

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.)

BILL: CS/CS/CS/SB 1406

SPONSOR: Fiscal Policy, Comprehensive Planning, Local and Military Affairs
Committee, Natural Resources Committee and Senator Latvala

SUBJECT: Brownfield financial incentives

DATE: April 25, 2000 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Branning</u>	<u>Voigt</u>	<u>NR</u>	<u>Favorable/CS</u>
2.	<u>Bowman</u>	<u>Yeatman</u>	<u>CA</u>	<u>Favorable/CS</u>
3.	<u>Hendon</u>	<u>Hadi</u>	<u>FP</u>	<u>Favorable/CS</u>
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This bill addresses changes to the financial incentives and programmatic changes that may be needed to enhance the use and success of the brownfields redevelopment program in Florida. Specifically, the bill:

- Authorizes local governments to file tax deed applications against certain tax certificates parcels in designated brownfield areas.
- Broadens the intangible tax credit and the corporate income tax credit for contaminated site rehabilitation to include other contaminated sites not previously eligible for the credit, for which cleanup is undertaken under a voluntary rehabilitation agreement approved by the department. If the tax credits allowed for eligible contaminated sites do not exceed the maximum allowable credits (\$2 million/yr.) for the year, a credit may be granted for petroleum contaminated sites which are being cleaned up pursuant to Preapproved Advanced Cleanup Program, but only up to the amount of private funding involved in the site cleanup activity.
- Provides an exemption from the sales and use tax for building materials used in the rehabilitation of real property in brownfield areas and a brownfield areas jobs credit.
- Provides a brownfields area jobs credit and a brownfields area property tax credit against the corporate income tax. Also provides a partial credit for corporations that contribute resources to public redevelopment organizations for the revitalization of designated brownfield areas.
- Includes brownfield areas in the list of various state tax incentives currently available to enterprise zones.

- Creates a State-Owned Lands Cleanup Program to be administered by the Department of Environmental Protection (DEP).
- Allows tax increment financing as a financial incentive to encourage redevelopment of brownfield areas.
- Increases the limited state loan guaranty of primary lenders loans for redevelopment projects in brownfield areas from 10 to 20 percent and decreases the duration of the loan guarantees from 5 years to 4 years.
- Creates a Brownfield Redevelopment Grants Program to be administered by the DEP. The program would make grants to local governments that have designated brownfield areas and need financial assistance for site assessment and cleanup activities to make the redevelopment project financially feasible.
- Appropriates \$5 million from the General Revenue Fund to DEP for administration of the Brownfield Redevelopment Grants Program.
- Deletes the requirement that a county that accepts real property of mined or reclaimed land from phosphate mining companies must forfeit a portion of its share of severance tax equal to the value of the property donated.

In addition, the proposed committee substitute addresses administrative and economic changes which are designed to enhance the use and success of the brownfields redevelopment program in Florida. Specifically:

- Broadens the brownfield redevelopment bonus tax refund provisions for qualified target industry businesses to include certain businesses investing in a brownfield area. The bill requires the businesses to report the amount of capital investment in a brownfield area to the Office of Tourism, Trade, and Economic Development (OTTED).
- Provides a \$3 million cap of tax refund awards that may be made in any fiscal year for brownfield bonuses.
- Requires Enterprise Florida, Inc., to develop a comprehensive marketing plan for redevelopment of designated brownfield areas.
- Redefines the terms “antagonistic effects,” “discharge,” “institutional controls,” “site rehabilitation,” and “natural attenuation.” Defines the term “risk reduction.” These are definitions used in the risk-based corrective action (RBCA) language that would apply to all contaminated sites as is provided by s. 376.30701, F.S., which is created in this committee substitute.
- Provides that the RBCA principles apply to all contaminated sites resulting from a discharge of pollutants or hazardous substances, to the extent the sites are not subject to RBCA cleanup criteria established for the petroleum, brownfields, and dry-cleaning programs (Global RBCA). This section would apply to site rehabilitation being conducted voluntarily

under DEP's enforcement authority or as a state-managed cleanup by DEP. Provides for retroactive application except for certain specified sites. Provides that the Global RBCA cleanup criteria would apply as Applicable or Relevant and Appropriate Requirements to all contaminated sites qualified for listing on the National Priority List. Requires those sites with institutional controls to be noted on local land use or zoning maps. Requires DEP to prepare and maintain a registry of all contaminated sites subject to institutional and engineering controls.

- Defines “contaminant” and “risk reduction,” and redefines the terms “natural attenuation,” “source removal,” and “institutional controls,” for purposes of the Brownfields Redevelopment Act.
- Requires the local government or persons responsible for rehabilitation and redevelopment of a brownfield area to establish an advisory committee or use an existing advisory committee that has expressed its intent to address redevelopment of the specific brownfield area.
- Provides further guidance to DEP in establishing the brownfield RBCA rule. Clarifies that the department, in establishing the cleanup criteria rule, must apply, to the maximum extent feasible, risk-based corrective action processes to achieve protection of human health and safety and the environment in a cost-effective manner. The rule must prescribe a phased risk-based corrective action process that is iterative and that tailors site rehabilitation tasks to site-specific conditions and risks.
- Provides that certain persons are not subject to administrative or judicial action to compel rehabilitation or pay the costs of rehabilitation of nearby sites if certain conditions are met.
- Creates a Brownfield Program Review Advisory Council to provide for continuous review of the progress in the administration of Florida's Brownfield Program and to make recommendations for its improvement. Specifies the council membership and length of service.
- Provides that projects located in a designated brownfield area are eligible for the expedited permitting process.
- Provides that Community Development Districts may finance investigation and remediation costs associated with the cleanup of actual or perceived environmental contamination within the district under the supervision or direction of a competent governmental authority unless the covered costs benefit any person who is a landowner within the district and who caused or contributed to such contamination.
- Prohibits subsequent property owners from removing certain deed restrictions under the provisions of the Marketable Records Title Act.
- Provides the Department of Community Affairs with the specific authority necessary to implement a system to accept automated reports for the Hazardous Materials Planning Program.

This bill amends ss. 190.012, 197.432, 197.502, 197.522, 199.1055, 212.08, 212.096, 212.20, 220.181, 220.182, 220.183, 220.1845, 252.87, 288.047, 288.107, 288.905, 290.007, 376.301, 376.3078, 376.30781, 376.79, 376.80, 376.81, 376.82, 376.84, 376.86, 403.973, 712.01, and 712.03, F.S. The bill creates ss. 376.30701, 376.30702, 376.876, and 376.88 F.S. and repeals s. 211.3103(9), F.S.

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 of these sites and that there should be incentives to encourage voluntary cleanup. Further, minority and low-income communities are disproportionately impacted by 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.

In 1998, the Brownfields Redevelopment Act was amended to address several glitches that had been identified since the passage of the 1997 act, in addition to other changes intended to enhance the usage and success of the program.

The Department of Environmental Protection's 1999 Annual Report describes their progress in implementing the Brownfields Redevelopment Act. Some of the statistics reported for 1999 include:

- The number of designated brownfield areas in Florida increased from 3 to 25 in 1999.
- The creation of 1,298 direct jobs and 1,546 indirect jobs can be attributed to the "Brownfield Redevelopment Bonus Refund" which is administered by the Office of Tourism, Trade, and Economic Development. Additionally, the inducement of \$41,014,000 in new capital investments is attributable to the "Brownfield Redevelopment Bonus Refund."
- Discussions with local governments during the fourth quarter of 1999 indicate that approximately 22 potential brownfield area designations are forthcoming in the first quarter of 2000.
- The U.S. Environmental Protection Agency and the Department of Environmental Protection executed a Superfund Memorandum of Agreement (MOA) for the Brownfields Program. The MOA specifies the criteria under which the EPA will forgo oversight at brownfield sites within a designated brownfield area that are cleaned up or are undergoing cleanup in accordance with Florida's Brownfield Redevelopment Act.

Pursuant to the Brownfields Redevelopment Act, 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 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 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 agreement with the DEP or an approved local program.

Local governments or persons responsible for rehabilitation and redevelopment of brownfield areas must establish an advisory committee to improve public participation and receive public comments on rehabilitation and redevelopment of the brownfield area.

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

Pursuant to s. 376.81, F.S., DEP developed cleanup criteria rules, Rules 62-785 and 62-777, Florida Administrative Code, (F.A.C.), to incorporate, to the maximum extent feasible, risk-based corrective action (RBCA) principles to achieve protection of human health and safety and the environment in a cost-effective manner. The rule includes protocols for the use of natural attenuation and the issuance of "no further action" letters and became effective July 6, 1998. Subsequently, in 1999 the rule was amended, along with the petroleum contamination site and dry-cleaning solvent cleanup criteria rules, to provided for consistency within the three programs.

Using RBCA principles, the DEP established a cleanup process and default cleanup target levels for a brownfield site within a designated brownfield area that are protective under actual circumstances of exposure.

Section 376.82, F.S., provides 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. Immunity and liability protection for further future remediation is provided under certain circumstances, and additional liability protection for lenders is provided. This provision does not impair third party rights for damages.

Section 376.86, F.S., provides for a 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. 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 of the minimum balance of the Nonmandatory Land Reclamation Trust Fund may be at risk at any time on loan guarantees or loan loss reserves. Of the \$5 million, 15 percent shall be reserved for the investment agreements involving predominantly minority-owned businesses. The investment earnings may not be used to guarantee any loan guaranty or loan loss reserve agreement for a period longer than 5 years.

Section 376.875, F.S., created the Brownfield Property Ownership Clearance Assistance Revolving Loan Trust Fund to be administered by the Office of Tourism, Trade, and Economic Development in the Executive Office of the Governor for the purpose of funding low-interest loans for the purchase of outstanding, unresolved contractor liens, tax certificates, or other liens or claims on brownfield sites designated as part of a brownfield area by a local government.

Other features of the Brownfields Redevelopment Act include:

- Authorizing the Florida Development Finance Corporation to engage in activities benefiting brownfield areas.
- Requiring 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.
- Providing an exemption for brownfield redevelopment amendments to the local comprehensive plans from the twice-a-year limitation on amendments to the comprehensive plan.
- Providing certain municipalities and counties to apply to the Governor's Office of Tourism, Trade, and Economic Development for designation of a brownfield area as an Enterprise Zone.

In order to provide additional economic incentives for brownfields redevelopment, the 1998 Legislature created a tax credit against either the intangible personal property tax or corporate income tax for taxpayers that voluntarily participate in the cleanup of a designated brownfield site. A tax credit of 35 percent is allowed for the costs of voluntary cleanup activity that is integral to site rehabilitation, with a maximum of \$250,000 per site per year. The total amount of the tax credits is \$2 million annually.

The total tax credits issued for 1999 were \$30,228.13. As of December 1999, one tax credit application was submitted for \$44,549.07 worth of tax credits. Two more applications were anticipated by the application deadline of December 31, 1999.

In the interim preceding the 2000 legislative session, Senator Latvala held a series of workshops to determine what legislative measures would be needed to continue or improve brownfield rehabilitation efforts. As a result, two comprehensive bills dealing with brownfields redevelopment issues have been introduced: one bill provides for additional financial incentives and the other one addresses various administrative provisions of the program administered by DEP.

Florida Enterprise Zone Program

Florida established one of the first enterprise zone programs in the country in 1980 to encourage economic growth and investment in distressed areas by offering tax advantages to businesses willing to make such an investment. An "enterprise zone" is a specific geographic area targeted for economic revitalization. The enterprise zone offers financial incentives to businesses to encourage private investment and increase employment opportunity for the area's residents.

Section 290.007, F.S., offers tax savings to businesses located in the Enterprise Zone if they are employing zone residents, rehabilitating real property, or purchasing new business equipment. Companies can receive credits on their state sales tax, corporate income tax, and local governments may also provide local property tax relief. Since July 1, 1995, the state has designated 34 enterprise zones.¹

Section 290.0055, F.S., provides requirements for nominating and selecting an enterprise zone. It provides size limitations depending on the community population category and requires that the selected area suffer from pervasive poverty, unemployment, and general distress, as described and measured pursuant to s. 290.0058, F.S. Section 290.0058(2), F.S., specifies that pervasive poverty “shall be evidenced by a showing that poverty is widespread throughout the nominated area. The poverty rate of the nominated area shall be established using the following criteria: (a) In each census geographic block group within a nominated area, the poverty rate shall be not less than 20 percent. (b) In at least 50 percent of the census geographic block groups within the nominated area, the poverty rate shall not be less than 30 percent.”

The total cost of state and local enterprise tax incentives was \$11.2 million in FY 1996-97 and \$13 million in FY 1997-98. During the fourth full year of the Enterprise Zone Program, costs have increased by \$11 million such that FY 1998-99 totals \$24 million in state and local incentives (\$5.2 million in state tax incentives approved by the Department of Revenue, and \$18.8 million in incentives provided by the local governing bodies; however, some of the local incentives provided are federal pass-through funds.). This increased activity was the result of 776 new businesses moving into enterprise zones creating 5,305 new jobs.

III. Effect of Proposed Changes:

This bill addresses changes to the financial incentives that may be needed to enhance the use and success of the brownfields redevelopment program in Florida.

Section 1: Section 190.012, F.S., is amended to provide that Community Development Districts may finance investigation and remediation costs associated with the cleanup of actual or perceived environmental contamination within the district under the supervision or direction of a competent governmental authority unless the covered costs benefit any person who is a landowner within the district and who caused or contributed to such contamination.

Section 2: Section 197.432, F.S., is amended to correct a cross-reference.

Section 3: Section 197.502, F.S., is amended to provide that when a tax certificate that is 2 years old or older exists against a parcel that is located within a designated brownfield area, the municipality or county may file a tax deed application in the same manner in which an application on a county-held tax certificate is filed and processed under ch. 197, F.S. This will assist in clearing up outstanding liens on property and assist in solving problems relating to accumulating

¹ Information from the March 1, 2000, *Florida Enterprise Zone Program Annual Report* by the Office of Tourism, Trade, and Economic Development.

adjacent parcels of land into usable tracts of land available for redevelopment of the brownfield area.

Section 4: Section 197.522, F.S., is amended to correct a cross-reference.

Section 5: Section 199.1055, F.S., is amended to broaden the intangible tax credit for contaminated site rehabilitation to include other contaminated sites for which cleanup is undertaken under a voluntary rehabilitation agreement approved by the department. If the tax credits allowed for eligible contaminated sites do not exceed the maximum allowable credits for the year, a credit may be granted for petroleum contaminated sites which are being cleaned up pursuant to the Preapproved Advanced Cleanup Program, but only up to the amount of private funding involved in the site cleanup activity. The total combined amount of credits allowed per year for both the intangible personal property tax and the corporate income tax cannot exceed \$2 million.

Section 6: Section 212.08, F.S., is amended to provide a sales tax exemption for building materials used in the rehabilitation of real property located in designated brownfield areas. Currently, there is a similar provision for building materials used in enterprise zones.

Section 7: Section 212.096, F.S., is amended to provide for a brownfields area jobs credit against the sales and use tax. Currently, there is a similar provision for enterprise zones. In addition, the bill would expand the category of employees who count toward the 20% of residents who are residents of an enterprise zone to include residents of a brownfield area.

Section 8: Section 212.20 is amended to provide for the certification by OTTED for a new tax credit created in section 17 of the bill.

Section 9: Section 220.181, F.S., is amended to provide for a brownfields area jobs credit against the corporate income tax. Currently, there is a similar provision for enterprise zones. The bill has the effect of modifying the requirement, for businesses located within an enterprise zone, that no less than 20 percent of the employees of the business are residents of an enterprise zone in order for the business to qualify for the credit. Under the amended language, employees who are residents of either an enterprise zone or a brownfield areas designated under s. 376.80, F.S., would count toward calculating the 20 percent.

Section 10: Section 220.182, F.S., is amended to provide for a brownfields area property tax credit against the corporate income tax. Currently, there is a similar provision for enterprise zones. In addition, the bill would expand the category of employees who count toward the 20% of residents who are residents of an enterprise zone, in order for the business to qualify for up to \$50,000 of property tax credit, to include residents of a brownfield area.

Section 11: Section 220.183, F.S., is amended to provide for partial credit against the corporate income tax to corporations that contribute resources to public redevelopment organizations for the revitalization of designated brownfield areas. Currently, there is a similar provision for enterprise zones.

Section 12: Section 220.1845, F.S., is amended to broaden the corporate income tax credit for contaminated site rehabilitation to include other contaminated sites for which cleanup is undertaken under a voluntary rehabilitation agreement approved by the department. If the tax credits allowed for eligible contaminated sites do not exceed the maximum allowable credits for the year, a credit may be granted for petroleum contaminated sites which are being cleaned up pursuant to the Preapproved Advanced Cleanup Program, but only up to the amount of private funding involved in the site cleanup activity. The total combined amount of credits allowed per year for both the intangible personal property tax and the corporate income tax cannot exceed \$2 million.

Section 13: Section 252.87, F.S., is amended to provide the Department of Community Affairs with the specific authority necessary to implement a system to accept automated reports for the Hazardous Materials Planning Program. The Department, to the extent feasible, is required to avoid duplicative reporting requirements and request the information authorized under the Emergency Planning and Community Right-to-Know Act (EPCRA).

Section 14: Section 288.047, F.S., is amended to provide that businesses located in brownfield areas are included, along with enterprise zone businesses, in a provision setting aside 30 percent of the appropriated Quick Response Training funds, for the first six months of each fiscal year, for instructional programs for these businesses. The committee substitute eliminates instruction for residents of enterprise zones from this funding set-aside provision.

Section 15: Section 288.107, F.S., is amended to broaden the brownfield redevelopment bonus tax refund provisions for qualified target industry businesses to include a business that can demonstrate a fixed capital investment of at least \$2 million in mixed use activities, including multi-unit housing, commercial, retail, and industrial in brownfield areas and which pays wages that are at least 80 percent of the average of all private sector wages and salaries in the county in which the business is located. An eligible business must include the amount of capital investment in the information required by OTTED for submitting a payment claim form. The committee substitute provides that the total tax refund payments scheduled in all active certifications for any fiscal year shall not exceed \$3 million..

Section 16: Section 288.905, F.S., is amended to require Enterprise Florida, Inc., to develop a comprehensive marketing plan for the redevelopment of designated brownfield areas. The plan must include strategies to distribute information about current designated brownfield areas and the available economic incentives for redevelopment of brownfield areas. These strategies are to be used in the promotion of business formation, expansion, recruitment, retention, and workforce development programs.

Section 17: Section 290.007, F.S., is amended to include designated brownfield areas in the list of various state tax incentives currently available to enterprise zones. A new tax rebate is provided for persons establishing a new business or expanding an existing business in a enterprise zone or designated brownfield. Businesses that generate \$1 million or more in sales taxes can receive a rebate for 75 percent of the sales taxes under certain circumstances.

Section 18: Section 376.301, F.S., is amended to define “risk reduction” and to redefine “antagonistic effects,” “discharge,” “institutional controls,” “natural attenuation,” and “site

rehabilitation.” Risk based corrective action (RBCA) language and these definitions would apply to all contaminated sites as provided by s. 376.30701, F.S., which is created in this committee substitute.

Section 19: Section 376.30701, F.S., is created to apply risk-based corrective action (RBCA) principles to all contaminated sites resulting from a discharge of pollutants or hazardous substances, to the extent the sites are not subject to RBCA cleanup criteria established for the petroleum, brownfields, and dry-cleaning programs. The concept in this section is often referred to as “Global RBCA.” This section would apply to all contaminated sites resulting from a discharge of pollutants or hazardous substances where legal responsibility for site rehabilitation exists pursuant to other provisions of chs. 376 or 403, F.S., except for those contaminated sites subject to the RBCA cleanup criteria established for the petroleum, brownfields, and dry-cleaning programs. This section would apply to a variety of site rehabilitation scenarios including, but not limited to, site rehabilitation conducted voluntarily under the Department of Environmental Protection’s (DEP) enforcement authority or as a state-managed cleanup by DEP.

The Global RBCA provisions would apply retroactively to all existing contaminated sites where legal responsibility for site rehabilitation exists pursuant to other provisions of chs. 376 or 403, F.S., except those sites for which as of March 1, 2000, a report has been submitted to DEP which documents that a cleanup has been completed; except those sites for which cleanup target levels have been accepted by DEP in an approved technical document, current permit, or other written agreement; and except at those sites that have received a No Further Action Order or a Site Rehabilitation Completion Order from the department.

The Global RBCA cleanup criteria shall apply as Applicable or Relevant and Appropriate Requirements (ARARs) to all contaminated sites in Florida that have been identified to qualify for listing on the National Priority List pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, and as subsequently amended.

The Global RBCA section does not affect the goal of expediency in emergency response actions to releases to soil that result in soil contamination at levels above the soil target cleanup levels. The need for uniformity in requirements and accountability necessitates that emergency response actions to releases be subject solely to the requirements of DEP, the Department of Community Affairs, and any federal agencies with statewide enforcement authority that are given jurisdiction over releases by federal law.

Essentially, this is the same RBCA language that is currently being used for brownfields, dry-cleaning contaminated sites, and petroleum contaminated sites.

This section also provides that the property owner must provide information regarding the institutional control to the local government for mapping purposes. The local government must then note the existence of the institutional control on any relevant local land use and zoning maps with a cross-reference to the department’s site registry. The department shall prepare and maintain a registry of all contaminated sites subject to institutional and engineering controls.

Section 20: Section 376.30702, F.S., is created to provide for a State-Owned-Lands Cleanup Program to be administered by the DEP. To encourage detection, reporting, and cleanup of contamination on state-owned lands, the department shall implement a cleanup program to provide state-funded and state-managed site rehabilitation for all state-owned property contaminated by discharges of pollutants or hazardous substances that are reported to the department. It is not the intent of this program to provide funding for environmental compliance for ongoing operations on state-owned lands. The Legislature intends to address only residual historical contamination on state-owned lands, and it is not the intent of this program to provide funding for environmental compliance for ongoing operations that may cause future contamination on state-owned lands. Continuation of this program is subject to an annual appropriation from the Legislature. Continued state funding will not be considered an entitlement or a vested right. Specifies what the moneys can be used for.

The Department may recover from any person causing the discharge of pollutants or hazardous substances on state-owned lands, sums expended for site rehabilitation under the program. The statute of limitation period in which to initiate a legal action to recover such sums commences on the last date on which the sums were expended and not on the date on which the discharge occurred.

Section 21: Section 376.3078, F.S., is amended to clarify that DEP may set alternative cleanup target levels for dry-cleaning sites based on the person responsible for site rehabilitation demonstrating that public health and safety and the environment are protected.

Section 22: Section 376.30781, F.S., is amended to broaden the partial tax credit language to include any contaminated site which is being cleaned up under a voluntary rehabilitation agreement approved by the DEP. If the credits granted do not exceed the maximum allowable under s. 199.1055, F.S., or s. 220.1845, F.S., for the year, then a credit may be granted for a petroleum-contaminated site at which cleanup is being conducted under the Preapproved Advanced Cleanup Program, but only up to the amount of private funding involved in the site cleanup activity. Any person who receives partial state-funded site rehabilitation under the Preapproved Advanced Cleanup Program is ineligible to receive tax credit for the portion of site rehabilitation costs paid by the state.

Section 23: Section 376.79, F.S., is amended to define “risk reduction” and “contaminant,” and to redefine the terms “natural attenuation,” “institutional controls,” and “source removal.”

Section 24: Section 376.80, F.S., is amended to require the local government or persons responsible for rehabilitation and redevelopment of a brownfield area to establish an advisory committee or use an existing advisory committee that has expressed its intent to address redevelopment of the specific brownfield area.

The person responsible for brownfield site rehabilitation must notify the advisory committee of the intent to rehabilitate and redevelop the site prior to executing the brownfield site rehabilitation agreement and provide the advisory committee with a copy of the draft plan for site rehabilitation, which addresses certain required elements. This includes disclosing potential reuse of the property as well as site rehabilitation activities if any are to be performed. The advisory committee shall review the proposed redevelopment agreement and provide comments, if appropriate, to the

board of the local government with jurisdiction over the brownfield area. The advisory committee must receive a copy of the executed brownfield site rehabilitation agreement. When an environmental assessment or remediation document is submitted to DEP or the local pollution control program for review, the person responsible for brownfield site rehabilitation must hold a meeting or attend a regularly scheduled meeting to inform the advisory committee of the findings and recommendations in the site assessment report or the technical document containing the proposed course of action following site assessment.

The person responsible for brownfield site rehabilitation must enter into a brownfield site rehabilitation agreement with DEP or the local pollution control program if actual contamination exists at the brownfield site.

Section 25: Section 376.81, F.S., is amended to provide further guidance to DEP in establishing the brownfield RBCA rule. This committee substitute clarifies that the department, in establishing the cleanup criteria, must apply, to the maximum extent feasible, risk-based corrective action processes to achieve protection of human health and safety and the environment in a cost-effective manner. The rule must prescribe a phased risk-based corrective action process that is iterative and that tailors site rehabilitation tasks to site-specific conditions and risks. DEP and the person responsible for brownfield site rehabilitation are encouraged to establish decision points at which risk management decisions will be made. DEP is to provide an early decision, when requested, regarding applicable exposure factors and a risk management approach based on the current and future land use at the site. The rule must include protocols for the use of natural attenuation, the use of institutional and engineering controls, and the issuance of “no further action” letters.

In establishing the applicable cleanup target levels for contaminants in groundwater, the department shall consider, as appropriate, calculations using a lifetime cancer risk of $1.0E^{-6}$; a hazard index of 1 or less; the best achievable detection limit; and nuisance, organoleptic, and aesthetic considerations. However, the department shall not require site rehabilitation to achieve a cleanup target level for any individual contaminant which is more stringent than the site-specific, naturally occurring background concentration for that contaminant.

Where surface waters are exposed to contaminated groundwater, the cleanup target levels for the contaminants shall be based on the more protective of the groundwater or surface water standards as established by department rule.

The department is required to approve alternative cleanup target levels in conjunction with institutional and engineering controls, if needed under certain conditions. When using alternative cleanup target levels at a brownfield site, institutional controls are not required if:

- The only cleanup target levels exceeded are the groundwater cleanup target levels derived from nuisance, organoleptic, or aesthetic considerations;
- Concentrations of all contaminants meet the state water quality standards or minimum criteria based on protection of human health;
- All of the groundwater cleanup target levels established are met at the property boundary;

- The person responsible for brownfield site rehabilitation has demonstrated that the contaminants will not migrate beyond the property boundary at concentrations exceeding the groundwater cleanup target standards;
- The property has access to and is using an offsite water supply and no unplugged private wells are used for domestic purposes; and
- The real property owner provides written acceptance of the “no further action” proposal to the department and the local pollution control program.

In establishing the target cleanup levels for soils, the department shall consider, as appropriate, using a lifetime cancer risk level of $1.0E^{-6}$, a hazard index of 1 or less, and the best achievable detection limit. However, the department shall not require site rehabilitation to achieve a cleanup target level for an individual contaminant which is more stringent than the site-specific, naturally occurring background concentration for that contaminant.

The cleanup criteria for brownfields apply only to site rehabilitation activities occurring at the contaminated site. Removal of contaminated media from a site for offsite relocation or treatment must be in accordance with all applicable federal, state, and local laws.

Section 26: Section 376.82, F.S., is amended to provide that a person whose property becomes contaminated due to geophysical or hydrologic reasons, including the migration of contaminants onto the property from the operation of facilities and activities on a nearby designated brownfield site, and whose property has never been occupied by a business that utilized or stored the contaminants, is not subject to administrative or judicial action to compel rehabilitation of or pay the costs of rehabilitation of nearby sites, if certain conditions are met.

Section 27: Section 376.84, F.S., is amended to provide that a financial incentive to encourage redevelopment of brownfield areas may include tax increment financing and special assessments. A local government with a designated brownfield area may issue revenue bonds and employ tax increment financing for the purpose of financing the implementation of a brownfield site rehabilitation agreement.

Section 28: Section 376.86, F.S., is amended to increase the limited state loan guaranty of primary lender loans for redevelopment projects in brownfield areas from 10 percent to 20 percent and decreases the duration of the loan guarantees from 5 years to 4 years. While the percentage is increased, the total amount at risk on loan guarantees or loan loss reserves from the Nonmandatory Reclamation Trust would remain at the current statutory limit of \$5 million in a fiscal year.

Section 29: Section 376.876, F.S., creates a Brownfield Redevelopment Grants Program. The DEP would administer the program to make grants to local governments that have designated brownfield areas and need financial assistance for site assessment and cleanup activities to make the redevelopment project financially feasible. Specifies the uses of the grant funds. Provides criteria for the DEP to consider when reviewing an application for a grant. Provides that the applicant must provide 20 percent matching funds, either in cash or in-kind services. No single grant may be greater than \$300,000 during each state fiscal year, and no more than \$100,000 may

be used for site assessment activities. The remainder of the grant amount is to be used for cleanup activities at a brownfield site. In the first fiscal year in which the Legislature provides an appropriation for this grant program, the department shall administer the funds to assure that at least one-half of the amount available is awarded to qualified local governments. The DEP is authorized to adopt rules to implement the grant program.

Section 30: Section 376.88, F.S., creates a Brownfield Program Review Advisory Council to provide for continuous review of the progress in the administration of Florida's Brownfield Program and make recommendations for its improvement. This section specifies the council membership and the term of service. The initial term for service of the council shall be two years from the date of the first meeting and may be extended at the discretion of the Secretary of the Department of Environmental Protection or his or her designee, based upon the needs of the brownfields program.

Section 31: Section 403.973, F.S., is amended to provide that projects located in a designated brownfield area are eligible for the expedited permitting process.

Section 32: Section 712.01, F.S., is amended to redefine the term "covenant or restriction" to prohibit subsequent property owners from removing certain deed restrictions under other provisions of the Marketable Records Title Act to be enforced by the Florida Department of Environmental Protection pursuant to chs. 376 or 403, F.S.

Section 33: Section 712.03, F.S., is amended to provide an exception to title marketability for a restriction or covenant recorded under chs. 376 or 403, F.S.

Section 34: States that each provision of this act will be implemented to the extent that funds are appropriated in the General Appropriations Act.

Section 35: Subsection (9) of s. 211.3103, F.S., is repealed. This deletes the requirement for a county that accepts real property of mined or reclaimed land from phosphate mining companies to forfeit a portion of its share of severance tax equal to the value of property donated.

Section 36: This act takes effect July 1, 2000.

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:

The bill provides for several tax credits to the corporate income tax and exemptions from the sales and use tax for qualified businesses in a enterprise zone or designated brownfield area.

Tax Credit for Cleanup Costs

The DEP can currently issue a tax credit certificate for either intangible personal property tax or corporate income tax for a portion of the cost of cleanup in designated brownfields areas. The bill expands this credit to those entities with a voluntary cleanup agreement with the DEP that are not designated as a brownfield area. DEP has identified 23,359 contaminated sites in Florida, and expects that at the end of the current fiscal year, 17,107 will not have their cleanup completed. Of these, 15,160 qualify for state-funded programs such as the petroleum underground storage tank cleanup program and the dry-cleaning solvent contaminated site cleanup program. Backlogs in these state-funded programs, however, may cause those entities to pursue their own cleanup and seek the tax credit.

Tax Credit for Building Materials

Florida's Enterprise Zone Program, while older and larger than the brownfields program uses this tax credit to encourage development in similarly distressed areas. The Office of Tourism, Trade and Economic Development (OTTED) within the Executive Office of the Governor authorized \$277,803 in tax credits for building materials used in Enterprise Zones in 1998-1999. The bill allows for retroactive tax credits. Sales tax credits for building materials and business equipment are available for materials or equipment used in a designated brownfield area after July 1, 1997. The fiscal impact of such retroactive credits is indeterminate.

Job Tax Credit

Under current law, OTTED provides a bonus refund of \$2,500 to qualified target industries that create jobs in designated brownfield areas. This is in addition to the job tax credit provided when the business qualifies as a targeted industry. In 1998-99, OTTED authorized \$3,245,000 in brownfield bonus tax credits to businesses for the expected creation of 1,298 jobs. The tax credit is realized after the business creates the job, a process that may take several years. The bill allows OTTED to provide such refunds to businesses in designated brownfield areas that are not designated as qualified target industries. There is no legislative cap on the amount of tax credits for job creation. The fiscal impact of this provision is indeterminate but could be significant in the coming years.

Local Property Tax Credit

The bill would allow credit for both real and tangible personal property taxes. Florida's Enterprise Zone Program reported \$1,015,587 in such credits in 1998-1999. The fiscal impact of this provision is indeterminate but could be significant.

Community Contribution Tax Credit

This tax credit is available to Enterprise Zones and is currently limited by statute to a total of \$10 million per year. OTTED provided \$5 million in such credits to Enterprise Zones in FY 1998-1999 and has provided approximately \$3 million to date for FY 1999-2000. The current statutory cap of \$10 million may be sufficient for FY 2000-2001, but may need to be raised in subsequent years.

Sales Tax Credit

A new tax rebate is provided for persons establishing a new business or expanding an existing business in a enterprise zone or designated brownfield. Businesses that generate \$1 million or more in sales taxes can receive a rebate for 75 percent of the sales taxes under certain circumstances.

B. Private Sector Impact:

The bill provides a variety of financial incentives to encourage the development of brownfield areas or other similar contaminated areas. Past use of existing incentives for brownfields redevelopment has been modest in part due to the fact that such incentives are relatively new. In addition, areas with environmental contamination have been more likely to qualify for and use other benefits and programs, such as state-sponsored cleanup of dry-cleaning and petroleum contaminated sites and the state's Enterprise Zone Program. This makes assessing the fiscal impact of the bill difficult. Florida's Enterprise Zone Program, while much larger and older than the brownfields program, uses many of the tax credits the bill provides to brownfields. The experience of the Enterprise Zone Program may help in considering the fiscal impact of the bill. The incentives provided in the bill and the potential fiscal impact are as follows.

There is no provision for the expiration of a brownfield area designation and the sections of statute containing the credits expire on December 31, 2005. Qualified tax credits could be provided each year until 2005.

This proposed committee substitute allows for the use of risk-based corrective action (RBCA) principles for all contaminated sites in Florida. The use of RBCA principles allows the site owner to redevelop the site and achieve some protection of human health and safety in a cost-effective manner. RBCA principles allow the use of institutional controls and engineering controls, and the application of alternative cleanup target levels to manage risk associated with contaminated sites. This is generally far less costly than the traditional cleanup methods such as "pump and treat."

Economic redevelopment of contaminated sites is likely to help some private land owners, increase property values, and create employment opportunities on land that is currently underutilized.

C. Government Sector Impact:

To the extent the tax credit provisions are fully utilized, a corresponding loss of state revenue would result. The impact conference estimates the total state and local fiscal impact for the brownfield area credits and refunds authorized by the bill to be 5.3 million dollars on a recurring basis for fiscal year 2000-2001, with a cash impact of 2.2 million dollars for fiscal year 2000-01. The impact of the addition of the new sales tax credit in s. 390.007(9) can not be estimated at this time.

In addition, the impact conference calculated an estimated state and local fiscal impact of \$500,000 on a recurring basis and a \$100,000 cash impact for fiscal year 2000-2001 for the additional job credits created under the enterprise zone program as a consequence of the ability of business owners to include employees who reside within a brownfield area in the calculation of employees who count towards meeting the requirement that at least 20% of the employees of the business must be residents of an enterprise zone or brownfield area.

For the current fiscal year, the Legislature has limited the total amount of voluntary cleanup tax credits which are applied to the intangible personal property tax or the corporate income tax to \$2 million. For the calendar year 1999, DEP anticipates issuing tax credits totaling \$118,438. It would appear that the current cap of \$2 million would be sufficient for FY 2000-2001.

In addition, where tax increment financing is utilized as a vehicle for financing brownfield areas, local governments will, in the short term, lose an indeterminate amount of ad valorem revenue. However, this short-term loss of ad valorem revenue will be offset by brownfield redevelopment that will likely increase the value of property located within the redevelopment area.

Quick Response Funding

A portion of the Quick Response funding that currently is reserved at the start of each fiscal year for enterprise zones would be shared with businesses in designated brownfield areas. This would not create a fiscal impact other than to make new funds available to designated brownfield areas and potentially fewer funds available to enterprise zones.

Brownfield Bonus Refund

Under current law, the Office of Tourism, Trade, and Economic Development (OTTED) provides a bonus refund of \$2,500 to qualified target industry businesses that create jobs in brownfields. This is in addition to the job tax credit provided when the business qualifies as a targeted industry. In FY 1998-1999, OTTED authorized \$2,245,000 in brownfield bonus tax refunds to businesses for the expected creation of 1,298 jobs. The tax refund is realized after the business creates the job, a process that may take several years. The committee substitute allows OTTED to provide such bonus refunds to businesses in designated brownfield areas that are not designated as qualified targeted industries. The bill provides a \$3 million cap of tax refund awards that may be made in any fiscal year for brownfield bonuses.

Enterprise Florida Brownfield Marketing Plan

This committee substitute requires Enterprise Florida Inc., to develop a marketing plan for brownfield development. There will be an indeterminate fiscal impact associated with the cost of developing a marketing plan, however, Enterprise Florida has determined this can be absorbed as part of its general marketing budget.

Increased State Loan Guarantee

No loans have been guaranteed by the state to date in the Brownfield Redevelopment Program and hence there is no experience on the size of loans or rate of default. The Legislature authorized funding for such loans in FY 1998-1999 but no applications have been received. Prior contingency funding arrangements, if needed, would likely be sufficient for FY 2000-2001.

Department of Environmental Protection

The Department of Environmental Protection will have to initiate rulemaking for the global risk-based corrective action (RBCA) provisions. There will be indeterminate fiscal impact associated with the cost of rulemaking.

Since the bill does not authorize any FTEs to implement the State-Owned Lands Cleanup Program, the Brownfield Redevelopment Grants Program, or the expanded Voluntary Cleanup Tax Credits, the DEP will have to absorb the workload associated with implementing these programs with existing resources.

The bill provides that it will be implemented to the extent that funds are provided in the General Appropriations Act.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.