

By Senator Broxson

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1 A bill to be entitled
2 An act relating to brownfield site rehabilitation;
3 amending s. 373.309, F.S.; requiring the Department of
4 Environmental Protection to make information relating
5 to areas of PFAS contamination available to certain
6 governmental entities; requiring the department to
7 promote cost-effective remediation of contaminated
8 potable water supplies; requiring the department to
9 delineate areas of groundwater contamination upon the
10 request of certain entities; amending s. 376.301,
11 F.S.; revising the definition of the term
12 "institutional controls" with respect to the pollution
13 of surface water and groundwater; amending s.
14 376.30701, F.S.; requiring the department to provide
15 constructive notice to local governmental entities and
16 to certain property owners and residents when the
17 department issues a site rehabilitation completion
18 order that relies on intuitional controls not recorded
19 in public records; amending s. 376.313, F.S.; revising
20 the defenses to causes of action for damages to real
21 or personal property as a result of pollution;
22 amending s. 376.79, F.S.; revising the definition of
23 the term "institutional controls" with respect to the
24 Brownfields Redevelopment Act; creating s. 376.91,
25 F.S.; defining the term "PFAS"; requiring the
26 department to adopt rules for statewide cleanup target
27 levels for PFAS in soils and groundwater; prohibiting
28 such rules from taking effect until ratified by the
29 Legislature; authorizing the department to require

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30 site assessments and sampling by potentially
31 responsible parties to assist in its investigations
32 before the PFAS rules are adopted and ratified;
33 providing that a responsible party who cooperates in
34 good faith with the department is immune from
35 liability for specified claims; providing that a
36 responsible party is not subject to administrative or
37 judicial action under certain circumstances; providing
38 that a person who executes a PFAS voluntary site
39 rehabilitation agreement with the department is immune
40 from and has no liability for certain claims under
41 certain circumstances; requiring the department to
42 allow a person to return to compliance within a
43 specified timeframe before revoking the person's
44 immunity; creating the PFAS Assessment and Site
45 Rehabilitation Program within the department, in
46 consultation with the Department of Health; providing
47 requirements for the program; requiring an annual
48 report to the Governor and the Legislature by a
49 specified date; providing an effective date.

50
51 WHEREAS, perfluoroalkyl and polyfluoroalkyl substances
52 (PFAS) are a class of nearly 5,000 manmade chemicals which
53 includes perfluorooctanoic acid (PFOA), perfluorooctane
54 sulfonate (PFOS), perfluorobutane sulfonate (PFBS), and GenX,
55 which are manufactured and used in a variety of industries, and

56 WHEREAS, PFAS chemicals are commonly found in every
57 American household and in products as diverse as nonstick
58 cookware, stain-resistant furniture and carpets, wrinkle-free

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59 and water-repellant clothing, cosmetics, lubricants, paint, food
60 packaging, and many other everyday products, and

61 WHEREAS, PFAS chemicals have been legally used throughout
62 the country for decades and, in some cases, have been mandated
63 for use in certain products, and

64 WHEREAS, PFAS chemicals are known as "forever" chemicals
65 because they are persistent in the environment and the human
66 body, and

67 WHEREAS, PFAS chemicals are suspected of causing adverse
68 health outcomes in humans, and

69 WHEREAS, in 2016, the United States Environmental
70 Protection Agency (EPA) established a lifetime exposure health
71 advisory level of 70 parts per trillion for the combined
72 concentration of PFOA and PFOS in drinking water, but the EPA
73 has not adopted maximum contaminant levels for such substances
74 in drinking water, and

75 WHEREAS, there are significant technical challenges in
76 detecting and measuring PFAS in water and other media at the
77 levels where adverse human health effects may occur, and
78 analytical methodologies are still under development or are not
79 yet generally available, and

80 WHEREAS, while science predicts that the entire class of
81 PFAS chemicals may be associated with adverse health effects and
82 many such chemicals are in industrial and commercial use, only a
83 small fraction of these chemicals has been investigated
84 sufficiently to establish quantitative measures of toxicity, and

85 WHEREAS, PFAS chemicals are currently required in
86 firefighting foams used at airports to meet federal performance
87 standards for extinguishing agents, but the Federal Aviation

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88 Administration is updating its standards to allow for
89 alternative options for airports, and

90 WHEREAS, PFAS contamination may be found at and around
91 military bases, airports, seaports, drycleaners, manufacturing
92 sites, landfills, and biosolid disposal sites, and in local
93 water supplies obtained from both surface and groundwater, and

94 WHEREAS, local governments are responsible for protecting
95 the health, safety, and welfare of residents, including
96 providing clean, safe water, and

97 WHEREAS, while treatment technology for removing PFAS from
98 water is not well-developed, the more effective methods use
99 technologies that are not conventionally available in existing
100 water treatment plants, so removing these PFAS chemicals from
101 water will require costly investments by local governments and
102 other water suppliers, which would be passed on to ratepayers,
103 and

104 WHEREAS, manufacturers, producers, and heavy users of PFAS
105 chemicals may be liable for site rehabilitation and face
106 additional liability, and

107 WHEREAS, other persons and entities, known as "PFAS
108 receivers," merely convey or manage the traces of PFAS chemicals
109 received from other sources, such as PFAS producers,
110 manufacturers, users, and everyday consumers, and

111 WHEREAS, PFAS receivers include drinking water treatment
112 systems, wastewater treatment facilities, and municipal solid
113 waste landfills, and

114 WHEREAS, PFAS receivers may be liable for site
115 rehabilitation and face additional liability, and

116 WHEREAS, PFAS contamination not only poses health risks,

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117 but also economic impacts on businesses and communities for
118 potential remediation and cleanup, and potential contamination
119 of food sources in the agricultural and fishing industries, NOW,
120 THEREFORE,

121

122 Be It Enacted by the Legislature of the State of Florida:

123

124 Section 1. Paragraph (e) of subsection (1) of section
125 373.309, Florida Statutes, is amended, and paragraph (g) is
126 added to that subsection, to read:

127 373.309 Authority to adopt rules and procedures.—

128 (1) The department shall adopt, and may from time to time
129 amend, rules governing the location, construction, repair, and
130 abandonment of water wells and shall be responsible for the
131 administration of this part. With respect thereto, the
132 department shall:

133 (e) Encourage prevention of potable water well
134 contamination and promote cost-effective remediation of
135 contaminated potable water supplies by use of the Water Quality
136 Assurance Trust Fund as provided in s. 376.307(1)(e) and
137 establish by rule:

138 1. Delineation of areas of groundwater contamination for
139 implementation of well location and construction, testing,
140 permitting, and clearance requirements as set forth in
141 subparagraphs 2., 3., 4., 5., and 6. The department shall make
142 available to water management districts, regional planning
143 councils, the Department of Health, and county building and
144 zoning departments, ~~maps~~ or other information on areas of
145 contamination, including areas of contamination from ethylene

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146 dibromide and PFAS, as defined in s. 376.91 ~~contamination~~. Such
147 maps or other information shall be made available to property
148 owners, realtors, real estate associations, property appraisers,
149 and other interested persons upon request and upon payment of
150 appropriate costs.

151 2. Requirements for testing for suspected contamination in
152 areas of known contamination, as a prerequisite for clearance of
153 a water well for drinking purposes. The department is authorized
154 to establish criteria for acceptance of water quality testing
155 results from the Department of Health and laboratories certified
156 by the Department of Health, and is authorized to establish
157 requirements for sample collection quality assurance.

158 3. Requirements for mandatory connection to available
159 potable water systems in areas of known contamination, wherein
160 the department may prohibit the permitting and construction of
161 new potable water wells.

162 4. Location and construction standards for public and all
163 other potable water wells permitted in areas of contamination.
164 Such standards shall be designed to minimize the effects of such
165 contamination.

166 5. A procedure for permitting all potable water wells in
167 areas of known contamination. Any new water well that is to be
168 used for drinking water purposes and that does not meet
169 construction standards pursuant to subparagraph 4. must be
170 abandoned and plugged by the owner. Water management districts
171 shall implement, through delegation from the department, the
172 permitting and enforcement responsibilities of this
173 subparagraph.

174 6. A procedure for clearing for use all potable water

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175 wells, except wells that serve a public water supply system, in
176 areas of known contamination. If contaminants are found upon
177 testing pursuant to subparagraph 2., a well may not be cleared
178 for use without a filter or other means of preventing the users
179 of the well from being exposed to deleterious amounts of
180 contaminants. The Department of Health shall implement the
181 responsibilities of this subparagraph.

182 7. Fees to be paid for well construction permits and
183 clearance for use. The fees shall be based on the actual costs
184 incurred by the water management districts, the Department of
185 Health, or other political subdivisions in carrying out the
186 responsibilities related to potable water well permitting and
187 clearance for use. The fees shall provide revenue to cover all
188 such costs and shall be set according to the following schedule:

189 a. The well construction permit fee may not exceed \$500.

190 b. The clearance fee may not exceed \$50.

191 8. Procedures for implementing well-location, construction,
192 testing, permitting, and clearance requirements as set forth in
193 subparagraphs 2.-6. within areas that research or monitoring
194 data indicate are vulnerable to contamination with nitrate, or
195 areas in which the department provides a subsidy for restoration
196 or replacement of contaminated drinking water supplies through
197 extending existing water lines or developing new water supply
198 systems pursuant to s. 376.307(1)(e). The department shall
199 consult with the Florida Ground Water Association in the process
200 of developing rules pursuant to this subparagraph.

201
202 All fees and funds collected by each delegated entity pursuant
203 to this part shall be deposited in the appropriate operating

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204 account of that entity.

205 (g) In order to facilitate the prompt and efficient
206 prevention of potable water well contamination, promote cost-
207 effective remediation of contaminated potable water supplies to
208 protect human health and the environment. Upon the request of a
209 local governmental entity or a person otherwise responsible for
210 site rehabilitation, the department shall delineate areas of
211 groundwater contamination without further action by the
212 Environmental Regulation Commission.

213 Section 2. Subsection (21) of section 376.301, Florida
214 Statutes, is amended to read:

215 376.301 Definitions of terms used in ss. 376.30-376.317,
216 376.70, and 376.75.—When used in ss. 376.30-376.317, 376.70, and
217 376.75, unless the context clearly requires otherwise, the term:

218 (21) “Institutional controls” means the restriction on use
219 of or access to a site to eliminate or minimize exposure to
220 petroleum products’ chemicals of concern; PFAS, as defined in s.
221 376.91; ~~;~~ drycleaning solvents; ~~;~~ or other contaminants. Such
222 restrictions may include, but are not limited to, any of the
223 following:

224 (a) Deed restrictions. ~~;~~

225 (b) Restrictive covenants. ~~;~~ ~~or~~

226 (c) Conservation easements.

227 (d) Local governmental requirements to:

228 1. Require mandatory connection to available potable or
229 reuse water systems;

230 2. Describe an area of groundwater contamination in a
231 shared electronic record system between the department and a
232 water management district or delegated permitting authority

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233 documenting the location and extent of groundwater contamination
234 for use in processing well construction permit applications; or
235 3. Delineate an area of groundwater contamination pursuant
236 to s. 373.309.

237 Section 3. Paragraph (d) of subsection (2) of section
238 376.30701, Florida Statutes, is amended to read:

239 376.30701 Application of risk-based corrective action
240 principles to contaminated sites; applicability; legislative
241 intent; rulemaking authority; contamination cleanup criteria;
242 limitations; reopeners.—

243 (2) INTENT; RULEMAKING AUTHORITY; CLEANUP CRITERIA.—It is
244 the intent of the Legislature to protect the health of all
245 people under actual circumstances of exposure. By July 1, 2004,
246 the secretary of the department shall establish criteria by rule
247 for the purpose of determining, on a site-specific basis, the
248 rehabilitation program tasks that comprise a site rehabilitation
249 program, including a voluntary site rehabilitation program, and
250 the level at which a rehabilitation program task and a site
251 rehabilitation program may be deemed completed. In establishing
252 these rules, the department shall apply, to the maximum extent
253 feasible, a risk-based corrective action process to achieve
254 protection of human health and safety and the environment in a
255 cost-effective manner based on the principles set forth in this
256 subsection. These rules shall prescribe a phased risk-based
257 corrective action process that is iterative and that tailors
258 site rehabilitation tasks to site-specific conditions and risks.
259 The department and the person responsible for site
260 rehabilitation are encouraged to establish decision points at
261 which risk management decisions will be made. The department

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262 shall provide an early decision, when requested, regarding
263 applicable exposure factors and a risk management approach based
264 on the current and future land use at the site. These rules must
265 include protocols for the use of natural attenuation, including
266 long-term natural attenuation where site conditions warrant, the
267 use of institutional and engineering controls, and the issuance
268 of "No Further Action" orders. The criteria for determining what
269 constitutes a rehabilitation program task or completion of a
270 site rehabilitation program task or site rehabilitation program,
271 including a voluntary site rehabilitation program, must:

272 (d) Allow the use of institutional or engineering controls
273 at contaminated sites being cleaned up pursuant to this section,
274 where appropriate, to eliminate or control the potential
275 exposure to contaminants of humans or the environment. The use
276 of controls must be preapproved by the department and only after
277 constructive notice and opportunity to comment within 30 days
278 after receipt of notice is provided to local governments, owners
279 of any property into which the point of compliance is allowed to
280 extend, and residents on any property into which the point of
281 compliance is allowed to extend. When institutional or
282 engineering controls are implemented to control exposure, the
283 removal of the controls must have prior department approval and
284 must be accompanied by the resumption of active cleanup, or
285 other approved controls, unless cleanup target levels under this
286 section have been achieved. Without limiting the generality of
287 the foregoing, when the department issues a site rehabilitation
288 completion order that relies upon an institutional control that
289 is not recorded in public records, the department must provide
290 constructive notice to local governmental entities, to owners of

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291 any property into which the point of compliance is allowed to
292 extend, and to residents on any property into which the point of
293 compliance is allowed to extend.

294
295 The department shall require source removal as a risk reduction
296 measure if warranted and cost-effective. Once source removal at
297 a site is complete, the department shall reevaluate the site to
298 determine the degree of active cleanup needed to continue.

299 Further, the department shall determine if the reevaluated site
300 qualifies for monitoring only or if no further action is
301 required to rehabilitate the site. If additional site
302 rehabilitation is necessary to reach "No Further Action" status,
303 the department is encouraged to utilize natural attenuation
304 monitoring, including long-term natural attenuation monitoring,
305 where site conditions warrant.

306 Section 4. Subsection (3) of section 376.313, Florida
307 Statutes, is amended to read:

308 376.313 Nonexclusiveness of remedies and individual cause
309 of action for damages under ss. 376.30-376.317.—

310 (3) Except as provided in s. 376.3078(3) and (11), nothing
311 contained in ss. 376.30-376.317 prohibits any person from
312 bringing a cause of action in a court of competent jurisdiction
313 for all damages to real or personal property directly resulting
314 from the use of a contaminant or a discharge or other condition
315 of pollution covered by ss. 376.30-376.317 and which was not
316 authorized by any federal, state, or local government approval,
317 requirement, or permit pursuant to chapter 403. ~~Nothing in This~~
318 ~~chapter~~ does not shall prohibit or diminish a party's right to
319 contribution from other parties jointly or severally liable for

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320 a prohibited discharge of pollutants or hazardous substances or
321 other pollution conditions. Except as otherwise provided in
322 subsection (4) or subsection (5), in any such suit, it is not
323 necessary for such person to plead or prove negligence in any
324 form or manner. Such person need only plead and prove the fact
325 of the prohibited discharge or other pollutive condition and
326 that it has occurred. The only defenses to such cause of action
327 shall be those specified in s. 376.308 or s. 376.82.

328 Section 5. Subsection (11) of section 376.79, Florida
329 Statutes, is amended to read:

330 376.79 Definitions relating to Brownfields Redevelopment
331 Act.—As used in ss. 376.77-376.85, the term:

332 (11) "Institutional controls" means the restriction on use
333 of or access to a site to eliminate or minimize exposure to
334 chemicals of concern from petroleum products; PFAS, as defined
335 in s. 376.91;~~;~~ drycleaning solvents;~~;~~ or other contaminants.
336 Such restrictions may include, but are not limited to, any of
337 the following:

338 (a) Deed restrictions.~~;~~

339 (b) Restrictive covenants.~~;~~~~or~~

340 (c) Conservation easements.

341 (d) Local government requirements to:

342 1. Require mandatory connection to available potable or
343 reuse water systems;

344 2. Describe an area of groundwater contamination described
345 in a shared electronic record system between the department and
346 a water management district or delegated permitting authority
347 documenting the location and extent of groundwater contamination
348 for use in processing well construction permit applications; or

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349 3. Delineate an area of groundwater contamination pursuant
350 to s. 373.309.

351 Section 6. Section 376.91, Florida Statutes, is created to
352 read:

353 376.91 Statewide cleanup of PFAS.-

354 (1) DEFINITION.—As used in this section, the term “PFAS”
355 means perfluoroalkyl and polyfluoroalkyl substances, including
356 perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate
357 (PFOS).

358 (2) CLEANUP TARGET LEVELS.—

359 (a) The department shall adopt rules for statewide cleanup
360 target levels for PFAS in soils and groundwater, with priority
361 given to PFOA and PFOS. Rules adopted by the department pursuant
362 to this section may not take effect until ratified by the
363 Legislature.

364 (b) The department may require site assessments and
365 sampling by potentially responsible parties to assist in its
366 investigation of PFAS contamination that occurs in this state
367 before rules are adopted under this section and ratified. A
368 responsible party who is cooperating in good faith with the
369 department’s investigations by conducting or assisting with the
370 site assessment, providing site access, sampling, or taking
371 other cooperative action is immune from and has no liability for
372 claims of any person, for damages of any kind, including, but
373 not limited to, diminished value of real property or
374 improvements; lost or delayed rent, sale, or use of real
375 property or improvements; statutory causes of action arising
376 under s. 376.313(3); or stigma to real property or improvements
377 caused by PFAS contamination. Such a party is not subject to any

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378 administrative or judicial action brought by or on behalf of any
379 person, state or local government, or agency to compel or enjoin
380 site rehabilitation or pay for the cost of rehabilitation of
381 environmental contamination or to pay any fines or penalties
382 regarding rehabilitation based on the presence of a particular
383 PFAS constituent until the department's rule for that
384 constituent has been ratified by the Legislature.

385 (3) VOLUNTARY SITE REHABILITATION AGREEMENTS.—

386 (a) A person who executes a PFAS voluntary site
387 rehabilitation agreement with the department, upon initiation of
388 such site rehabilitation, is immune from and has no liability
389 for claims of any person for damages of any kind, including, but
390 not limited to, diminished value of real property or
391 improvements; lost or delayed rent, sale, or use of real
392 property or improvements; statutory causes of action arising
393 under s. 376.313(3); or stigma to real property or improvements
394 caused by PFAS contamination; nor is the person subject to any
395 administrative or judicial action brought by or on behalf of any
396 person, state, or local government, or agency thereof, to compel
397 or enjoin site rehabilitation or pay for the cost of
398 rehabilitation of environmental contamination, or to pay any
399 fines or penalties regarding rehabilitation.

400 (b) This subsection does not affect an individual's ability
401 or authority to seek contribution from any person who may have
402 liability with respect to the site and who did not receive
403 cleanup liability protection under this subsection.

404 (c)1. The liability protection provided under this
405 subsection is effective upon execution of a PFAS voluntary site
406 rehabilitation agreement and remains effective as long as the

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407 following conditions are met:

408 a. A person is responsible for site rehabilitation,
409 provided each person responsible for site rehabilitation
410 complies with the terms of the site rehabilitation agreement.

411 b. Any subsequent property owner of the site maintains
412 compliance, as applicable, with any institutional controls or
413 engineering controls required for site rehabilitation.

414 2. Any statute of limitations that would bar the department
415 from pursuing relief in accordance with its existing authority
416 is tolled from the time the agreement is executed until site
417 rehabilitation is completed or immunity is revoked pursuant to
418 paragraph (d).

419 (d) If the person responsible for site rehabilitation fails
420 to comply with the site rehabilitation agreement, the department
421 shall allow 90 days for the person responsible for the site
422 rehabilitation to return to compliance with the provision at
423 issue or to negotiate a modification to the site rehabilitation
424 agreement with the department for good cause shown. If an
425 imminent hazard exists, the 90-day grace period does not apply.
426 If the project is not returned to compliance with the site
427 rehabilitation agreement and a modification is unable to be
428 negotiated, the immunity provisions of this subsection are
429 revoked.

430 (4) PFAS ASSESSMENT AND SITE REHABILITATION PROGRAM; ANNUAL
431 REPORT.—In consultation with the Department of Health, the
432 department shall develop and implement a PFAS Assessment and
433 Site Rehabilitation Program within the department to study the
434 impacts to human health and the environment from PFAS, develop
435 strategies to protect human health and the environment from the

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436 harmful effects of PFAS, and develop cost-effective strategies
437 for remediation of PFAS.

438 (a) The program must do all of the following:

439 1. Estimate costs incurred by the state, local governmental
440 entities, businesses, and individuals in response to human and
441 ecological exposure to PFAS.

442 2. Estimate the costs attributable to each source of PFAS
443 identified in this state.

444 3. Inventory all ongoing direct and indirect discharges of
445 PFAS to the air and surface waters, likely instances of PFAS
446 contamination in soil and groundwater, and the amount of such
447 discharges and contaminations.

448 4. Include a risk assessment, based on the best available
449 scientific information, of the risks to human health from
450 exposure to PFAS present in this state in various media,
451 including air, water, and soil.

452 5. Estimate the ongoing and anticipated future costs of the
453 aggregate impact of the discharge, emission, and contamination
454 of PFAS in this state, including the costs of sampling, testing,
455 cleanup, and decontamination; health care-related costs for
456 treating individuals who have been exposed to PFAS;
457 infrastructure improvements; and any other associated costs.

458 6. Evaluate the impact of PFAS on public health and natural
459 resources.

460 7. Identify areas of potential or known contamination.

461 8. Recommend response strategies that minimize the health
462 risks of exposure to PFAS and protect this state's resources in
463 a cost-effective manner.

464 9. Recommend risk mitigation and remedial strategies.

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465 10. Recommend public education and outreach strategies to
466 increase awareness and understanding of PFAS impacts and the
467 relative risk of exposure to PFAS through various exposure
468 pathways.

469 11. Recommend a program for site cleanup, rehabilitation,
470 mitigation, funding, financial assistance, and liability
471 protection for responsible persons.

472 (b) By December 31, 2021, and annually thereafter, the
473 department, in consultation with the Department of Health, shall
474 prepare and submit a report to the Governor, the President of
475 the Senate, and the Speaker of the House of Representatives on
476 the progress of its findings under the program, including any
477 recommendations for legislative action.

478 Section 7. This act shall take effect upon becoming a law.