

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Community Affairs Committee

BILL: CS/SB 2594

INTRODUCER: Environmental Preservation and Conservation Committee and Senator Constantine

SUBJECT: Brownfield Areas

DATE: April 17, 2008

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Branning</u>	<u>Kiger</u>	<u>EP</u>	<u>Fav/CS</u>
2.	<u>Herrin</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/CS</u>
3.	_____	_____	<u>BI</u>	_____
4.	_____	_____	<u>FT</u>	_____
5.	_____	_____	<u>GA</u>	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The committee substitute for committee substitute (CS) makes a number of changes to the brownfields program. Specifically, the CS:

- Provides definitions relating to the costs of solid waste removal at brownfield sites;
- Provides that certain owners who acquired a contaminated site are eligible for financial assistance for site rehabilitation, notwithstanding that the site may have been transferred to a spouse as part of a trust or similar method of transferring real property.
- Clarifies the tax credit for the costs of solid waste removal at brownfield sites;
- Provides an additional tax credit for rehabilitation costs that result in the construction and operation of a health care facility or health care provider on a brownfield site;
- Revises the procedures for applying for a tax credit and provides additional limitations on the amount of credits claimed;
- Revises the provisions relating to the administration of the brownfield program at the local level;
- Deletes the requirement that professional engineers and geologists must maintain certain liability insurance;

- Deletes the requirement that contractors maintain certain liability insurance. Provides for the evaluation of the health effects of brownfield site rehabilitation;
- Provides that the Brownfield Areas Loan Guarantee Program may guarantee 75 percent of a loan for the construction and operation of a new health care facility or health care provider; and
- Revises the membership of the Brownfield Areas Loan Guarantee Council to include the State Surgeon General.

This CS amends ss. 220.1845, 376.30715, 376.30781, 376.77, 376.79, 376.80, 376.82, 376.83, 376.86, and 163.3221, F.S.

II. Present Situation:

In 1995, the U.S. Environmental Protection Agency (EPA) initiated a program to empower states, communities, and other stakeholders in economic redevelopment to work together in a timely manner to prevent, assess, safely clean up, and reuse brownfields. Florida followed suit in 1997 and enacted the Brownfields Redevelopment Act to provide incentives for the private sector to redevelop abandoned or underused real property, the development of which was complicated by real or perceived environmental contamination.

The federal brownfields program was significantly expanded on January 11, 2002, when President Bush signed into law the Small Business Relief and Liability and Brownfields Revitalization Act, also known as the “Brownfields Amendments.” The main purpose of this new law was to create incentives for the redevelopment of brownfield properties and Superfund sites and provide grants to assess or cleanup a brownfields property.

The Florida Brownfield Redevelopment Act, consisting of ss. 376.77-376.85, F.S., provides legislative intent, a brownfield area designation process, environmental cleanup criteria, program eligibility and liability protections; and economic and financial incentives. Furthermore, s. 376.86, F.S., provides for a Brownfield Areas Loan Guarantee Program, and ss. 376.87 and 376.875, F.S., provide for brownfield property ownership clearance assistance and the creation of the Brownfield Property Ownership Clearance Assistance Revolving Loan Trust Fund.

Legislative intent—As provided in s. 376.78, F.S., the Legislature declared that the reduction of public health and environmental hazards on existing commercial and industrial sites is vital to their use and reuse as sources of employment. There should be incentives to encourage voluntary cleanup.

Designation and administration—Designation of a brownfield area must come from the local government through the passage of a local resolution. Once a brownfield area has been designated, the local government must notify the Department of Environmental Protection (DEP) and attach a map or a detailed legal description of the brownfield area. The designation of a brownfield area may be initiated in one of two ways:

- By a local government to encourage redevelopment of an area of specific interest to the community; or
- By an individual with a redevelopment plan in mind.

In determining the area to be designated, the local government must consider:

- Whether the brownfield area warrants economic development and has a reasonable potential for such activities;
- Whether the proposed area to be designated represents a reasonable focused approach and is not overly large in geographic coverage;
- Whether the area has potential to interest the private sector in participating in rehabilitation; and
- Whether the area contains sites or parts of sites suitable for limited recreational open space, cultural, or historical preservation purposes.¹

A local government shall designate a brownfield area if:

- The person who owns or controls a potential brownfield site is requesting the designation and has agreed to rehabilitate the site;
- The redevelopment and rehabilitation of the proposed brownfield site will result in economic productivity of the area and will create at least 10 new permanent jobs at the brownfield site;²
- The redevelopment of the proposed brownfield site is consistent with the local comprehensive plan and is a permissible use under the applicable local land development regulations;
- Notice has been provided to neighbors and nearby residents of the proposed area to be designated; and
- The person proposing the area for designation has provided reasonable assurance that there are sufficient financial resources to implement and complete the rehabilitation agreement and redevelopment plan.

The designation of a brownfield area and the identification of a person responsible for brownfield site rehabilitation simply entitle the identified person to negotiate a brownfield site rehabilitation agreement with the DEP or an approved local program. The person responsible for rehabilitation must enter into a brownfield site rehabilitation agreement with the DEP or an approved local program to be eligible for certain benefits associated with the brownfields redevelopment program.

As of March 10, 2008, there were 170 designated brownfield areas in Florida.

Cleanup criteria—Risk-based corrective-action principles apply, to the maximum extent feasible, to the cleanup activities on a brownfield site within a designated brownfield area. These principles are designed to achieve protection of human health and safety and the environment in a cost-effective manner by taking into account natural attenuation, individual site characteristics, and the use of engineering and institutional controls.

¹ s. 376.80(2), F.S.

² As specified in s. 376.80(2)(b), F.S., the 10 new permanent jobs may be full- or part-time and cannot be associated with the rehabilitation agreement or redevelopment project demolition or construction activities.

Eligibility and liability protection—A person who has not caused or contributed to the contamination of a brownfield site on or after July 1, 1997, is eligible to participate in the brownfield program. Certain specified sites are not eligible for the program. Those sites include brownfield sites that are subject to an ongoing formal judicial or administrative enforcement action or corrective action pursuant to federal authority, or sites that have obtained or are required to obtain a hazardous waste operation, storage, or disposal facility permit, unless specifically exempted by a memorandum of agreement with the EPA.

After July 1, 1997, petroleum and drycleaning contamination sites in a brownfield area cannot receive both funding assistance for the cleanup of the discharge that is available under the underground storage tank cleanup program or the drycleaning cleanup program and any state assistance available under s. 288.107, F.S., relating to brownfield redevelopment bonus refunds.

If a state or local government has involuntarily acquired a contaminated site within a brownfield area, it is not liable for implementing site rehabilitation corrective actions, unless the state or local government has caused or contributed to a release of contaminants at the brownfield site. Also, nonprofit conservation organizations, acting for the public interest, which purchase contaminated sites and which did not contribute to the release of contamination on the site also warrant protection from liability.

Lenders are afforded certain liability protections to encourage financing of real property in brownfield areas. Essentially, the same liability protections apply to lenders if they have not caused or contributed to a release of a contaminant at the brownfield site.

Economic and financial incentives—Since the Brownfields Redevelopment Act was envisioned to emphasize economic redevelopment, local governments were expected to play a significant role in the process. As a result, state and local governments are encouraged to offer redevelopment incentives which may include financial, regulatory, and technical assistance.

Other economic and financial incentives available to brownfield sites are tax refunds for qualified target industries located in a brownfield area, brownfield redevelopment bonus refunds, and partial voluntary cleanup tax credits.

The tax refunds available as a qualified target industry may be for corporate income taxes, insurance premium taxes, sales and use taxes, emergency excise taxes, documentary stamp taxes, and ad valorem taxes.

The brownfield redevelopment bonus refunds of \$2,500 are available to any qualified target industry business for each new Florida job created in a brownfield area which is claimed on the qualified target industry's annual refund claim. Section 288.107, F.S., provides the minimum criteria for participation in the brownfield redevelopment bonus refund program.

According to information reported by the Governor's Office of Tourism, Trade, and Economic Development (OTTED) to the DEP in January 2006, the cumulative totals for new job creation and capital investment attributable to the Brownfields Redevelopment Program from inception includes 8,595 new direct jobs, 7,264 new indirect jobs, and \$883,713,993 of capital investment

in designated brownfield investment. The OTTED has reported that for CY 2007 the following projections were made:

- New jobs — 1,165
- Indirect jobs — 1,265
- Capital investment — \$129,050,000

Voluntary cleanup tax credit—One of the financial incentives that is getting increased attention as the brownfield program matures and gains in popularity, is the voluntary cleanup tax credit or VCTC. This is a tax credit available for site rehabilitation conducted at eligible drycleaning sites and brownfield sites in designated brownfield areas. To be eligible, the responsible party must execute a Brownfield Site Rehabilitation Agreement with the DEP.

The VCTC can apply toward corporate income taxes. The following is a summary of the available credits under the VCTC program.

Tax Credit Type	Application Frequency	Maximum Credit for Costs Incurred after 6/30/06	
Site Rehabilitation	Annually	50 %	\$500,000
No Further Action	Once	25%	\$500,000
Affordable Housing	Once	25%	\$500,000
Solid Waste (Removal, Transport & Disposal	Once	50%	\$500,000

As an inducement to complete the voluntary cleanup, the tax credit applicant may claim an additional 25 per cent of the total cleanup costs, not to exceed \$500,000 in the final year of cleanup. The tax credits may be transferred once to another entity in whole or in units of not less than 25 percent of the remaining credit.

As an inducement to encourage the construction of affordable housing, an applicant for the tax credit may claim an additional 25 percent of the total eligible site rehabilitation costs, not to exceed \$500,000.

Brownfield Areas Loan Guarantee Program—The Brownfield Areas Loan Guarantee Program was created in 1998. A Brownfield Areas Loan Guarantee Council was created 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. A loan guarantee may only be for a period of not more than 5 years.

The limited state loan guarantee applies to 50 percent of the primary lender’s loans for redevelopment projects in brownfield areas. If the redevelopment project is for affordable housing in a brownfield area, the loan guarantee applies to 75 percent of the primary lender’s loan. The loan guarantee holds until permanent financing is acquired or until the project is sold. Section 376.86, F.S., provides that no more than \$5 million of the balance of the Inland Protection Trust Fund in any fiscal year may be at risk at any time on loan guarantees or as loan loss reserves.

To date, the loan guarantee provisions have been used only one time. That project involved a shopping center and an out-parcel in a Clearwater brownfield area. The loan guarantee mechanism worked as it was designed to do. With the loan guarantee, the developer has more financial flexibility because the initial cash flow is not as great.

Enterprise Florida, Inc. (EFI)—This is a public-private partnership responsible for leading Florida’s statewide economic development efforts. EFI was formed in July 1996, when Florida became the first state in the nation to replace its Commerce Department with a public-private organization that is responsible for economic development, international trade and statewide business markets. In 2006, EFI was directed to aggressively market brownfields.

III. Effect of Proposed Changes:

Section 1 amends s. 220.1845, F.S., to provide that a tax credit applicant, or multiple tax credit applicants working jointly to clean up a single brownfield site, may claim costs to address solid waste removal under the contaminated site rehabilitation tax credit provisions. Multiple tax credit applicants shall be granted tax credits in the same proportion as their contribution to payment of solid waste removal costs. To receive the credit, the applicant must submit an affidavit stating that to the best of the applicant’s knowledge after consultation with appropriate local government officials, the DEP, and available historical records, the brownfield site was never operated as a permitted solid waste disposal area or for monetary compensation. Tax credit applications claiming solid waste costs are not subject to the calendar-year limitation and January 31 annual application deadline. Only one solid waste removal tax credit application may be filed per brownfield site. Tax credit applicants may claim 50 percent of the cost for solid waste removal, not to exceed \$500,000, when the applicant has determined solid waste removal is completed for the brownfield site.

The following terms are defined: “monetary compensation”; “solid waste disposal area”; and “solid waste removal.”

This section is further amended to provide that a tax credit applicant may claim an additional 25 percent of the total site rehabilitation costs, not to exceed \$500,000, if the applicant constructs a new health care facility or health care provider on the brownfield site.

Section 2 amends s. s. 376.30715, F.S., to make the current owner who acquired a contaminated site before July 1, 1990, and ceased operation of a petroleum storage or retail business on the site before January 1, 1985, eligible for certain financial assistance for site rehabilitation. It also defines the term "acquired" for this purpose to include certain methods of transferring real property to a spouse.

Section 3 amends s. 376.30781, F.S., to clarify that tax credits are allowed for site rehabilitation or solid waste removal conducted during the calendar year in which the applicable voluntary cleanup agreement or brownfield site rehabilitation is executed, even if the site rehabilitation or solid waste removal is conducted prior to the execution of that agreement or designation.

The term “integral to site rehabilitation” is defined for purposes of this section.

