

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Date: March 10, 1998 Revised: 3/12/98 _____

Subject: Brownfields Redevelopment

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Branning</u>	<u>Voigt</u>	<u>NR</u>	<u>Favorable/CS</u>
2.	<u>Cooper</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/1 amendment</u>
3.	_____	_____	<u>WM</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This bill addresses several glitches that have been identified since the passage of the 1997 Brownfields Redevelopment Act in addition to other changes intended to enhance the usage and success of the program. The bill:

- Adds “closed military bases” to the list of areas like enterprise zones where, if a brownfield is proposed for designation within such areas, special public hearings are not required.
- Provides that certain petroleum and dry-cleaning contaminated sites cannot receive funding assistance for the discharge under ch. 376, F.S., and any assistance available under the bonus refund program in s. 288.107, F.S.
- Requires the Director of the Governor’s Office of Tourism, Trade, and Economic Development to approve requests to waive the wage level requirements for target industries in brownfield areas unless it can be demonstrated that such action is not in the public interest.
- Provides legislative findings regarding the reuse and redevelopment of brownfield areas.
- Creates a Brownfield Areas Loan Guarantee Program.
- Creates the Brownfield Areas Loan Guarantee Council 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. Provides council membership and duties. Provides for an annual report to the Legislature.
- Authorizes the Florida Development Finance Corporation to engage in activities benefiting brownfield areas.
- Requires the Board of Regents to establish a Center for Brownfield Rehabilitation Assistance in the Environmental Sciences and Policy Program in the College of Arts and Sciences at the University of South Florida.

- Provides an exemption for brownfield redevelopment amendments to the local comprehensive plans from the twice-a-year limitation on amendments to the comprehensive plan.
- Provides legislative intent regarding a Brownfield Property Ownership Clearance Assistance Revolving Loan Trust Fund to assist in clearance of property title problems on brownfield sites resulting from contractor liens or tax certificates.
- Provides that certain municipalities and counties may apply to the Governor's Office of Tourism, Trade, and Economic Development for designation of a brownfield area as an Enterprise Zone. Provides an effective date.

This bill amends the following sections of the Florida Statutes: 376.77, 376.79, 376.80, 376.81, 376.82, 376.83, 288.106, 288.107, 288.9602, 288.9605, and 163.3187.

II. Present Situation:

In 1997, the Legislature passed the Brownfields Redevelopment Act to provide incentives for the private sector to redevelop abandoned, idled, or under used industrial and commercial properties where expansion or redevelopment is complicated by real or perceived environmental contamination.

The stated intent of the act was that the reduction of public health and environmental hazards on existing commercial and industrial sites is vital to use and reuse and that there should be incentives to encourage voluntary cleanup. Further, minority and low-income communities are disproportionately impacted by targeted environmentally hazardous sites and that environmental justice considerations should be inherent in meaningful public participation elements of a brownfields program. Cooperation among federal, state, and local agencies, local redevelopment organizations, current owners, and prospective purchasers of brownfield sites is required to accomplish timely cleanup activities and the redevelopment and reuse of brownfield sites.

A local government must designate a brownfield area through the passage of a local resolution. The local government must notify the Department of Environmental Protection (DEP) and attach a map adequate to clearly delineate exactly which parcels are to be included in the brownfield area, or alternatively, provide a detailed legal description. A property owner within the proposed designated area may request in writing that his property be removed from the proposed designation.

The act further specified the duties of local governments regarding the designation of brownfield areas. The local government must conduct certain public hearings and the notice requirements for such hearing are specified. The criteria the local government must consider in designating a brownfield area are provided. There must also be a person responsible for brownfield site rehabilitation identified and the local government must establish an advisory committee for the purpose of improving public participation and receiving public comments on rehabilitation and redevelopment of the brownfield area, future land use, local employment opportunities, community safety, and environmental justice.

The person responsible for brownfield rehabilitation must enter into a brownfield site rehabilitation agreement with the DEP or an approved local program. The act specifies what the agreement must include.

Local governments are encouraged to use the full range of economic and tax incentives available to facilitate and promote the rehabilitation of brownfield areas.

The act required that by July 1, 1998, the DEP must establish criteria by rule to determine on a site-specific basis the rehabilitation program tasks that comprise a site rehabilitation program and the level at which a rehabilitation program task and a site rehabilitation program may be deemed completed. In establishing the rule, the DEP shall incorporate, to the maximum extent feasible, risk-based corrective-action principles to achieve protection of human health and safety and the environment in a cost-effective manner. The rule shall also include protocols for the use of natural attenuation and the issuance of "no further action" letters.

The act provided that any person who has not caused or contributed to the contamination of a brownfield site after July 1, 1997, is eligible to participate in the brownfield rehabilitation program. Certain specified sites are not eligible.

Petroleum and dry-cleaning contamination sites cannot receive both restoration funding assistance available for the discharge under ch. 376, F.S., and any state assistance available under s. 288.107, F.S., relating to bonus refunds.

Immunity and liability protection for further future remediation is provided under certain circumstances. This does not impair third party rights for damages. Purchasers of brownfield sites who are nonprofit conservation organizations acting for the public interest and who did not cause or contribute to the release of contamination on the site are provided liability protection. Additional liability protection for lenders was also provided.

A significant feature of the act was the emphasis on redevelopment and economic incentives to encourage the private sector to redevelop these often blighted urban properties. State and local governments were encouraged to offer redevelopment incentives which may include financial, regulatory, and technical assistance. In addition, the act provided for brownfield redevelopment bonus refunds. Any qualified target industry business could be eligible for a \$2,500 bonus refund for each new Florida job created in a brownfield which is claimed on the qualified target business's annual refund claim authorized in s. 288.106(6), F.S., and which is approved by the director of the Office of Tourism, Trade, and Economic Development.

The 1997 legislation provided for grants to certain local governments to be used to set up and implement a program which promotes brownfield redevelopment.

III. Effect of Proposed Changes:

This bill addresses several glitches that have been identified since the passage of the 1997 Brownfields Redevelopment Act in addition to other changes intended to enhance the usage and success of the program.

Section 1: Section 376.77, F.S., is amended to correct a cross-reference.

Section 2: Section 376.79, F.S., is amended to modify the definitions of “local pollution control program,” “natural attenuation,” “person responsible for brownfield site rehabilitation”; and defines “secretary” to mean the Secretary of the Department of Environmental Protection.

Section 3: Section 376.80, F.S., is amended to add closed military bases to the list of areas like enterprise zones where, if a brownfield is proposed for designation within such areas, special public hearings are not required. Also, the job requirement for the designation of a brownfield area is clarified to mean that there must be at least ten new *permanent* full-time or part-time jobs created. A local government would no longer be required to notify the department at the time the local resolution designating a brownfield area is adopted of the person responsible for brownfield site rehabilitation. That notification can be done at a later date. Certain technical amendments are made to clarify certain provisions.

Section 4: Section 376.81, F.S., is amended to delete a redundant provision relating to the issuance of a “no further action order” by the DEP.

Section 5: Section 376.82, F.S., is amended to clarify that any 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 rehabilitation program. The jobs creation requirement is clarified to mean 10 new permanent full-time or part-time jobs.

Currently, petroleum and dry-cleaning contaminated sites cannot receive both restoration funding assistance for the discharge under ch. 376, F.S., and any state assistance available under the bonus refunds program in s. 288.107, F.S. This bill provides that this provision would only affect petroleum and dry-cleaning contamination sites receiving restoration funding under ch. 376, F.S., after July 1, 1997.

Currently, a unit of state or local government is not liable for implementing corrective actions at a contaminated site within an eligible brownfield area in those circumstances where the local or state governmental unit has involuntarily acquired ownership of the site. This bill includes acquisition by foreclosure to the circumstances under which the governmental entity is not liable for cleanup actions.

Section 6: Section 376.83, F.S., is amended to correct a cross-reference.

Section 7: Section 288.106, F.S., is amended to require the Director of the Office of Tourism, Trade, and Economic Development to approve requests to waive the wage level requirements for target industries in brownfield areas unless it can be demonstrated that such action is not in the public interest.

Section 8: Section 288.107, F.S., is amended to distinguish between the definitions of “brownfield sites” and “brownfield areas.”

Section 9: This section provides legislative intent regarding the under use of brownfield areas and the inefficient use of public facilities and services, and the need to provide economic and financial incentives to promote the redevelopment of brownfield areas. This section declares that providing economic and financial incentives to promote the redevelopment of brownfield areas is an important and appropriate public purpose.

Section 10: This section creates a Brownfields Areas Loan Guarantee Program. The Brownfield Areas Loan Guarantee Council is created to review and approve or deny the situations and circumstances for participation in partnership by agreements with local governments, financial institutions, and others associated with the redevelopment of brownfield areas pursuant to the Brownfield Redevelopment Act for a limited state guaranty of up to 5 years of loan guarantees or loan loss reserves issued pursuant to law. The limited state loan guaranty applies only to 10 percent of the primary lenders loans for redevelopment projects in brownfield areas. A limited state guaranty of private loans or a loan loss reserve is authorized for lenders under certain circumstances.

The council membership consists of the Secretary of the Department of Environmental Protection, the Secretary of the Department of Community Affairs, the Executive Director of the State Board of Administration, the Executive Director of the Florida Housing Finance Agency, and the Director of the Governor’s Office of Tourism, Trade, and Economic Development, or their respective designees. The chairperson of the council is the Director of the Governor’s Office of Tourism, Trade, and Economic Development and staff support services are to be provided as needed by the member agencies.

The council may enter into an investment agreement with the DEP and the State Board of Administration concerning the investment of the earnings accrued and collected upon the investment of the balance of funds maintained in the Nonmandatory Land Reclamation Trust Fund.

- Not more than \$5 million of the investment earnings earned on the investment of the minimum balance of the Nonmandatory Land Reclamation Trust Fund in a fiscal year may be at risk at any time on loan guarantees or as loan loss reserves.
- The investment earnings may not be used to guarantee any loan guaranty or loan loss reserve agreement for a period longer than 5 years.

A lender seeking a limited state guaranty for a loan from the council must first provide to the council a report demonstrating that the lender has reviewed the project for redevelopment of the brownfield area and determined its feasibility in accordance with its standard procedures. The procedures are specified in the bill.

A lender covered by a limited state guaranty for a loan is not entitled to file a claim for a loss pursuant to the guaranty unless all reasonable and normal remedies available and customary for lending institutions for resolving problems of loan repayments are exhausted. If the lender has received collateral security in connection with the loan, the lender must first exhaust all available remedies against the collateral security.

The council may, by rule, establish requirements for the issuance of loan guarantees, including contractual provisions to foster reimbursement, in the event of default, to the guarantee fund.

The council may receive public and private funds, federal grants, and private donations in carrying out its responsibilities.

The council is required to provide an annual report to the Legislature by February 1 of each year describing its activities and agreements approved relating to redevelopment of brownfield areas. This section relating to the council shall be reviewed by the Legislature by October 1, 2003, and a determination must be made related to the need to continue or modify this section. New loan guarantees may not be approved in 2003 until the review by the Legislature has been completed and a determination has been made as to the feasibility of continuing the use of the Nonmandatory Land Reclamation Trust Fund to guarantee portions of loans under this section.

Section 11: Section 288.9602, F.S., is amended to include redevelopment of brownfield areas in the declaration of findings regarding economic development.

Section 12: Section 288.9605, F.S., is amended to authorize the Florida Development Finance Corporation to engage in certain activities which benefit the redevelopment of brownfield areas.

Section 13: The Board of Regents is required to establish a Center for Brownfield Rehabilitation Assistance in the Environmental Sciences and Policy Program in the College of Arts and Sciences at the University of South Florida with the collaboration of other related disciplines such as business administration, environmental science, and medicine. The center shall work in conjunction with other colleges in the State University System. The Center for Brownfield Rehabilitation Assistance is to:

- Conduct research relating to problems and solutions associated with rehabilitation and restoration of brownfield areas. The research must include identifying innovative solutions to removing contamination from brownfield sites to reduce the threats to drinking water supplies and other potential health threats from contaminated sites.

- Provide public service to local, regional, and state agencies, units of government, and authorities by helping them to create workable mechanisms, partnerships with public and private sectors and other techniques for rehabilitating brownfield areas.
- Conduct special research relating to risk-based corrective-actions for rehabilitation of brownfield areas.
- Develop a base of informational and financial support from the private sector for the activities of the center.

Section 14: Section 163.3187, F.S., is amended to allow any local government comprehensive plan amendments directly related to proposed redevelopment of brownfield areas to be approved without regard to the twice-a-year statutory limitations on plan amendments.

Section 15: This section provides a legislative finding and recognition of the difficulties in redeveloping brownfield areas due to the existence of various types of liens on the property and complications from previous ownership having declared bankruptcy. Further, the Legislature recognizes that a revolving loan fund could assist in the early stages of redeveloping brownfields by helping to clear prior liens on the property through a negotiated process. Such a revolving loan fund could be repaid in later years from the resale of rehabilitated brownfield sites. Senate Bill 1204 is a companion bill to this bill which would create the Brownfield Property Ownership Clearance Assistance Revolving Loan Trust Fund. As required by s. 19(f), Art. III, State Constitution, trust funds must be created by a separate bill and must pass by a three-fifths vote of each house of the Legislature.

Section 16: This section would allow a municipality or a county containing a U.S. Environmental Protection Agency brownfield pilot project that was designated as of May 1, 1997, to apply to the Office of Tourism, Trade, and Economic Development for designation of one enterprise zone encompassing the brownfield pilot project, if the project is located in a county with a population less than 1 million. The application must be submitted by December 31, 1999, and must comply with the requirements of s. 290.0055, F.S. Notwithstanding the provisions of s. 290.0065, F.S., which limit the number of enterprise zones designated and the number of enterprise zones within a population category, the Office of Tourism, Trade, and Economic Development shall designate one enterprise zone under this section if the zone is consistent with the limitations imposed under this section.

Section 17: This act takes effect on July 1, 1998.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill is intended to increase the private sector's participation in the brownfields redevelopment program. This bill would provide a program for loan guarantees in an effort to encourage the lending community to make more funds available for brownfield redevelopment and cleanup. The enhanced property values as a result of such redevelopment would benefit the developer or the business engaged in the redevelopment as well as placing unproductive property back on the tax rolls of the local government.

The creation of a revolving loan program to clear tax and other liens on potential brownfield sites would provide a greater incentive to redevelop such property. Currently, this is a financial impediment to the redevelopment efforts of these sites.

The creation of the Center for Brownfield Rehabilitation Assistance at the University of South Florida would provide a central location for research and information to not only local governments but also the private sector in their efforts to redevelop these urban brownfield areas.

C. Government Sector Impact:

There may be costs associated with the Brownfields Areas Loan Guarantee Council, but those costs cannot be determined at this time. Such costs would include any costs associated with rulemaking and each member agency is responsible for providing staff support to the

council. However, the bulk of the staff support costs may be borne by the Office of Tourism, Trade and Economic Development since the director serves as the chairperson.

The bill provides that the limited 10-percent loan guarantees would be provided by the Department of Environmental Protection's Nonmandatory Land Reclamation Trust Fund. The guarantees are limited to \$5 million of the investment earnings earned on the investment of the minimum balance of the fund in a fiscal year. These funds would serve as a contingency and would not actually be appropriated on an annual basis. According to the DEP, the Nonmandatory Land Reclamation Trust Fund is projected to be exhausted in 2008 or 2009, when the reclamation of lands disturbed by the severance of phosphate is completed. Even though the bill would put \$5 million of this trust fund at risk during each fiscal year, it is not expected to ever be called upon since the bill requires that a lender must first exhaust all reasonable and normal remedies available and customary for lending institutions for resolving problems of loan repayments. Also, if the lender has received collateral security in connection with the loan, the lender must first exhaust all available remedies against the collateral security.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Community Affairs:

This amendment deletes the required 10 percent commitment of local financial resources to a project's redevelopment cost, and replaces it with a required commitment of "in kind resources, local financial incentives, or local financial resources," for a project to qualify for, through a lender, a limited state guaranty for a loan from the Brownfield Areas Loan Guaranty Council.