

# 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/SB 1406

SPONSOR: Natural Resources Committee and Senator Latvala

SUBJECT: Brownfield financial incentives

DATE: March 7, 2000 REVISED: \_\_\_\_\_

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

## I. Summary:

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. 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 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. Also, appropriates \$2.5 million from the General Revenue Fund to DEP for the administration of the State-Owned Lands Cleanup 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.

This bill amends ss. 197.432, 197.502, 197.522, 199.1055, 212.08, 212.096, 220.181, 220.182, 220.182, 220.1845, 290.007, 376.30781, 376.84 and 376.86, F.S.; creates ss. 376.30702 and 376.876, 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 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.

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.

According to the Department of Environmental Protection's 1999 Annual Report which describes their progress in implementing the Brownfields Redevelopment Act, some of the highlights in 1999 were:

- 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 would 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 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 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 a cleanup criteria rule 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 was adopted with an effective date of July 6, 1998. Subsequently, in 1999 the rule was amended, along with the petroleum contamination site and drycleaning 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 earned on the investment 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.

### **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 197.432, F.S., is amended to correct a cross-reference.

**Section 2:** 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 adjacent parcels of land into usable tracts of land available for redevelopment of the brownfield area.

**Section 3:** Section 197.522, F.S., is amended to correct a cross-reference.

**Section 4:** 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 5:** 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 6:** 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.

**Section 7:** 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.

**Section 8:** 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.

**Section 9:** 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 10:** 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 11:** 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.

**Section 12:** 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.

**Section 13:** 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 14:** Section 376.84, F.S., is amended to provide that a financial incentive to encourage redevelopment of brownfield areas may include tax increment financing. 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 15:** Section 376.86, F.S., is amended to increase the limited state loan guaranty of primary lenders loans for redevelopment projects in brownfield areas from 10 percent to 20 percent and decrease 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 16:** 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 17:** This section appropriates \$5 million from the General Revenue Fund to DEP for the purpose of administering the Brownfield Redevelopment Grants Program for FY 2000-2001.

**Section 18:** This section appropriates \$2.5 million from the General Revenue Fund to DEP for the purpose of administering the State-Owned Lands Cleanup Program for FY 2000-2001.

**Section 19:** 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 20:** 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 designated brownfield area.

## 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 drycleaning 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.

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.

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.

**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 drycleaning 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 fiscal impact of this provision 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.

#### **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.

**C. Government Sector Impact:**

To the extent the tax credit provisions are fully utilized, a corresponding loss of state revenue would result. Such losses cannot be determined at this time. (See discussion in Private Section Impact above)

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.

The bill requires the DEP to amend a rule and to adopt a rule for the Brownfield Redevelopment Grants Program. 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 a \$5 million appropriation from the General Revenue Fund to the DEP to Administer the Brownfield Redevelopment Grants Program.

The bill provides a \$2.5 million appropriation from the General Revenue Fund to the DEP to administer the State-Owned Lands Cleanup Program.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.