



149374

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/01/2015	.	
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The Committee on Environmental Preservation and Conservation (Evers) recommended the following:

Senate Amendment (with title amendment)

Delete lines 301 - 313

and insert:

Section 3. Present subsections (3) through (11) of section 376.79, Florida Statutes, are redesignated as subsections (4) through (12), respectively, and present subsections (13) through (19) are redesignated as subsections (14) to (21), respectively, and new subsections (3) and (13) are added to that section, to read:



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11 376.79 Definitions relating to Brownfields Redevelopment
12 Act.—As used in ss. 376.77–376.85, the term:

13 (3) "Background concentration" means the concentration of
14 contaminants naturally occurring or resulting from anthropogenic
15 impacts unrelated to the discharge of pollutants or hazardous
16 substances at a contaminated site undergoing site
17 rehabilitation.

18 (13) "Long-term natural attenuation" means natural
19 attenuation approved by the department as a site rehabilitation
20 program task for a period of more than 5 years.

21 Section 4. Section 376.81, Florida Statutes, is amended to
22 read:

23 376.81 Brownfield site and brownfield areas contamination
24 cleanup criteria.—

25 (1) It is the intent of the Legislature to protect the
26 health of all people under actual circumstances of exposure. By
27 July 1, 2001, the secretary of the department shall establish
28 criteria by rule for the purpose of determining, on a site-
29 specific basis, the rehabilitation program tasks that comprise a
30 site rehabilitation program and the level at which a
31 rehabilitation program task and a site rehabilitation program
32 may be deemed completed. In establishing the rule, the
33 department shall apply, to the maximum extent feasible, a risk-
34 based corrective action process to achieve protection of human
35 health and safety and the environment in a cost-effective manner
36 based on the principles set forth in this subsection. The rule
37 must prescribe a phased risk-based corrective action process
38 that is iterative and that tailors site rehabilitation tasks to
39 site-specific conditions and risks. The department and the



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40 person responsible for brownfield site rehabilitation are
41 encouraged to establish decision points at which risk management
42 decisions will be made. The department shall provide an early
43 decision, when requested, regarding applicable exposure factors
44 and a risk management approach based on the current and future
45 land use at the site. The rule must ~~shall also~~ include protocols
46 for the use of natural attenuation, including long-term natural
47 attenuation where site conditions warrant, the use of
48 institutional and engineering controls, and the issuance of "no
49 further action" letters. The criteria for determining what
50 constitutes a rehabilitation program task or completion of a
51 site rehabilitation program task or site rehabilitation program
52 must:

53 (a) Consider the current exposure and potential risk of
54 exposure to humans and the environment, including multiple
55 pathways of exposure. The physical, chemical, and biological
56 characteristics of each contaminant must be considered in order
57 to determine the feasibility of risk-based corrective action
58 assessment.

59 (b) Establish the point of compliance at the source of the
60 contamination. However, the department may ~~is authorized to~~
61 temporarily move the point of compliance to the boundary of the
62 property, or to the edge of the plume when the plume is within
63 the property boundary, while cleanup, including cleanup through
64 natural attenuation processes in conjunction with appropriate
65 monitoring, is proceeding. The department may ~~also is~~
66 ~~authorized,~~ pursuant to criteria provided for in this section,
67 ~~to~~ temporarily extend the point of compliance beyond the
68 property boundary with appropriate monitoring, if such extension



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69 is needed to facilitate natural attenuation or to address the
70 current conditions of the plume, provided human health, public
71 safety, and the environment are protected. When temporarily
72 extending the point of compliance beyond the property boundary,
73 it cannot be extended further than the lateral extent of the
74 plume at the time of execution of the brownfield site
75 rehabilitation agreement, if known, or the lateral extent of the
76 plume as defined at the time of site assessment. Temporary
77 extension of the point of compliance beyond the property
78 boundary, as provided in this paragraph, must include actual
79 notice by the person responsible for brownfield site
80 rehabilitation to local governments and the owners of any
81 property into which the point of compliance is allowed to extend
82 and constructive notice to residents and business tenants of the
83 property into which the point of compliance is allowed to
84 extend. Persons receiving notice pursuant to this paragraph
85 shall have the opportunity to comment within 30 days of receipt
86 of the notice.

87 (c) Ensure that the site-specific cleanup goal is that all
88 contaminated brownfield sites and brownfield areas ultimately
89 achieve the applicable cleanup target levels provided in this
90 section. In the circumstances provided below, and after
91 constructive notice and opportunity to comment within 30 days
92 from receipt of the notice to local government, to owners of any
93 property into which the point of compliance is allowed to
94 extend, and to residents on any property into which the point of
95 compliance is allowed to extend, the department may allow
96 concentrations of contaminants to temporarily exceed the
97 applicable cleanup target levels while cleanup, including



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98 cleanup through natural attenuation processes in conjunction
99 with appropriate monitoring, is proceeding, if human health,
100 public safety, and the environment are protected.

101 (d) Allow brownfield site and brownfield area
102 rehabilitation programs to include the use of institutional or
103 engineering controls, where appropriate, to eliminate or control
104 the potential exposure to contaminants of humans or the
105 environment. The use of controls must be preapproved by the
106 department and only after constructive notice and opportunity to
107 comment within 30 days from receipt of notice is provided to
108 local governments, to owners of any property into which the
109 point of compliance is allowed to extend, and to residents on
110 any property into which the point of compliance is allowed to
111 extend. When institutional or engineering controls are
112 implemented to control exposure, the removal of the controls
113 must have prior department approval and must be accompanied by
114 the resumption of active cleanup, or other approved controls,
115 unless cleanup target levels under this section have been
116 achieved.

117 (e) Consider the interactive ~~additive~~ effects of
118 contaminants, including additive, synergistic, and antagonistic
119 effects. ~~The synergistic and antagonistic effects shall also be~~
120 ~~considered when the scientific data become available.~~

121 (f) Take into consideration individual site
122 characteristics, which shall include, but not be limited to, the
123 current and projected use of the affected groundwater and
124 surface water in the vicinity of the site, current and projected
125 land uses of the area affected by the contamination, the exposed
126 population, the degree and extent of contamination, the rate of



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127 contaminant migration, the apparent or potential rate of
128 contaminant degradation through natural attenuation processes,
129 the location of the plume, and the potential for further
130 migration in relation to site property boundaries.

131 (g) Apply state water quality standards as follows:

132 1. Cleanup target levels for each contaminant found in
133 groundwater shall be the applicable state water quality
134 standards. Where such standards do not exist, the cleanup target
135 levels for groundwater shall be based on the minimum criteria
136 specified in department rule. The department shall apply the
137 following, as appropriate, in establishing the applicable
138 cleanup target levels: calculations using a lifetime cancer risk
139 level of 1.0E-6; a hazard index of 1 or less; the best
140 achievable detection limit; and nuisance, organoleptic, and
141 aesthetic considerations. However, the department may ~~shall~~ not
142 require site rehabilitation to achieve a cleanup target level
143 for any individual contaminant which is more stringent than the
144 site-specific, ~~naturally occurring~~ background concentration for
145 that contaminant.

146 2. Where surface waters are exposed to contaminated
147 groundwater, the cleanup target levels for the contaminants
148 shall be based on the more protective of the groundwater or
149 surface water standards as established by department rule, unless it has been demonstrated that the contaminants do not
150 cause or contribute to the exceedance of applicable surface
151 water quality criteria. In such circumstances, the point of
152 measuring compliance with the surface water standards shall be
153 in the groundwater immediately adjacent to the surface water
154 body.
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156 3. Using risk-based corrective action principles, the
157 department shall approve alternative cleanup target levels in
158 conjunction with institutional and engineering controls, if
159 needed, based upon an applicant's demonstration, using site-
160 specific or other relevant data and information, risk assessment
161 modeling results, including results from probabilistic risk
162 assessment modeling, risk assessment studies, risk reduction
163 techniques, or a combination thereof, that human health, public
164 safety, and the environment are protected to the same degree as
165 provided in subparagraphs 1. and 2. Where a state water quality
166 standard is applicable, a deviation may not result in the
167 application of cleanup target levels more stringent than the
168 standard. In determining whether it is appropriate to establish
169 alternative cleanup target levels at a site, the department must
170 consider the effectiveness of source removal, if any, which has
171 been completed at the site and the practical likelihood of the
172 use of low yield or poor quality groundwater, the use of
173 groundwater near marine surface water bodies, the current and
174 projected use of the affected groundwater in the vicinity of the
175 site, or the use of groundwater in the immediate vicinity of the
176 contaminated area, where it has been demonstrated that the
177 groundwater contamination is not migrating away from such
178 localized source, provided human health, public safety, and the
179 environment are protected. When using alternative cleanup target
180 levels at a brownfield site, institutional controls shall not be
181 required if:

182 a. The only cleanup target levels exceeded are the
183 groundwater cleanup target levels derived from nuisance,
184 organoleptic, or aesthetic considerations;



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185 b. Concentrations of all contaminants meet the state water
186 quality standards or minimum criteria, based on protection of
187 human health, provided in subparagraph 1.;

188 c. All of the groundwater cleanup target levels established
189 pursuant to subparagraph 1. are met at the property boundary;

190 d. The person responsible for brownfield site
191 rehabilitation has demonstrated that the contaminants will not
192 migrate beyond the property boundary at concentrations exceeding
193 the groundwater cleanup target levels established pursuant to
194 subparagraph 1.;

195 e. The property has access to and is using an offsite water
196 supply and no unplugged private wells are used for domestic
197 purposes; and

198 f. The real property owner provides written acceptance of
199 the "no further action" proposal to the department or the local
200 pollution control program.

201 (h) Provide for the department to issue a "no further
202 action order," with conditions, including, but not limited to,
203 the use of institutional or engineering controls where
204 appropriate, when alternative cleanup target levels established
205 pursuant to subparagraph (g)3. have been achieved, or when the
206 person responsible for brownfield site rehabilitation can
207 demonstrate that the cleanup target level is unachievable within
208 available technologies. Before ~~Prior to~~ issuing such an order,
209 the department shall consider the feasibility of an alternative
210 site rehabilitation technology at ~~in~~ the brownfield site ~~area~~.

211 (i) Establish appropriate cleanup target levels for soils.

212 1. In establishing soil cleanup target levels for human
213 exposure to each contaminant found in soils from the land



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214 surface to 2 feet below land surface, the department shall apply
215 the following, as appropriate: calculations using a lifetime
216 cancer risk level of 1.0E-6; a hazard index of 1 or less; and
217 the best achievable detection limit. However, the department may
218 ~~shall~~ not require site rehabilitation to achieve a cleanup
219 target level for an individual contaminant which is more
220 stringent than the site-specific, ~~naturally occurring~~ background
221 concentration for that contaminant. Institutional controls or
222 other methods shall be used to prevent human exposure to
223 contaminated soils more than 2 feet below the land surface. Any
224 removal of such institutional controls shall require such
225 contaminated soils to be remediated.

226 2. Leachability-based soil cleanup target levels shall be
227 based on protection of the groundwater cleanup target levels or
228 the alternate cleanup target levels for groundwater established
229 pursuant to this paragraph, as appropriate. Source removal and
230 other cost-effective alternatives that are technologically
231 feasible shall be considered in achieving the leachability soil
232 cleanup target levels established by the department. The
233 leachability goals are ~~shall~~ not be applicable if the department
234 determines, based upon individual site characteristics, and in
235 conjunction with institutional and engineering controls, if
236 needed, that contaminants will not leach into the groundwater at
237 levels that pose a threat to human health, public safety, and
238 the environment.

239 3. Using risk-based corrective action principles, the
240 department shall approve alternative cleanup target levels in
241 conjunction with institutional and engineering controls, if
242 needed, based upon an applicant's demonstration, using site-



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243 specific or other relevant data and information, risk assessment
244 modeling results, including results from probabilistic risk
245 assessment modeling, risk assessment studies, risk reduction
246 techniques, or a combination thereof, that human health, public
247 safety, and the environment are protected to the same degree as
248 provided in subparagraphs 1. and 2.

249 (2) The department shall require source removal, as a risk
250 reduction measure, if warranted and cost-effective. Once source
251 removal at a site is complete, the department shall reevaluate
252 the site to determine the degree of active cleanup needed to
253 continue. Further, the department shall determine if the
254 reevaluated site qualifies for monitoring only or if no further
255 action is required to rehabilitate the site. If additional site
256 rehabilitation is necessary to reach "no further action" status,
257 the department is encouraged to utilize natural attenuation
258 monitoring, including long-term natural attenuation and
259 monitoring, where site conditions warrant.

260 (3) The cleanup criteria described in this section govern
261 only site rehabilitation activities occurring at the
262 contaminated site. Removal of contaminated media from a site for
263 offsite relocation or treatment must be in accordance with all
264 applicable federal, state, and local laws and regulations.

265 Section 5. Subsection (3) of section 196.1995, Florida
266 Statutes, is amended to read:

267 196.1995 Economic development ad valorem tax exemption.—

268 (3) The board of county commissioners or the governing
269 authority of the municipality that calls a referendum within its
270 total jurisdiction to determine whether its respective
271 jurisdiction may grant economic development ad valorem tax



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272 exemptions may vote to limit the effect of the referendum to
273 authority to grant economic development tax exemptions for new
274 businesses and expansions of existing businesses located in an
275 enterprise zone or a brownfield area, as defined in s. 376.79(5)
276 ~~s. 376.79(4)~~. If an area nominated to be an enterprise zone
277 pursuant to s. 290.0055 has not yet been designated pursuant to
278 s. 290.0065, the board of county commissioners or the governing
279 authority of the municipality may call such referendum prior to
280 such designation; however, the authority to grant economic
281 development ad valorem tax exemptions does not apply until such
282 area is designated pursuant to s. 290.0065. The ballot question
283 in such referendum shall be in substantially the following form
284 and shall be used in lieu of the ballot question prescribed in
285 subsection (2):

286
287 Shall the board of county commissioners of this county (or the
288 governing authority of this municipality, or both) be authorized
289 to grant, pursuant to s. 3, Art. VII of the State Constitution,
290 property tax exemptions for new businesses and expansions of
291 existing businesses that are located in an enterprise zone or a
292 brownfield area and that are expected to create new, full-time
293 jobs in the county (or municipality, or both)?

294
295Yes-For authority to grant exemptions.

296No-Against authority to grant exemptions.

297 Section 6. Paragraph (c) of subsection (5) of section
298 288.1175, Florida Statutes, is amended to read:

299 288.1175 Agriculture education and promotion facility.-

300 (5) The Department of Agriculture and Consumer Services



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301 shall competitively evaluate applications for funding of an
302 agriculture education and promotion facility. If the number of
303 applicants exceeds three, the Department of Agriculture and
304 Consumer Services shall rank the applications based upon
305 criteria developed by the Department of Agriculture and Consumer
306 Services, with priority given in descending order to the
307 following items:

308 (c) The location of the facility in a brownfield site as
309 defined in s. 376.79(4) ~~s. 376.79(3)~~, a rural enterprise zone as
310 defined in s. 290.004, an agriculturally depressed area as
311 defined in s. 570.74, or a county that has lost its agricultural
312 land to environmental restoration projects.

313
314 ===== T I T L E A M E N D M E N T =====

315 And the title is amended as follows:

316 Delete lines 16 - 17

317 and insert:

318 alternative cleanup target levels; amending s. 376.79,
319 F.S.; adding definitions of "background concentration"
320 and "long-term natural attenuation" to the definitions
321 relating to the Brownfields Redevelopment Act;
322 amending s. 376.81, F.S.; adding further criteria to
323 brownfield site and brownfield areas contamination
324 cleanup criteria; amending s. 196.1995, F.S.;;
325 conforming a cross-reference; amending s. 288.1175,
326 F.S.; conforming a cross-reference;