

# FLORIDA HOUSE OF REPRESENTATIVES

## FINAL BILL ANALYSIS

*This bill analysis was prepared by nonpartisan committee staff and does not constitute an official statement of legislative intent.*

<b>BILL #:</b> <a href="#">CS/HB 733</a>	<b>COMPANION BILL:</b> <a href="#">CS/CS/SB 736</a> (Truenow)
<b>TITLE:</b> Brownfields	<b>LINKED BILLS:</b> None
<b>SPONSOR(S):</b> Anderson	<b>RELATED BILLS:</b> None

**FINAL HOUSE FLOOR ACTION:** 116 Y's 0 N's **GOVERNOR'S ACTION:** Pending

### SUMMARY

#### Effect of the Bill:

The bill makes various changes related to the Brownfields Program (program). Specifically, the bill:

- Extends the contaminated site eligibility cutoff date for local government participants that did not cause or contribute to the contamination from July 1, 1997, to July 1, 2025.
- Streamlines a process that requires certain sites to obtain approval from the Environmental Protection Agency to participate in the program.
- Revises the requirements and timing for claiming a certain tax credit under the Voluntary Cleanup Tax Credit (VCTC) program.
- Allows larger brownfield properties to be subdivided into smaller parcels for purposes of brownfield site rehabilitation.
- Revises other requirements and procedures related to the program.

#### Fiscal or Economic Impact:

The Revenue Estimating Conference estimated that the bill will not have an impact on state or local government revenues. The bill may have an indeterminate positive fiscal impact on the private sector associated with the expanded eligibility of the VCTC.

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### ANALYSIS

#### EFFECT OF THE BILL:

The bill makes various changes related to the [Brownfields Program](#) (program).

#### Definitions

The bill revises definitions that apply to the program to create separate definitions for the terms “brownfield” and “brownfield site.” The bill defines “brownfield” as any real property, the expansion, redevelopment, or reuse of which may be complicated by actual or perceived environmental contamination and which has not yet been entered into a brownfield site rehabilitation agreement. The bill defines the term “brownfield site” to mean the real property identified in a brownfield site rehabilitation agreement executed by the person responsible for brownfield site rehabilitation of the property and the Department of Environmental Protection (DEP) or a delegated local pollution control program, as applicable. (Section [4](#))

#### Eligibility and Participation

##### *Local Governments*

The bill authorizes a local governmental entity, including any other person who may be organized or united with the entity for a business purpose, to participate in the program if such entity or person did not cause or contribute to the contamination of a brownfield site on or after July 1, 2025. Thus, the bill extends the contaminated site eligibility cutoff date for local government participants from July 1, 1997, to July 1, 2025. (Section [6](#))

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**DATE:** 5/5/2025

### *Environmental Protection Agency Authorizations*

The bill revises a process that requires certain sites, including superfund sites, to obtain an exemption through a [memorandum of agreement \(MOA\) with the Environmental Protection Agency](#) (EPA) in order to be eligible for participation in the program. Instead of having to obtain such an exemption, the bill allows these sites to participate in the program if the EPA issues a letter stating it has no objection to the site's participation, the person seeking to participate in the program demonstrates he or she will conduct site rehabilitation, and DEP issues a letter of concurrence. (Section [6](#))

The bill specifies that DEP may not require as a condition of issuing its letter of concurrence that the EPA forego enforcement of federal corrective action authority at brownfield sites that have received a site rehabilitation completion order. The bill requires the letter of no objection from the EPA and the letter of concurrence from DEP to be attached to the brownfield site rehabilitation agreement. (Section [6](#))

The bill specifies that proposed brownfield sites that are subject to ongoing formal judicial or administrative enforcement action or corrective action pursuant to an EPA order under the federal Resource Conservation and Recovery Act,<sup>1</sup> or that have obtained or are required to obtain a permit for the operation of a hazardous waste treatment, storage, or disposal facility, a post-closure permit, or a permit pursuant to the federal Hazardous and Solid Waste Amendments of 1984, are eligible for participation in the program provided that the sites:

- Obtain the necessary letters of no objection and concurrence.
- Comply with the provisions of Section V<sup>2</sup> of the Memorandum of Agreement between DEP and EPA Region 4 covering Florida's Brownfield Program, dated November 28, 2005, as may be amended. (Section [6](#))

### *Job Creation Requirement*

The bill specifies that the requirement that a proposed brownfield site create 10 new permanent jobs that normally applies to a site applicant who is subject to ongoing corrective action or enforcement does not apply to the rehabilitation and redevelopment of a brownfield site that will:

- Provide affordable housing;
- Create recreational areas, conservation areas, or parks; or
- Be maintained for cultural or historical preservation purposes. (Section [6](#))

### **Procedures and Requirements**

The bill removes requirements for local governments to note the use of institutional controls to reach closure of a brownfield site on their land use and zoning maps. This information is provided on a GIS-based system maintained by DEP that is available to the public. (Section [1](#))

### **Voluntary Cleanup Tax Credit**

The bill revises the requirements and timing for claiming an additional 25 percent tax credit under the Voluntary Cleanup Tax Credit (VCTC) program in the final year of cleanup. The bill specifies that such credit may be claimed if DEP has approved the applicant's annual site rehabilitation application and has issued a site rehabilitation completion order for the site. In addition, the bill requires the tax credit applicant to submit the claim within two years after receipt of the "No Further Action" order for the site. (Section [2](#))

The bill also extends the deadline for DEP to notify tax credit applicants of their eligibility status and credit amount from May 1 to June 1. It also gives DEP an additional 30 days (for a total of 120 days instead of the current 90 days) to respond after receiving a tax credit applicant's response to a notice of deficiency. (Section [2](#))

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<sup>1</sup> 42 U.S.C. §6901 et seq.

<sup>2</sup> Section V provides the following: "Region 4's relationship with FDEP regarding RCRA facilities eligible for the [state brownfields program] will be conducted in accordance with the RCRA MOA, under 40 C.F.R. § 271.8, and other provisions governing the authorized program under RCRA Subtitle C. Region 4 recognizes that FDEP can determine whether to take State action at RCRA facilities under its State law and consistent with the provisions governing the State's authorized program. Region 4 also recognizes that those RCRA sites which participate in the [state brownfields program] may qualify for the economic and regulatory benefits specific to the Act." EPA and DEP, *Memorandum of Agreement between the Florida Department of Environmental Protection and the United States Environmental Protection Agency Region 4-5* (2005), available at [https://floridadep.gov/sites/default/files/Brownfields%20MOA%20with%20EPA%2011-28-05\\_0.pdf](https://floridadep.gov/sites/default/files/Brownfields%20MOA%20with%20EPA%2011-28-05_0.pdf).

### **Smaller Parcel Rehabilitation**

The bill provides that if the person responsible for a brownfield site rehabilitation demonstrates compliance with the applicable contamination cleanup criteria, and the brownfield site is only a portion of a larger contaminated site, DEP or any delegated local pollution control program may not:

- Deny a “No Further Action” status for the brownfield site; or
- Refuse to issue a site rehabilitation completion order for the brownfield site, regardless of whether it has engineering and institutional controls. This applies even where similar contamination exists elsewhere on the contaminated site, which was the result of similar or related activities or operations that occurred both on the contaminated site and the brownfield site, provided that all soil and groundwater contamination emanating from the brownfield site is adequately addressed. (Section [5](#))

This prohibition applies to all brownfield sites, irrespective of the effective date of the brownfield site rehabilitation agreement. (Section [5](#))

### **Miscellaneous Provisions**

The bill revises legislative intent to remove language that specifies the program is limited to existing commercial and industrial sites. (Section [3](#))

The bill conforms cross-references. (Sections [7](#), [8](#), and [9](#))

### **Effective Date**

Subject the Governor’s veto powers, the effective date of the bill is July 1, 2025. (Section [10](#))

### **FISCAL OR ECONOMIC IMPACT:**

#### **STATE GOVERNMENT:**

The Revenue Estimating Conference determined that the bill would have no impact on state revenues associated with the expansion of eligibility for the VCTC because the \$35 million authorization cap for the VCTC remains unchanged under the bill.<sup>3</sup>

#### **PRIVATE SECTOR:**

The bill may have an indeterminate positive fiscal impact on the private sector associated with the expanded eligibility of the VCTC.

## **RELEVANT INFORMATION**

### **SUBJECT OVERVIEW:**

#### **Brownfields Program**

Many areas in Florida contain sites with actual or perceived environmental contamination that may present a significant barrier to redevelopment.<sup>4</sup> The Florida Brownfields Redevelopment Act was adopted by the Florida Legislature in 1997 to provide incentives for local governments and individuals to voluntarily clean up and redevelop brownfield sites pursuant to the Brownfields Program (program).<sup>5</sup> Participation in the program results in environmental cleanup, protection of public health, reuse of infrastructure, economic redevelopment, and job creation.<sup>6</sup> Since inception of the program in 1997, 235 contaminated sites have been cleaned up; approximately 89,976 confirmed and projected direct and indirect jobs have been created; and \$3.188 billion in capital investment is projected in designated brownfield areas.<sup>7</sup>

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<sup>3</sup> Revenue Estimating Conference, *Brownfields Credit Modification* (2/28/2025) available at <https://edr.state.fl.us/content/conferences/revenueimpact/archives/2025/pdf/impact0228.pdf> (last visited Mar. 12, 2025).

<sup>4</sup> Department of Environmental Protection (DEP), *Florida Brownfields Redevelopment Program Annual Report: FY 2023-24 [hereinafter 2024 Annual Report]*, 4 (2024), available at <https://floridadep.gov/sites/default/files/2024%20Brownfields%20Program%20Legislative%20Report%208.1.2024.pdf>.

<sup>5</sup> Chapter 97-277, s. 1, Laws of Fla.

<sup>6</sup> DEP, *DEP 2024 Annual Report* at 4.

<sup>7</sup> *Id.* at 2.

Local governments support the use of the tools and incentives provided by the program by designating brownfield areas for cleanup and revitalization.<sup>8</sup> A brownfield area designation can also be proposed by other persons, including, but not limited to, individuals, corporations, partnerships, limited liability companies, community-based organizations, and not-for-profit corporations.<sup>9</sup> In such cases, the local government with jurisdiction over the proposed brownfield area must adopt a resolution to designate the brownfield area if, at a public hearing, the person proposing the designation establishes the following:

- A person who owns or controls a potential brownfield site is requesting the designation and has agreed to rehabilitate and redevelop the brownfield site.
- The rehabilitation and redevelopment of the proposed brownfield site will result in economic productivity of the area, along with the creation of at least five new permanent jobs at the brownfield site that are full-time equivalent positions not associated with the implementation of the brownfield site rehabilitation agreement and that are not associated with redevelopment project demolition or construction activities pursuant to the redevelopment of the proposed brownfield site or area. However, the job creation requirement does not apply to the rehabilitation and redevelopment of a brownfield site that will provide affordable housing<sup>10</sup> or the creation of recreational areas, conservation areas, or parks.
- The redevelopment of the proposed brownfield site is consistent with the local comprehensive plan and is a permissible use under the applicable local land development regulations.
- Notice of the proposed rehabilitation of the brownfield area has been provided to neighbors and nearby residents of the proposed area to be designated, and the person proposing the area for designation has afforded to those receiving notice the opportunity for comments and suggestions about rehabilitation.
- The person proposing the area for designation has provided reasonable assurance that he or she has sufficient financial resources to implement and complete the rehabilitation agreement and redevelopment of the brownfield site.<sup>11</sup>

