

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: The bill increases tax credit provisions which will create additional incentives for voluntary cleanup of eligible contaminated sites. Increased participation in the state's Brownfields Redevelopment Program and the voluntary cleanup of eligible drycleaning sites will reduce trust fund expenditures, accelerate cleanup and redevelopment of these contaminated sites and have a positive impact on local communities as these properties begin to create new tax revenue.

Ensure Lower Taxes: The bill provides an increase for the percentage of costs of voluntary cleanup activity that is integral to site rehabilitation from 35 percent to 40 percent when obtaining a tax credit against intangible personal property tax or corporate income tax and increases the dollar cap on the 10 percent completion incentive tax credit from \$50,000 to \$250,000.

Safeguard Individual Liberty and Promote Personal Responsibility: The bill provides an increase for the percentage of costs of voluntary cleanup activity that is integral to site rehabilitation from 35 percent to 40 percent when obtaining a tax credit against intangible personal property tax or corporate income tax and increases the dollar cap on the 10 percent completion incentive tax credit from \$50,000 to \$250,000. These provisions may result in increased participation in the Florida Brownfields Redevelopment Program and voluntary cleanup of drycleaning solvent contaminated sites.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

GENERAL BACKGROUND ON BROWNFIELDS:

Sections 376.77-376.85, F.S., are 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 real property, the expansion, redevelopment, or reuse of which may be 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 The Department of Environmental Protection (DEP) reports that as of January 1, 2005, local governments have adopted 100 resolutions that officially designate "Brownfields areas."

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 DEP. For an agreement to be executed a brownfield area must be designated by a local

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.

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.⁶ DEP reports that as of January 1, 2005, 60 Brownfield Site Rehabilitation Agreements have been executed with voluntary parties to rehabilitate Brownfield sites.

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.⁷

In 1998, the legislature also recognized the need for Brownfield Property Ownership Clearance Assistance (s. 376.87, F.S.) since some brownfield redevelopment projects were more difficult to redevelop due to the existence of various types of liens on property and complications due to previous owners having declared bankruptcy. In response to this, the legislature created the Brownfield Property Ownership Clearance Assistance Revolving Loan Trust Fund (s. 376.875, F.S.) to provide a revolving loan fund to be used to help clear prior liens on property through a negotiated process. To date, no one has made use of this provision of law.

Enterprise Florida, Inc.:

Enterprise Florida, Inc. (EFI) is the public-private partnership responsible for leading Florida's statewide economic development efforts. EFI was formed in July 1996, when Florida became the first state in the nation to replace its Commerce Department with a public-private organization that's responsible for economic development, international trade and statewide business marketing. EFI's mission is to diversify Florida's economy and create better-paying jobs for its citizens by supporting, attracting and helping to create businesses in innovative, high-growth industries.⁸ Currently, brownfields are not included in the types of communities that EFI is required to aggressively assist in economic development and job growth.

Partial Tax Credits:

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 or a drycleaning-solvent contaminated site. The tax credits are transferable; however, such transferred credits may not be transferred again, although they may succeed to a surviving or acquiring entity after merger or acquisition.

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 \$3,867,638 in tax credits have been issued since its inception in 1998. Of the total amount of tax credits issued, \$3,098,752 (80 percent) has been issued for brownfield sites and \$768,886 (20 percent) has been issued for drycleaning solvent cleanup sites. Table A below, illustrates the fiscal year history associated with the voluntary tax credit program administered by DEP:

⁶ s. 376.80, F.S., and *Florida Brownfields Redevelopment Program 2003 Annual Report*, DEP, Division of Waste Management, Bureau of Waste Cleanup, p. 5

⁷ s. 376.78(3), F.S.

⁸ <http://www.eflorida.com/aboutus/default.asp?tn=3>

Table A

Fiscal Year	# Voluntary Cleanup Tax Credit Certificates Issued	Total \$ Issued
FY 1998-1999	1	\$30,228.13
FY 1999-2000	3	\$118,438.25
FY 2000-2001	6	\$213,851.71
FY 2001-2002	9	\$494,193.72
FY 2002-2003	13	\$1,068,049.29
FY 2003-2004	16	\$1,014,834.47
FY 2004-2005	10	\$928,042.19

Due to a concern that some participants in a voluntary cleanup may only conduct enough work to eliminate or minimize their exposure to third party lawsuits (i.e. ensure that their neighbor can not sue them for personal injury or diminished property value), the voluntary tax cleanup tax credit statute also provides a completion incentive in the form of an additional 10 percent supplemental tax credit for those applicants that carry site rehabilitation through to completion and receive a "No Further Action Order" from DEP. This additional supplemental credit is 10 percent of the total cost of cleanup over the life of the project, with a \$50,000 cap.

