



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: The bill clarifies the requirements for submittals of both site rehabilitation and solid waste removal tax credit applications, which are expected to allow more time and flexibility for the submittal and review of tax credit applications, and may result in a greater number of tax-credit certificate awards.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Current Situation**

##### **General Information about Brownfields**

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 Brownfield Redevelopment Act, consisting of ss. 376.77-376.86, F.S., provides legislative intent, 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.

##### **Legislative intent**

As provided in s. 376.78, F.S., the Legislature declared that the reduction of public health and environmental hazards on existing commercial and industrial sites is vital to their use and reuse as sources of employment.

##### **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 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. See, Section 376.80(2), F.S.

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 site;
- 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 site rehabilitation agreement with the DEP or an approved local program. The person responsible for rehabilitation must enter into a brownfield site rehabilitation agreement with the DEP or an approved local program to be eligible for certain benefits associated with the brownfields redevelopment program.

### **Cleanup criteria**

Risk-based corrective-action principles, to the maximum extent feasible, apply 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 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 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 may be for corporate income taxes, insurance premium taxes, sales and use 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.

According to information reported by the Governor's Office of Tourism, Trade, and Economic Development to the DEP in January 2006, the cumulative totals for new job creation and capital investment attributable to the Brownfields Redevelopment Program from inception includes 8,595 new direct jobs, 7,264 new indirect jobs, and \$883,713,993 of capital investment in designated brownfield areas. In 2007, 1,165 new direct jobs, 1,265 new indirect jobs, and \$129,050,000 in new capital investment were attributable to the Brownfields Redevelopment 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 for site rehabilitation and solid waste removal conducted at brownfield sites in designated brownfield areas. To be eligible, the responsible party must execute a Voluntary Cleanup Agreement or a Brownfield Site Rehabilitation Agreement (BSRA) with the DEP.

The VCTC can apply toward corporate income taxes. The amount of the credit is 50 percent, up to \$500,000 once per site, for solid waste removal. of the costs of the voluntary cleanup activity that is integral to site rehabilitation. 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. The total amount of the tax credit that may be granted each year under the program is \$2 million.

As of January 22, 2008, local governments have adopted 168 resolutions that officially designate "Brownfield areas" and 112 BSRAs have been executed with voluntary parties to rehabilitate Brownfield sites. Twenty Site Rehabilitation Completion Orders (SRCOs), sometimes referred to as "No Further Action" (NFA) orders in statutes, have been issued since the beginning of the program for brownfield sites that have been cleaned up to levels protective of human health and the environment. The remaining sites are still in some phase of site assessment or cleanup.

The VCTC program has issued a total of \$7,399,088 in tax credits since its inception in 1998. Of the total amount of tax credits issued, \$6,287,669 (85%) has been for brownfield sites and \$1,111,420 (15%) has been for drycleaning solvent contaminated sites.

From creation of the program in 1998 through the FY 02 03, the total value of tax credits issued annually approximately doubled each year. In FYs 02-03 through 05-06, the overall dollar amount issued annually remained relatively constant. In FYs 03-04 through 05-06, the number of applications for tax credits remained steady; but the number of certificates issued decreased due to failure of some applicants to meet all qualifying criteria required by statute. In FY 06-07, the number of applications

received, the number of certificates awarded, and the total dollar amount awarded increased. The following table shows the growth of the program as of January 22, 2008.

<u>Fiscal Year</u>	<u># VCTC Applications Received</u>	<u># VCTC Certificates Issued</u>	<u>Total \$ Issued</u>
FY 1998-1999	1	1	\$30,228.13
FY 1999-2000	3	3	\$118,438.25
FY 2000-2001	8	6	\$213,851.71
FY 2001-2002	10	9	\$494,193.72
FY 2002-2003	14	13	\$1,068,049.29
FY 2003-2004	18	16	\$1,093,319.13
FY 2004-2005	18	13	\$1,190,541.85
FY 2005-2006	17	14	\$1,314,698.88
FY 2006-2007	21	19	\$1,875,767.00
FY 2007-2008	40	*	*

\*As of January 15, 2008, 40 VCTC applications had been received by the Department. These applications represent a total request of \$4,410,767.59 in tax credits. However, the number of complete applications and total dollar amount of certificates to be issued is unknown as of January 22. Applications are required to be reviewed for completeness and eligibility by March 31.

As an inducement to complete the voluntary cleanup, the tax credit applicant may claim an additional 25 percent of the total cleanup costs, not to exceed \$500,000 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.

