

By Senator Albritton

26-00911-22

20221210__

1 A bill to be entitled
2 An act relating to the development of current or
3 former agricultural land; creating s. 376.3065, F.S.;
4 defining terms; providing legislative findings;
5 providing that the application of pesticides as part
6 of agricultural operations is presumed to be a lawful
7 application under certain circumstances; authorizing
8 pesticide mixing areas to be legally subdivided for
9 certain purposes; requiring the Department of
10 Environmental Protection to investigate claims and
11 provide certain remedies as applicable; providing site
12 assessment and remedial activity requirements for
13 current or former agricultural land; providing
14 applicability; providing that current or former
15 agricultural land that meets certain requirements is
16 exempt from further regulation by the department;
17 authorizing property owners to voluntarily apply for
18 brownfield site rehabilitation activities; authorizing
19 lenders to rely on certain provisions under certain
20 circumstances; requiring property owners to provide
21 the department with reasonable assurances that certain
22 risk management techniques have been implemented
23 before redeveloping their property; requiring the
24 property owner to notify the department upon
25 completion of the risk management techniques;
26 prohibiting the department from requiring additional
27 environmental management activities for certain
28 property owners except in cases of fraud, the
29 discovery of new information regarding a specified

26-00911-22

20221210__

30 contaminant, failed management efforts, or substantial
31 changes in exposure conditions; amending s. 403.182,
32 F.S.; providing that the Secretary of Environmental
33 Protection has exclusive jurisdiction in evaluating
34 environmental conditions and assessing potential
35 liability for the presence of contaminants on certain
36 lands; prohibiting the secretary from delegating such
37 authority to a local governmental entity; providing an
38 effective date.

39
40 Be It Enacted by the Legislature of the State of Florida:

41
42 Section 1. Section 376.3065, Florida Statutes, is created
43 to read:

44 376.3065 Development of current or former agricultural
45 land.—

46 (1) DEFINITIONS.—As used in this section, the term:

47 (a) "Current or former agricultural land" means land that
48 is or was classified as agricultural land pursuant to s.
49 193.461.

50 (b) "Lawful application" means the application of
51 pesticides that have been properly mixed and applied in
52 accordance with the manufacturer specifications and United
53 States Environmental Protection Agency approvals on the labels
54 of properly registered products.

55 (c) "Pesticide" has the same meaning as in 7 U.S.C. s.
56 136(u).

57 (d) "Pesticide mixing area" means the area on the property
58 where pesticide storage, mixing, or equipment maintenance

26-00911-22

20221210__

59 facilities are located.

60 (e) "Qualified property" means a parcel of land that is
61 part of a broader, regional, or multi property area impacted by
62 pesticides.

63 (2) LAWFUL APPLICATION OF PESTICIDES.—

64 (a) The Legislature finds that state and federal
65 regulations prescribe lawful application of pesticides and limit
66 their use in the operation of bona fide agricultural activities.

67 (b) For purposes of this section, the application of
68 pesticides as part of agricultural operations is presumed to be
69 a lawful application, unless a discharge as defined in s.
70 376.301 exists, and is presumed not to be a recognized
71 environmental condition pursuant to 40 C.F.R. part 312.

72 (c) Notwithstanding any other state or local law or
73 regulation to the contrary, pesticide mixing areas may be
74 legally subdivided as separate parcels of land for environmental
75 evaluation and remediation.

76 (d) Upon receiving a report of a discovery of verifiable
77 pesticide impacts to potable water systems or potable private
78 wells caused by a property, the department shall investigate the
79 claim pursuant to s. 376.30(3) and provide any appropriate
80 remedies pursuant to s. 376.307(5).

81 (3) SITE ASSESSMENT AND REMEDIAL ACTIVITIES FOR CURRENT OR
82 FORMER AGRICULTURAL LAND.—

83 (a) Notwithstanding any existing state or local law or
84 regulation for site assessment and remedial activity applicable
85 to current or former agricultural land, this section shall be
86 used for evaluating environmental conditions and prescribing
87 remedial activity for a contaminated site for such current or

26-00911-22

20221210__

88 former agricultural land. This section does not apply to former
89 agricultural land that has obtained local government-approved
90 permits to initiate redevelopment or has completed redevelopment
91 as of July 1, 2022.

92 (b) Current or former agricultural land that meets the
93 requirements of this section is exempt from regulation by
94 department rules for site assessment and remedial activity
95 associated with lawful applications.

96 (c) A property owner may voluntarily apply for brownfield
97 site rehabilitation activities in accordance with the
98 Brownfields Redevelopment Act, ss. 376.77-376.85.

99 (d) Lenders may rely on this section if:

100 1. The lender is serving as a trustee, a personal
101 representative, or another type of fiduciary;

102 2. The lender holds indicia of ownership in the site
103 primarily to protect a security interest; or

104 3. The lender held a security interest in the site and has
105 foreclosed or otherwise acted to acquire title primarily to
106 protect its security interest; seeks to sell, transfer, or
107 otherwise divest the assets for subsequent sale at the earliest
108 possible time, taking all relevant facts and circumstances into
109 account; and has not undertaken management activities beyond
110 those necessary to protect its financial interest, to effectuate
111 compliance with environmental statutes and rules.

112 (e) This section applies regardless of when a contaminant
113 was discovered if the real property owner of the current or
114 former agricultural land:

115 1. Completes environmental management activities pursuant
116 to subsection (4) as part of the property's redevelopment. The

26-00911-22

20221210__

117 incentives of this subsection do not apply to formerly
118 cultivated land that has obtained local government-approved
119 permits to initiate redevelopment or has completed redevelopment
120 as of July 1, 2022, and such redeveloped properties are not
121 required to complete the risk management activities pursuant to
122 subsection (4);

123 2. Has not been proved to have operated in a grossly
124 negligent manner. Discharges as defined in s. 376.301 do not
125 exist on the current or former agricultural land;

126 3. Has not willfully concealed a discharge as defined in s.
127 376.301; and

128 4. Provides reasonable assurances that the property does
129 not include:

130 a. A pesticide mixing area; or

131 b. An area, including surface or groundwater, designated as
132 a contaminated site whose classification as a contaminated site
133 was the result of its proximity to a pesticide mixing area.

134 (f) Current or former bona fide agricultural operations are
135 presumed to have lawfully applied pesticides in this state,
136 unless evidence of a point source of impacts or a discharge as
137 defined in s. 376.301 exists.

138 (4) ENVIRONMENTAL MANAGEMENT.—

139 (a) Before redevelopment of current or former agricultural
140 land that qualifies as a contaminated site, the property owner
141 or authorized representative shall provide the department with
142 reasonable assurances that all of the following applicable risk
143 management techniques have been implemented:

144 1. A soil management plan that includes, at a minimum,
145 exposed soils on site that are subject to human exposure, that

26-00911-22

20221210__

146 are found between land surface and 2 feet below land surface,
147 and that meet or exceed soil cleanup target levels established
148 by department rule. The soils must be managed using appropriate
149 institutional or engineering controls consistent with the
150 proposed land reuse, which may be accomplished using non-
151 contaminated fill material or by mixing or blending the soil
152 during construction. Soil reuse or relocation must be conducted
153 in accordance with all applicable federal, state, and local
154 regulations. A soil management plan must follow guidance
155 developed by the department.

156 2. If surface water or groundwater sampling for the current
157 or former agricultural land indicates the presence of
158 contaminants at concentrations exceeding cleanup target levels
159 established by department rule, a water management plan for the
160 property that incorporates institutional controls as defined in
161 s. 376.301(21) or s. 376.79(11). Stormwater conveyance
162 construction and dewatering requirements must be completed
163 pursuant to applicable department permits. Proposed or existing
164 improvements to a property with human occupancy which is served
165 by a municipal drinking water supply system or which accesses
166 drinking water must meet water management district well
167 permitting rules.

168 (b) The property owner shall notify the department upon
169 completion of the risk management techniques, with an
170 affirmative demonstration that the owner has met the
171 requirements of this section.

172 (c) Qualified properties are not required to meet any off-
173 property sampling requirements under this chapter, and a
174 property owner of such a property is only responsible for

26-00911-22

20221210__

175 environmental risk management within the qualified property's
176 legal boundaries.

177 (5) REOPENERS.—Upon completion of environmental management
178 activities in compliance with subsection (4), the property may
179 not be required to complete additional environmental management
180 activities unless:

181 (a) The department determines that fraud was committed in
182 demonstrating land or real property conditions or in completing
183 environmental management activities;

184 (b) New information confirms the existence of a contaminant
185 that exceeds the environmental management criteria established
186 in accordance with subsection (4) or that otherwise poses the
187 threat of real and substantial harm to public health, safety,
188 and the environment;

189 (c) Environmental management efforts failed to achieve the
190 criteria established under this section; or

191 (d) Substantial changes in exposure conditions have
192 increased the level of risk beyond the acceptable risk
193 established under subsection (4). The department may require a
194 person who changes the land use of the property which causes the
195 level of risk to increase beyond the acceptable risk level to
196 undertake additional environmental management measures to assure
197 the protection of human health and the environment.

198 Section 2. Subsection (11) is added to section 403.182,
199 Florida Statutes, to read:

200 403.182 Local pollution control programs.—

201 (11) Notwithstanding this section or any existing local
202 pollution control programs, the Secretary of Environmental
203 Protection has exclusive jurisdiction in all matters related to

26-00911-22

20221210__

204 evaluating environmental conditions and assessing potential
205 liability for the presence of contaminants on land that is or
206 was classified as agricultural land pursuant to s. 193.461,
207 including defining what constitutes all appropriate inquiries.
208 The secretary may not delegate the authority to a county, a
209 municipality, or another unit of local government through a
210 local pollution control program under s. 403.182.

211 Section 3. This act shall take effect July 1, 2022.