

**STORAGE NAME:** h2355a.gg

**DATE:** April 26, 2000

**HOUSE OF REPRESENTATIVES  
AS REVISED BY THE COMMITTEE ON  
GENERAL GOVERNMENT APPROPRIATIONS  
ANALYSIS**

**BILL #:** HB 2355

**RELATING TO:** Pollution control and cleanup

**SPONSOR(S):** Representative(s): Constantine; Murman

**TIED BILL(S):**

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

- (1) ENVIRONMENTAL PROTECTION YEAS 12 NAYS 0
  - (2) GENERAL GOVERNMENT APPROPRIATIONS YEAS 9 NAYS 0
  - (3)
  - (4)
  - (5)
- 

**I. SUMMARY:**

This bill addresses many issues related to brownfield site remediation and state cleanup procedures and programs.

Brownfield provisions address: state training efforts for businesses; Enterprise Florida marketing efforts; cleanup criteria; community involvement; rulemaking; expedited permitting; and marketable titles. In addition, this bill creates and provides funding for the Brownfield Redevelopment Grants Program and the Brownfield Program Review Advisory Council.

The bill also creates a State-Owned Lands Cleanup Program. Provisions are created that address: findings and intent; purposes; program requirements; liability protection; and cost recovery.

The bill also expands the use of Risk-Based Corrective Action processes to all environmental cleanups conducted under the Department of Environmental Protection or approved local programs. Provisions within this section: detail legislative intent; provide rulemaking; define cleanup criteria; establish limitations; address reopeners, mapping, and registry of sites. A provision of the bill provides for a one-time \$2.5 million appropriation to administer the program.

Other provisions of the bill address: eligibility for participating in the drycleaning cleanup program; and funding by community development districts for certain environmental activities.

This bill would become effective upon becoming law.

**On April 19, 2000, the Committee on Environmental Protection adopted a strike-everything amendment that is traveling with the bill. Please see "Amendment or Committee Substitute Changes" section.**

**On April 26, 2000, the General Government Appropriations Committee adopted a substitute strike-everything amendment that is traveling with the bill. Please see "Amendment or Committee Substitute Changes" section.**

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |                              |                             |   |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u>         | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u>             | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Created in 1997 (Chapter 97-277, L.O.F.) and amended in 1998 (Chapter 98-75, L.O.F.) the Brownfields Redevelopment Act (Act) encourages the reuse and redevelopment of brownfield sites within designated brownfield areas. Brownfield sites are "sites that are generally abandoned, idled, or under-used industrial and commercial properties where expansion or redevelopment is complicated by actual or perceived environmental contamination." The Act created the framework for the state's brownfields program to facilitate redevelopment of these sites while also providing for environmental cleanup and protection of the public health and the environment.

As directed by the Act, the Department of Environmental Protection (DEP) is charged with the development and implementation of the Brownfield's program. To accomplish this the DEP has undertaken a series of necessary administrative actions, including:

- > Negotiation of a Memorandum of Agreement with the Environmental Protection Agency (EPA). This agreement was reached in December of 1999 and specifies the criteria under which the EPA would forego oversight at brownfield sites within a designated brownfield area that are cleaned up or undergoing cleanup in accordance with the provisions of the Act.
- > Development of a Brownfields Cleanup Criteria Rule. Adopted in July, 1998 and subsequently amended in 1999, chapter 62-785, F.A.C. establishes cleanup standards and procedures that utilize risk-based corrective action (RBCA) principles to achieve protection of human health and safety and the environment in a cost-effective manner.
- > Development of a Voluntary Cleanup Tax Credit Rule. As a part of the 1998 amendments, there was created a tax credit against either intangible personal property tax or corporate income tax for taxpayers that voluntarily participate in the cleanup of a brownfield site in a designated brownfield area. Chapter 62-788, F.A.C., adopted in March of 1999 implemented these provisions.

A significant feature of the act was the emphasis on redevelopment and economic incentives to encourage the private sector to redevelop these often blighted urban properties. State and local governments were encouraged to offer redevelopment

incentives which may include financial, regulatory, and technical assistance. In addition, the act provided for brownfield redevelopment bonus refunds. Any qualified target industry business could be eligible for a \$2,500 bonus refund for each new Florida job created in a brownfield which is claimed on the qualified target business's annual refund claim authorized in s. 288.106(6), F.S., and which is approved by the Office of Tourism, Trade, and Economic Development (OTTED).

### **Florida Brownfield Areas**

Local governments are to take the lead in identifying, delineating, and then designating by resolution parcels to be included in a brownfield area. An important component of this process is the formation of an advisory committee to improve public participation and receive public comment on rehabilitation and redevelopment of the designated brownfield area, future land use, local employment opportunities, community safety, and environmental justice.

The number of designated areas has increased from a total of three in 1998 to twenty-five in 1999. These designated areas encompass over 54,000 acres of contaminated and uncontaminated properties including residential and viable business properties. Additionally, the DEP is reporting (Florida Brownfields Redevelopment Act -- 1999 Annual Report) that a potential of twenty-two additional brownfield areas designations may occur early in 2000. This report also indicates that as a result of the "Brownfield Redevelopment Bonus Refund" there has been created 1,298 direct jobs, 1,546 indirect jobs, and the inducement of \$41 million in new capital investments.

### **Risk-Based Corrective Action**

Risk-based Corrective Action (RBCA) or "rebecca" as it is commonly referred to is an approach to the cleanup of contaminated sites. Created in the mid-1990's as a result of state's, insurers, and private industries discovery that they did not have the resources to adequately finance cleanups to meet the stringent levels required by regulatory programs. In response, the American Society for Testing and Materials (ASTM) undertook the effort to develop a standardized process that can be used for making risk-based decisions at contaminated sites in order the apply limited resources to those sites with the highest current risk.

As a result of the ASTM efforts, Emergency Standard 38 was adopted. The standard, referred to as ASTM-38, or generically as RBCA, describes a framework, or philosophy, upon which regulatory agencies can build their own risk-based guidance. This standard was adopted by EPA, first for use in petroleum storage tank cleanups and ultimately for other types of contamination cleanup programs.

RBCA involves a process for managing contamination cleanup on a site-specific basis. Specifically, RBCA is defined as a streamlined approach in which exposure and risk assessment practices are integrated with traditional components of the corrective action (cleanup) process to ensure that appropriate and cost-effective remedies are selected, and that limited resources are properly allocated.

The RBCA process is built around three goals:

1. To ensure the protection of human health and the environment.
2. To be practical and cost-effective.
3. To provide a consistent and technically-defensible cleanup process.

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In this approach, decisions related to resource allocation, urgency of response, target cleanup levels, and remedial measures are based on current and potential risks to human health and environmental resources. Though not the original intent, cost savings can be an outcome of a properly applied RBCA process, because it fosters site specific decisions based on action needed as opposed to treating all sites the same. Also, RBCA can be used to group sites within general ranges of high, medium, and low risk so that all sites can progress towards cleanup completion while limited resources can be directed at the highest risk sites.

Florida's use of RBCA principles and processes dates back to the mid-1990's. First adopted and applied to the petroleum underground storage tank cleanup program, then to the drycleaning program and most recently to the brownfield program. Historically, dating from its first adoption to today, a series of core issues are always discussed involving the RBCA process.

**Point of Compliance:** The point at which contaminated land or water must meet clean-up or water quality standards.

**Point of Exposure:** The point at which contaminants reach a human or environmental receptor.

**Institutional Controls:** Administrative or legal tools utilized to prevent future uses of soil and groundwater at the property where there exists the potential for human or environmental exposure to contaminants.

**Engineering Controls:** The use of engineered systems to protect human health and the environment from contact with contaminated soil or groundwater.

**Risk-Based Screening Levels:** The levels of contaminant concentration that set the parameters for site clean-up standards. The state has adopted the following minimum clean-up standards to be applied at a point immediately adjacent to the point of exposure: applicable state standards if they exist; calculations using a life-time cancer risk level of  $10^{-6}$  (one in one million); a hazard index of 1 or less; the best achievable detection limit; the naturally occurring background concentration; or nuisance, organoleptic, and aesthetic considerations.