As an inducement to encourage the construction of affordable housing (as provided in s. 420.0004(3), F.S.), an applicant for the tax credit may claim an additional 25 percent of the total site eligible rehabilitation costs, not to exceed \$500,000.

### **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 to 50 percent of the primary lender's loans for redevelopment projects in brownfields areas. If the redevelopment project is for affordable housing in a brownfield area, the loan guaranty applies to 75 percent of the primary lender's loan. 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 do. With the loan guarantee, the developer has more financial flexibility because the initial cash flow is not as great.

### **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 is 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. Brownfields are included in the

types of communities that EFI is required to aggressively assist in economic development and to encourage growth.

### **Recent Legislative Changes**

In 2006, HB 7131 by the Environmental Regulation Committee and Representatives Needelman and Peterman passed both Houses and was enacted into law.

One of the changes made was to increase the reimbursement percentage rate for applicants (the percentage of the costs of the voluntary cleanup activity an applicant may claim) from 35 percent to 50 percent. In addition, the cap for the annual amount an applicant may claim was increased from \$250,000 to \$500,000. The incentive to complete the project in the final year was increased from 10 percent to 25 percent.

The program was expanded to provide incentives for cleaning solid waste from brownfield sites, and incentives for sites that provide affordable housing were added by reducing the required number of new jobs to 5 full-time equivalent positions from 10 full or part-time jobs. In addition, the rehabilitation and redevelopment of a site that will provide affordable housing or the creation of recreational areas, conservation areas, or parks were exempted from the job-creation requirement

Brownfield areas were included within the implementation of the economic development ad valorem tax exemption authorized under s. 3, Art VII of the Florida Constitution. Businesses that open or expand in brownfield areas will qualify as new businesses under these statutes, and a city or county that adopts the economic development ad valorem tax exemption may limit the exemption to businesses located in an enterprise zone or a brownfield area.

Enterprise Florida, Inc., was directed to aggressively market brownfields. In addition the amendments made technical changes to reflect the elimination of intangibles tax, and reduced auto liability coverage requirements for site rehabilitators from \$2 million to \$1 million.

Finally, the DEP has 30 more days to review applications (from March 1 to March 31), and the Brownfield Property Ownership Clearance Assistance Program and the Brownfield Property Ownership Clearance Assistance Revolving Loan Trust Fund were repealed.

### **Effect of Proposed Changes**

The bill establishes a new tax credit for an additional 25% of total site rehabilitation costs, up to \$500,000, as a bonus for the construction and operation of a health care facility or a health care provider on a brownfield site. The bill requires that the "health care facility" or "health care provider" meet the definitions in ss. 408.032<sup>1</sup>, 408.07<sup>2</sup> or 408.7056<sup>3</sup>, F.S. Additionally, the bill encourages state and local governments to evaluate, measure, and monitor the community health benefits associated

---

<sup>1</sup> Subsection (8) of that section defines "health care facility" to include a hospital, long-term care hospital, skilled nursing facility, hospice, or intermediate care facility for the developmentally disabled. A facility relying solely on spiritual means through prayer for healing is not included as a health care facility.

<sup>2</sup> Subsection (24) of that section defines "health care facility" to include an ambulatory surgical center, a hospice, a nursing home, a hospital, a diagnostic-imaging center, a freestanding or hospital-based therapy center, a clinical laboratory, a home health agency, a cardiac catheterization laboratory, a medical equipment supplier, an alcohol or chemical dependency treatment center, a physical rehabilitation center, a lithotripsy center, an ambulatory care center, a birth center, or a nursing home component licensed under chapter 400 within a continuing care facility licensed under chapter 651.

Subsection (25) of that section defines "health care provider" to include a health care professional licensed under chapter 458 (physicians, generally), chapter 459 (osteopathic), chapter 460 (chiropractic), chapter 461 (podiatric), chapter 463 (optometry), chapter 464 (nurses), chapter 465 (pharmacy), chapter 466 (dentistry), part I (speech-language pathology and audiology), part III (occupational therapy), part IV (radiology), part V (respiratory therapy), or part X (dietetics and nutrition) of chapter 468, chapter 483 (health testing facilities (labs)), chapter 484 (opticians and hearing aid fitters and dispensers), chapter 486 (physical therapy), chapter 490 (psychology), or chapter 491 (clinical, counseling, and psychotherapy).

<sup>3</sup> Paragraph (d) of subsection (1) of that section defines "health care provider" or "provider" to include a state-licensed or state-authorized facility, a facility principally supported by a local government or by funds from a charitable organization that holds a current exemption from federal income tax under s. 501(c)(3) of the Internal Revenue Code, a licensed practitioner, a county health department established under part I of chapter 154, a prescribed pediatric extended care center defined in s. 400.902, a federally supported primary care program such as a migrant health center or a community health center authorized under s. 329 or s. 330 of the United States Public Health Services Act that delivers health care services to individuals, or a community facility that receives funds from the state under the Community Alcohol, Drug Abuse, and Mental Health Services Act and provides mental health services to individuals.

with the rehabilitation and redevelopment of brownfield sites. The bill expands the Brownfield Areas Loan Guarantee Program to include a 75% state loan guarantee for the primary lender's loan to construct or operate a health care facility or health care provider.

The bill establishes that tax credits for affordable housing, healthcare facilities or providers, and site rehabilitation completion orders are applicable to solid waste removal sites. Such a site may not be, or have even been, a permitted landfill, dump, or other area which is or was the recipient of solid waste for a fee or direct compensation.

The bill clarifies the requirements for submittals of both site rehabilitation and solid waste removal tax credit applications:

- Provides for tax credit applications will be reviewed for both completeness and eligibility;
- Allows for a one-time correction of completeness deficiencies; and
- Establishes review and eligibility determination time frames.

The bill also clarifies, reduces, or eliminates some of the requirements for brownfield area designations and Brownfields Site Rehabilitation Agreement (BSRA) execution. For instance, because the statutory requirement to hold a public hearing in the proposed brownfield area is sometimes not feasible because there are not facilities available, the bill requires that at least one meeting be held as near the brownfield site as is feasible. The requirement to provide a redevelopment agreement that has been reviewed and approved by the local government has proved to be problematic to both the private sector and the local governments, therefore the bill requires that the person responsible for the brownfield site rehabilitation certify that he or she has consulted with the local government and that the local government approves of the project. In addition, current law includes contractor insurance requirements that are appropriate for a state-managed project; but since brownfields projects are managed by private sector volunteers, and are subject to applicable state and federal safety standards, the insurance requirements are unnecessary.

The bill provides a retroactive application to January 1, 2008, to avoid creating a split-calendar year for tax credit applications claiming new incentives (e.g., the health care credit).

#### C. SECTION DIRECTORY:

**Section 1:** Amends s. 220.1845, F.S., to incent the placement of affordable housing, new health care facilities and new health care providers on brownfield sites affected by solid waste, and to award a tax credit certificate when the applicant documents that the construction has received a certificate of occupancy or a license or certificate has been issued for operation of a health care facility. This section creates paragraph (j) of s. 220.1845, F.S., to include clarifying definitions and requirements for issuance of a solid waste removal tax credit certificate for 50% of the eligible costs claimed, not to exceed \$500,000, and creates paragraph (k) of s. 220.1845, F.S., for the issuance of a new health care facility or new health care provider tax credit certificate for 25% of the total eligible site rehabilitation costs claimed, not to exceed \$500,000.

**Section 2:** Amends s. 376.30781, F.S., allowing an applicant or applicants on a single site to claim tax credits for the removal of solid waste from a brownfield site, with limitations, and establishes an incentive of 50 percent recovery for costs associated with removal of solid waste, not to exceed \$500,000. The section provides for the DEP to consider issuing tax credits for site rehabilitation or solid waste removal conducted *prior* to the execution of a BSRA or the designation of a brownfield area. The phrase "integral to site rehabilitation" is referenced to the Florida Administrative Code rules implementing the Act.

The section provides definitions and clarifies the timing for filing applications for site rehabilitation tax credits, and for filing solid waste removal tax credits. This section requires applicants to submit "site rehabilitation" tax credit applications once per site per year, and to submit "solid waste removal" tax credit applications only once per site, when the applicant deems the "solid waste removal" activities complete. All tax credit applications must contain specific supporting documentation to be considered

complete and complete applications are subsequently reviewed to verify that the costs claimed are eligible. Tax credit applicants are allowed one opportunity to supplement their application to meet the “completeness” requirements. This section establishes time frames for when supplemental information must be received and when tax credit certificates must be issued. Finally, this section clarifies that the DEP has audit authority for tax credit applications, and establishes limitations.

**Section 3:** Amends section (6), (8), (10), (11), and (17) of s. 376.79, F.S., to conform definitions to existing definitions found in s. 376.301, F.S., *Pollutant Discharge Prevention and Removal*.<sup>4</sup>

**Section 4:** Amends s. 376.80, F.S., to permit at least one of the brownfield area designation public hearings to be held in a location as close to the brownfield area as practicable. This section provides that the consultation/approval certification requirements are between the local government and the person responsible for the site rehabilitation, and confirms that the proposed development must comply with applicable laws and requirements for the redevelopment project. This section deletes the requirement that a contractor must certify to the Department that it complies with OSHA regulations and that it maintains certain types of insurance. This section provides legislative findings and declarations regarding brownfields and community health, and authorizes the DEP and the Department of Health to adopt rules on how to evaluate and monitor the community health benefits associated with the rehabilitation and redevelopment of brownfield sites.

**Section 5:** Amends paragraphs (d) and (f) of subsection (2) of s. 376.82, F.S., to conform that section to the amended s. 376.80, F.S., in this bill.

**Section 6:** Amends subsection (1) and (2) of s. 376.86, F.S., to establish a 75% state loan guarantee, on the primary lender’s loan, if the redevelopment project includes the construction and operation of a new health care facility or health care provider, as defined in ss. 408.032, 408.07, or s. 408.7056, F.S., and the applicant has obtained the applicable documentation required under s. 376.30781, F.S.; adds the State Surgeon General or the State Surgeon General’s designee, to the Brownfield Areas Loan Guarantee Council.

**Section 7:** Provides the bill shall take effect upon becoming a law and shall operate retroactively to January 1, 2008.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

See Fiscal Comments

#### 2. Expenditures:

See Fiscal Comments

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

See Fiscal Comments

---

<sup>4</sup> Instead of mirroring definitions for “engineering controls” and “institutional controls,” however, the proposed bill uses the phrase, “. . . chemicals of concern from petroleum products, drycleaning solvents, or other . . .”, rather than the phrase “. . . petroleum products’ chemicals of concern, drycleaning solvents, or other . . .”, found in s. 376.301, F.S.



2. Expenditures:

See Fiscal Comments

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

It is anticipated that expanding the scope of site rehabilitation tax credits may increase the interest and participation in redeveloping brownfield sites. The revitalization of these areas may enhance the economy of the local government and bring new job opportunities.

Direct benefits may include employment opportunities for environmental cleanup contractors, future job opportunities for area residents, opportunity for developers to realize profits on property investments, and the possibility of an increase in surrounding property value. Increased availability of annual tax credits may increase private enterprise and provide employment opportunities. Eliminating the contractor insurance requirements may reduce those companies' overhead and may increase competition among environmental cleanup firms.

D. FISCAL COMMENTS:

**State**

**Revenue:**

The bill expands the scope of applicants eligible to apply for contaminate site rehabilitation tax credits to include the following types of activities:

- Solid waste removal within a brownfield site
- Construction and operation of a new health care facility or health care provider on a brownfield site

This expansion of applicants may increase tax credit applications. Monies associated with the \$250 tax credit application review fee which are deposited into the Water Quality Assurance Trust Fund may be increased by an indeterminate amount.

**Expenditures:**

The bill encourages the state and local governments to establish funding sources to evaluate the community benefits of brownfield site rehabilitation and redevelopment. The Department of Health is encouraged to assist local governments, in collaboration with local health departments, community health providers, and nonprofit organizations, in evaluating the community health benefits of brownfield site rehabilitation and redevelopment. The cost of such evaluation is unknown.

**Local**

**Revenues:**

Local governments may experience an increase in redevelopment activity in designated brownfield areas, which may result in an increased tax base for local government.

**Expenditures:**

The bill encourages the state and local governments to establish funding sources to evaluate the community benefits of brownfield site rehabilitation and redevelopment. The cost of such evaluation is unknown.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to require the counties or cities to spend funds or take an action 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 noted

#### B. RULE-MAKING AUTHORITY:

The bill does not provide rulemaking authority.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### D. STATEMENT OF THE SPONSOR

No Sponsor Statement Submitted

### IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

The CS version of the bill differs from the bill as originally filed in the following ways:

- Statutory cross references are correct;
- Obsolete language is removed;
- The increase to the annual VCTC cap is removed, making the bill revenue neutral;
- The amendment to ch. 212, F.S., regarding the state sales tax exemption for construction materials to construct a "qualified home" is removed, which removes the indeterminate reduction to local option sales tax collections; and,
- A retroactive effective date of January 1, 2008 is added.