DEP, Division of Waste Management, Bureau of Waste Cleanup, p. 3

² s. 376.79(4), F.S.

³ s. 376.79(3), F.S.

⁴ *Florida Brownfields Redevelopment Program 2003 Annual Report*, DEP, Division of Waste Management, Bureau of Waste Cleanup, p. 4

⁵ s. 376.80(1), F.S.

⁶ *Florida Brownfields Redevelopment Program 2003 Annual Report*, DEP, Division of Waste Management, Bureau of Waste Cleanup, p. 3

⁷ s. 376.80, F.S., and *Florida Brownfields Redevelopment Program 2003 Annual Report*, DEP, Division of Waste Management, Bureau of Waste Cleanup, p. 5

The Legislature declared that 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 government.⁸

Issue – Partial Tax Credits

Present Situation

In order to provide economic incentives for brownfields redevelopment, the Legislature created a tax credit applicable to either intangible personal property tax or corporate income tax for taxpayers that voluntarily participate in the cleanup of a brownfield site and drycleaning-solvent contaminated site.

Sections 376.30781, 199.1055, and 220.1845, F.S., provide authorization of partial tax credits to be issued regarding the costs of voluntary cleanup of drycleaning-solvent contaminated sites and brownfield sites designated in a brownfield area. The tax credit is limited to 35 percent of the costs of voluntary cleanup of a drycleaning-solvent contaminated site and a brownfield site designated in a brownfield area with a maximum cap of \$250,000 per site per year. DEP is responsible for allocating the tax credits and is not authorized to exceed \$2 million in tax credits annually. DEP reports that from creation of the tax credit program in 1998 through FY 02-03, the total value of tax credits issued annually has nearly doubled each year. A total of \$1,924,761 in tax credits have been issued since its inception in 1998. Of the total amount of tax credits issued, \$1,379,516 (72%) has been issued for brownfield sites and \$545,245 (28%) has been issued for drycleaning solvent cleanup sites.

Effect of Proposed Change

Sections 376.30781, 199.1055, and 220.1845, F.S., are amended to: increase the tax credit from 35 percent to 40 percent of the costs of voluntary cleanup of a drycleaning-solvent contaminated site and a brownfield site designated in a brownfield area; increase the maximum cap of \$250,000 to \$400,000; and authorize DEP to increase the allocation of tax credits from \$2 million annually to \$3.5 million annually. The bill will require DEP to amend Rule 62-788, F.A.C., an existing rule detailing the tax credit application process.

Issue – Brownfield Redevelopment Bonus Refunds

Present Situation

Currently the Office of Tourism, Trade, and Economic Development (OTTED), authorizes brownfield redevelopment bonus refunds for the creation of new jobs to eligible business under section 288.107, F.S. An eligible business is a qualified target business or a business that can demonstrate a fixed capital investment of at least \$2 million in mixed-use business activities. The brownfield redevelopment bonus refund provides up to a \$2,500 refund for each new job created in a designated brownfield by an eligible business. The amount of the refund is equal to 20 percent of the average annual wage of the new jobs created. Refunds are based upon taxes paid by the business, including corporate income, sales, ad valorem, intangible personal property, insurance premium, and other taxes. No more than 25 percent of the total refund approved may be paid in a single fiscal year.⁹ Currently there is not a waiver available to eligible business regarding the required \$2 million in fixed capital investment.

Effect of Proposed Change

⁸ s. 376.78(3), F.S.

⁹ Incentive Information Sheet, Brownfield Redevelopment Bonus, Enterprise Florida, Inc.

Section 288.107, F.S., is amended to provide OTTED the authorization to issue a waiver to an eligible business for the required \$2 million in fixed capital investment. OTTED is given the authority to waive the fixed capital investment at the request of the local governing body recommending the project and Enterprise Florida, Inc. The fixed capital investment may only be waived for a project located in a rural city or county, community redevelopment area, enterprise zone, or empowerment zone, and only when the merits of the individual project or the specific circumstances in the community in relationship to the project warrant such action. All recommendations and approvals for the fixed capital investment waiver must be in writing along with the justification of the waiver.

