

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 0485 Rehabilitation of Contaminated Sites

SPONSOR(S): Benson

TIED BILLS: **IDEN./SIM. BILLS:** SB 338

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Environmental Regulation (Sub)	_____	Perkins	Lotspeich
2) Natural Resources	_____	_____	_____
3) Agriculture & Environmental App. (Sub)	_____	_____	_____
4) Appropriations	_____	_____	_____
5) _____	_____	_____	_____

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 Act provides specific statutory incentives to encourage the cleanup and redevelopment of these sites.

The bill increases the statutory incentives to encourage additional participation in this program.

The bill does not appear to have a significant fiscal impact on state or local governments.

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

STORAGE NAME h0485.nr.doc

DATE January 27, 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 – Brownfield Areas Loan Guarantee Program

Present Situation

Section 376.86, F.S., establishes the Brownfield Areas Loan Guarantee program and creates the Brownfield Areas Loan Guarantee Council (Council). The purpose of the Council is to review and approve or deny the situations and circumstances for participation in partnership agreements with local governments, financial institutions, and others associated with the redevelopment of brownfield areas. There is a limited state guaranty of up to 5 years of loan guarantees or loan loss reserves issued. Currently the limited state loan guarantee applies only to 10 percent of the primary lenders loans for redevelopment projects in brownfield areas. The Council may enter into an investment agreement with DEP and the State Board of Administration concerning the investment of the balance of funds maintained in the Nonmandatory Land Reclamation Trust Fund (NLRTF).⁹ Currently, no more than \$1.5 million of the NLRTF in a fiscal year may be at risk at any time on loan guarantees or loan loss reserves.¹⁰

The Council provides an annual report to the Legislature by February 1 of each year describing its activities and agreements approved relating to redevelopment of brownfield areas. New loan guarantees may not be approved 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 NLRTF to guarantee portions of loans under section 376.86, F.S.

The Nonmandatory Land Reclamation program was designed to provide funding for the reclamation of eligible phosphate lands mined before July 1975 and receives revenues from severance taxes on phosphate mining. The NLRTF is also used as both an insurance against mining operation failures to close phosphogypsum stacks and environmental hazards for purposes of emergency response to spills of acidic water. DEP reports that approximately \$8 to \$10 million is appropriated annually for nonmandatory reclamation. DEP has withdrawn funds against the NLRTF over the last three years to pay for the costs of managing and preventing the potential environmental hazard associated with two phosphogypsum stack systems (Mulberry and Piney Point) abandoned as a result of bankruptcy of the Mulberry Corporation. The projected costs to complete closure and safe management of the two abandoned stack systems is over \$100 million. DEP estimates a non-recurring balance of \$37.5 million to be available on July 1, 2004 and estimates receipts into the fund during FY 04/05 of \$7.7 million for a total balance of \$45.2 million during FY 04/05. All of these funds are necessary to continue emergency management and closure of the Piney Point and Mulberry Phosphogypsum stack systems.

Effect of Proposed Change

Section 376.86(1), F.S., is amended to increase the limited state loan guaranty from 10 percent to 20 percent of the primary lender loans for redevelopment projects in brownfield areas. The 10 percent expansion may allow more lenders to submit applications to the council for review and participation in the Brownfield Areas Loan Guarantee program.

⁸ s. 376.78(3), F.S.

⁹ Note : Effective July 1, 2004 statutory language shall revert back to June 30, 2003 statutory language which limits the council to invest the "investment earnings" accrued and collected upon the investment of the balance of funds in the NLRTF.

¹⁰ Note : Effective July 1, 2004 statutory language shall revert back to June 30, 2003 statutory language which limits the council to invest not more than \$5 million of the "investment earnings" of the minimum balance of the NLRTF in a fiscal year.

Sections 376.86(3)(a-b), F.S., are amended to delete reference to investment earnings related to the NLRTF. The deletion will allow the balance of up to \$5 million in the NLRTF to be utilized as a guarantee for loans under this section. Based on the DEP projection of the NLRTF balance, the fund will be exhausted and additional funds may need to be appropriated if this fund is to continue to be utilized as a contingency fund on loan guarantees or a new funding source identified.

Section 376.86(8), F.S., is amended to require the Legislature by January 1, 2007, to review the provisions of this section to determine the ability of the NLRTF to continue serving as a contingency fund on loan guarantees. New loan guarantees may not be approved in the calendar year 2007 until the Legislative review has been completed and a determination made as to an appropriate trust fund to serve as a contingency fund on loan guarantees.

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 previously discussed 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 \$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.¹¹ Currently there is not a waiver available to eligible business regarding the required \$2 million in fixed capital investment.

Effect of Proposed Change

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. The waiver criteria provides OTTED the ability 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.¹²

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

¹¹ Incentive Information Sheet, Brownfield Redevelopment Bonus, Enterprise Florida, Inc.

¹² <http://www.epa.gov./swerosps/bf/glossary.htm>

(5) the person proposing the area for designation has provided reasonable assurance that they have sufficient financial resources to implement and complete the rehabilitation agreement and plan.¹³

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 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.¹⁴

Effect of Proposed Change

Section 376.80, F.S., is amended relating to the creation of 10 permanent jobs, as a result of an area being designated as a brownfield area. These positions are required to be located at the brownfield site and 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 which is no longer required by DEP for the person responsible for the brownfield site rehabilitation plan and replaces it with the current requirement that site rehabilitation be conducted in accordance with DEP quality assurance rules.

Section 376.80(6)(b), F.S., is amended to require the contractor performing site rehabilitation program tasks 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 amended language requires the contractor performing the majority of the site rehabilitation program or supervising the performance of licensed subcontractors to increase their general and professional liability insurance coverage limits, and to 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.

C. SECTION DIRECTORY:

¹³ s. 376.80(2)(b), F.S.

¹⁴ s. 376.80 (5)-(7), F.S.

- Section 1. Amends s. 376.86(1), F.S., relating to the percentage of limited loan guaranty of primary lender loans for redevelopment projects in brownfield areas; amends s. 376.86(3)(a-b), F.S., relating to the NLRTF; and amends s. 376.86(8), F.S., relating to Legislative review of the NLRTF.
- Section 2. Amends s. 376.30781(2)(a) and (b), (3), (4), (7), and (9), F.S., relating to tax credit limitations.
- Section 3. Amends s. 199.1055(1)(a),(b), and (f), F.S., relating to tax credit limitations.
- Section 4. Amends s. 220.1845(1)(a),(b), and (g), F.S., relating to tax credit limitations.
- Section 5. Amends s. 288.107(1)(e), and (3)(b), F.S., relating to waiver of fixed capital investment.
- Section 6. Amends s. 376.79(3), F.S., relating to the definition of brownfield sites.
- Section 7. 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 8. Amends s. 376.82(1), F.S., relating to site rehabilitation agreements.
- 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 state may experience a loss of tax revenues associated with the 5% increase in tax credits for amounts it otherwise would have collected for intangible personal tax and corporate income tax. *(Note: The bill provides up to \$5 million in annual tax credit authorization to DEP.)*

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 bill provides for increased incentives to participate in the Brownfields Redevelopment program. Based on the DEP projection of the NLRTF balance, the fund will be exhausted. As a result of increased incentives, additional funds may need to be appropriated if this fund is to continue to be utilized as a contingency fund on loan guarantees for future years. Otherwise another source of funding will need to be identified to provide the loan guaranty.

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:

Comments from DEP:

The use of the NLRTF as a guaranty or loss reserve is both detrimental to the fund and, as a practical matter, unlikely to have any value because there will be no resources in the fund to support such use.

DEP estimates a non-recurring balance of \$37.5 million to be available on July 1, 2004 and estimated receipts into the fund during FY 04/05 of \$7.7 million for a total balance of \$45.2 million during FY 04/05. All of these funds are necessary to continue emergency management and closure of the Piney

Point and Mulberry Phosphogypsum stack systems and have been requested in DEP FY 04/05 Legislative Budget Request and the Governor's Recommendations leaving a zero cash balance for FY 05/06 and thereafter. With zero cash balance and no increase in the revenue stream into the NLRTF, DEP will be unable to end the environmental hazards presented by the Piney Point and Mulberry stack systems as well as reclaim the remaining 27,000 plus acres of unreclaimed "old mined" lands. Because DEP has an obligation to close the abandoned Piney Point and Mulberry phosphogypsum stack systems to protect public health and the environment, the NLRTF must be adequately funded, and available without restriction for this purpose. The proposed change to section 376.86(8), F.S., which would allow up to \$5 million of the balance in the NLRTF to be used for Brownfield loan guarantees or loan loss reserve, conflicts with this obligation.

Use of the NLRTF as a Brownfield loan guarantee or loan loss reserve is no longer feasible and should be eliminated and all language referencing this purpose should be deleted. Another source of funds to provide the guaranty should be identified.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES