

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure Lower Taxes: The bill increases from 35 percent to 40 percent the amount of eligible costs that can be used toward a tax credit against intangible personal property taxes or corporate income taxes. The bill also increases the dollar cap on the 10 percent completion incentive tax credit from \$50,000 to \$250,000.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

GENERAL BACKGROUND ON BROWNFIELDS:

Sections 376.77 - 376.85, F.S., are known as the "Brownfield Redevelopment Act." The Brownfield Redevelopment Act was established in 1997 by the Legislature to assist local governments and responsible persons in achieving voluntary cleanup and redevelopment of properties within designated brownfield areas.¹ A brownfield area is defined as a contiguous area of one or more brownfield sites, some of which may not be contaminated, and which has been designated by a local government by resolution.² A brownfield site is defined as real property, the expansion, redevelopment, or reuse of which may be complicated by actual or perceived environmental contamination.³

The Brownfield Redevelopment Act provides the framework for the Brownfields Redevelopment program to facilitate the redevelopment of properties within designated brownfield areas while also providing for environmental cleanup and protection of the public health.⁴ Local governments are primarily responsible for the identification, delineation, and designation of properties for inclusion in a brownfield area.⁵

The Brownfields Redevelopment program encourages the voluntary execution of a "Brownfield Site Rehabilitation Agreement," between the person responsible for the brownfield site rehabilitation and the Department of Environmental Protection (DEP). For an agreement to be executed a brownfield area must be designated by a local government resolution and a responsible person must be identified by the local government. The identified responsible person then enters into negotiations for an agreement with DEP. The agreement provides DEP the public assurances that site rehabilitation will be conducted in accordance with the statute and the Brownfields Cleanup Criteria rule (Chapter 62-785, F.A.C.), and it provides liability protection for the responsible person.⁶

Voluntary Cleanup Tax Credits:

¹ *Florida Brownfields Redevelopment Program 2003 Annual Report*, DEP, Division of Waste Management, Bureau of Waste Cleanup, p. 3

² s. 376.79(4), F.S.

³ s. 376.79(3), F.S.

⁴ *Florida Brownfields Redevelopment Program 2003 Annual Report*, DEP, Division of Waste Management, Bureau of Waste Cleanup, p. 4

⁵ s. 376.80(1), F.S.

⁶ s. 376.80, F.S., and *Florida Brownfields Redevelopment Program 2003 Annual Report*, DEP, Division of Waste Management, Bureau of Waste Cleanup, p. 5

In order to provide economic incentives for brownfields redevelopment, the Legislature created a tax credit applicable to either intangible personal property tax or corporate income tax for taxpayers that voluntarily participate in the cleanup of a brownfield site or a dry-cleaning-solvent contaminated site. The tax credits are transferable; however, such transferred credits may not be transferred again, although they may succeed to a surviving or acquiring entity after merger or acquisition.

Sections 199.1055, 220.1845, and 376.30781, F.S., authorize partial tax credits to be issued for the costs of voluntary cleanup of dry-cleaning-solvent contaminated sites and designated brownfield sites. The tax credit is limited to 35 percent of the costs of the voluntary cleanup with a maximum cap of \$250,000 per site per year. If the credit is not fully used in any one year because of insufficient tax liability on the part of the tax credit applicant, the unused portion may be carried forward for a period not to exceed five years. DEP is responsible for allocating the tax credits previously discussed and is not authorized to exceed \$2 million in tax credits annually. DEP reports that a total of \$3,867,638 in tax credits have been issued since the program's inception in 1998. Of that total, \$3,098,752 (80 percent) has been issued for brownfield sites and \$768,886 (20 percent) has been issued for dry-cleaning solvent cleanup sites. The table below illustrates the fiscal year history associated with the Voluntary Cleanup Tax Credit program:

Fiscal Year	# Voluntary Cleanup Tax Credit Certificates Issued	Total \$ Issued
FY 1998-1999	1	\$30,228.13
FY 1999-2000	3	\$118,438.25
FY 2000-2001	6	\$213,851.71
FY 2001-2002	9	\$494,193.72
FY 2002-2003	13	\$1,068,049.29
FY 2003-2004	16	\$1,014,834.47
FY 2004-2005	9	\$928,042.19

Due to a concern that some participants in a voluntary cleanup may only conduct enough work to eliminate or minimize their exposure to third party lawsuits (i.e. ensure that their neighbor can not sue them for personal injury or diminished property value), the Voluntary Cleanup Tax Credit statute also provides a completion incentive in the form of an additional 10 percent supplemental tax credit for those applicants that carry site rehabilitation through to completion and receive a "No Further Action Order" from DEP. This additional supplemental credit is 10 percent of the total cost of cleanup over the life of the project, with a \$50,000 cap.