Issue – Brownfield Site Definition

Present Situation

Pursuant to section 376.79(3), F.S., brownfield sites are defined as sites that are generally abandoned, idled, or underused industrial and commercial properties where expansion or redevelopment is complicated by actual or perceived environmental contamination. The U.S. Environmental Protection Agency defines a brownfield site to mean real property, the expansion, redevelopment, or reuse of which may be the presence or potential presence of a hazardous substance, pollutant, or contaminant.¹⁰

Effect of Proposed Change

Section 376.79(3), F.S., is amended to define a brownfield site to mean real property, the expansion, redevelopment, or reuse of which may be complicated by actual or perceived environmental contamination. This definition amendment appears to be more closely aligned with the U.S. Environmental Protection Agency definition of a brownfield site.

Issue- Brownfield Program Administration Process

Present Situation

In order for an area to be designated as a brownfield area, the local government must determine the following:

- (1) the person who owns or controls a potential brownfield site is requesting the designation and has agreed to rehabilitate and redevelop the brownfield site;
- (2) the rehabilitation and redevelopment of the proposed brownfield site will result in economic productivity of the area, along with the creation of at least 10 new permanent jobs which are not associated with the implementation of the rehabilitation agreement;
- (3) the redevelopment of the proposed brownfield site is consistent with the local comprehensive plan and is a permissible use under local land development regulations;
- (4) the proposed rehabilitation area has been noticed to nearby residents and the person proposing the area for designation has afforded those receiving notice the opportunity for comments and suggestions about the rehabilitation; and
- (5) the person proposing the area for designation has provided reasonable assurance that sufficient financial resources are available to implement and complete the rehabilitation agreement and plan.¹¹

The person responsible for the brownfield site rehabilitation must enter into a brownfield site rehabilitation agreement with DEP or an approved local pollution control program if actual contamination exists at the brownfield site. The brownfield site rehabilitation agreement contains the

¹⁰ <http://www.epa.gov./swerosps/bf/glossary.htm>

¹¹ s. 376.80(2)(b), F.S.

terms and conditions necessary to complete the site rehabilitation. Contained within the brownfield site rehabilitation agreement is a requirement for the person responsible for the site rehabilitation to commit to conduct site rehabilitation in accordance with an approved comprehensive quality assurance plan under DEP rules. Also contained within the brownfield site rehabilitation agreement are requirements for contractors to follow. One requirement is for a contractor to receive approval from DEP to proceed with the brownfield site rehabilitation in accordance with the comprehensive quality assurance plan under DEP rules and carry proper liability insurance along with having the capacity to supervise the majority of the work at the site.¹²

Effect of Proposed Change

Section 376.80, F.S., which requires that 10 permanent jobs must be created, is amended to require that the jobs be located at the brownfield site. Additionally, the jobs may not be associated with redevelopment project demolition or construction activities pursuant to the redevelopment agreement.

Section 376.80(5)(c), F.S., deletes the requirement for a comprehensive quality assurance plan for the person responsible and provides that site rehabilitation be conducted in accordance with DEP quality assurance rules. A comprehensive quality assurance plan for the person responsible for the brownfield site rehabilitation plan which is no longer required by DEP

Section 376.80(6)(b), F.S., is amended to require the contractor performing site rehabilitation to demonstrate that it has received the necessary approvals for conducting sample collection and analysis pursuant to DEP rules.

The bill amends section 376.80(7), F.S., relating to contractor requirements. The contractor performing the majority of the site rehabilitation program or supervising the performance of licensed subcontractors must to increase his or her general and professional liability insurance coverage limits, and maintain pollution liability coverage.

Issue – Brownfield Eligibility Criteria and Liability Protection

Present Situation

Section 376.82, F.S., identifies the eligibility requirements and liability protection for a person who participates in the brownfield corrective action plan.

