

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Environmental Preservation and Conservation Committee

BILL: CS/SB544

INTRODUCER: Committee on Environmental Preservation and Conservation and Senator Constantine

SUBJECT: Brownfields

DATE: March 24, 2010 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiggins	Kiger	EP	Fav/CS
2.			GA	
3.			RU	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The CS provides a state sales tax financial incentive for mixed-use projects constructed in designated Brownfield areas. The CS provides for eligible environmental costs incurred in a given calendar year to be claimed for state Voluntary Cleanup Tax credits (VCTC) provided that the VCTC application is submitted by January 31. The CS allows small businesses to qualify for the existing state/Office of Tourism, Trade, and Economic Development (OTTED) Brownfield Job Bonus refund if they create at least 5 jobs and up to 50 total and they can demonstrate at least \$50,000 in fixed capital investment. The CS provides that the identification of items for potential improvements to Florida's Brownfield program be included in the Florida Department of Environmental Protection (DEP) annual Brownfield report. Finally, it clarifies that brownfield projects are eligible for funding and priority ranking when existing statutory criteria are met under DEP's Water Pollution Control Financial Assistance Revolving Loan Fund Program.

The bill amends s. 212.08, 220.1845, 288.107, 376.30781, 376.85, and 403.1835, F.S.

The bill will take effect July 1, 2010.

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 Liability Relief 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. 376.77-376.85, 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, 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.

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, and in addition there should be incentives to encourage voluntary cleanup.

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 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

¹ S. 376. 802 (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 entitles 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 the DEP or an approved local program to be eligible for certain benefits associated with the brownfields redevelopment program.

As reported by DEP in the Florida Brownfields Redevelopment Act, dated July 2009, there are 236 designated brownfield areas and 132 Brownfield Voluntary Cleanup Agreements executed in Florida. The number of new direct and indirect jobs attributed to the Brownfields Redevelopment program for 2008 was 8,105. Since the program's inception in 1997, the number of direct and indirect jobs created is 23,964. The capital investment in Florida since 1997 is \$1.3 billion, and \$407.9 million for 2008.

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 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 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.

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 the 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, however, 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 per cent 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. 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.

III. Effect of Proposed Changes:

Section 1: Revises s. 212.08, F.S., to provide state sales tax refunds for building materials purchased in connection with mixed-use projects constructed in designated brownfield areas for mixed-use units that include residential, commercial or other comparable or permitted uses.

Section 2. Revises s. 220.1845, F.S., of the contaminated site rehabilitation tax credit to require that site rehabilitation applications be received by the DEP, by January 31st of the year after the calendar year for which site rehabilitation costs are being claimed in a Voluntary Cleanup Tax Credit application.

Section 3. Revises s. 288.107, F.S. to allow brownfield redevelopers to be eligible for the state Brownfield Redevelopment Job Bonus Refund with the creation of at least 5 and up to 50 jobs and at least \$500,000 in project capital investment.

Section 4. Revises s. 376.30781, F.S., to provide that all site rehabilitation costs claimed must have been for work conducted between January 1 and December 31 of the year for which the application is being submitted. All payment requests must have been received no later than January 31 of the year after the calendar year for which site rehabilitations costs were incurred.

Section 5. Revises s. 376.85, F.S., to provide an annual deadline regarding DEP's issuance of the annual DEP Brownfield Program report. Further, it provides for the report to include recommendations on items for potential improvements to Florida's Brownfield program.

Section 6. Amends s. 403.1835, F.S.; to provide that eligible projects located within brownfield sites subject to a brownfield voluntary cleanup agreement will be given priority, under the water pollution control financial assistance program, when certain environmental and public health criteria are met.

Section 7. Provides for an effective date of July 1, 2010.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The changes to the Florida Brownfield Redevelopment Job Bonus Refund will provide small businesses with an incentive to consider rehabilitating designated brownfield sites. Once rehabilitation or clean up begins the contractors utilized for the project could create jobs in an area that would otherwise not have been rehabilitated.

C. Government Sector Impact:

The Department of Revenue has stated that they will not require any appropriations to manage the changes to the programs.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Environmental Preservation and Conservation on March 23,2010:
The original bill was a shell bill. The CS is reflected in the current analysis.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