A tax credit applicant, or multiple tax credit applicants working jointly to clean up a single brownfield site, may claim costs to address solid waste removal under the contaminated site rehabilitation tax credit provisions. Multiple tax credit applicants shall be granted tax credits in the same proportion as their contribution to payment of solid waste removal costs. To receive the credit, the applicant must submit an affidavit stating that to the best of the applicant's knowledge after consultation with appropriate local government officials, the DEP, and available historical records, the brownfield site was never operated as a permitted solid waste disposal area or for monetary compensation. Tax credit applications claiming solid waste costs are not subject to the calendar-year limitation and January 31 annual application deadline. Only one solid waste removal tax credit application may be filed per brownfield site. Tax credit applicants may claim 50 percent of the cost for solid waste removal, not to exceed \$500,000, when the applicant has determined solid waste removal is completed for the brownfield site.

The following terms are defined: "monetary compensation"; "solid waste disposal area"; and "solid waste removal."

In order to encourage the construction and operation of a new health care facility or a health care provider on a brownfield site, an applicant for a tax credit may claim an additional 25 percent of the total site rehabilitation costs, not to exceed \$500,000 if the applicant provides documentation indicating that the applicant has constructed a new health care facility or health care provider on the brownfield site.

For site rehabilitation tax credits, the applicant must have entered into a voluntary cleanup agreement with the DEP for a drycleaning-solvent-contaminated site or a brownfield site rehabilitation agreement, as applicable, and shall submit only one complete application per site for each calendar year's site rehabilitation costs. Applications must be received by the Division of Waste Management by January 31 of the year following the calendar year for which site rehabilitation costs are being claimed.

For solid waste removal tax credits, the applicant must have entered into a brownfield site rehabilitation agreement with the DEP. Solid waste removal tax credit applicants shall submit only one complete application agreement per brownfield site. Applications must be received by the Division of Waste Management subsequent to the completion of the solid waste removal.

Documents supporting the goods and services and associated costs being claimed for the tax credits must be submitted to the DEP. The documents must contain certain specified information. This documentation must be sufficient to demonstrate a link between the contractual records, the payment requests, and the payment records for the time period covered by the application. A certified public accountant's report must be submitted and the certified public accountant must attest to the accuracy and validity of the costs incurred and paid during the period covered in the application by conducting an independent review of the data presented by the tax credit applicant.

If the scope of solid waste removal activities do not require oversight by a registered technical professional, the certification form is not required as part of the tax credit application.

Upon verification that the application for the tax credit is complete, the application shall secure a place in the first-come, first-served application line. If DEP determines that an application is incomplete, the applicant shall be notified in writing and shall have 30 days to correct any deficiencies. Tax credit applications may not be altered to claim additional costs during this time.

For costs to be eligible, the review must verify that the work claimed was integral to site rehabilitation or was for solid waste removal, that the work claimed was performed in the applicable timeframe, and that the costs claimed were properly documented. On or before May 1, DEP shall inform each eligible tax credit applicant, subject to the January 31 annual application deadline, of their eligibility status and the amount of any credit due. The DEP shall provide each eligible tax credit applicant with a tax credit certificate that must be submitted with the applicant's tax return to the Department of Revenue to claim the tax credit or have the credit transferred pursuant to s. 220.1845(1)(g), F.S. The May 1 deadline for annual site rehabilitation tax credit certificate awards does not apply to any tax credit application for which DEP issued a notice of deficiency.

For applications for solid waste removal, a new health care facility or health care provider, or affordable housing tax credit, the DEP shall inform the applicant of the DEP's determination within 90 days after the application has been deemed complete. Tax refunds may not be paid on credits that exceed the amount of tax owed.

Tax credits are additive; however, the total tax credit award may not exceed 100 percent of the costs incurred and paid by the applicant.

A single brownfield site may receive tax credits for eligible site rehabilitation and eligible solid waste removal costs if the costs are claimed only once per site.

The CS specifies that costs incurred that are not considered integral to site rehabilitation include, but are not limited to, brownfield area designation costs and tax credit application preparation and submittal costs.

If the DEP notifies an applicant that any claimed costs are ineligible, those costs may not be allocated against the annual tax credit authorization, and any disputed costs may not delay the application processing or award for subsequent eligible tax credit applicants in the first-come, first-served application line. However, if the DEP subsequently agrees to award tax credits on an amount that was in dispute, it shall do so based upon the first-come, first-served application line determined by the applicant's original completeness date and time if there is any tax credit authorization available. If a tax credit applicant does not receive an award for the disputed costs due to an exhaustion of the annual tax credit authorization, such subsequent tax credit award shall be included in the same first-come, first-served order in next year's annual tax credit allocation, if any, based on the applicant's original completeness date and time.