Effect of Proposed Change

The bill amends section 376.82, F.S., to replace “corrective action” terminology with “site rehabilitation agreement” in order to be consistent with chapter terminology.

Issue – Brownfield Areas Loan Guarantee Program

Present Situation

In 1998, the Legislature created the Brownfield Areas Loan Guarantee Program . The Brownfield Areas Loan Guarantee Council was created to review, approve, or deny certain partnership agreements with local governments, financial institutions, and others associated with the redevelopment of brownfields for limited guarantees of loans or loss reserves. The council may enter into an investment agreement with the Department of Environmental Protection and the State Board of Administration concerning the investment of the earnings accrued and collected upon the investment of the balance of funds

¹² s. 376.80 (5)-(7), F.S.

maintained in the Nonmandatory Land Reclamation Trust Fund. No more than \$5 million of the investment earnings earned on the investment of the minimum balance of the Nonmandatory Land Reclamation Trust Fund may be at risk at any time on loan guarantees or as loan loss reserves. Of the \$5 million, 15 percent shall be reserved for investment agreements involving predominantly minority-owned businesses. The investment earnings may not be used to guarantee any loan guaranty or loan loss reserve agreement for a period of longer than 5 years.

The limited state loan guarantee applies only to 10 percent of the primary lenders loans for redevelopment projects in brownfield areas. A lender seeking a limited state guarantee for a loan from the Brownfield Areas Loan Guarantee Council must first provide to the council a report demonstrating that the lender has reviewed the project for redevelopment of the brownfield areas and determined its feasibility in accordance with its standard procedures. A lender may not file a claim for loss pursuant to the guaranty unless all reasonable and normal remedies available and customary for lending institutions for resolving problems of loan repayments are exhausted.

The provisions relating to the Brownfield Areas Loan Guarantee Program must be reviewed by the Legislature by June 30, 2004, and a determination made related to the need to continue or modify this section relating to the Brownfield Areas Loan Guarantee Program. New loan guarantees may not be approved in 2004 until the review by the Legislature has been completed and a determination has been made as to the feasibility of continuing the use of the Nonmandatory Land Reclamation Trust Fund to guarantee portions of loans made pursuant to this program.

Effect of Proposed Change

The bill amends s. 376.86, F.S., relating to the Brownfields Areas Loan Guarantee Program provides that the Inland Protection Trust Fund will be used for the Brownfield Areas Loan Guarantee Program instead of the Nonmandatory Land Reclamation Trust Fund. Not more than \$5 million of the balance of the Inland Protection Trust Fund in a fiscal year may be at risk at any time on loan guarantees or as loan loss reserves. The loan guarantee program is extended to 2007 and must be reviewed by the Legislature by January 1, 2007.

Issue – Environmental Liability and Escheated Property

Present Situation

Currently, a county does not enjoy any immunity from liability for a property with environmental contamination that escheats to the county. The Department of Transportation (DOT) has an immunity provision relating to property that it acquires through eminent domain. Section 337.27, F.S., provides that the DOT is not subject to liability under chapters 376 or 403 for preexisting soil or groundwater contamination due solely to its ownership. This provision does not affect the rights or liabilities of any past or future owners to the liability of any governmental entity for any actions that create or exacerbate a pollution source. The DOT and the DEP are authorized to enter into an interagency agreement regarding the performance, funding, and reimbursement of the investigative and remedial acts necessary for any property acquired by DOT through eminent domain.

Effect of Proposed Change

The amends s. 376.82, F.S. to provide immunity for the county from environmental liability associated with properties that escheat to the county. This does not affect the rights or liabilities of any past or future owners to the liability of any governmental entity for any actions that create or exacerbate a pollution source. It provides that the county and DEP may enter into a written agreement that addresses investigative and remedial activities for a property that escheats to the county.