### **State-Owned Lands Cleanup**

The state owns and is responsible for many parcels of property that are contaminated with hazardous substances. The contamination may be limited to soils or may extend to surface waters or groundwaters of the state. The threats to public health may range from inconsequential to substantial threats to those that might come in contact with either the soil or water. Environmental threats would be primarily to plants and animals living in or drinking from surface waters.

In most cases, the contamination was not caused by intentional discharge, but was caused by equipment failures such as leaking underground storage tanks or sloppy operating practices such as the spillage of pesticides. In some instances, the contamination may have been caused by the state and in others it may have been caused by tenants leasing the state owned property. Additionally, the state may have purchased property that was contaminated by a previous occupant. Some examples on state owned lands: approximately 85 petroleum sites; at least 31 cattle dipping vats; hundreds of acres of railroad right of way; Cascades Park in Tallahassee; Belle Glade Airport; Department of

Transportation maintenance yards; and Department of Corrections/Pride of Florida vocational training facilities.

In the past, the DEP has worked cooperatively with other agencies to conduct appropriate investigations and cleanups. However, progress is often slow and difficult due to funding limitations. Because of this and the reluctance to sue agencies, many of these sites have remained contaminated for years.

The full scope of the problem is unknown at this time. The DEP will survey its approximately 1,500 leaseholders to obtain information about known contamination and the status of any cleanups that may be underway.

### **Drycleaning Cleanups**

Originally created in 1994 (Chapter 94-355) and substantially amended in 1995, this program was established to undertake cleanups at an estimated 1,400 sites throughout the state. A critical component to the program is eligibility determination. The original eligibility requirements directed that for any facility operating before, on, or after 10/1/94 certain conditions be met: must have registered by 6/30/95; and installed secondary containment devices by 1/1/97. Failure to install the secondary containment constitutes gross negligence, thus a facility would be ineligible if they failed to comply with the deadline. The department in their attempt to notify all drycleaners of the statutory requirements failed to contact them all. A small percentage, less than 10 percent, is thought to have fallen through the cracks. Because they were never notified of the need to register or install secondary containment, they are now ineligible.

### **Expedited Permitting**

Section 403.973, F.S., describes a process to be used for expedited permitting. It was created to facilitate the location and expansion of economic development projects which offer job creation and high wages, strengthen and diversify the state's economy, and take into consideration protection of the state's environment. It is built upon a team permitting concept that seeks to bring all relevant agencies to the table and allow for the concurrent processing of permit requests.

### **Community Development Districts**

Chapter 190, F.S., deals with the creation and operation of community development districts. Specifically, s. 190.012, F.S., details special powers of these districts as they relate to public improvements and community facilities. These districts are allowed to exercise, subject to regulatory jurisdiction, a series of powers which are described in this section. One such power is the ability to finance numerous public works related activities.

### **Marketable Record Titles to Real Property**

Chapter 712, F.S., created a section of law that deals with marketable titles and related issues. Specific provisions define what the terms used shall mean, and what activities shall not affect or extinguish certain title rights.

**C. EFFECT OF PROPOSED CHANGES:**

**Section 1** Amends s. 288.047, F.S. "Quick-response training for economic development"

Businesses located within brownfield areas will now be eligible to receive assistance and funds under the Quick-Response Training Program administered by Enterprise Florida.

**Section 2** Amends s. 288.107, F.S. "Brownfield redevelopment bonus refunds"

Expands definition of the term "eligible business" to include those that can demonstrate a fixed capital investment of at least \$2 million in a brownfield area. This investment can include multiunit housing, commercial, retail and industrial. In addition, wages paid by these businesses must be at least 80 percent of the average of all private sector wages in the county in which the business is located. Conforming changes are also made to recognize the change in the definition.

**Section 3** Amends s. 288.905, F.S., "Duties of the board of directors of Enterprise Florida"

Creates a new provision that directs Enterprise Florida to develop a marketing plan to foster the redevelopment of brownfield areas. The plan, at a minimum, is to include strategies for the distribution of information about brownfields and economic incentives available to them.

