



181564

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/17/2020	.	
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	.	

The Committee on Environment and Natural Resources (Baxley) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Paragraphs (c), (d), and (e) of subsection (3) and subsection (9) of section 376.30781, Florida Statutes, are amended to read:

376.30781 Tax credits for rehabilitation of drycleaning-solvent-contaminated sites and brownfield sites in designated brownfield areas; application process; rulemaking authority;



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11 revocation authority.-

12 (3)

13 (c) In order to encourage completion of site rehabilitation
14 at contaminated sites that are being voluntarily cleaned up and
15 that are eligible for a tax credit under this section, the tax
16 credit applicant may claim an additional 25 percent of the total
17 site rehabilitation costs, not to exceed \$500,000, if the
18 Department of Environmental Protection has approved the
19 applicant's annual site rehabilitation applications and has
20 issued in the final year of cleanup as evidenced by the
21 Department of Environmental Protection issuing a "No Further
22 Action" order for that site. The tax credit applicant must
23 submit the claim for the additional 25 percent within 2 years of
24 receipt of the "No Further Action" order for that site.

25 (d) In order to encourage the construction of housing that
26 meets the definition of affordable provided in s. 420.0004, an
27 applicant for the tax credit may claim an additional 25 percent
28 of the total site rehabilitation costs that are eligible for tax
29 credits under this section, not to exceed \$500,000. To receive
30 this additional tax credit, the applicant must provide a
31 certification letter from the Florida Housing Finance
32 Corporation, the local housing authority, or other governmental
33 agency that is a party to the use agreement indicating that the
34 construction on the brownfield site has received a certificate
35 of occupancy and ~~the brownfield site~~ has a properly recorded
36 instrument that limits the use of the property to housing.
37 Notwithstanding that only one application may be submitted each
38 year for each site, an application for the additional credit
39 provided for in this paragraph shall be submitted after all



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40 requirements to obtain the additional tax credit have been met.
41 (e) In order to encourage the redevelopment of a brownfield
42 site, as defined in the brownfield site rehabilitation
43 agreement, that is hindered by the presence of solid waste, as
44 defined in s. 403.703, costs related to solid waste removal may
45 also be claimed under this section. A tax credit applicant, or
46 multiple tax credit applicants working jointly to clean up a
47 single brownfield site, may also claim costs to address the
48 solid waste removal as defined in this paragraph in accordance
49 with department rules. Multiple tax credit applicants shall be
50 granted tax credits in the same proportion as each applicant's
51 contribution to payment of solid waste removal costs. These
52 costs are eligible for a tax credit provided the applicant meets
53 the eligibility requirements of s. 376.82(1) and submits an
54 affidavit stating that, after consultation with appropriate
55 local government officials and the department, to the best of
56 the applicant's knowledge based upon such consultation and
57 available historical records, the brownfield site was never
58 operated as a permitted solid waste disposal area under chapter
59 62-701, Florida Administrative Code, or the predecessor rules ~~or~~
60 ~~was never operated for monetary compensation, and the applicant~~
61 ~~submits all other documentation and certifications required by~~
62 ~~this section.~~ In this section, where reference is made to "site
63 rehabilitation," the department shall instead consider whether
64 the costs claimed are for solid waste removal. Tax credit
65 applications claiming costs pursuant to this paragraph shall not
66 be subject to the calendar-year limitation and January 31 annual
67 application deadline, and the department shall accept a one-time
68 application filed subsequent to the completion by the tax credit



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69 applicant of the applicable requirements listed in this
70 subsection. A tax credit applicant may claim 50 percent of the
71 costs for solid waste removal, not to exceed \$500,000, after the
72 applicant has determined solid waste removal is completed for
73 the brownfield site. A solid waste removal tax credit
74 application may be filed only once per brownfield site. For the
75 purposes of this section, the term:

76 1. "Solid waste disposal area" means a landfill, dump, or
77 other area where solid waste has been disposed.