If the local government proposes the designation, the local government must consider:

- Whether the brownfield area warrants economic development and has a reasonable potential for such activities.
- Whether the proposed area to be designated represents a reasonably focused approach and is not overly large in geographic coverage.
- Whether the area has potential to interest the private sector in participating in rehabilitation.
- Whether the area contains sites or parts of sites suitable for limited recreational open space, cultural, or historical preservation purposes.<sup>12</sup>

Upon designation, properties within a brownfield area have met the first requirement for participation in the program.<sup>13</sup> These properties may participate in economic incentives that are linked to a brownfield site rehabilitation agreement (BSRA), including the job bonus tax refund or refunds on sales and use tax paid on the purchase of building materials used in a mixed-use project or housing project. If contamination is known or suspected, the local government may designate an area and identify the person responsible for brownfield site rehabilitation. This entitles the identified person to negotiate a BSRA with the Department of Environmental Protection (DEP).<sup>14</sup>

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<sup>8</sup> *Id.* at 5.

<sup>9</sup> Section [376.80\(1\)\(b\)2. and \(2\)\(c\), F.S.](#)

<sup>10</sup> “Affordable” means that monthly rents or monthly mortgage payments including taxes, insurance, and utilities do not exceed 30 percent of that amount which represents the percentage of the median adjusted gross annual income for the households of extremely-low-income persons, very-low-income persons, low-income persons, or moderate-income persons. Section [420.0004\(3\), F.S.](#)

<sup>11</sup> “Brownfield area” means a contiguous area of one or more brownfield sites, some of which may not be contaminated and which have been designated by a local government by resolution. Section [376.79\(5\), F.S.](#) “Brownfield sites” means real property, the expansion, redevelopment, or reuse of which may be complicated by actual or perceived environmental contamination. Section [376.79\(4\), F.S.](#)

<sup>12</sup> Section [376.80\(2\)\(a\), F.S.](#)

<sup>13</sup> DEP, 2024 Annual Report at 5.

<sup>14</sup> *Id.*

## **Local Pollution Control Programs**

Counties and municipalities may establish and administer a local pollution control program provided it complies with all other provisions of the Florida Air and Water Pollution Control Act (FAWPCA).<sup>15</sup> All local pollution control programs must:<sup>16</sup>

- Be approved by DEP as adequate to meet the requirements of the FAWPCA and any applicable rules and regulations pursuant thereto.
- Provide by ordinance, regulation, or local law for requirements compatible with, or stricter or more extensive than, those imposed by the FAWPCA and regulations issued thereunder.
- Provide for the enforcement of such requirements by appropriate administrative and judicial process.
- Provide for administrative organization, staff, financial, and other resources necessary to effectively and efficiently carry out its program.

If DEP determines that a local pollution control program is inadequate to prevent and control pollution, or is being administered in a manner inconsistent with the requirements of the FAWPCA, it may require necessary corrective measures.<sup>17</sup> If these corrective measures are not implemented, DEP may reassume implementation of the FAWPCA within the jurisdiction.<sup>18</sup> Each local pollution control program must cooperate with and assist DEP in carrying out its powers, duties, and functions.<sup>19</sup>

Site rehabilitation completion orders are issued for sites that have completed cleanup of property to standards protective of human health and the environment, as established by DEP rule, and for which “no further action” is required at that time.<sup>20</sup>

## **Memorandum of Agreement with the Environmental Protection Agency**

The current memorandum of agreement (MOA) between DEP and the Environmental Protection Agency (EPA) that specifies the criteria under which the EPA will forego its oversight of cleanups in Florida was amended and executed on November 28, 2005. Florida is one of approximately 25 states with an existing MOA with the EPA. Through the MOA, certain sites subject to corrective action under the federal Comprehensive Environmental Response Compensation and Liability Act (CERCLA)<sup>21</sup> and Resource Conservation and Recovery Act (RCRA)<sup>22</sup> authority are eligible for state brownfields incentives.<sup>23</sup>

## **Brownfield Area**

A brownfield area is a contiguous area of one or more brownfield sites, portions of which may not be contaminated, that has been designated by local government resolution. Brownfield areas may include all or portions of community redevelopment areas, enterprise zones, empowerment zones, other similarly designated economically deprived communities and areas, and EPA-designated brownfield pilot projects.<sup>24</sup>

## **Voluntary Cleanup Tax Credit**

In 1998, the Florida Legislature established the Voluntary Cleanup Tax Credit (VCTC) program to provide an incentive for the voluntary cleanup of drycleaning solvent-contaminated sites and brownfield sites in designated brownfield areas.<sup>25</sup> Only those brownfield sites with an executed BSRA are eligible to apply for a VCTC incentive.<sup>26</sup> For these eligible sites, a tax credit of 50 percent is allowed for the cost of voluntary cleanup activity that is integral

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<sup>15</sup> Section [403.182, F.S.](#)

<sup>16</sup> Section [403.182\(1\), F.S.](#)

<sup>17</sup> See section [403.182\(4\), F.S.](#)

<sup>18</sup> *Id.*

<sup>19</sup> Section [403.182\(10\), F.S.](#)

<sup>20</sup> “No further action” is a term of art for a determination by DEP that no further action is necessary to address the environmental issues at the property. See generally DEP, *Brownfields Program*, <https://floridadep.gov/waste/waste-cleanup/content/brownfields-program> (last visited Mar. 12, 2025); rule [62-780.680, F.A.C.](#)

<sup>21</sup> 2 U.S.C. §9601 et seq.

<sup>22</sup> 42 U.S.C. §6901 et seq.

<sup>23</sup> DEP, 2024 Annual Report at 9.

<sup>24</sup> Section [376.79\(5\), F.S.](#)

<sup>25</sup> DEP, 2024 Annual Report at 7.

<sup>26</sup> *Id.*



to site rehabilitation, with a maximum of \$500,000 allowed per site per year.<sup>27</sup> An additional 25 percent of the total site rehabilitation costs, not to exceed \$500,000, may also be claimed in the final year of cleanup as evidenced by DEP issuing a “no further action” order for that site.<sup>28</sup>

Additionally, a one-time 50 percent tax credit may be claimed for costs related to solid waste removal at a brownfield site, with a maximum of \$500,000 allowed per site.<sup>29</sup> To claim the tax credit, the applicant must submit an affidavit stating that, after consultation with appropriate local government officials and DEP, to the best of the applicant’s knowledge based upon such consultation and available historical records, the brownfield site was never operated as a permitted solid waste disposal area or was never operated for monetary compensation.<sup>30</sup>

For site rehabilitation tax credits, a tax credit application must be received by DEP’s Division of Waste Management by January 31 of the year after the calendar year for which site rehabilitation costs are being claimed.<sup>31</sup> On or before May 1, DEP must inform each tax credit applicant that is subject to the January 31 annual application deadline of the applicant’s eligibility status and the amount of any tax credit due.<sup>32</sup> If DEP determines that an application is incomplete, it must notify the applicant in writing and the applicant will have 30 days after receiving such notification to correct any deficiency.<sup>33</sup> The May 1 deadline for annual site rehabilitation tax credit certificate awards does not apply to any tax credit application for which DEP has issued a notice of deficiency.<sup>34</sup> DEP must respond within 90 days after receiving a response from the tax credit applicant to such a notice of deficiency.<sup>35</sup>

Tax credits are applied against the state corporate income tax and are eligible for a one-time transfer within a five-year period.<sup>36</sup> Tax credit certificates are awarded by DEP from an annual \$35 million authorization.<sup>37</sup> Tax credit awards in excess of \$35 million for any given fiscal year are issued from the next available tax credit authorization.<sup>38</sup> The VCTC program has approved approximately \$201.2 million in tax credits since it began more than 20 years ago.<sup>39</sup>

### **Liability Protection**

Any person who executes and implements a BSRA to successful completion is relieved of:

- Further liability for remediation of the contaminated site or sites to the state and to third parties.
- Liability in contribution to any other party who has or may incur cleanup liability for the contaminated site or sites.
- Liability for claims of property damages (e.g., diminished value of real property, lost or delayed rent, sale, or use of real property or improvements, or stigma to real property or improvements caused by contamination addressed by a brownfield site rehabilitation agreement).<sup>40</sup>

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<sup>27</sup> *Id.*

<sup>28</sup> Section [376.30781\(3\)\(c\), F.S.](#)

<sup>29</sup> DEP, 2024 Annual Report at 7.

<sup>30</sup> Section [376.30781\(3\)\(e\), F.S.](#)

<sup>31</sup> Section [376.30781\(5\)\(a\), F.S.](#)

<sup>32</sup> Section [376.30781\(9\), F.S.](#) Tax credit applications claiming costs for solid waste removal are not subject to the calendar-year limitation and January 31 annual application deadline. Section [376.30781\(3\)\(e\), F.S.](#)

<sup>33</sup> Section [376.30781\(8\)\(a\), F.S.](#)

<sup>34</sup> Section [376.30781\(9\), F.S.](#)

<sup>35</sup> *Id.*

<sup>36</sup> DEP, 2024 Annual Report at 7.

<sup>37</sup> DEP, *Voluntary Cleanup Tax Credit*, <https://floridadep.gov/waste/waste-cleanup/content/voluntary-cleanup-tax-credit> (last visited on Mar. 12, 2025).

<sup>38</sup> *Id.*

<sup>39</sup> DEP, 2024 Annual Report at 7.

<sup>40</sup> Section [376.82\(2\)\(a\), F.S.](#) This liability protection does not apply to a person who discharges contaminants on property subject to a brownfield site rehabilitation agreement, who commits fraud in demonstrating site conditions or completing site rehabilitation of a property subject to a brownfield site rehabilitation agreement, or who exacerbates contamination of a property subject to a brownfield site rehabilitation agreement in violation of applicable laws which causes property damages.

*Id.*

This does not limit the right of a third party other than the state to pursue an action for personal injury damages; however, such an action may not compel site rehabilitation in excess of that required in the approved brownfield site rehabilitation agreement or otherwise required by DEP or approved local pollution control program.<sup>41</sup>

Liability protection becomes effective upon execution of a BSRA.<sup>42</sup> Completion of the performance of the remediation obligations at the brownfield site must be evidenced by a site rehabilitation completion letter or a “no further action” letter issued by DEP or the approved local pollution control program.<sup>43</sup>

In an effort to secure federal liability protection for persons willing to undertake remediation responsibility at a brownfield site, DEP negotiated an MOA with EPA, whereby EPA agreed to forego enforcement of federal corrective action authority at brownfield sites that have received a site rehabilitation completion or “no further action” determination from DEP or the approved local pollution control program or that are in the process of implementing a BSRA.<sup>44</sup> Through the MOA, certain sites subject to corrective action under CERCLA and RCRA authority are eligible for state brownfields incentives.<sup>45</sup>

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<sup>41</sup> Section [376.82\(2\)\(b\), F.S.](#)

<sup>42</sup> Section [376.82\(2\)\(d\), F.S.](#)

<sup>43</sup> Section [376.82\(2\)\(e\), F.S.](#)

<sup>44</sup> Section [376.82\(2\)\(g\), F.S.](#) See EPA and DEP, *Memorandum of Agreement* at 4.

<sup>45</sup> Section [376.81\(1\)\(a\), F.S.](#); DEP, 2024 Annual Report at 9.