

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/SB 1408

SPONSOR: Commerce and Economic Opportunities Committee, Natural Resources Committee, and Senator Latvala

SUBJECT: Brownfield economic redevelopment

DATE: March 17, 2000 REVISED: _____

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

I. Summary:

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

- Provides that businesses located in brownfield areas are included, along with enterprise zone businesses, in a provision setting aside 30 percent of Quick Response Training funds, for the first six months of each fiscal year, for instructional programs for these businesses.
- Broadens the brownfield redevelopment bonus tax refund provisions for qualified target industry businesses to include certain businesses investing in a brownfield area.
- 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.

This committee substitute amends ss. 288.047, 288.107, 288.905, 376.301, 376.3078, 376.79, 376.80, 376.81, 376.82, 403.973, 190.012, 712.01, and 712.03, F.S., and creates ss. 376.30701 and 376.88, 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. (See ss. 376.77-376.85, F.S.)

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 cleanups. 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 (s. 376.78, F.S.).

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 (ch. 98-75, L.O.F.).

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

- The number of designated brownfield areas in Florida increased from three 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 million in new capital investments is attributable to the "Brownfield Redevelopment Bonus Refund." (See s. 288.107, F.S.)
- 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 (EPA) 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 a cleanup in accordance with Florida's Brownfields 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 the owner's 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 DEP or an approved local program (s. 376.80, F.S.).

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 also encouraged to use the full range of economic and tax incentives available to facilitate and promote the rehabilitation of brownfield areas (s. 376.80, F.S.).

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 dry-cleaning solvent cleanup criteria rules, to provide for consistency within the three programs.

Using RBCA principles, 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 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 five 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 Legislature in 1998 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, a series of workshops were organized by a senator 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 (SB 1406) provides for additional financial incentives, and the other bill (SB1408) addresses various administrative provisions of the program administered by DEP and addresses economic development activities related to brownfields.

III. Effect of Proposed Changes:

This committee substitute addresses administrative and economic changes which are designed to enhance the use and success of the brownfields redevelopment program in Florida.

Section 1: 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 2: 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.

Section 3: 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 4: 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 5: 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 6: 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 7: 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 8: 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 9: 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 10: 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 11: 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 12: 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 13: 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 14: 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 15: 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 16: This committee substitute takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Section 6 of Art. III of the State Constitution requires that the subject of every law be briefly expressed in the title. The title of this committee substitute describes the subject of the act as “brownfield economic redevelopment.” However, because some provisions in the measure address issues that are related to pollutant discharge but that are broader than brownfields (e.g., risk-based corrective action principles are extended to all contaminated sites statewide, and the measure makes a clarifying amendment to a statute relating to dry-cleaning facility restoration), the title language may not be broad enough to provide sufficient notice of the act’s contents.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This 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:**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.

QTI 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 \$3,245,000 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. There is no cap on the amount of tax refunds for job creation that may be provided to such non-QTI businesses. The fiscal impact of this provision is indeterminate but could be significant in the coming years.

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 such a plan.

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.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.