Brownfield Areas Loan Guarantee Program:

Section 376.86, F.S., establishes the Brownfield Areas Loan Guarantee program and creates the Brownfield Areas Loan Guarantee Council (Council). The purpose of the Council is to review and approve or deny the situations and circumstances for participation in partnership agreements with local governments, financial institutions, and others associated with the redevelopment of brownfield areas. There is a limited state guaranty of up to five years on loan guarantees or loan loss reserves issued. Currently the limited state loan guarantee applies only to 10 percent of the primary lenders loans for redevelopment projects in brownfield areas.

Brownfield Property Ownership Clearance Assistance Revolving Loan Trust Fund:

Section 376.87, F.S., provides for brownfield property ownership clearance assistance. Some brownfield redevelopment projects are more difficult due to the existence of various types of liens on the property and complications from previous ownership having declared bankruptcy. The Brownfield Property Ownership Clearance Assistance Revolving Loan Trust Fund (s.376.875, F.S.) assists in the early stages of redeveloping brownfields by helping to clear prior liens on the property through a

negotiated process. The loans would be repaid in later years from the resale of the brownfield properties following site rehabilitation and other activities that enhance property value. Since its inception in 1998, no one has made use of this provision of law.

Enterprise Florida, Inc.:

Enterprise Florida, Inc. (EFI) is the 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 marketing. EFI's mission is to diversify Florida's economy and create better-paying jobs for its citizens by supporting, attracting and helping to create businesses in innovative, high-growth industries. ⁷ Currently, brownfields are not included in the types of communities that EFI is required to aggressively market and assist in economic development.

Effect of Proposed Change

Sections 199.1055, 220.1845, and 376.30781, F.S., are amended to make the following changes:

- The bill provides an increase in the percentage allowed for the Voluntary Cleanup Tax Credit from 35% to 40% of the costs of voluntary cleanup activity that is integral to site rehabilitation. This incremental increase of 5% may provide additional incentive to real property owners, developers, or redevelopers to clean up and redevelop contaminated sites.
- The bill also proposes to increase the statutory cap on the completion incentive from \$50,000 to \$250,000. This is a substantial increase that may provide significant incentive to carry site rehabilitation through to completion rather than stopping short of total cleanup of a site.

This bill is expected to increase participation in the state's Brownfields Redevelopment Program and the voluntary cleanup of eligible dry-cleaning sites (that would otherwise be cleaned up at the state's expense). This will reduce trust fund expenditures, accelerate cleanup and redevelopment of these contaminated sites and have a positive impact on local communities as these developments begin to create new tax revenue.

The bill amends section 288.9015, F.S., to add brownfields to the types of communities that EFI is required to aggressively assist in economic development and job growth.

Section 376.86(1), F.S., is amended to increase the limited state loan guaranty from 10 percent to 25 percent of the primary lender loans for redevelopment projects in brownfield areas. The 15 percent expansion may allow more lenders to submit applications to the Council for review and participation in the Brownfield Areas Loan Guarantee program.

The bill repeals sections 376.87 and 376.875, F.S. These sections relate to the Brownfield Property Ownership Clearance Assistance Revolving Loan Trust Fund. During its existence, this fund has neither been capitalized nor used for its intended purposes.

C. SECTION DIRECTORY:

Section 1. Amends s. 199.1055, F.S., relating to tax credit limitations.

Section 2. Amends s. 220.1845, F.S., relating to tax credit limitations.

⁷ <http://www.eflorida.com/aboutus/default.asp?tn=3>

Section 3. Amends s. 376.30781, F.S., relating to tax credit limitations.

Section 4. Amends s. 288.9015, F.S., to add brownfields to the types of communities that Enterprise Florida is required to aggressively assist in economic development and job growth.

Section 5. Amends s. 376.86, F.S., to increase the limited state loan guaranty available to lenders that provide loans for redevelopment projects in brownfield areas from 10% to 25%.

Section 6. Repeals ss. 376.87 and 376.875, F.S., relating to the Brownfield Property Ownership Clearance Assistance Program and the Brownfield Property Ownership Clearance Assistance Revolving Loan Trust Fund.

Section 7. Provides the act will take effect on July 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

	FY 2005-2006	FY 2006-2007
General Revenue	(.2 m)	(.2 m)

2. Expenditures:

The bill will require DEP to amend an existing rule detailing the tax credit application process. There will be indeterminate fiscal impacts associated with the cost of rulemaking related to publishing rule drafts and conducting public workshops for rule development.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Since the inception of the program, the Voluntary Cleanup Tax Credit has not exceeded the \$2 million cap that may be awarded annually. Calendar year 2003 tax credits were \$1,014,834.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require cities or counties to spend funds or take actions requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill will require DEP to amend an existing rule detailing the tax credit application process.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES