

STORAGE NAME: h4435a.ep
DATE: April 8, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
ENVIRONMENTAL PROTECTION
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 4435
RELATING TO: Brownfields Redevelopment
SPONSOR(S): Representative Constantine
COMPANION BILL(S): SB 1202 by Senator Latvala

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) ENVIRONMENTAL PROTECTION YEAS 8 NAYS 0
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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. 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. Revises the job-creation criteria for designation of a brownfield area. Provides that certain petroleum and drycleaning 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 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 (loan 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 Speaker of the House and President of the Senate. 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 (trust fund) to assist in clearance of property title problems on brownfield sites resulting from contractor liens or tax certificates. Provides for \$5 million annually to be transferred from General Revenue to the trust fund. 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. Repeals Section 21 of Chapter 86-159, Laws of Florida.

This bill provides the act shall take effect upon becoming law.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

In 1997, the Legislature passed the Brownfields Redevelopment Act to provide incentives for the private sector to redevelop abandoned, idled, or underused 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.

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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 drycleaning 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.

EFFECT OF PROPOSED CHANGES:

Changes to the Brownfield Administrative Process:

In the Brownfield program, it will no longer be required that local governments conduct public hearings when the area to be designated is a closed military base.

Brownfield rehabilitation and redevelopment is to create at least 10 new permanent jobs, whether full or part time.

Local governments must notify the DEP when there is a person responsible for brownfield site rehabilitation.

Changes in the brownfield site cleanup criteria:

Criteria for the issuing of "no further action orders" is revised. A "no further action order" will be issued, with or without conditions, when cleanup target levels have been achieved, or when the person responsible for site rehabilitation can demonstrate the cleanup target level is unachievable within available technologies.

Changes in Eligibility Criteria:

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Clarifies that any person who has not caused or contributed to the contamination of a brownfield site on or after July 1, 1997 will be eligible. Also clarified is the jobs creation requirement to stipulate those jobs must be new permanent full or part-time jobs.

After July 1, 1997, petroleum and drycleaning sites will not receive both restoration funding assistance for discharges under ch. 376, F.S., and any state assistance available under the bonus refunds program in s. 288.107, F.S.

Changes in liability protection:

The state or local governments may not be held liable for implementing corrective actions at a site as a result of involuntary ownership through foreclosure.

Changes to the application and approval process:

The permanent jobs proposed to be provided under the application must be paid at a rate of at least 115 percent of the estimated annual average wage in the area the business is to be located. These wage requirements may be waived, but all requests for waiving the wage requirements must be approved by the director of the Office of Tourism, Trade and Economic Development (OTTED).

Legislative intent:

Provides new legislative intent language regarding the underuse 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.

Brownfield Areas Loan Guarantee Program:

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 OTTED, or their respective designees. The chairperson of the council is the Director of the OTTED 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 or loan loss reserve agreement for a period longer than 5 years.

A lender covered by a limited state guarantee for a loan is not entitled to file a claim for a loss pursuant to the guarantee 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 Speaker of the House of Representatives and the President of the Senate 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.

Changes in powers authorized to the Florida Development Finance Corporation:

Brownfield redevelopment is included in the declaration of findings regarding economic development. The corporation is authorized to determine the situations and circumstances for participation in partnerships for a limited state guarantee of revenue bonds, loan guarantees, or loan loss reserves.

Interdisciplinary Center for Brownfield Rehabilitation Assistance:

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 all units of government 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.

Brownfield property ownership clearance assistance:

Recognizing 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 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. There will be up to \$5 million transferred annually from the General Revenue Fund to the Brownfield Property Ownership Clearance Assistance Revolving Loan Trust Fund, as necessary to provide the assistance described above.

Other Provisions:

- Definitions are provided and revised.
- Cross references are corrected.
- Municipalities or counties containing U.S. Environmental Protection Agency brownfield pilot projects that were designated as of May 1, 1997, may apply to the OTTED 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.
- Repeals Section 21 of Chapter 86-159, Laws of Florida. This will keep s. 376.313(4), F.S., from expiring. This provision provides that in any civil action brought after July 1, 1986, against the owner or operator of a petroleum storage system for damages arising from a petroleum storage system discharge, the provisions of subsection (3) will not apply in certain circumstances. Subsection (3) of this section provides that nothing in ss. 376.30-766.319, F.S., prohibits any person from bringing a cause of action in a court of competent jurisdiction for all damages resulting from a discharge or other condition of pollution covered in those sections.

B. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

The Director of the Office of Tourism, Trade and Economic Development will be given the responsibility of approving requests for the waiving of wage requirements for designated brownfields.

This bill also creates the Brownfield Areas Loan Guarantee Council. 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 Office of Tourism, Trade, and Economic Development, or their respective designees. The chairperson of the council is the Director of the Office of Tourism, Trade, and Economic Development and staff support services are to be provided as needed by the member agencies.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

The provision for a revolving loan program to clear tax and other liens will make it easier for individuals and organizations to redevelop brownfields.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

No.

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

- (1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

C. STATUTE(S) AFFECTED:

Amends sections 376.77, 376.79, 376.80, 376.81, 376.82, 376.83, 288.106, 288.107, 288.9602, 288.9605, 163.3187, 376.313, Florida Statutes.

D. SECTION-BY-SECTION RESEARCH:

Section 1: Amends s. 376.77, F.S., Makes technical change.

Section 2: Amends s. 376.79, F.S., Provides revised definitions.

Section 3: Amends s. 376.80, F.S., Includes closed military bases in proposed brownfield areas that do not require local governments to hold public hearings before designation. Requires that the jobs created by the rehabilitation and redevelopment of a brownfield be permanent jobs, whether full or part time. A local government is no longer required to notify the department at the time of designation, this notification can be done at a later time. Technical changes are made to clarify certain provisions.

Section 4: Amends s. 376.81, F.S., Revises the provisions for “no further action orders”.

Section 5: Amends s. 376.82, F.S., Revises eligibility criteria for the Brownfield Program to include persons who have not caused or contributed to the contamination of a brownfield site on or after July 1, 1997. Petroleum and drycleaning contamination sites are not eligible to receive restoration funding assistance and any state assistance pursuant to s. 288.107, F.S. Foreclosure is added to the circumstances of acquisition under which the governmental entity is not liable for cleanup. Makes technical changes.

Section 6: Amends s. 376.83, F.S., Makes technical changes.

Section 7: Amends s. 288.106, F.S., Requires the Director of the Office of Tourism, Trade and Economic Development to approve requests to waive the wage requirement for target industries in Brownfields areas. The wage requirement can only be waived for projects located in designated Brownfield areas, and must be in the public’s best interest.

Section 8: Amends s. 288.107, F.S., Defines “brownfield site, brownfield area”.

Section 9: Provides Legislative intent regarding the underuse of Brownfield areas, the reuse and development of Brownfield areas, and the importance of economic and financial incentives to promote Brownfield redevelopment.

Section 10: Creates the Brownfield Areas Loan Guarantee Program.

Section 11: Amends s. 288.9602, F.S., Includes redevelopment of Brownfield areas in the declaration of findings regarding economic development.

Section 12: Amends s. 288.9605, F.S., Authorizes the Florida Development Finance Corporation to engage in certain activities which will benefit the redevelopment of Brownfield areas.

Section 13: 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.

Section 14: Amends s. 163, 3187, F.S., Allows local government comprehensive plan amendments that are directly related to proposed redevelopment of brownfield area, to be approved without adhering to the twice a year statutory limitations on comprehensive plan amendments.

Section 15: Provides for brownfield property ownership clearance assistance. Allows up to \$5 million to be transferred annually from General Revenue to the Brownfield Property Ownership Clearance Assistance Revolving Loan Trust Fund.

Section 16: Allows municipalities or counties containing EPA Brownfield Pilot Projects designated as of May 1, 1997, to apply to the Office of Tourism, Trade and Economic Development for the designation of one enterprise zone encompassing the brownfield pilot project.

Section 17: Amends s. 376.313, F.S., Makes technical change.

Section 18: Repeals Section 21 of Chapter 86-159, Laws of Florida.

Section 19: Provides an effective date of July 1, of the enacting year.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

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.

There will be up to \$5 million transferred annually from the General Revenue Fund to the Brownfield Property Ownership Clearance Assistance Revolving Loan Trust Fund, as necessary to provide assistance.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

Indeterminate at this time.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

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.

3. Effects on Competition, Private Enterprise and Employment Markets:

Increased redevelopment of brownfield sites should contribute to economic revitalization, spurring business competition and additional employment opportunities in areas that have been economically depressed.

D. FISCAL COMMENTS:

The University of South Florida should not be required to spend any funds in the establishment of the Center for Brownfield Rehabilitation Assistance. The University has in place a similar program that will allow them to begin the program with no cost.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of state tax shared with counties and municipalities.

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 6, 1998, the Committee on Environmental Protection heard HB 4436. The bill was adopted unanimously with two amendments. The amendments did the following:

Amendment 1: provides flexibility to local governments when seeking loan guarantees.

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Amendment 2: provides that the state will not be held responsible for more than the guarantee in case of default by the borrower.

VII. SIGNATURES:

COMMITTEE ON ENVIRONMENTAL PROTECTION:

Prepared by:

Legislative Research Director:

Chris Flack

Wayne Kiger