**Section 4** Amends s. 376.301, F.S., "Definitions"

This section amends a series of existing definitions and adds a definition to the section of law that governs the various cleanup programs found in chapter 376. These programs include: brownfields, drycleaning, and petroleum. Specific changes made by this bill include:

Adding the phrase "as a result of exposure" to the definition of "antagonistic effects."

Adding the terms "releasing" and "hazardous substance" to the definition of "discharge."

Adding "restrictive covenants, or conservation easements" to the list of acceptable restrictions within the definition of "institutional controls."

Clarifying that within the definition of "natural attenuation" that such process must be verifiable not assumed.

Creating a definition for "risk reduction." The term is defined to mean the lowering or elimination of the level of risk through remedial actions.

Adding additional language to the definition of "site rehabilitation" to conform to EPA terminology involving RCRA sites.

**Section 5** Creates s. 376.30701, F.S., "Application of RBCA to contaminated sites"

This section creates a new statutory provision that will allow for the application of RBCA principles to any contaminated site not currently covered within existing programs. Provisions of this section address: applicability; legislative intent; rulemaking authority; contamination cleanup criteria; limitations; reopeners; mapping; and registry.

**Applicability:** These provisions will apply retroactively and prospectively to all contaminated sites, not currently covered by other provisions, where a discharge of pollutants or hazardous substances exists and where legal responsibility for site rehabilitation exists.

Directs that the cleanup criteria established within this section shall apply as Applicable or Relevant and Appropriate Requirements to all sites in Florida that qualify or are listed on the CERCLA priority list, i.e. "superfund sites."

Details that this new section does not affect emergency response actions regarding releases to soil that result in soil contamination levels above the soil target cleanup levels.

**Intent:** This provision details the intent of the Legislature to protect the health of all people under actual circumstances of exposure.

**Rulemaking:** The department is granted specific authority to draft rules for the purposes of determining, on a site specific basis, the tasks that comprise a site rehabilitation program. The rule is to utilize to the maximum extent feasible RBCA processes. In addition, the rules are to include protocols for the use of natural attenuation, institutional and engineering controls, and the issuance of "no further action" letters. When developing what constitutes a rehabilitation task or completion of the rehabilitation processes, the rule shall:

- (A) Consider the current exposure and potential risk of exposure.
- (B) Establish the point of compliance at the source of the contamination. However, this point may be moved on a temporary basis provided it does not go beyond the property boundary, unless needed to address the current conditions of the plume. In cases where the temporary compliance point is beyond a property boundary, the entity responsible for site rehabilitation must provide actual notice to affected property owners and constructive notice to any residents or tenants. These individuals will have 30 days to comment upon receipt of such notice.
- (C) Ensure that all sites cleaned-up shall ultimately achieve the applicable cleanup target levels. The rule may authorize temporary exceedences of target levels provided human health, public safety and the environment are protected.
- (D) Allow the use of institutional controls (deed restrictions, restrictive covenants, etc.) and engineering controls (capping, fences, etc.) to eliminate or control potential exposure to contaminants. The removal of any controls must have prior department approval.
- (E) When establishing target levels, consider the additive effects of contaminants. In addition, upon data becoming available, consider the synergistic and antagonistic effects.

- (F) Take into account individual site characteristics, such as: current and projected uses of groundwater and/or land; the degree and extent of contamination; rate of contaminant migration; location of the plume; and potential for future migration in relation to property boundaries.
- (G) Apply existing state water quality standards. When standards do not exist, they shall be developed based on a cancer risk level of  $10^{-6}$ , a hazard index of 1 or less, the best achievable detection limit, and nuisance, organoleptic and aesthetic considerations. However, such levels shall not be more stringent than site specific, naturally occurring background concentrations.

For instances when surface waters are exposed to contaminated groundwater, the cleanup target levels shall be based on the more protective of the groundwater or surface water standards. The point of compliance for this provision shall be in the groundwater immediately adjacent to the surface water body.

Provide for the establishment of alternative target levels in conjunction with institutional and engineering controls, if needed.

- (H) Provide for the issuance of "no further action orders," with conditions, if necessary.
- (I) Establish cleanup target levels for soils. The levels are to be predicated on human exposure to contaminants found in soils from the surface to a depth of two feet. Standards are to be developed based on a cancer risk level of  $10^{-6}$ , a hazard index of 1 or less, the best achievable detection limit, and nuisance, organoleptic and aesthetic considerations. Institutional controls or other methods are to be used for soil contamination more than 2 feet below the surface. Any removal of such controls shall require the soils to be remediated.

Leachability-based soil target levels shall be based on protection of the groundwater cleanup target levels or alternative groundwater target levels. These target levels shall not be applicable if the DEP determines that contaminants will not leach into groundwater at levels that pose a threat.

Provide for the establishment of alternative target levels in conjunction with institutional and engineering controls, if needed.

- (J) The department is directed to require source removal if warranted and cost-effective. If source removal occurs the department is to re-evaluate the site to determine the degree of cleanup needed.

**Limitations:** Cleanup criteria established pursuant to this bill shall only apply at the contaminated site. Removal of contaminated materials shall be governed by existing state and federal statutes concerning their transport, storage, or disposal.

**Reopeners:** Once site rehabilitation has been completed, additional rehabilitation shall not be required unless: a demonstration of fraud is made; new information confirms the existence of previously unknown contamination which exceeds target levels or poses a threat; remediation efforts failed to achieve target levels; level of risk is increased due beyond acceptable levels due to changes in exposure conditions; or a new discharge occurs prior to the issuance of a no further action order.



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**Mapping:** If institutional controls are used at any site including sites in the petroleum, brownfields, or drycleaning programs, the property owner must provide information regarding such controls to the local government for mapping purposes. Such control must be noted on relevant land use and zoning maps. Such mapping requirements shall be removed upon the removal of the institutional control.

**Registry:** The DEP is directed to maintain a registry of all contaminated sites subject to institutional and engineering controls.

**Section 6** Creates s. 376.30702, F.S., "State-Owned-Lands Cleanup Program"

A new provision of law creating a state-owned lands cleanup program provides findings and intent; purpose; program requirements; limited liability protection; and cost recovery.

**Findings & Intent:** Finds that over the years numerous types of discharges have occurred on state-owned lands, thus causing contamination of the groundwater or surface water or soils. Additional provisions call for providing adequate financial resources to clean-up the lands and that these clean-ups be based on the actual risk that the contamination may pose.

**Creation; Purposes of Program:** Directs the department to implement a clean-up program to provide state funded and state managed site rehabilitation for all state owned property. The program will be subject to annual appropriation from the Legislature and not constitute an entitlement or a vested right. Monies allocated under this program are to be used for:

Investigation and assessment;

Treatment, restoration, or replacement of potable water;

Site rehabilitation;

Maintenance and monitoring;

Inspection and supervision of activities;

Payment of expenses and other related reasonable costs (administration, field and laboratory, risk assessments, etc.); and

Restoration of property to previous conditions.

**Site Priority Ranking and Cleanup Criteria:** The department is given authority to establish a procedure to allow for the priority ranking of sites using risk-based criteria as established in the drycleaning program. These criteria include but are not limited to: distance from aquifers; status of aquifers; distance from public drinking water sources; and size of threatened water supply.

The department is directed to use cleanup standards as described in currently ongoing programs, i.e., brownfields, petroleum, and drycleaning, and adopted by rule (Chapter 62-777, F.A.C.).

Authority is granted to the department to temporarily postpone cleanup activities when it is deemed necessary to address a higher priority or if federal assistance is available.

**Limited Liability Protection:** The department is prohibited from compelling a state agency to cleanup a site and from pursuing financial reimbursement for cleanup activities.

The department is granted authority to pursue enforcement and seek contributions from a person who may have liability for a contaminated site.

**Departmental Duty to Seek Recovery and Reimbursement:** The department is specifically authorized to recover from any person causing or having caused the discharge of pollutants or hazardous substances on state-owned lands all sums owed or expended for site rehabilitation performed under this program.

