

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Commerce and Consumer Services Committee

BILL: SB 1448

SPONSOR: Senator Constantine

SUBJECT: Redevelopment of Brownfields

DATE: March 9, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Branning</u>	<u>Kiger</u>	<u>EP</u>	Favorable
2.	<u>Barrett</u>	<u>Cooper</u>	<u>CM</u>	Favorable
3.	_____	_____	<u>GE</u>	_____
4.	_____	_____	<u>GA</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill implements the recommendations of the Senate Environmental Preservation Committee's interim report no. 2005-152, Review of the Brownfield Redevelopment Act.

Specifically, the bill:

- Increases the amount of credit, from 35 to 40 percent, that may be applied against intangible personal property tax and corporate income tax for the voluntary cleanup costs of a contaminated brownfield or dry-cleaning site;
- Increases the amount that may be received by the taxpayer in the final year of the cleanup, from \$50,000 to \$250,000, as an incentive to complete the cleanup;
- Requires Enterprise Florida, Inc., to aggressively market brownfields;
- Increases the amount of the brownfields loan guarantee from 10 to 25 percent; and
- Repeals the Brownfield Property Ownership Clearance Assistance Program and the Brownfield Property Ownership Clearance Assistance Revolving Loan Trust Fund.

This bill substantially amends the following sections of the Florida Statutes: 199.1055, 220.1845, 376.30781, 288.9015, and 376.86.

This bill repeals the following sections of the Florida Statutes: 376.87 and 376.875.

II. Present Situation:

In 1995, the U.S. Environmental Protection Agency (EPA) initiated a program to empower states, communities, and other stakeholders in economic redevelopment to work together in a timely manner to prevent, assess, safely clean up, and reuse brownfields. Florida followed suit in 1997 and enacted the Brownfields Redevelopment Act to provide incentives for the private sector to redevelop abandoned or underused real property, the development of which was complicated by real or perceived environmental contamination.

The federal brownfields program was significantly expanded on January 11, 2002, when President Bush signed into law the Small Business Relief and Liability and Brownfields Revitalization Act, also known as the "Brownfields Amendments." The main purpose of this new law was to create incentives for the redevelopment of brownfield properties and Superfund sites and provide grants to assess or cleanup a brownfields property.

The Florida Brownfields Redevelopment Act, consisting of ss. 376.77-376.85, F.S., provides legislative intent, definitions, a brownfield area designation process, environmental cleanup criteria, program eligibility and liability protections; and economic and financial incentives. Furthermore, s. 376.86, F.S., provides for a Brownfield Areas Loan Guarantee Program, and ss. 376.87 and 376.875, F.S., provide for brownfield property ownership clearance assistance and the creation of the Brownfield Property Ownership Clearance Assistance Revolving Loan Trust Fund.

A local government is required to notify the Department of Environmental Protection (DEP) when designating a brownfield area. The notification must include a resolution by the local government body and either a map or description of the area.

Designation and administration -- Designation of a brownfield area must come from the local government through the passage of a local resolution. Once a brownfield area has been designated, the local government must notify the Department of Environmental Protection (DEP) and attach a map or a detailed legal description of the brownfield area. The designation of a brownfield area may be initiated in one of two ways:

- By a local government to encourage redevelopment of an area of specific interest to the community; or
- By an individual with a redevelopment plan in mind.

In determining the area to be designated, the local government must consider:

- Whether the brownfield area warrants economic development and has a reasonable potential for such activities;
- Whether the proposed area to be designated represents a reasonable focused approach and is not overly large in geographic coverage;
- Whether the area has potential to interest the private sector in participating in rehabilitation; and

- Whether the area contains sites or parts of sites suitable for limited recreational open space, cultural, or historical preservation purposes.¹

A local government shall designate a brownfield area if:

- The person who owns or controls a potential brownfield site is requesting the designation and has agreed to rehabilitate the site;
- The redevelopment and rehabilitation of the proposed brownfield site will result in economic productivity of the area and will create at least 10 new permanent jobs at the brownfield site²;
- 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;
- Notice has been provided to neighbors and nearby residents of the proposed area to be designated; and
- The person proposing the area for designation has provided reasonable assurance that there are sufficient financial resources to implement and complete the rehabilitation agreement and redevelopment plan.

The designation of a brownfield area and the identification of a person responsible for brownfield site rehabilitation simply entitle the identified person to negotiate a brownfield rehabilitation site agreement with the DEP or an approved local program. The person responsible for rehabilitation must enter into a brownfield site rehabilitation agreement with DEP or an approved local program to be eligible for certain benefits associated with the brownfields redevelopment program.

There are currently approximately 93 designated brownfield areas in Florida. According to information reported by the Governor's Office of Tourism, Trade, and Economic Development to DEP in January 2005, the cumulative totals for new job creation and capital investment attributable to the Brownfields Redevelopment program from inception of the program until December 31, 2004 are: 4,407 new direct jobs, 2,947 new indirect jobs, and \$396,967,858 of capital investment in designated brownfields areas.

Cleanup criteria—Risk-based corrective-action principles apply, to the maximum extent feasible, to the cleanup activities on a brownfield site within a designated brownfield area. These principles are designed to achieve protection of human health and safety and the environment in a cost-effective manner by taking into account natural attenuation, individual site characteristics, and the use of engineering and institutional controls.

Eligibility and liability protection—A person who has not caused or contributed to the contamination of a brownfield site on or after July 1, 1997, is eligible to participate in the brownfield program. Certain specified sites are not eligible for the program. Those sites include brownfield sites that are subject to an ongoing formal judicial or administrative enforcement

¹ Section 376.80(2), F.S.

² As specified in s. 376.80(2)(b), F.S., the 10 new permanent jobs may be full- or part-time and cannot be associated with the rehabilitation agreement or redevelopment project demolition or construction activities.

action or corrective action pursuant to federal authority, or sites that have obtained or are required to obtain a hazardous waste operation, storage, or disposal facility permit, unless specifically exempted by a memorandum of agreement with the EPA.

After July 1, 1997, petroleum and drycleaning contamination sites in a brownfield area cannot receive both funding assistance for the cleanup of the discharge that is available under the underground storage tank cleanup program or the drycleaning cleanup program and any state assistance available under s. 288.107, F.S., relating to brownfield redevelopment bonus refunds.

If a state or local government has involuntarily acquired a contaminated site within a brownfield area, it is not liable for implementing site rehabilitation corrective actions, unless the state or local government has caused or contributed to a release of contaminants at the brownfield site. Also, nonprofit conservation organizations, acting for the public interest, which purchase contaminated sites and which did not contribute to the release of contamination on the site also warrant protection from liability.

Lenders are afforded certain liability protections to encourage financing of real property in brownfield areas. Essentially, the same liability protections apply to lenders if they have not caused or contributed to a release of a contaminant at the brownfield site.

Economic and financial incentives—Since the Brownfields Redevelopment Act was envisioned to emphasize economic redevelopment, local governments were expected to play a significant role in the process. As a result, state and local governments are encouraged to offer redevelopment incentives which may include financial, regulatory, and technical assistance.

Other economic and financial incentives available to brownfield sites are tax refunds for qualified target industries located in a brownfield area, brownfield redevelopment bonus refunds, and partial voluntary cleanup tax credits.

The tax refunds available as a qualified target industry may be for corporate income taxes, insurance premium taxes, sales and use taxes, intangible personal property taxes, emergency excise taxes, documentary stamp taxes, and ad valorem taxes.

The brownfield redevelopment bonus refunds of \$2,500 are available to any qualified target industry business for each new Florida job created in a brownfield area which is claimed on the qualified target industry's annual refund claim. Section 288.107, F.S., provides the minimum criteria for participation in the brownfield redevelopment bonus refund program.

Voluntary cleanup tax credit—One of the financial incentives that is getting increased attention as the brownfield program matures and gains in popularity, is the voluntary cleanup tax credit or VCTC. This is a tax credit available for site rehabilitation conducted at eligible drycleaning sites and brownfield sites in designated brownfield areas. To be eligible, the responsible party must execute a Brownfield Site Rehabilitation Agreement with DEP.

The VCTC can apply toward either the intangible personal property tax or the corporate income tax. The amount of the credit is 35 percent of the costs of the voluntary cleanup activity that is integral to site rehabilitation. The maximum amount for a tax credit applicant is \$250,000 per

year. If the credit is not fully used in any one year because of insufficient tax liability on the part of the tax credit applicant, the unused amount may be carried forward for a period not to exceed 5 years. However, the total amount of the tax credit that may be granted each year under the program is \$2 million. To date, the total amount of applications for the tax credits has not reached the \$2 million cap in any one year.

As an inducement to complete the voluntary cleanup, the tax credit applicant may claim an additional 10 percent of the total cleanup costs, not to exceed \$50,000 in the final year of cleanup.

The tax credits may be transferred once to another entity in whole or in units of not less than 25 percent of the remaining credit.

Brownfield Areas Loan Guarantee Program—The Brownfield Areas Loan Guarantee Program was created in 1998. A 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. A loan guarantee may only be for a period of not more than 5 years.

The limited state loan guarantee applies only to 10 percent of the primary lender's loans for redevelopment projects in brownfields areas. The loan guarantee holds until permanent financing is acquired or until the project is sold. Section 376.86, F.S., provides that no more than \$5 million of the balance of the Inland Protection Trust Fund in any fiscal year may be at risk at any time on loan guarantees or as loan loss reserves.

To date, the loan guarantee provisions have been used only one time. That project involved a shopping center and an out-parcel in a Clearwater brownfield area. The loan guarantee mechanism worked as it was designed to. With the loan guarantee, the developer has more financial flexibility because the initial cash flow is not as great.

Brownfield Property Ownership Clearance Assistance and Revolving Loans Trust Fund—Section 376.87, F.S., provides for brownfield property ownership clearance assistance. The Legislature recognized that some brownfield redevelopment projects are more difficult to redevelop due to the existence of various types of liens on the property and complications from previous ownership having declared bankruptcy. The Brownfield Property Ownership Clearance Assistance Revolving Loan Trust Fund was created to assist in the early stages of redeveloping brownfields by helping to clear prior liens on the property through a negotiated process. The loans would be repaid in later years from the resale of the brownfield properties following site rehabilitation and other activities that will enhance the property's ultimate value. This trust fund has never been capitalized and used for its intended purposes.

Interim Project -- The Senate Environmental Preservation Committee was assigned an interim project to review Florida's Brownfield Redevelopment Act to determine if the act could be amended to increase its effectiveness.

III. Effect of Proposed Changes:

Sections 1, 2, and 3.

Sections 199.1055, 220.1845, and 376.30781, F.S., are amended to increase the tax credit that is available against either the intangible personal property tax or the corporate income tax for costs incurred for voluntary cleanup activity integral to site rehabilitation from 35 percent to 40 percent.

To encourage completion of site rehabilitation at contaminated sites being voluntarily cleaned up, current law allows the applicant to claim an additional 10 percent of the total cleanup costs in the final year of cleanup up to \$50,000. These sections are amended to increase the maximum amount from \$50,000 to \$250,000. The total amount of the tax credit that may be granted annually remains at \$2 million.

Section 4

Part VII of ch. 288, F.S., creates Enterprise Florida, Inc., as the principle economic development organization for the state. It is Enterprise Florida, Inc.'s responsibility to aggressively market Florida's rural communities, distressed urban communities, and enterprise zones as locations for potential new investment, to aggressively assist these communities in the identification and development of new economic development opportunities for job creation, and to fully market state incentive programs such as the Qualified Target Industry Tax Refund Program and the Quick Action Closing Fund in economically distressed areas. This section amends s. 299.9015, F.S., to require Enterprise Florida, Inc., to aggressively market brownfields as locations for potential new investment.

Section 5

This section amends s. 376.86, F.S., to increase the amount of the Brownfield Areas Loan Guarantee from 10 percent to 25 percent.

Section 6

This section repeals ss. 376.87 and 376.875, F.S., which relate to the brownfield property ownership clearance assistance program and the Brownfield Property Ownership Clearance Assistance Revolving Loan Trust Fund. This program has never been capitalized and used for its intended purposes.

Section 7

This section provides an effective date of July 1, 2005.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by s.18, Art. VII, State Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

This bill would increase the amount of credit which may be applied against the tax on intangible personal property and the corporate income tax for the voluntary cleanup costs of a contaminated drycleaning or brownfield site from 35 percent to 40 percent. While annual tax credits have increased each year since 1998, the annual credits have not reached the \$2 million cap. According to DEP, for the year 2004, the total tax credits applied for is \$1,650,748. The total number of applicants applying for the tax credits is 18—16 of which applied for tax credits on brownfield sites.

By raising the tax credit limit, it is likely that the credits will be used and the cap will be reached, with a corresponding impact on state tax collections.

Local governments could experience an increase in redevelopment activity in designated brownfield areas. That activity could result in an increased tax base for the local government.

B. Private Sector Impact:

It is anticipated that by increasing the amount of the tax credit available for voluntary cleanup at contaminated drycleaning and brownfield sites, interest and participation in redeveloping brownfield areas would increase. The revitalization of these predominantly urban areas would enhance the economy of the local government and bring new job opportunities.

The incentive to follow through with the voluntary cleanup should be enhanced by increasing the amount available in the last year of cleanup. The percentage remains at 10 percent of the costs, but the cap is increased from \$50,000 to \$250,000.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

VIII. Summary of Amendments:

None.

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