

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Committee on Agriculture, Environment, and General Government

BILL: CS/SB 736

INTRODUCER: Environment and Natural Resources Committee and Senator Truenow and others

SUBJECT: Brownfields

DATE: March 25, 2025

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Barriero</u>	<u>Rogers</u>	<u>EN</u>	<u>Fav/CS</u>
2.	<u>Reagan</u>	<u>Betta</u>	<u>AEG</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 736 provides that if the person responsible for a brownfield site rehabilitation demonstrates the applicable contamination cleanup criteria has been met, and the brownfield site is part of a larger contaminated site, the Department of Environmental Protection (DEP) or any delegated local pollution control program may not deny a “no further action” status or refuse to issue a site rehabilitation completion order for the brownfield site, regardless of whether it has engineering and institutional controls. The bill deletes provisions related to local governments’ role in mapping institutional controls.

The bill removes a provision that prohibited unpermitted sites that were operated for monetary compensation (i.e., sites that charged fees or levied assessments for the disposal of solid waste at a landfill, dump, or other area where solid waste has been disposed) from claiming tax credits for the costs of solid waste removal under the brownfield program.

The bill also allows persons organized or united with a local governmental entity for a business purpose to participate in the program, provided they did not cause or contribute to the brownfield site.

The bill also provides that, for sites subject to certain federal enforcement actions or permits that would otherwise be ineligible to participate in the brownfield program, the DEP must allow participation if the U.S. Environmental Protection Agency (EPA) issues a letter stating it has no objection to a site’s participation in a brownfield program, and the person seeking to participate

in the brownfield program can reasonably demonstrate that he or she will conduct site rehabilitation pursuant to the rules governing contamination cleanup criteria. The bill provides that the DEP may not require as a condition of such letter that the EPA forego enforcement of federal corrective action authority at brownfield sites that have received a site rehabilitation completion order.

The bill has no impact on state revenues or expenditures. See Section V. Fiscal Impact Statement.

The bill takes effect on July 1, 2025.

II. Present Situation:

Brownfields Program Overview

Many areas in Florida contain sites with actual or perceived environmental contamination that may present a significant barrier to redevelopment.¹ 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.² Participation in the program results in environmental cleanup, protection of public health, reuse of infrastructure, economic redevelopment and job creation.³ 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.⁴

Local governments support the use of the tools and incentives provided by the program by designating brownfield areas for cleanup and revitalization.⁵ 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.⁶ 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

¹ Florida Dep't of Environmental Protection (DEP), *Florida Brownfields Redevelopment Program Annual Report: FY 2023-24*, 4 (2024), available at <https://floridadep.gov/sites/default/files/2024%20Brownfields%20Program%20Legislative%20Report%208.1.2024.pdf>. (last visited Mar. 22, 2025).

² Chapter 97-277, s. 1, Laws of Fla.; ss. 376.77-376.86, F.S.

³ The DEP, *Florida Brownfields Redevelopment Program Annual Report: FY 2023-24* at 4.

⁴ *Id.* at 2.

⁵ The DEP, *Florida Brownfields Redevelopment Program Annual Report: FY 2023-24* at 5, available at <https://floridadep.gov/sites/default/files/2024%20Brownfields%20Program%20Legislative%20Report%208.1.2024.pdf>. (last visited Mar. 22, 2025).

⁶ Section 376.80(1)(b)2. and (2)(c), F.S.

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 housing⁷ 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.⁸

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; and
- Whether the area contains sites or parts of sites suitable for limited recreational open space, cultural, or historical preservation purposes.⁹

Upon designation, properties within a brownfield area have met the first requirement for participation in the program.¹⁰ 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).¹¹

⁷ “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.

⁸ Section 376.80(2)(c), F.S. “Brownfield area” means a contiguous area of one or more brownfield sites, some of which may not be contaminated, and which has 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.

⁹ Section 376.80(2)(a), F.S.

¹⁰ The DEP, *Florida Brownfields Redevelopment Program Annual Report: FY 2023-24* at 5, available at <https://floridadep.gov/sites/default/files/2024%20Brownfields%20Program%20Legislative%20Report%208.1.2024.pdf>. (last visited Mar. 22, 2025).

¹¹ *Id.*

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 ch. 62-780 of the Florida Administrative Code., and for which “no further action” is required at that time.¹²

Program Eligibility

Any person who has not caused or contributed to the contamination of a brownfield site on or after July 1, 1997, is eligible to participate in the brownfield program.¹³ However, certain sites are not eligible for participation unless a specific exemption is secured by a memorandum of agreement (MOA) with the U.S. Environmental Protection Agency (EPA).¹⁴ This applies to sites that (1) are subject to ongoing federal enforcement or corrective actions pursuant to the Comprehensive Environmental Response Compensation and Liability Act, the Safe Drinking Water Act, or the Clean Water Act; (2) under an order from the EPA pursuant to s. 3008(h) of the Resource Conservation and Recovery Act; or (3) have obtained or are required to obtain a permit for the operation of a hazardous waste treatment, storage, or disposal facility; a postclosure permit; or a permit pursuant to the federal Hazardous and Solid Waste Amendments of 1984.¹⁵ Likewise, if a brownfield site within an eligible brownfield area later becomes subject to formal federal enforcement or corrective actions, its eligibility will be revoked unless specific exemptions are secured through an EPA memorandum of agreement.¹⁶

In addition, otherwise eligible persons who, prior to the DEP’s approval of a BSRA, are subject to ongoing corrective action or enforcement under state authority, including those persons subject to a pending consent order with the state, are eligible for participation in a BSRA if:

- The proposed brownfield site is currently idle or underutilized as a result of the contamination, and participation in the brownfield program will immediately result in increased economic productivity at the site, including at a minimum the creation of 10 new permanent jobs, whether full-time or part-time, which are not associated with implementation of the BSRA; and
- The person is complying in good faith with the terms of an existing consent order or a DEP-approved corrective action plan, or responding in good faith to an enforcement action, as evidenced by a determination issued by the DEP or an approved local pollution control program.¹⁷

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.

¹² *Id.* “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); Fla. Admin. Code R. 62-780.680.

¹³ Section 376.82(1), F.S.

¹⁴ See section 376.82(1)(a), F.S. See EPA and DEP, *Memorandum of Agreement between the Florida Department of Environmental Protection and the United States Environmental Protection Agency Region 4* (2005), available at https://floridadep.gov/sites/default/files/Brownfields%20MOA%20with%20EPA%2011-28-05_0.pdf. (last visited Mar. 22, 2025).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Section 376.82(1)(b), F.S.

- 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).¹⁸

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 the DEP or approved local pollution control program.¹⁹

Liability protection becomes effective upon execution of a BSRA.²⁰ 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 the DEP or the approved local pollution control program.²¹

In an effort to secure federal liability protection for persons willing to undertake remediation responsibility at a brownfield site, the DEP negotiated an MOA with the EPA, whereby the 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 the DEP or the approved local pollution control program or that are in the process of implementing a BSRA.²² Through the MOA, certain sites subject to corrective action under federal Comprehensive Environmental Response Compensation and Liability Act and Resource Conservation and Recovery Act authority are eligible for state brownfields incentives.²³

Voluntary Cleanup Tax Credits (VCTC)

In 1998, the Florida Legislature established the VCTC program to provide an incentive for the voluntary cleanup of drycleaning solvent-contaminated sites and brownfield sites in designated brownfield areas.²⁴ Only those brownfield sites with an executed BSRA are eligible to apply for a VCTC incentive.²⁵ For these eligible sites, a tax credit of 50 percent is allowed for the cost of

¹⁸ 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.*

¹⁹ Section 376.82(2)(b), F.S.

²⁰ Section 376.82(2)(d), F.S.

²¹ Section 376.82(2)(e), F.S.

²² Section 376.82(2)(g), F.S. See EPA and DEP, *Memorandum of Agreement between the Florida Department of Environmental Protection and the United States Environmental Protection Agency Region 4*, 4 (2005), available at https://floridadep.gov/sites/default/files/Brownfields%20MOA%20with%20EPA%2011-28-05_0.pdf. (last visited Mar. 22, 2025).

²³ Section 376.81(1)(a), F.S.; DEP, *Florida Brownfields Redevelopment Program Annual Report: FY 2023-24* at 9, available at <https://floridadep.gov/sites/default/files/2024%20Brownfields%20Program%20Legislative%20Report%208.1.2024.pdf>. (last visited Mar. 22, 2025).

²⁴ *Id.* at 7.

