

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 Appropriations Subcommittee on Finance and Tax

BILL: CS/CS/SB 554

INTRODUCER: Community Affairs Committee; Environmental Preservation and Conservation Committee; and Senator Altman

SUBJECT: Brownfields

DATE: April 4, 2013 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gudeman	Uchino	EP	Fav/CS
2.	Anderson	Yeatman	CA	Fav/CS
3.	Fournier	Diez-Arguelles	AFT	Pre-meeting
4.			AP	
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

CS/CS/SB 554 amends procedures that must be followed in order to designate brownfield areas under the Brownfields Redevelopment Act. The bill also provides additional liability protection for individuals responsible for the rehabilitation of a brownfield site.

This bill has no impact on state or local revenues.

This bill amends ss. 376.78, 376.80, and 376.82 of the Florida Statutes.

II. Present Situation:

The Brownfields Redevelopment Act

The term “brownfield” came into existence in the 1970s and originally referred to any previously developed property, regardless of any contamination issues. The term, as it is currently used, originated in 1992 during a U.S. Congressional field hearing and is defined by the U.S. Environmental Protection Agency (EPA) as, “real property, the expansion, redevelopment, or

reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.”¹ In 1995, the EPA created the Brownfields Program in order to manage contaminated property through site remediation and redevelopment. The program was designed to provide local communities around the country access to federal funds that have been allocated for redevelopment, including environmental assessments and cleanups, environmental health studies, and environmental training programs.²

In 1997, the Legislature enacted the Brownfields Redevelopment Act (Act).³ The Act provides financial and regulatory incentives to encourage voluntary remediation and redevelopment of brownfield sites in order to improve public health and reduce environmental hazards.⁴ The Act required the Department of Environmental Protection (DEP) to adopt rules to determine site-specific investigation methods, clean-up methods, and clean-up target levels by incorporating risk based corrective action (RBCA) principles.⁵ The Brownfields Cleanup Criteria Rule, Rule 62-785 of the Florida Administrative Code (F.A.C.), was adopted by the DEP on April 30, 1998, and became effective July 6, 1998.⁶

The Act provides liability protection for program participants who have not caused or contributed to the contamination of a brownfield site on or after July 1, 1997. A person who successfully completes a brownfield site rehabilitation agreement (BSRA) is relieved from further liability for remediation of the contaminated site or sites to the state and to third parties, and of liability in contribution to any other party who has or may incur cleanup liability for the contaminated site.⁷ The Act does not limit the right of a third party, other than the state, to pursue an action for damages to property or person; however, an action may not require rehabilitation in excess of what is outlined in the approved BSRA or required by the DEP or the local pollution control program.⁸

The Act provides lenders the same liability protections as program participants as long as the lender has not caused or contributed to the contamination of a brownfield site. The lender liability protections are provided to encourage financing of real-property transactions involving brownfield sites.⁹

¹ Robert A. Jones and William F. Welsh, *Michigan Brownfield Redevelopment Innovation: Two Decades of Success*, (Sept. 2010), available at <http://www.miseagrant.umich.edu/downloads/focus/brownfields/10-201-EMU-Final-Report.pdf> (last visited Feb. 15, 2013).

² The Florida Brownfields Association, *Brownfields 101*, available at <http://floridabrownfields.org/associations/11916/files/Brownfields101.pdf> (last visited Feb. 15, 2013).

³ Chapter 97-277, Laws of Fla.

⁴ Department of Environmental Protection, *Florida Brownfields Redevelopment Act-1998 Annual Report*, available at http://www.dep.state.fl.us/waste/quick_topics/publications/wc/brownfields/leginfo/1998/98final.pdf (last visited Feb. 15, 2013).

⁵ ASTM International defines “risk based corrective action principles” as consistent decision-making processes for assessment and response to chemical releases. See <http://www.astm.org/Standards/E2081.htm> (last visited Feb. 22, 2013).

⁶ See Rule 62-785, F.A.C.

⁷ *Id.* “Brownfield site rehabilitation agreement” (BSRA) means an agreement entered into between the person responsible for brownfield site rehabilitation and the Department or a delegated local program. The BSRA shall at a minimum establish the time frames, schedules, and milestones for completion of site rehabilitation tasks and submission of technical reports, and other commitments or provisions pursuant to s. 376.80(5), F.S., and Rule 62-785, F.A.C.

⁸ See s. 376.82, F.S.

⁹ *Id.*

The Act also created the Brownfield Redevelopment Bonus Refund to provide a refund to qualified businesses for new jobs that are created in a brownfield area.¹⁰ The Act identifies specific procedures and criteria for the designation of a brownfield area by local governments,¹¹ counties,¹² and municipalities.¹³

Economic Incentives

In 1998, the Legislature passed SBs 1202 and 244 providing economic and financial incentives to promote the redevelopment of brownfield areas. SB 1202 created the Brownfield Area Loan Guarantee Program, which authorized up to five years of state loan guarantees for redevelopment and applied to 10 percent of the primary lender loan.¹⁴ SB 244 authorized a voluntary clean-up tax credit (VCTC) of up to 35 percent of the costs of voluntary clean-up activity of brownfield areas with a maximum allowable amount of \$250,000 per site per year.¹⁵

In 2005, the Legislature passed SB 1338, the Brownfield Property Ownership Clearance Assistance and Revolving Loans Trust Fund, facilitating the redevelopment of properties that may be more difficult to redevelop due to various liens on the property or complications from bankruptcy. The trust fund was to help clear prior liens on the property through the negotiation process. The loans would then be repaid through the resale of the brownfield property and other activities that may have enhanced the property's value. This trust fund was never capitalized or used for its intended purpose and was later repealed.¹⁶

In 2006, the Legislature passed HB 7131, which substantially increased the economic and financial incentives for the redevelopment of brownfield areas and repealed the Brownfield Property Ownership Clearance Assistance and Revolving Loans Trust Fund. The VCTC increased from 35 percent to 50 percent, which may be applied against intangible property tax and corporate income tax for the remediation of brownfield area with a maximum allowable amount of \$500,000 per year per site. The Brownfield Area Loan Guarantee Program increased from 10 percent to 25 percent of the loan and the loan guaranty was applied to 75 percent of the lender loan if the brownfield area redevelopment is for "affordable" housing.¹⁷ The percentage of tax credit that may be received during the final year of clean-up was increased from 10 percent to 25 percent and the amount was increased from \$50,000 to \$500,000. The total amount of tax credits that may be granted for brownfield clean-up was increased from \$2 million annually to \$5 million annually. The law also provides incentives for cleaning unlicensed or historic solid waste dumpsites and requires Enterprise Florida, Inc., to market brownfields for redevelopment and job growth.¹⁸

¹⁰ See s. 288.107, F.S.

¹¹ See s. 376.80, F.S.

¹² See s. 125.66, F.S.

¹³ See s. 166.041, F.S.

¹⁴ See s. 376.86 F.S.

¹⁵ See s. 220.1845, F.S.

¹⁶ See ch. 2005-3, Laws of Fla.

¹⁷ "Affordable" housing, as defined in s. 420.0004, F.S., means that monthly rents or monthly mortgage payments including taxes, insurance, and utilities do not exceed 30 percent of that amount which represents the percentage of median adjusted gross annual income for the households as indicated in ss. 420.0004(9), (11), (12), or (17), F.S.

¹⁸ See ss. 196.012, 196.1995, 199.1055, 220.1845, 288.9015, 376.30781, 376.80, and 376.86, F.S. Sections 376.87 and 376.875, F.S., were repealed.

In 2008, the Legislature passed HB 527 providing additional tax credits for the developers of brownfield areas. The law allows a tax credit for the costs incurred to remove solid waste from a brownfield site. The tax credit applicant may claim 50 percent of the cost of solid waste removal, not to exceed \$500,000. An additional 25 percent of the total site rehabilitation costs, not to exceed \$500,000, may be claimed if a health care facility is constructed on the brownfield site.¹⁹

In 2010, the Legislature passed SB 550 requiring the DEP to submit an annual report to the President of the Senate and Speaker of the House of Representatives by August 1 of each year. The annual report must include the number, locations and sizes of the brownfield sites that have been remediated or are currently being rehabilitated under the provisions of the Act.²⁰

Brownfield Designation Procedures

Currently, a local government that has jurisdiction over a proposed brownfield area is required by the Act to notify the DEP of the decision to designate the brownfield area for rehabilitation. The notification must include a resolution that contains a map of the proposed area and the parcels to be included in the brownfield designation. Municipalities that propose to designate a brownfield area must do so according to the resolution adoption procedures outlined in s. 166.041, F.S., and notice the public hearing according to s. 166.041(3)(c)2., F.S. Counties that propose to designate a brownfield area must do so according to the resolution adoption procedures outlined in s. 125.66, F.S., and notice the public hearing according to s. 125.66(4)(b)2., F.S.²¹

The Act requires a local government that proposes to designate a brownfield area that is outside of a community redevelopment area, enterprise zone, empowerment zone, closed military base, or designated brownfield pilot project, to notify the DEP of the proposed designation. The notification must include a resolution that contains a map of the proposed area and the parcels to be included in the brownfield designation. The local government is also required to consider if the area warrants development, confirm the area is not too large, determine if the area has the potential for the private sector to participate in the rehabilitation, and whether the area has sites that can be used for recreation, cultural or historical preservation.²²

The Act allows a local government to designate a brownfield area if the person who owns or controls a potential brownfield area is requesting the designation and has agreed to rehabilitate and redevelop the area. The redevelopment must provide an economic benefit to the area and create at least five permanent new jobs. The redevelopment of the proposed area must be consistent with the local comprehensive plan and be permissible. Notice of the proposed designation must be provided to the residents of the area and published in a newspaper of local circulation. The person requesting the designation must also provide reasonable assurance that he or she has sufficient financial resources to complete the rehabilitation and redevelopment of the

¹⁹ See s. 376.30781, F.S.

²⁰ See s. 376.85, F.S.

²¹ Chapter 97-277, Laws of Fla.

²² *Id.*

brownfield area and enter into a site rehabilitation agreement with the department or local pollution control program.²³

The Act also requires that if a property owner within the proposed designation area requests in writing to the local government to have their property removed from the designation, the request must be granted.²⁴

As of January 23, 2013, local governments have adopted 330 resolutions to officially designate brownfield areas and 183 BSRAs have been executed. A total of 56 Site Rehabilitation Completion Orders or “No Further Action” orders have been issued since the inception of the program.²⁵

III. Effect of Proposed Changes:

Section 1 amends s. 376.78, F.S., to emphasize that the redevelopment of a brownfield area within a community redevelopment area, empowerment zone, closed military bases, or designated brownfield pilot project area is particularly beneficial.

Section 2 amends s. 376.80, F.S., to clarify and revise the procedures for the designation of a brownfield area for the purpose of rehabilitation under the Act.

The bill specifies the following procedures for the designation of a brownfield area:

- A local government with jurisdiction over the brownfield area must adopt a resolution to designate the proposed area.
- The local government must notify the DEP, and, if applicable, the local pollution control program within 30 days of the adoption of the resolution.
- The resolution must include a detailed map of the parcels that are to be designated or a legal description of the parcels along with a less detailed map.
- The resolution must be adopted according to the resolution adoption procedures and requirements of the local government at the time of the proposal.
- Property owners within the proposed brownfield area who make written requests to have their properties removed from the designation before the adoption of the resolution must be granted the request.

The bill specifies that if the designation is proposed by a local government that has jurisdiction over the area and the area is located outside an existing community redevelopment area, an enterprise zone, an empowerment zone, a closed military base, or a designated brownfield pilot project, then the following public hearing and notification procedures are required:

- At least one of the required public hearings must be conducted as close to the proposed area as possible to provide an opportunity for public input on the size of the area, the objectives

²³ *Id.*

²⁴ *Id.*

²⁵ Department of Environmental Protection, *Senate Bill 554 Agency Analysis* (Feb. 2013) (on file with the Senate Committee on Environmental Preservation and Conservation).

for rehabilitation, job opportunities and economic developments, and residents' considerations.

- Notice of the public hearing must be made in a newspaper of general circulation, in ethnic newspapers or community bulletins, posted in the affected area, and announced at a scheduled meeting of the local governing body held prior to the public hearing.
- At the public hearing the local government must consider the following:
 - Whether the proposed brownfield area warrants development;
 - Whether the proposed area covers an overly large area;
 - Whether the proposed area has the potential for the private sector to participate in rehabilitation; and
 - Whether the proposed area contains sites that may be used for recreational open space, cultural or historical preservation purposes.

The bill specifies that if the designation is proposed by a local government that has jurisdiction over the area and the area is located within an existing community redevelopment area, an enterprise zone, an empowerment zone, a closed military base, or a designated brownfield pilot project, then the public hearing considerations outlined above are not required; however, the local government must be in compliance with the notification and resolution adoption procedures outlined in paragraph two of this section of the analysis.

The bill specifies that if the designation is proposed by individuals, corporations, partnerships, limited liability corporations, community-based organizations, not-for-profit corporations, or other non-governmental entities the following public hearing and notification procedures are required:

- A public hearing must be conducted as close to the proposed area as possible to provide an opportunity for public input on the size of the area, the objectives for rehabilitation, job opportunities and economic developments, and residents' considerations.
- Notice of the public hearing must be published in a newspaper of general circulation, published in an ethnic newspaper or community bulletin, posted in the affected area and announced at a scheduled meeting of the local governing body held prior to the public hearing.
- The individual proposing the designation must also meet the following criteria:
 - The person owns or controls the proposed area;
 - The rehabilitation and redevelopment of the proposed area will be economically beneficial and include the creation of at least five new permanent jobs;
 - The redevelopment is consistent with the local comprehensive plan and is permissible;
 - The individual has provided reasonable assurance that he or she has sufficient financial resources to complete the rehabilitation and redevelopment of the brownfield area; and
 - The individual must enter into a site rehabilitation agreement with the DEP or local pollution control program, and the individual is entitled to negotiate the terms of the agreement.

The bill specifies that a local government that designates a brownfield area according to these procedures is not required to use the term “brownfield area” within the name of the brownfield area proposed for designation by the local government.

The bill also adds sub-headings to the existing statutory language to further clarify what notification and designations to use, by whom, and when.

Section 3 amends s. 376.82, F.S., to revise the liability protection for a person who executes and implements a successful BSRA to include protection against liability for claims of any person for property damage, including:

- Diminished value of real property or improvements;
- Lost or delayed rent, sale, or use of real property or improvements; and
- The stigma to real property or improvements caused by the contamination that was addressed in the BSRA.

The liability protection applies to causes of action accruing on or after July 1, 2013.

Section 4 provides an effective date of July 1, 2013.

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 bill eliminates the right of a third party to pursue an action for property damages. The elimination of this legal remedy may harm third parties whose properties are damaged. However, individuals, corporations, community-based organizations, and not-for-profit corporations proposing to designate brownfield areas may benefit from this limitation of liability provision.

C. Government Sector Impact:

Local governments may incur costs associated with damages to public property that have been affected by contamination from a brownfield site due to the limitation of liability provisions in the bill.

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/CS by Community Affairs on April 2, 2012:

The committee substitute amended the notice required by a local government designating brownfields to include the local pollution control program, if applicable.

CS by Environmental Preservation and Conservation on March 14, 2013:

The committee substitute made the following changes to the bill:

- Deletes the tax exemption for the building materials used for the substantial rehabilitation of a “housing project” in a designated brownfield area.
- Resolves the technical deficiencies that were present in the bill by eliminating the reference to the notice requirements in ss. 166.041 and 125.041, F.S.
- Rearranges the procedures in s. 378.80, F.S., to clarify the resolution adoption procedures, public hearing requirements and notification requirements that apply to local governments and individuals who propose to designate a brownfield area.
- Clarifies that a local government that designates a brownfield area according to the procedures in the bill is not required to use to the term “brownfield” within the name of the area for the designation.

B. Amendments:

None.