Section 4 amends s. 376.77, F.S., to correct a cross reference.

Section 5 amends s. 376.79, F.S., to redefine "contaminated site," "engineering controls"; "institutional controls" and "site rehabilitation". It also corrects a cross reference.

Section 6 amends s. 376.80, F.S., to provide that if a local government proposes to designate a brownfield area outside certain areas, the local government must adopt the brownfield designation resolution and conduct public hearings. At least one of the required public hearings must be conducted as close as reasonably practicable to the area to be designated.

A brownfield site rehabilitation agreement must include certain specified information. The CS revises the requirements for a certification that must be included in such agreement. The requirement that the rehabilitation contractor maintain certain liability insurance is deleted. Also, the requirement for professional engineers and geologists to carry certain liability insurance is deleted.

Legislative intent is provided regarding community health benefits in brownfield areas. Local governments are authorized and encouraged to evaluate the community health benefits and effects of brownfield site rehabilitation and redevelopment in connection with brownfield areas within their jurisdiction. The Department of Health is authorized and encouraged to assist local governments in their evaluation of the health benefits of brownfield site rehabilitation and redevelopment.

Section 7 amends s. 376.82, F.S., to correct cross references.

Section 8 amends s. 376.83, F.S., to correct cross references.

Section 9 amends s. 376.86, F.S., to provide that if the redevelopment project includes the construction and operation of a new health care facility or a health care provider by the applicant on a brownfield site and the applicant has obtained documentation of occupancy or the issuance of a license or certificate, the limited state loan guaranty applies to 75 percent of the primary lender's loan. The Brownfield Areas Loan Guaranty Council membership is revised to include the State Surgeon General of the Department of Health or the State Surgeon General's designee.

Section 10 amends s. 163.3221, F.S., to correct a cross reference.

Section 11 provides that the CS will take effect upon becoming a law and applies retroactively to January 1, 2008.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The CS will allow an additional 25 percent tax credit for the construction and operation of a health care facility or a health care provider in a brownfield area. These additional opportunities to claim tax credits on cleanup activities on a brownfield site would encourage and entice a party to voluntarily cleanup such sites. However, the additional tax credits are still subject to the overall tax credit cap of \$2 million per year. The more one individual tax applicant qualifies for, the less there is for other tax applicants.

Also, certain solid waste removal activities on a brownfield site may be subject to a tax credit.

Overall, the additional incentives for voluntary cleanup of eligible brownfield and drycleaning-solvent contaminated sites could increase participation in the voluntary cleanup program. Those drycleaning-solvent contaminated sites that are cleaned up voluntarily could save the state the expense of using the funds in the Water Quality Assurance Trust Fund designated for the cleanup of such sites.

In addition, a loan guarantee of up to 75 percent of the primary lenders loan would be available for the construction and operation of a health care facility or a health care provider in a designated brownfield area.

Under this CS, a current owner who acquired a contaminated site before July 1, 1990, and ceased operation of a petroleum storage or retail business on the site before January 1, 1985, is eligible for certain financial assistance for site rehabilitation. It also defines the term "acquired" for this purpose to include certain methods of transferring real property to a spouse.

C. Government Sector Impact:

No significant impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Environmental Preservation and Conservation Committee on April 3, 2008:
The CS makes a number of technical changes and generally conforms the CS to HB 527.

Deletes the amendments to s. 212.08, relating to the sales and use tax exemptions for building materials for “qualified homes.”

Clarifies the tax credit for the costs of solid waste removal at brownfield sites.

Defines the term “integral to site rehabilitation.”

Clarifies the application procedure for multiple tax credit applicants on a single brownfield site.

Clarifies the procedures for when a tax credit cost is deemed ineligible for the tax credit.

Restores the definition of “synergistic effects.”

CS by the Community Affairs Committee on April 17, 2008:

The CS provides that certain owners who acquired a contaminated site are eligible for financial assistance for site rehabilitation, notwithstanding that the site may have been transferred to a spouse as part of a trust or similar method of transferring real property. It also clarifies that an applicant must have constructed a new health care facility or health care provider on the brownfield site in order to receive certain benefits. It also makes a number of technical changes.

- B. **Amendments:**

None.