Brownfield Areas Loan Guarantee Program:

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.

Effect of Proposed Change

Sections 199.1055, 220.1845, and 376.30781, F.S., are amended pursuant to the following provisions:

- The bill provides an increase in the percentage allowed for the Voluntary Cleanup Tax Credit from 35% to 40% of the costs of voluntary cleanup activity that is integral to site rehabilitation. This incremental increase of 5% may provide additional incentive to real property owners, developers, or redevelopers to clean up and redevelop contaminated sites.
- The bill also proposes to increase the statutory cap on the completion incentive from \$50,000 to \$250,000. This is a substantial increase that may provide significant incentive to carry site rehabilitation through to completion rather than stopping short of total cleanup of a site.

Overall, increasing these tax credit provisions will create additional incentives for voluntary cleanup of eligible contaminated sites. Increased participation in the state's Brownfields Redevelopment Program and the voluntary cleanup of eligible drycleaning sites (that would otherwise be cleaned up at the state's expense) will reduce trust fund expenditures, accelerate cleanup and redevelopment of these contaminated sites and have a positive impact on local communities as these properties begin to create new tax revenue.

The bill amends section 288.9015, F.S., to add brownfields to the types of communities that EFI is required to aggressively assist in economic development and job growth.

Section 376.86(1), F.S., is amended to increase the limited state loan guaranty from 10 percent to 25 percent of the primary lender loans for redevelopment projects in brownfield areas. The 15 percent expansion may allow more lenders to submit applications to the council for review and participation in the Brownfield Areas Loan Guarantee program.

The bill repeals sections 376.87 and 376.875, F.S. These sections relate to the Brownfield Property Ownership Clearance Assistance Program and the Brownfield Property Ownership Clearance Assistance Revolving Loan Trust Fund which has never been capitalized and used for its intended purposes.

C. SECTION DIRECTORY:

Section 1. Amends s. 199.1055, F.S., relating to tax credit limitations.

Section 2. Amends s. 220.1845, F.S., relating to tax credit limitations.

Section 3. Amends s. 376.30781, F.S., relating to tax credit limitations.

Section 4. Amends s. 288.9015, F.S., to add brownfields to the types of communities that Enterprise Florida is required to aggressively assist in economic development and job growth.

Section 5. Amends s. 376.86, F.S., to increase the limited state loan guaranty available to lenders that provide loans for redevelopment projects in brownfield areas from 10% to 25%.

Section 6. Repeals ss. 376.87 and 376.875, F.S., relating to the Brownfield Property Ownership Clearance Assistance Program and the Brownfield Property Ownership Clearance Assistance Revolving Loan Trust Fund.

Section 7. Provides the act will take effect on July 1, 2005.

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: since the inception of the program the voluntary tax credit has not exceeded the \$2 million cap that may be awarded annually. FY 2004 tax credits equated to \$1,014,834.

2. Expenditures:

a. Non-recurring Effects:

The bill will require DEP to amend an existing rule detailing the tax credit application process. There will be indeterminate fiscal impacts associated with the cost of rulemaking related to publishing rule drafts and conducting public workshops for rule development.

b. Recurring Effects: None.

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:

a. Non-recurring Effects:

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

b. 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:

The bill increases the percentage of costs of voluntary cleanup activity that is integral to site rehabilitation from 35 percent to 40 percent and increases the completion incentive cap from \$50,000 to \$250,000 which may result in increased participation in the Florida Brownfields Redevelopment Program and voluntary cleanup of drycleaning solvent contaminated sites. Direct benefits include employment opportunities for environmental cleanup contractors, future job opportunities for area residents, opportunity for developers to realize profits on property investments, the possibility of an increase in surrounding property value, and a reduction or elimination of risk to public health and the environment resulting from cleaning up contamination in the area.

D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require cities or counties to spend funds or take actions requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties

2. Other: None.

B. RULE-MAKING AUTHORITY:

The bill will require DEP to amend an existing rule detailing the tax credit application process.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.