**Section 7** Amends s. 376.3078, F.S., "Drycleaning facility restoration"

Adds an additional provision concerning eligibility for the drycleaning program. Facilities that were operating prior to 1/1/96 and applied for the program by 12/30/97 shall be eligible if they entered into a consent order to install secondary containment and have installed the required equipment by 4/15/99. If such facilities have met these requirements, the department is directed to reconsider their applications.

Additionally, a clarification is made by adding the term "demonstrating" to a provision concerning the setting of alternative cleanup target levels.

**Section 8** Amends s. 376.79, F.S., "Definitions used for Brownfields"

Creates a definition for the term "contaminant." The term shall mean any substance present in any medium which may result in adverse effects to human health or the environment or which creates an adverse nuisance, organoleptic, or aesthetic condition in groundwater.

Amends the term "institutional controls" to include restrictive covenants or conservation easements as examples of acceptable controls.

Rewrites the definition of "natural attenuation" to more scientifically define the process and to site examples.

Creates a definition for "risk reduction." The term shall mean the lowering or elimination of the risk posed by contamination through remedial actions.

Provides technical and clarifying changes to the term "source removal."

**Section 9** Amends s. 376.80, F.S., "Brownfield program administration"

Permits brownfield areas to use existing advisory committees, instead of creating new ones, if they have been established for the purposes of addressing redevelopment of the specific brownfield area.

The role of the advisory committee is defined. Specifically, the person responsible for site rehabilitation shall:

Notify the committee of their intent to rehabilitate and redevelop the site;

Provide the committee with a copy of the draft plan;

Disclose potential reuse of the property as well as rehabilitation activities;

Provide a copy of the executed brownfield site rehabilitation agreement; and

Attend a committee meeting for the purposes of informing them as to the contents and results of any site assessment reports.

Clarification is provided that a brownfield site rehabilitation agreement is only needed if actual contamination exists at the brownfield site.

**Section 10** Amends s. 376.81, F.S., "Brownfield site cleanup criteria"

Extends from 7/1/98 to 7/1/01 the deadline for the department to develop a cleanup criteria rule for brownfields.

Provides additional guidelines to be followed in developing the rule. The rule shall also: describe a phased RBCA process; provide for the establishment of decision points at which risk management decisions shall be made; and allow for the use of institutional and engineering controls.

Clarification is provided to a section that directs how the department is to apply state water quality standards and soil target levels. Primarily, wording is added to prohibit the department from using a cleanup target level that is more stringent than the site specific naturally occurring background concentration for the contaminant.

The use of alternative cleanup target levels is changed from permissive to mandatory. In addition, specific conditions are described for those instances when institutional controls shall not be required. All must be met and they are:

If the only target levels exceeded are those derived from nuisance, organoleptic, or aesthetic considerations.

Concentrations of all contaminants meet the state water quality standards or other established minimum criteria.

If all of the groundwater cleanup target levels are met at the property boundary.

A demonstration can be made that the contaminants will not migrate beyond the property boundary at concentrations exceeding groundwater target levels.

If the property has access to and is using an offsite water supply and public wells are being used for domestic purposes.

The property owner provides written acceptance of the no further action order.

A clarifying provision is added to state that cleanup criteria established pursuant to this program shall apply only at brownfield sites. The removal of any contaminated material to an offsite location or treatment facility shall be governed by existing state and federal laws.

**Section 11** Amends s. 376.82, F.S., "Brownfield eligibility and liability protection"

A new liability provision is added to an existing list. The new provision will protect property adjacent to brownfields whose property became contaminated because of the activities that existed within the brownfield. The protection is conditioned on the person having not: held ownership interest in or shared profits of the activities in the brownfield; participated in the management or operation of facilities within the brownfield; caused or contributed to the release of hazardous substances.

**Section 12** Creates s. 376.876, F.S., "Brownfield Redevelopment Grants"

This provision of the bill creates the "Brownfield Redevelopment Grants Program." The program is designed to provide financial assistance for site assessment and cleanup activities at designated brownfields. The grants shall not be used for general administrative expenses.

For the purposes of evaluating the grant proposals the department is to consider the:

Level of unemployment and poverty in the census tract of the brownfield.

Proposed response action will be adequate to cleanup the property.

Community benefits associated with the project, including, the creation or revitalization of open space.

Proximity of the site to existing transportation and utility infrastructure needed for the project.

If the site is located in an area that has received brownfield funding from the EPA.

Local government has made available substantial funds for use in the brownfield.

If the local government has completed any projects in the designated area.

The grants must be applied for by local governments, but can be used by redevelopment entities.

Each grant requires a 20 percent match of cash or in-kind services. Grants shall not exceed \$300,000 in a fiscal year and no more than \$100,000 may be used for site assessment activities. The remainder is to be used for cleanup activities.

The department is directed to use one-half of the first years appropriation for projects that meet the last three evaluation criteria described previously.

**Section 13** Creates s. 376.88, F.S., "Brownfield Advisory Council"

This provision creates the "Brownfield Program Review Advisory Council." The purpose of the council is to provide a continuous review of and make recommendations of the state's brownfield program. The council shall consist of representatives from local governments, business organizations, rehabilitation contractors, state agencies, financial institutions, and environmental organizations. Members of the council are to be appointed by the Secretary of the Department of Environmental Protection. The

council is to submit a report to the Legislature as often as needed to address issues requiring legislative changes or appropriations.

**Section 14** Amends, s. 403.973, F.S., "Expedited permitting"

Provides that projects located in designated brownfield areas shall be eligible for the expedited permitting process created under this section.

**Section 15** Amends, s. 190.012, F.S., "Community development district powers"

Adds costs associated with investigation and remediation of cleanups of environmental contamination as eligible for funding under powers of community development districts.

**Section 16** Amends, s. 712.01, F.S., "Definitions for marketable titles"

The definition of "covenant or restriction" is amended to recognize institutional or engineering controls adopted by the department under chapters 376 or 403 (Environmental cleanup programs).

**Section 17** Amends s. 712.03, F.S., "Exceptions to marketability"

Provides that restrictions or covenants recorded by the department under chapters 376 or 403 shall not affect or extinguish title rights.

**Section 18**

Creates a chapter law provision appropriating \$5 million from the General Revenue Fund for fiscal year 2000-2001, to the department for the purposes of administering the Brownfield Redevelopment Grants Program created by this bill.

**Section 19**

Creates a chapter law provision appropriating \$2.5 million from the General Revenue Fund for fiscal year 2000-2001, for the purpose of administering the State Owned Lands Cleanup Program created by this bill.

**Section 20**

Provides the act shall take effect upon becoming law.

**D. SECTION-BY-SECTION ANALYSIS:**

**Section 1:** Amends s. 288.047, F.S., to provide eligibility for businesses located in brownfields under the Quick-Response Training Program.

**Section 2:** Amends s. 288.107, F.S., to expand the definition of "eligible business" and make the necessary conforming changes.

**Section 3:** Amends s. 288.905, F.S., to direct Enterprise Florida to develop a marketing plan to foster the redevelopment of brownfields.

**Section 4:** Amends s. 376.301, F.S., to amend the definitions: antagonistic effects, discharge, institutional controls, natural attenuation, and site rehabilitation, and create a definition for risk reduction.

**Section 5:** Creates s. 376.30701, F.S., providing for the application, legislative intent, rulemaking, cleanup criteria, limitations, reopeners, mapping, and registry of a risk-based corrective action program to any contaminated site.

**Section 6:** Creates s. 376.30702, F.S., creating a state owned lands cleanup program and providing: findings and intent; purposes; program requirements; liability protection; and cost recovery.

**Section 7:** Amends s. 376.3078, F.S., to add an additional eligibility provision within the drycleaning program.

**Section 8:** Amends s. 376.79, F.S., to revise the definitions of, "institutional controls," "natural attenuation," and "source removal." Definitions are created for "contaminant," and "risk reduction."

**Section 9:** Amends s. 376.80, F.S., to clarify and provide additional direction concerning the role of brownfield advisory committees and when a rehabilitation agreement is needed.

**Section 10:** Amends s. 376.81, F.S., to extend a rulemaking deadline concerning brownfield cleanup criteria and provide additional guidelines to be used in developing the rule.

**Section 11:** Amends s. 376.82, F.S., to add a new liability protection provision for adjacent property owners.

**Section 12:** Creates s. 376.876, F.S., to create the Brownfield Redevelopment Grants Program. Additional provisions direct how the grants are to be evaluated and awarded.

**Section 13:** Creates s. 376.88, F.S., to create the Brownfield Program Review Advisory Council. Duties and memberships are also provided.

**Section 14:** Amends s. 403.973, F.S., to provide eligibility for brownfields under the expedited permitting program.

**Section 15:** Amends s. 190.012, F.S., to allow environmental investigation and remediation costs to be covered under community development districts funding.

**Section 16:** Amends s. 712.01, F.S., to amend the definition of "covenant and restriction" to recognize certain actions taken under environmental cleanup programs.

**Section 17:** Amends s. 712.03, F.S., to ensure that certain actions taken under environmental cleanup programs do not impair titles.

**Section 18:** Creates a chapter law appropriation for the Brownfield Redevelopment Grants Program.

**Section 19:** Creates a chapter law appropriation for the State Owned Lands Cleanup Program.

**Section 20:** Provides an effective date.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

There are two provisions of the bill that create a one-time appropriation for fiscal year 2000-2001. One appropriates \$5 million from the General Revenue Fund for the Brownfield Redevelopment Grants Program. The second appropriates \$2.5 million from the General Revenue Fund for the State Owned Lands Cleanup Program.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

Under the Brownfield Redevelopment Grants Program local governments are required to provide a 20 percent in-kind or cash match.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

The proposed House and Senate General Appropriations Bills both include \$2 million from the Inland Protection Trust Fund for the State owned Lands Cleanup Program, therefore, the appropriation for this purpose in this bill is not necessary.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to expend funds, or to take actions requiring the expenditure of funds.

**B. REDUCTION OF REVENUE RAISING AUTHORITY:**

The bill does not reduce the revenue raising authority of counties or municipalities.

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

The bill does not reduce the amount of state tax shared with counties and municipalities.

**V. COMMENTS:**

**A. CONSTITUTIONAL ISSUES:**

N/A

**B. RULE-MAKING AUTHORITY:**

The department is granted specific rulemaking authority concerning the development of cleanup criteria for brownfields, state-owned lands, and expansion of RBCA.

**C. OTHER COMMENTS:**

N/A

**VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:**

On April 19, 2000, the Committee on Environmental Protection adopted a strike everything amendment and subsequently passed this bill. The amendment is traveling with the bill. Differences between the bill and the amendment are:

Reducing from \$2.5 million to \$2.0 million an appropriation for the State-Owned Lands Cleanup Program to reflect the position in the House budget.

Adding a provision to clarify the method by which the rates are to be calculated regarding fees deposited into the Inland Protection Trust Fund and the Water Quality Assurance Trust Fund to correct potential deficits.

Adding a provision which repeals a prohibition against certain classes of employees within the department from working for petroleum tank cleanup contractors.

Adding a provision that will allow the Department of Community Affairs with specific authority necessary to implement an automated system for reports under the Hazardous Material Planning Program.

Removal of provisions that created and funded the Brownfields Redevelopment Grant Program.

Removal of a provision that created the Brownfields Advisory Council.

On April 26, 2000, the Committee on General Government Appropriations adopted a substitute strike everything amendment and subsequently passed this bill. The amendment



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is traveling with the bill. Differences between the strike-everything amendment and the substitute strike-everything amendment are:

Adding a provision that grants authority for the DEP to utilize a risk-based approach for cleanups on lands owned by the state university system.

Removing provisions that: allowed the DEP to utilize a risk-based approach to all cleanups conducted within the state; and created a State-Owned Lands Cleanup Program along with its associated appropriation.

VII. SIGNATURES:

COMMITTEE ON ENVIRONMENTAL PROTECTION:

Prepared by:

Staff Director:

Wayne S. Kiger

Wayne S. Kiger

AS REVISED BY THE COMMITTEE ON GENERAL GOVERNMENT APPROPRIATIONS:

Prepared by:

Staff Director:

Cynthia P. Kelly

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