78 2. ~~"Monetary compensation" means the fees that were charged~~
79 ~~or the assessments that were levied for the disposal of solid~~
80 ~~waste at a solid waste disposal area.~~

81 3. "Solid waste removal" means removal of solid waste from
82 the land surface or excavation of solid waste from below the
83 land surface and removal of the solid waste from the brownfield
84 site. The term also includes:

85 a. Transportation of solid waste to a licensed or exempt
86 solid waste management facility or to a temporary storage area.

87 b. Sorting or screening of solid waste prior to removal
88 from the site.

89 c. Deposition of solid waste at a permitted or exempt solid
90 waste management facility, whether the solid waste is disposed
91 of or recycled.

92 (9) On or before June ~~May~~ 1, the Department of
93 Environmental Protection shall inform each tax credit applicant
94 that is subject to the January 31 annual application deadline of
95 the applicant's eligibility status and the amount of any tax
96 credit due. The department shall provide each eligible tax
97 credit applicant with a tax credit certificate that must be



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98 submitted with its tax return to the Department of Revenue to
99 claim the tax credit or be transferred pursuant to s.
100 220.1845(2)(g). The June ~~May~~ 1 deadline for annual site
101 rehabilitation tax credit certificate awards shall not apply to
102 any tax credit application for which the department has issued a
103 notice of deficiency pursuant to subsection (8). The department
104 shall respond within 90 days after receiving a response from the
105 tax credit applicant to such a notice of deficiency. Credits may
106 not result in the payment of refunds if total credits exceed the
107 amount of tax owed.

108 Section 2. Subsection (3) of section 376.313, Florida
109 Statutes, is amended to read:

110 376.313 Nonexclusiveness of remedies and individual cause
111 of action for damages under ss. 376.30-376.317.—

112 (3) Except as provided in s. 376.3078(3) and (11), nothing
113 contained in ss. 376.30-376.317 prohibits any person from
114 bringing a cause of action in a court of competent jurisdiction
115 for all damages to real or personal property directly resulting
116 from a discharge or other condition of pollution covered by ss.
117 376.30-376.317 and which was not authorized by any government
118 approval or permit pursuant to chapter 403. Nothing in this
119 chapter shall prohibit or diminish a party's right to
120 contribution from other parties jointly or severally liable for
121 a prohibited discharge of pollutants or hazardous substances or
122 other pollution conditions. Except as otherwise provided in
123 subsection (4) or subsection (5), in any such suit, it is not
124 necessary for such person to plead or prove negligence in any
125 form or manner. Such person need only plead and prove the fact
126 of the prohibited discharge or other pollutive condition and



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127 that it has occurred. The only strict-liability exceptions
128 ~~defenses~~ to such cause of action shall be those specified in s.
129 376.308 or s. 376.82.

130 Section 3. Subsection (1) of section 376.78, Florida
131 Statutes, is amended to read:

132 376.78 Legislative intent.—The Legislature finds and
133 declares the following:

134 (1) The reduction of public health and environmental
135 hazards on existing ~~commercial and industrial~~ sites is vital to
136 their use and reuse as sources of employment, housing,
137 recreation, and open space areas. The reuse of industrial land
138 is an important component of sound land use policy for
139 productive urban purposes which will help prevent the premature
140 development of farmland, open space areas, and natural areas,
141 and reduce public costs for installing new water, sewer, and
142 highway infrastructure.

143 Section 4. Subsections (1) and (2) of section 376.80,
144 Florida Statutes, are amended to read:

145 376.80 Brownfield program administration process.—

146 (1) The following general procedures apply to brownfield
147 designations:

148 (a) The local government with jurisdiction over a proposed
149 brownfield area shall designate such area pursuant to this
150 section.

151 (b) For a brownfield area designation proposed by:

152 1. The jurisdictional local government, the designation
153 criteria under paragraph (2)(a) apply, except if the local
154 government proposes to designate as a brownfield area a
155 specified redevelopment area as provided in paragraph (2)(b).



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156 2. Any person, ~~other than a governmental entity,~~ including,
157 but not limited to, individuals, corporations, partnerships,
158 trusts, limited liability companies, community-based
159 organizations, or not-for-profit corporations, the designation
160 criteria under paragraph (2) (c) apply.

161 (c) Except as otherwise provided, the following provisions
162 apply to all proposed brownfield area designations:

163 1. Notification to department following adoption.—A local
164 government with jurisdiction over the brownfield area must
165 notify the department, and, if applicable, the local pollution
166 control program under s. 403.182, of its decision to designate a
167 brownfield area for rehabilitation for the purposes of ss.
168 376.77–376.86. The notification must include a resolution
169 adopted by the local government body. The local government shall
170 notify the department, and, if applicable, the local pollution
171 control program under s. 403.182, of the designation within 30
172 days after adoption of the resolution.

173 2. Resolution adoption.—The brownfield area designation
174 must be carried out by a resolution adopted by the
175 jurisdictional local government, which includes a map adequate
176 to clearly delineate exactly which parcels are to be included in
177 the brownfield area or alternatively a less-detailed map
178 accompanied by a detailed legal description of the brownfield
179 area. For municipalities, the governing body shall adopt the
180 resolution in accordance with the procedures outlined in s.
181 166.041, except that the notices ~~procedures~~ for the public
182 hearings on the proposed resolution must be in the form
183 established in s. 166.041(3)(c)2. For counties, the governing
184 body shall adopt the resolution in accordance with the



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185 procedures outlined in s. 125.66, except that the notices
186 ~~procedures~~ for the public hearings on the proposed resolution
187 shall be in the form established in s. 125.66(4) (b).

188 3. Right to be removed from proposed brownfield area.—If a
189 property owner within the area proposed for designation by the
190 local government requests in writing to have his or her property
191 removed from the proposed designation, the local government
192 shall grant the request.

193 4. Notice and public hearing requirements for designation
194 of a proposed brownfield area outside a redevelopment area or by
195 a nongovernmental entity. Compliance with the following
196 provisions is required before designation of a proposed
197 brownfield area under paragraph (2) (a) or paragraph (2) (c):

198 a. At least one of the required public hearings shall be
199 conducted as closely as is reasonably practicable to the area to
200 be designated to provide an opportunity for public input on the
201 size of the area, the objectives for rehabilitation, job
202 opportunities and economic developments anticipated,
203 neighborhood residents' considerations, and other relevant local
204 concerns.

205 b. Notice of a public hearing must be made in a newspaper
206 of general circulation in the area, must be made in ethnic
207 newspapers or local community bulletins, must be posted in the
208 affected area, and must be announced at a scheduled meeting of
209 the local governing body before the actual public hearing.

210 (2) (a) *Local government-proposed brownfield area*
211 *designation outside specified redevelopment areas.*—If a local
212 government proposes to designate a brownfield area that is
213 outside a community redevelopment area, enterprise zone,



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214 empowerment zone, closed military base, or designated brownfield
215 pilot project area, the local government shall provide notice,
216 adopt the resolution, and conduct public hearings pursuant to
217 paragraph (1)(c). At a public hearing to designate the proposed
218 area as a brownfield area, as defined in s. 376.79, the local
219 government must consider:

220 1. Whether the brownfield area warrants economic
221 development and has a reasonable potential for such activities;

222 2. Whether the proposed area to be designated represents a
223 reasonably focused approach and is not overly large in
224 geographic coverage;

225 3. Whether the area has potential to interest the private
226 sector in participating in rehabilitation; and

227 4. Whether the area contains sites or parts of sites
228 suitable for limited recreational open space, cultural, or
229 historical preservation purposes.

230 (b) *Local government-proposed brownfield area designation*
231 *within specified redevelopment areas.*—Paragraph (a) does not
232 apply to a proposed brownfield area if the local government
233 proposes to designate the brownfield area inside a community
234 redevelopment area, enterprise zone, empowerment zone, closed
235 military base, or designated brownfield pilot project area and
236 the local government complies with paragraph (1)(c).

237 (c) *Brownfield area designation proposed by specified*
238 *persons ~~other than a governmental entity~~.*—For designation of a
239 brownfield area that is proposed by a person under this
240 subsection ~~other than the local government~~, the local government
241 with jurisdiction over the proposed brownfield area shall
242 provide notice and adopt a resolution to designate the



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243 brownfield area pursuant to paragraph (1)(c) if, at the public
244 hearing to adopt the resolution, the person establishes all of
245 the following with respect to the proposed brownfield area:

246 1. A person who owns or controls a potential brownfield
247 site is requesting the designation and has agreed to
248 rehabilitate and redevelop the brownfield site.

249 2. The rehabilitation and redevelopment of the proposed
250 brownfield site will result in economic productivity of the
251 area, along with the creation of at least 5 new permanent jobs
252 at the brownfield site that are full-time equivalent positions
253 not associated with the implementation of the brownfield site
254 rehabilitation agreement and that are not associated with
255 redevelopment project demolition or construction activities
256 pursuant to the redevelopment of the proposed brownfield site or
257 area. However, the job creation requirement does not apply to
258 the rehabilitation and redevelopment of a brownfield site that
259 will provide affordable housing as defined in s. 420.0004 or the
260 creation of recreational areas, conservation areas, or parks.

261 3. The redevelopment of the proposed brownfield site is
262 consistent with the local comprehensive plan and is a
263 permittable use under the applicable local land development
264 regulations.

265 4. Notice of the proposed rehabilitation of the brownfield
266 area has been provided to neighbors and nearby residents of the
267 proposed area to be designated pursuant to paragraph (1)(c), and
268 the person proposing the area for designation has afforded to
269 those receiving notice the opportunity for comments and
270 suggestions about rehabilitation. Notice pursuant to this
271 subparagraph must be posted in the affected area.



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272 5. The person proposing the area for designation has
273 provided reasonable assurance that he or she has sufficient
274 financial resources to implement and complete the rehabilitation
275 agreement and redevelopment of the brownfield site.

276 (d) *Negotiation of brownfield site rehabilitation*
277 *agreement.*—The designation of a brownfield area ~~and the~~
278 ~~identification of a person responsible for brownfield site~~
279 ~~rehabilitation~~ simply entitles a ~~the identified~~ person to
280 negotiate a brownfield site rehabilitation agreement with the
281 department or approved local pollution control program.

282 Section 5. Paragraph (b) of subsection (1) and paragraphs
283 (a), (c), and (d) of subsection (2) of section 376.82, Florida
284 Statutes, are amended to read:

285 376.82 Eligibility criteria and liability protection.—

286 (1) ELIGIBILITY.—Any person who has not caused or
287 contributed to the contamination of a brownfield site on or
288 after July 1, 1997, is eligible to participate in the brownfield
289 program established in ss. 376.77-376.85, subject to the
290 following:

291 (b) Persons who have not caused or contributed to the
292 contamination of a brownfield site on or after July 1, 1997, and
293 who, prior to the department's approval of a brownfield site
294 rehabilitation agreement, are subject to ongoing corrective
295 action or enforcement under state authority established in this
296 chapter or chapter 403, including those persons subject to a
297 pending consent order with the state, are eligible for
298 participation in a brownfield site rehabilitation agreement if:

299 1. The proposed brownfield site is currently idle or
300 underutilized as a result of the contamination, and



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301 participation in the brownfield program will immediately, after
302 cleanup or sooner, result in increased economic productivity at
303 the site, including at a minimum the creation of 10 new
304 permanent jobs, whether full-time or part-time, which are not
305 associated with implementation of the brownfield site
306 rehabilitation agreement. However, the job creation requirement
307 does not apply to the rehabilitation and redevelopment of a
308 brownfield site that will provide affordable housing as defined
309 in s. 420.0004 or create recreational areas, conservation areas,
310 or parks, or be maintained for cultural or historical
311 preservation purposes; and

312 2. The person is complying in good faith with the terms of
313 an existing consent order or department-approved corrective
314 action plan, or responding in good faith to an enforcement
315 action, as evidenced by a determination issued by the department
316 or an approved local pollution control program.

317 (2) LIABILITY PROTECTION.—

318 (a) Any person, ~~including his or her successors and~~
319 ~~assigns~~, who executes and implements to successful completion a
320 brownfield site rehabilitation agreement, his or her successors
321 and assigns, and any subsequent property owner of the brownfield
322 site, is relieved of:

323 1. Further liability for remediation of the contaminated
324 site or sites to the state and to third parties.

325 2. Liability in contribution to any other party who has or
326 may incur cleanup liability for the contaminated site or sites.

327 3. Liability for claims of property damages, including, but
328 not limited to, diminished value of real property or
329 improvements; lost or delayed rent, sale, or use of real



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330 property or improvements; or stigma to real property or
331 improvements caused by contamination addressed by a brownfield
332 site rehabilitation agreement. Notwithstanding any other
333 provision of this chapter, this subparagraph applies to causes
334 of action accruing on or after July 1, 2014. This subparagraph
335 does not apply to a person who discharges contaminants on
336 property subject to a brownfield site rehabilitation agreement,
337 who commits fraud in demonstrating site conditions or completing
338 site rehabilitation of a property subject to a brownfield site
339 rehabilitation agreement, or who exacerbates contamination of a
340 property subject to a brownfield site rehabilitation agreement
341 in violation of applicable laws which causes property damages.

342 4. Statutory causes of action arising under s. 376.313(3).

343 (c) This section does ~~shall~~ not affect the ability or
344 authority to seek contribution from any person who may have
345 liability with respect to the contaminated site and who did not
346 receive cleanup liability protection under this act.

347 (d) The liability protection provided under this section
348 shall become effective upon execution of a brownfield site
349 rehabilitation agreement and shall remain effective as to any
350 person responsible for brownfield site rehabilitation, provided
351 each ~~the~~ person responsible for brownfield site rehabilitation
352 complies with the terms of the site rehabilitation agreement,
353 and as to any subsequent property owner of the brownfield site,
354 such owner maintains compliance, as applicable, with any
355 institutional controls or engineering controls required for site
356 rehabilitation. Any statute of limitations that would bar the
357 department from pursuing relief in accordance with its existing
358 authority is tolled from the time the agreement is executed



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359 until site rehabilitation is completed or immunity is revoked
360 pursuant to s. 376.80(8).

361 Section 6. This act shall take effect July 1, 2020.

362

363 ===== T I T L E A M E N D M E N T =====

364 And the title is amended as follows:

365 Delete everything before the enacting clause
366 and insert:

367 A bill to be entitled
368 An act relating to contamination; amending s.
369 376.30781, F.S.; revising the conditions under which
370 an applicant that has rehabilitated a contaminated
371 site may submit and claim certain tax credits;
372 specifying a timeframe within which such tax credit
373 applications must be submitted; revising the criteria
374 for determining applicants who are redeveloping
375 brownfield sites who may be eligible for certain tax
376 credits; revising the date by which the Department of
377 Environmental Protection must issue annual site
378 rehabilitation tax credit certificate awards; amending
379 s. 376.313, F.S.; revising available damages and
380 exceptions to specified causes of action concerning
381 certain discharges or other types of pollution
382 resulting from certain discharges or pollution;
383 amending s. 376.78, F.S.; conforming provisions to
384 changes made by the act; amending s. 376.80, F.S.;
385 revising the entities that may propose brownfield
386 designations using specified criteria; removing the
387 requirement that certain persons be identified before



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388 negotiating a brownfield site rehabilitation
389 agreement; amending s. 376.82, F.S.; exempting certain
390 job creation requirements otherwise needed for
391 eligibility for specified brownfield site
392 rehabilitation agreements; providing an effective
393 date.