²⁵ *Id.*

voluntary cleanup activity that is integral to site rehabilitation, with a maximum of \$500,000 allowed per site per year.²⁶ 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 the DEP issuing a “no further action” order for that site.²⁷

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.²⁸ To claim the tax credit, the applicant must submit an affidavit stating that, after consultation with appropriate local government officials and the 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.²⁹

For site rehabilitation tax credits, a tax credit application must be received by the DEP’s Division of Waste Management by January 31 of the year after the calendar year for which site rehabilitation costs are being claimed.³⁰ On or before May 1, the 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.³¹ If the 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.³² The May 1 deadline for annual site rehabilitation tax credit certificate awards does not apply to any tax credit application for which the DEP has issued a notice of deficiency.³³ The DEP must respond within 90 days after receiving a response from the tax credit applicant to such a notice of deficiency.³⁴

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

²⁶ *Id.*; section 376.30781(3)(a) and (b), F.S.

²⁷ Section 376.30781(3)(c), F.S.

²⁸ The DEP, *Florida Brownfields Redevelopment Program Annual Report: FY 2023-24* at 7; section 376.30781(3)(e), F.S.

²⁹ Section 376.30781(3)(e), F.S.

³⁰ Section 376.30781(5)(a), F.S.

³¹ 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.

³² Section 376.30781(8)(a), F.S.

³³ Section 376.30781(9), F.S.

³⁴ *Id.*

³⁵ The DEP, *Florida Brownfields Redevelopment Program Annual Report: FY 2023-24* at 7, available at <https://floridadep.gov/sites/default/files/2024%20Brownfields%20Program%20Legislative%20Report%208.1.2024.pdf>.

³⁶ The DEP, *Voluntary Cleanup Tax Credit*, <https://floridadep.gov/waste/waste-cleanup/content/voluntary-cleanup-tax-credit> (last visited on Mar. 12, 2025).

³⁷ *Id.*

³⁸ The DEP, *Florida Brownfields Redevelopment Program Annual Report: FY 2023-24* at 7. This also includes incentives for the voluntary cleanup of drycleaning solvent-contaminated sites. *See 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).³⁹ All local pollution control programs must:⁴⁰

- Be approved by the 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; and
- Provide for administrative organization, staff, financial and other resources necessary to effectively and efficiently carry out its program.

If the 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.⁴¹ If these corrective measures are not implemented, the DEP may reassume implementation of the FAWPCA within the jurisdiction.⁴² Each local pollution control program must cooperate with and assist the DEP in carrying out its powers, duties, and functions.⁴³

III. Effect of Proposed Changes:

Section 1 amends s. 376.303, F.S., regarding the powers and duties of the Department of Environmental Protection (DEP). The bill eliminates the requirement for brownfield property owners to provide local governments with institutional control information for mapping purposes when a contaminated site in a designated brownfield area has such controls in place. It also removes the obligation for local governments to: (1) note the existence of institutional controls on land use and zoning maps; and (2) remove such notations when the local government is provided with evidence that the DEP has issued a “no further action” order without institutional controls for a site currently noted on such maps.

Under current law, the DEP must maintain a registry of all contaminated sites located in a brownfield area which are subject to institutional and engineering controls. Sites for which the DEP has issued a “no further action” order must be removed from this registry. The bill amends this to require that sites be removed from the registry when the DEP has issued a “site rehabilitation completion order,” rather than a “no further action order.”

Section 2 amends s. 376.30781, F.S., regarding tax credits for rehabilitation of brownfield sites in designated brownfield areas. The bill removes the provision that the additional 25 percent tax credit for site rehabilitation costs can be claimed in the final year of cleanup as evidenced by a “no further action” order issued by the DEP. Instead, the bill provides that the credit may be

³⁹ Section 403.182, F.S.; *see also* ch. 67-436, s. 2, Laws of Fla. (identifying the short title of the act).

⁴⁰ Section 403.182(1), F.S.

⁴¹ *See* section 403.182(4), F.S.

⁴² *See id.*

⁴³ Section 403.182(10), F.S.

claimed if the DEP approves the applicant's annual site rehabilitation application and issues a site rehabilitation completion order. The bill provides that the tax credit applicant must submit the claim for the additional 25 percent within two years after receipt of the site rehabilitation completion order for that site.

Under current law, costs related to solid waste removal are eligible for a tax credit if the applicant submits an affidavit stating that, to the best of the applicant's knowledge based upon a consultation with appropriate local government officials and available historical records, the brownfield site was never operated as a permitted solid waste disposal area or was never operated for monetary compensation, and the applicant submits all other required documentation and certifications required by law.⁴⁴ The bill limits the restriction to sites that were never operated as a permitted solid waste disposal area regulated by modern DEP rules but eliminates both the affidavit requirement and the requirement that the brownfield site was never operated for monetary compensation.⁴⁵

The bill also extends the deadline for the DEP to notify tax credit applicants of their eligibility status and credit amount from May 1 to June 1. It also gives the 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 3 amends s. 376.78, F.S., regarding the legislative intent for the Pollutant Discharge Prevention and Control Act. Currently, this statute provides that the reduction of public health and environmental hazards on "existing commercial and industrial" sites is vital to their use and reuse as sources of employment, housing, recreation, and open space areas. The bill changes "existing commercial and industrial sites" to "sites proposed to be rehabilitated and redeveloped."

Section 4 amends s. 376.79, F.S., which provides definitions for the Brownfields Redevelopment Act. Currently, this statute defines "brownfield sites" as real property, the expansion, redevelopment, or reuse of which may be complicated by actual or perceived environmental contamination. The bill changes the term "brownfield sites" to "brownfield" and adds that the term only includes real property which has not yet been entered into a brownfield site rehabilitation agreement.

The bill adds the following new definition for "brownfield site": the real property identified in a brownfield site rehabilitation agreement executed by the person responsible for brownfield site rehabilitation of the property and the DEP or a delegated local pollution control program, as applicable.

Section 5 amends s. 376.81, F.S., regarding brownfield site and brownfield areas contamination cleanup criteria. The bill includes the following legislative findings:

- Rehabilitation and redevelopment of a potential brownfield site that is a portion of a larger contaminated site is significantly complicated when multiple parties may own, lease, or operate different portions of the contaminated site.

⁴⁴ See section 376.30781(3)(e), F.S.

⁴⁵ The bill also removes the definition for "monetary compensation." The term is not used elsewhere in this section of law.

- Delaying a person’s ability to achieve a “No Further Action” status for a potential brownfield site until such time as the owners, lessees, or operators of all other portions of the larger historical contaminated site have completed site rehabilitation on their respective portions is not in the public’s interest, as such delay disincentivizes rehabilitation and redevelopment of the potential brownfield site by imposing unnecessary legal burdens, technical obstacles, and financial costs.
- It is in the public interest to remove any such barriers to the rehabilitation and redevelopment of property by providing a clear path to obtaining a “No Further Action” status in cases where a potential brownfield site is only a portion of a larger contaminated site.

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, the 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 pursuant to ch. 62-780 of the Florida Administrative Code.

This applies to all brownfield sites, irrespective of the effective date of the brownfield site rehabilitation agreement.

The bill also provides that the cleanup criteria described in s. 376.81, F.S., applies only to site rehabilitation activities occurring at a “brownfield site,” rather than a “contaminated site,” as the law currently provides.⁴⁶

Section 6 amends s. 376.82, F.S., regarding eligibility criteria and liability protection for the brownfield program. Currently, any person who has not caused or contributed to the contamination of a brownfield site on or after July 1, 1997, is eligible to participate in the brownfield program, subject to certain conditions. The bill provides that a local governmental entity may also participate in the program, including any other person who may be organized or united with the local governmental entity for a business purpose, if such entity or person did not cause or contribute to the contamination of a brownfield site on or after July 1, 2025.

Under current law, certain sites are not eligible for participation in the brownfield program unless specific exemptions are secured by a memorandum of agreement (MOA) with the U.S. Environmental Protection Agency (EPA).⁴⁷ The bill amends this process by providing that, instead of securing an exemption through the MOA, these sites may participate in the

⁴⁶ “Contaminated site” means any contiguous land, sediment, surface water, or groundwater areas that contain contaminants that may be harmful to human health or the environment. Section 376.79(7), F.S. The bill defines “brownfield site” as the real property identified in a brownfield site rehabilitation agreement executed by the person responsible for brownfield site rehabilitation of the property and the DEP or a delegated local pollution control program, as applicable.

⁴⁷ See section 376.82(1)(a), F.S.

brownfields program if the EPA issues a letter stating it has no objection to the site's participation, and the DEP issues a letter of concurrence.

Currently, people who did not cause or contribute to contamination at a brownfield site after July 1, 1997 (i.e., people who are currently eligible to participate in the program) but who are subject to ongoing corrective action or enforcement under state authority may still be eligible for participation in a brownfield site rehabilitation agreement if certain conditions are met, including, among other things, that program participation will create at least 10 new permanent jobs. The bill provides that the job creation requirement does not apply to the rehabilitation and redevelopment of a brownfield site that will:

- Provide housing that is affordable;⁴⁸
- Create recreational areas, conservation areas, or parks; or
- Be maintained for cultural or historical preservation purposes.

Current law required the DEP to attempt to negotiate an MOA or similar document with the EPA whereby the EPA agrees to forego enforcement of federal corrective action authority at brownfield sites that have received a site rehabilitation completion or "no further action" determination from the DEP or the approved local pollution control program, or that are in the process of implementing a brownfield site rehabilitation agreement. Such a MOA was entered into in November 2005.⁴⁹ The bill removes this provision and instead provides that, if the EPA issues a letter stating it has no objection to a site's participation and the person seeking to participate in the brownfield program can reasonably demonstrate he or she will conduct site rehabilitation pursuant to the state contamination cleanup criteria, the DEP may issue a letter of no objection that states the person may participate in the brownfield program.

The bill provides that the DEP may *not* require as a condition of such 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 letters of concurrence from the EPA and the DEP to be added as attachments to the brownfield site rehabilitation agreement.

The bill provides that proposed brownfield sites that are subject to ongoing formal judicial or administrative enforcement action or corrective action pursuant to an EPA order under s. 3008(h) of the Resource Conservation and Recovery Act, 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 brownfield program provided that the sites:

- Obtain the necessary letters of concurrence; or

⁴⁸ "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.

⁴⁹ See EPA and DEP, *Memorandum of Agreement between the Florida Department of Environmental Protection and the United States Environmental Protection Agency Region 4*, 4 (2005), available at https://floridadep.gov/sites/default/files/Brownfields%20MOA%20with%20EPA%2011-28-05_0.pdf. (last visited Mar. 22, 2025).

- Comply with the provisions of Section V⁵⁰ of the Memorandum of Agreement between the DEP and the EPA Region 4 covering Florida's Brownfield Program, dated November 28, 2005, as may be amended.

Sections 7 and 8 amend ss. 196.1995 and 288.1175, F.S., respectively, to make conforming changes.

Section 9 reenacts s. 1004.53, F.S., to incorporate the amendments made by the bill to s. 376.79, F.S.

Section 10 provides an effective date of July 1, 2025.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

⁵⁰ 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 BP may qualify for the economic and regulatory benefits specific to the Act." DEP and EPA, *Memorandum of Agreement between the Florida Department of Environmental Protection and the United States Environmental Protection Agency Region 4*, 4-5 (2005), available at https://floridadep.gov/sites/default/files/Brownfields%20MOA%20with%20EPA%2011-28-05_0.pdf.

B. Private Sector Impact:

The expanded eligibility for the voluntary cleanup tax credit will provide eligible corporate taxpayers with tax savings.

C. Government Sector Impact:

The Revenue Estimating Conference determined that HB 733 on Brownfields (which is similar to this bill) would have no fiscal impact because the \$35 million authorization cap remains unchanged under the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 376.303, 376.30781, 376.78, 376.79, 376.81, 376.82, 196.1995, 288.1175, and 1004.53.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Environment and Natural Resources on March 11, 2025:

- Clarifies that solid waste disposal areas are *regulated* pursuant to s. 403.704, F.S., rather than *defined by* rules adopted pursuant to s. 403.704., F.S.
- Clarifies that a person responsible for a brownfield site rehabilitation must demonstrate compliance with the applicable contamination cleanup criteria.
- Removes the provision that added trusts as an example of the type of “person” that may propose a brownfield area designation.
- Restores language providing that the identification of a person responsible for brownfield site rehabilitation simply entitles the identified person to negotiate a brownfield site rehabilitation agreement with the Department of Environmental Protection (DEP) or approved local pollution control program.
- Restores the requirement that the *procedures* for public hearings, rather than just the *notices*, must follow governing county and municipality resolution adoption processes.
- Permits (rather than requires) DEP to allow certain otherwise ineligible sites to participate in the brownfield program if the U.S. Environmental Protection Agency issues a no-objection letter and other criteria are met.

- Modifies eligibility for brownfield sites subject to federal orders or hazardous waste permits, allowing them to either obtain letters of concurrence *or* comply with the memorandum of agreement, instead of requiring both.
- Corrects the date of the memorandum of agreement from 2025 to 2005.

B. Amendments:

None.