C. SECTION DIRECTORY:

- Section 1. Amends s. 376.30781(2)(a) and (b), (3), (4), (7), and (9), F.S., relating to tax credit limitations.
- Section 2. Amends s. 199.1055(1)(a),(b), and (f), F.S., relating to tax credit limitations.
- Section 3. Amends s. 220.1845(1)(a),(b), and (g), F.S., relating to tax credit limitations.
- Section 4. Amends s. 288.107(1)(e), and (3)(b), F.S., relating to waiver of fixed capital investment.
- Section 5. Amends s. 376.79(3), F.S., relating to the definition of brownfield sites.
- Section 6. Amends s. 376.80(2)(b) 2, F.S., relating to brownfield area designation requirements; amends s. 376.80(5)(c), F.S., relating to brownfield site rehabilitation agreements; and amends s. 376.80(6)(b), (7), (7)(c-d), F.S., relating to contractor criteria in the site rehabilitation program.
- Section 7. Amends ss. 376.82(1) and (2), F.S., relating to site rehabilitation agreements.
- Section 8. Amends ss. 376.86(3) and (8), F. S., relating to Brownfield Areas Loan Guarantee Program.
- Section 9. Provides the bill take effect July 1, 2004.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The increase of the credits against intangible personal tax and corporate income tax is estimated to have a negative fiscal impact of \$0.3 for FY 04-05 and a recurring negative fiscal impact of \$1.5 million.

2. Expenditures:

1. Non-recurring Effects:

The bill will require DEP to amend Rule 62-788, F.A.C., an existing rule detailing the tax credit application process. Rulemaking costs will be insignificant and non-recurring. These costs include DEP's efforts to publicize a proposed rule through mail-outs and public workshops around the state, as well as costs associated with publication and process requirements pursuant to Chapter 120, F.S.

2. Recurring Effects: The section of the bill providing for a waiver for fixed capital investment will have an indeterminate impact on future appropriations.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: Unknown. Local governments may benefit from the satisfaction of tax liens and the replacement of properties onto local tax rolls as redevelopment occurs on brownfield areas.

2. Expenditures:

1. Non-recurring Effects:

Local governments should not have significant incidental costs associated with implementation of the amendments to the brownfields program.

2. Recurring Effects:

Local governments may benefit from the cleanup of brownfield sites and drycleaning solvent contaminated sites and may see an increased demand for passage of resolutions designating brownfield areas.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Unknown. Participation in the voluntary cleanup and redevelopment of brownfield sites and drycleaning solvent contaminated sites, will result in private capital being expended. A portion of this capital expenditure may be offset by state funds and partial tax credits. The capital expenditure will provide the potential for profit to be gained by the private sector upon completion of a cleanup. Site rehabilitation and economic redevelopment should stimulate competition, spur enterprise to succeed, and create new employment opportunities.

D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect municipal or county government.

2. Other: None.

B. RULE-MAKING AUTHORITY: The bill does not provide new rulemaking. However, DEP will need to amend existing Rule 62-788, F.A.C., which details the tax credit application process.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 17, 2004, the Committee on Natural Resources favorably adopted one amendment to HB 485.

The amendment removes Section 1 of the bill relating to the Brownfield Areas Loan Guarantee Program.

On March 31, 2004, the Committee on Finance & Tax adopted three amendments.

Amendment 1: The tax credit cap was increased from \$2 million to \$5 million in the original bill. The amendment changes the cap to \$3.5 million.

Amendment 2: The amendment provides that the Inland Protection Trust Fund will be used for the Brownfield Areas Loan Guarantee Program instead of the Nonmandatory Land Reclamation Trust Fund. Not more than \$5 million of the balance of the Inland Protection Trust Fund in a fiscal year may be at risk at any time on loan guarantees or as loan loss reserves. The loan guarantee program is extended to 2007 and must be reviewed by the Legislature by January 1, 2007.

Amendment 3: The amendment provides that when a property, including a brownfield site, escheats to a county, the county is not subject to any liability for preexisting soil or groundwater contamination due solely to its ownership.