

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 Committee on Environment and Natural Resources

BILL: SB 736

INTRODUCER: Senator Truenow

SUBJECT: Brownfields

DATE: February 28, 2025

REVISED: _____

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

I. Summary:

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, 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 the rules governing contamination cleanup criteria. The bill provides that DEP may not require as a condition of such letter that EPA forego enforcement of federal corrective action authority at brownfield sites that have received a site rehabilitation completion order.

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 5 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 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.

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>.

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

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

⁴ *Id.* at 2.

⁵ 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>.

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

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.

- 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 DEP.¹¹

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 chapter 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

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 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>.

¹¹ *Id.*

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. 7, 2025); Fla. Admin. Code R. 62-780.680.

¹³ Section 376.82(1), F.S.

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 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 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 DEP-approved corrective action plan, or responding in good faith to an enforcement action, as evidenced by a determination issued by 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.
- 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

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.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Section 376.82(1)(b), F.S.

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.*

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.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 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, 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.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 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 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 DEP, to the best of the applicant’s knowledge based upon such

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.

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>.

²⁴ *Id.* at 7.

²⁵ *Id.*

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

²⁷ Section 376.30781(3)(c), F.S.

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

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 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, 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 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 DEP has issued a notice of deficiency.³³ 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 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

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 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

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 be 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 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 DEP, *Voluntary Cleanup Tax Credit*, <https://floridadep.gov/waste/waste-cleanup/content/voluntary-cleanup-tax-credit> (last visited on Feb. 26, 2025).

³⁷ *Id.*

³⁸ 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.*

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.

- 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.⁴¹ If these corrective measures are not implemented, DEP may reassume implementation of the FAWPCA within the jurisdiction.⁴² Each local pollution control program must cooperate with and assist 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 DEP has issued a “no further action” order without institutional controls for a site currently noted on such maps.

Under current law, 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 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 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 DEP. Instead, the bill provides that the credit may be claimed if 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 as defined by modern DEP rules but eliminates

⁴¹ See section 403.182(4), F.S.

⁴² See *id.*

⁴³ Section 403.182(10), F.S.

⁴⁴ See section 376.30781(3)(e), F.S.

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 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 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 DEP or a delegated local pollution control program, as applicable.

Section 5 amends s. 376.80, F.S., regarding the Brownfield program administration process. The bill adds trusts to the types of "persons" that may propose a brownfield area designation.

Currently, this statute provides that any person *other than a governmental entity* must adhere to the designation criteria delineated in s. 376.80(2)(c), F.S., which sets forth what that person must establish at the public hearing to adopt the resolution of designation. The bill removes "other than a governmental entity" from this provision.

The bill also removes 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 DEP or approved local pollution control program. Instead, it provides that the designation of a brownfield area entitles "a person" to negotiate a brownfield site rehabilitation agreement with DEP or approved local pollution control program.

The current law provides that, for proposed resolutions to adopt brownfield area designations, the procedures for public hearings must be in the form established by those statutes that govern the resolution adoption process for counties and municipalities. The bill amends this provision to

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

provide that the *notices* for such public hearings, rather than the *procedures*, must adhere to the referenced statutes.

Section 6 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.
- 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 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 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 7 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

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 DEP or a delegated local pollution control program, as applicable.

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 brownfields program if EPA issues a letter stating it has no objection to the site's participation, and 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 DEP to attempt to negotiate an MOA or similar document with EPA whereby 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 DEP or the approved local pollution control program, or that are in the process of implementing a brownfield site rehabilitation agreement. Such a memorandum of agreement was entered into in November 2005.⁴⁹ The bill removes this provision and instead provides that, if 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, DEP must issue a letter of no objection that states the person may participate in the brownfield program.

The bill provides that DEP may *not* require as a condition of such letter of concurrence that 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 EPA and 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)

⁴⁷ See section 376.82(1)(a), F.S.

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.

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; and
- Comply with the provisions of Section V⁵⁰ of the Memorandum of Agreement between DEP and EPA Region 4 covering Florida's Brownfield Program, dated November 28, 2025,⁵¹ as may be amended.

Section 8 through 10 make conforming changes.

Section 11 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.

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.

⁵¹ The bill indicates that this memorandum of agreement is dated November 28, 2025. The actual date of this agreement is November 28, 2005. See DEP and EPA, *Florida MOA for Brownfields Redevelopment Program* at 6, available at https://floridadep.gov/sites/default/files/Brownfields%20MOA%20with%20EPA%2011-28-05_0.pdf.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

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:

The bill provides that “solid waste disposal area” is defined in rules adopted pursuant to s. 403.704, F.S. However, this term does not appear to be defined in such rules, and the statute being amended by this section of the bill (s. 376.30781(3)(e), F.S.) already includes a definition for this term.

The bill provides that the Department of Environmental Protection (DEP) may not deny a “no further action” status if the person responsible for a brownfield site rehabilitation “demonstrates the applicable contamination cleanup criteria.” The intention of the bill may be better served if this language clarified that applicants must demonstrate *compliance* with the applicable contamination cleanup criteria.

The meaning of “specified persons” on lines 332-333 is unclear. This provision may benefit from further specificity or a definition of “specified persons.”

Further, the bill provides that the memorandum of agreement between the U.S. Environmental Protection Agency and DEP is dated November 28, 2025. The actual date of this agreement is November 28, 2005.

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, 376.80, 376.81, 376.82, 196.1995, 288.1175, and 1004.53.

IX. Additional Information:

- A. **Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
