

Tab 1	SB 1284 by Diaz ; (Similar to H 01157) Florida Land Subsidence Research Initiative
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Tab 2	SB 1350 by Baxley ; (Compare to CS/CS/H 01001) Brownfields
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The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

ENVIRONMENT AND NATURAL RESOURCES

Senator Montford, Chair
Senator Albritton, Vice Chair

MEETING DATE: Monday, February 17, 2020
TIME: 4:00—6:00 p.m.
PLACE: Mallory Horne Committee Room, 37 Senate Building

MEMBERS: Senator Montford, Chair; Senator Albritton, Vice Chair; Senators Berman, Mayfield, and Wright

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 1284 Diaz (Similar H 1157)	Florida Land Subsidence Research Initiative; Establishing the Florida Land Subsidence Research Initiative as a partnership between the Department of Environmental Protection and Florida International University; directing the department to contract with, and allocate certain funds to, Florida International University to implement the initiative; requiring Florida International University to collaborate with other state universities, develop data collection and reporting specifications, and submit reports to the Governor and Legislature by specified dates, etc. EN 02/17/2020 Favorable AED AP	Favorable Yeas 5 Nays 0
2	SB 1350 Baxley (Compare CS/CS/H 1001)	Brownfields; Revising the definition of the terms "housing project" and "mixed-use project" for purposes of specifying the projects eligible for certain tax exemptions; revising the conditions under which an applicant that has rehabilitated a contaminated site may submit and claim certain tax credits; revising the criteria for determining applicants who are redeveloping brownfield sites who may be eligible for certain tax credits; specifying defenses to specified causes of action concerning certain discharges or other types of pollution resulting from certain discharges or pollution, etc. EN 02/17/2020 Fav/CS FT AP	Fav/CS Yeas 4 Nays 0

Other Related Meeting Documents

Bonn, Kim

From: Martinez, Daniel
Sent: Monday, February 17, 2020 10:48 AM
To: Rogers, Ellen; Bonn, Kim
Cc: Peck, Taylor
Subject: SB 1284

Good Morning,

Chair Montford will present SB 1284 for Senator Diaz in The Environment and Natural Resources Committee due to several scheduling conflicts during that block. If you have any questions or concerns please don't hesitate to reach out.

Thank you,

Daniel Martinez
Legislative Aide
Senator Manny Diaz Jr.
District 36

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 1284

INTRODUCER: Senator Diaz

SUBJECT: Florida Land Subsidence Research Initiative

DATE: February 14, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Schreiber	Rogers	EN	Favorable
2.			AED	
3.			AP	

I. Summary:

SB 1284 creates the Florida Land Subsidence Research Initiative between the Department of Environmental Protection (DEP) and Florida International University (FIU). The goal of the initiative is to collect and analyze information to understand natural hazards, such as land subsidence and sinkholes, and their effects on sea-level rise.

The bill requires DEP to contract with FIU to implement the initiative. FIU must collaborate with Florida State University, the University of Florida, the University of North Florida, and the University of South Florida to implement the initiative. Funds specifically appropriated by the legislature for the initiative must be allocated by DEP to FIU to achieve the initiative's goals. FIU must use a portion of these funds to engage other state universities to implement the initiative statewide.

The bill requires FIU to submit a report every two years, beginning on July 1, 2022, to the Governor and Legislature. The report must provide an update on the progress of the research and include a summary and analysis of the data collected by each state university. FIU must submit a final report to the Governor and Legislature by July 1, 2030, in coordination with contributing state universities. The final report must include the following:

- The assessment methodologies for data collection used by each university.
- A summary of the data collected by each university.
- An analysis, using all relevant data, of the trends in land subsidence in the state.
- An estimation of current and future sea level risks, including land subsidence and other natural hazards, such as coastal flooding and sinkholes.

II. Present Situation:

Sea-Level Rise and Coastal Flooding

With 1,350 miles of coastline and relatively low elevations, Florida is particularly vulnerable to coastal flooding.¹ There are three primary ways that climate change influences coastal flooding: sea-level rise, storm surge intensity, and rainfall intensity and frequency.²

Sea-level rise is an observed increase in the average local sea level or global sea level trend.³ The two major causes of global sea-level rise are thermal expansion caused by the warming of the oceans (water expands as it warms) and the loss of land-based ice (ice sheets and glaciers) due to melting.⁴ Since 1880, the average global sea level has risen about 8 to 9 inches, and the rate of global sea-level rise has been accelerating.⁵ The National Oceanic and Atmospheric Administration (NOAA) utilizes tide gauges to measure changes in sea level, and provides data on local sea-level rise trends.⁶ Analysis of this data shows some low-lying areas in the southeastern U.S. experience higher local rates of sea-level rise than the global average.⁷

Florida's coastal communities are experiencing high-tide flooding events, sometimes referred to as "sunny day" or "nuisance" flooding, with increasing frequency because sea-level rise increases the height of high tides.⁸ The areas of the state most at risk from sea-level rise include the 35 coastal counties that contain approximately 76% of Florida's population.⁹ In the U.S., sea-level rise and flooding threaten an estimated \$1 trillion in coastal real estate value, and analyses estimate that there is a chance Florida could lose more than \$300 billion in property value by

¹ Florida Division of Emergency Management, *Enhanced State Hazard Mitigation Plan, State of Florida*, 107-108, 162 (2018) [hereinafter *SHMP*], available at https://www.floridadisaster.org/globalassets/dem/mitigation/mitigate-fl--shmp/shmp-2018-full_final_approved.6.11.2018.pdf. This measurement of Florida's coastline increases to over 8,000 miles when considering the intricacies of Florida's coastline, including bays, inlets, and waterways.

² *Id.* at 107.

³ DEP, *Florida Adaptation Planning Guidebook*, Glossary (2018) [hereinafter *DEP Guidebook*], available at <https://floridadep.gov/sites/default/files/AdaptationPlanningGuidebook.pdf>; see NASA, Facts, *Vital Signs: Sea Level*, <https://climate.nasa.gov/vital-signs/sea-level/> (last visited Dec. 20, 2019).

⁴ *DEP Guidebook*, at Glossary; NOAA, *Climate Change: Ocean Heat Content*, <https://www.climate.gov/news-features/understanding-climate/climate-change-ocean-heat-content> (last visited Dec. 19, 2019). More than 90 percent of the warming that has happened on Earth over the past 50 years has occurred in the ocean; IPCC, *The Ocean and Cryosphere in a Changing Climate*, SPM-8, SPM-10, SPM-19, SPM-21, SPM-23, 1-15, 4-3, 4-4, 4-14 (Sept. 2019) [hereinafter *IPCC Ocean and Cryosphere*], available at https://report.ipcc.ch/srocc/pdf/SROCC_FinalDraft_FullReport.pdf. Uncertainty regarding projected sea-level rise by 2100 is mainly determined by ice sheets, especially those in Antarctica and Greenland, which are losing ice at increasing rates. The sum of glacier and ice sheet contributions is now the dominant source of global mean sea-level rise.

⁵ U.S. Global Change Research Program, *Fourth National Climate Assessment*, 757 (2018) [hereinafter *NCA4*], available at https://nca2018.globalchange.gov/downloads/NCA4_2018_FullReport.pdf; IPCC *Ocean and Cryosphere*, at SPM-10, 4-3.

⁶ NOAA, *What is a Tide Gauge?*, <https://oceanservice.noaa.gov/facts/tide-gauge.html> (last visited Dec. 19, 2019); NOAA, *Tides and Currents, Sea Level Trends*, <https://tidesandcurrents.noaa.gov/sltrends/> (last visited Dec. 19, 2019); see *DEP Guidebook*, at 8, 16.

⁷ *NCA4*, at 757.

⁸ *SHMP*, at 108, 101, available at https://www.floridadisaster.org/globalassets/dem/mitigation/mitigate-fl--shmp/shmp-2018-full_final_approved.6.11.2018.pdf; NOAA, *High-Tide Flooding*, <https://toolkit.climate.gov/topics/coastal-flood-risk/shallow-coastal-flooding-nuisance-flooding> (last visited Dec. 19, 2019).

⁹ *DEP Guidebook*, at III, available at <https://floridadep.gov/sites/default/files/AdaptationPlanningGuidebook.pdf>.

2100.¹⁰ Sea-level rise affects the salinity of both surface water and groundwater through saltwater intrusion, posing a risk particularly for shallow coastal aquifers.¹¹ Sea-level rise also pushes saltwater further upstream in tidal rivers and streams, raises coastal groundwater tables, and pushes saltwater further inland at the margins of coastal wetlands.¹²

Storm surge intensity and the intensity and precipitation rates of hurricanes are generally projected to increase,¹³ and studies suggest the overall extent of destruction from hurricanes is also rising.¹⁴ Higher sea levels will cause storm surges to travel farther inland and impact more properties than in the past.¹⁵ Stronger storms and sea-level rise are likely to lead to increased coastal erosion.¹⁶

Increases in evaporation rates and water vapor in the atmosphere increase rainfall intensity and extreme precipitation events, and the sudden onset of water can overwhelm stormwater infrastructure.¹⁷ As sea levels and groundwater levels rise, low areas drain more slowly, and the combined effects of rising sea levels and extreme rainfall events are increasing the frequency and magnitude of coastal and lowland flood events.¹⁸

Land Subsidence

Land subsidence is a gradual settling or sudden sinking of the Earth's surface due to the movement of underground materials.¹⁹ Land subsidence is most often caused by the removal of water, oil, natural gas, or mineral resources from the ground, but it can also be caused by natural events such as earthquakes, soil compaction, erosion, sinkhole formation, or land adjusting from a previous ice age.²⁰ According to the United States Geological Survey (USGS), more than 80

¹⁰ *NCA4*, at 324, 758; Zillow, *Climate Change and Housing: Will a Rising Tide Sink All Homes?* (2017), <https://www.zillow.com/research/climate-change-underwater-homes-12890/> (last visited Dec. 20, 2019) (stating that by 2100 \$883 billion in U.S. homes are at risk of being underwater with the total value of potentially underwater properties in Florida at \$413 billion); Union of Concerned Scientists, *New Study Finds 1 Million Florida Homes Worth \$351 Billion Will Be At Risk From Tidal Flooding* (2018), <https://www.ucsusa.org/about/news/1-million-florida-homes-risk-tidal-flooding> (last visited Dec. 20, 2019).

¹¹ *SHMP*, at 106, available at https://www.floridadisaster.org/globalassets/dem/mitigation/mitigate-fl--shmp/shmp-2018-full_final_approved.6.11.2018.pdf.

¹² *Id.* at 108.

¹³ *Id.* at 106, 141; *IPCC Ocean and Cryosphere*, at 6-21, available at https://report.ipcc.ch/srocc/pdf/SROCC_FinalDraft_FullReport.pdf; *NCA4*, at 95, 97, 116-117, 1482, available at https://nca2018.globalchange.gov/downloads/NCA4_2018_FullReport.pdf.

¹⁴ See Aslak Grinsted et. al., *Normalized US Hurricane Damage Estimates Using Area of Total Destruction, 1900-2018*, Proceedings of the National Academy of Sciences Nov. 2019, 116 (48) 23942-23946, available at <https://www.pnas.org/content/116/48/23942>.

¹⁵ *NCA4*, at 758; *SHMP*, at 107; see also NOAA, *Florida Marine Debris Emergency Response Guide: Comprehensive Guidance Document* (Jan. 2019), available at https://marinedebris.noaa.gov/sites/default/files/publications-files/FL_Marine_Debris_Emergency_Response_Guide_2019.pdf.

¹⁶ *NCA4*, 331, 340-341, 833, 1054, 1495; *SHMP*, at 108, 221; *IPCC, Climate Change and Land*, 4-44-4-45 (Aug. 2019), available at <https://www.ipcc.ch/site/assets/uploads/2019/08/Fullreport-1.pdf>.

¹⁷ *SHMP*, at 99, 106, 116, 141, 181; *NCA4*, at 88, 762-763; see Florida Senate, Committee on Infrastructure and Security, *Meeting Packet for October 14, 2019*, available at http://www.flsenate.gov/Committees/Show/IS/MeetingPacket/4649/8266_MeetingPacket_4649_2.pdf.

¹⁸ *SHMP*, at 106; *NCA4*, at 763.

¹⁹ NOAA, *What is Subsidence?*, <https://oceanservice.noaa.gov/facts/subsidence.html> (last visited Feb. 10, 2020).

²⁰ *Id.*

percent of known land subsidence in the United States is a consequence of groundwater use.²¹ Land subsidence is a global problem, and in the United States more than 17,000 square miles, in 45 states, have been directly affected.²²

In Florida, the Department of Environmental Protection's (DEP) Florida Geological Survey (FGS) provides a database of voluntarily reported subsidence incidents statewide.²³ Currently, a majority of the records come from the State Watch Office, which is the clearinghouse for emergency response calls involving man-made and natural disasters.²⁴ Data is also received from citizens who use FGS's subsidence incident report form or who call FGS.²⁵ According to DEP's website, for a majority of the reported incidents, the incidents have not been field-checked and the cause of subsidence is not verified.²⁶

Studying land subsidence involves the field of geodesy, which includes measuring and understanding the earth's geometric shape and how it changes over time using geodetic techniques.²⁷ The detection of regional-scale subsidence has historically occurred with the identified movement of key benchmarks over long periods of time.²⁸ Today, the USGS's methods for measuring subsidence include Interferometric Synthetic Aperture Radar (InSAR).²⁹ InSAR uses radar signals from satellites to measure changes in land-surface altitude at high degrees of measurement resolution and spatial detail.³⁰ InSAR produces a map of ground deformation that covers a very large spatial area with centimeter-scale accuracy.³¹ In addition to InSAR, land subsidence can be measured with techniques such as Global Positioning System (GPS) receivers, repeated surveys of geodetic leveling, or installations of ground and water sensors.³²

²¹ USGS, *Land Subsidence*, https://www.usgs.gov/mission-areas/water-resources/science/land-subsidence?qt-science_center_objects=0#qt-science_center_objects (last visited Feb. 10, 2020).

²² *Id.*

²³ DEP, *Subsidence Incident Reports*, <https://floridadep.gov/fgs/sinkholes/content/subsidence-incident-reports> (last visited Feb. 6, 2020); DEP, *Map Direct: Subsidence Incident Reports Map*, <https://ca.dep.state.fl.us/mapdirect/?focus=fgssinkholes> (last visited Feb. 11, 2020).

²⁴ DEP, *Subsidence Incident Reports*, <https://floridadep.gov/fgs/sinkholes/content/subsidence-incident-reports> (last visited Feb. 6, 2020); see DEM, *State Watch Office*, <https://floridadisaster.org/dem/response/operations/> (last visited Feb. 11, 2020).

²⁵ DEP, *Subsidence Incident Reports*, <https://floridadep.gov/fgs/sinkholes/content/subsidence-incident-reports> (last visited Feb. 11, 2020).

²⁶ *Id.*

²⁷ NOAA, *What is Geodesy?*, <https://oceanservice.noaa.gov/facts/geodesy.html> (last visited Feb. 11, 2020); NOAA, *National Geodetic Survey*, <https://www.ngs.noaa.gov/index.shtml> (last visited Feb. 12, 2020); Florida International University, *Geodesy Lab*, <http://geodesy.fiu.edu/index.html> (last visited Feb. 11, 2020).

²⁸ USGS, *Land Subsidence*, https://www.usgs.gov/mission-areas/water-resources/science/land-subsidence?qt-science_center_objects=0#qt-science_center_objects (last visited Feb. 10, 2020).

²⁹ USGS, *Land Subsidence*, https://www.usgs.gov/mission-areas/water-resources/science/land-subsidence?qt-science_center_objects=0#qt-science_center_objects (last visited Feb. 10, 2020).

³⁰ USGS, *Interferometric Synthetic Aperture Radar (InSAR)*, https://www.usgs.gov/centers/ca-water-ls/science/interferometric-synthetic-aperture-radar-insar?qt-science_center_objects=0#qt-science_center_objects (last visited Feb. 11, 2020).

³¹ USGS, *InSAR—Satellite-Based Technique Captures Overall Deformation "Picture,"* <https://volcanoes.usgs.gov/vhp/insar.html> (last visited Feb. 11, 2020).

³² NOAA, *What is Subsidence?*, <https://oceanservice.noaa.gov/facts/subsidence.html> (last visited Feb. 11, 2020).

Sinkholes

Sinkholes are closed depressions in areas underlain by soluble rock, and they form when surface sediments subside or collapse into underground voids and cavities created by the dissolving action of ground water in the underlying rock.³³ Sinkholes are just one of many forms of subsidence, but they are not technically considered “subsidence incidents” by DEP.³⁴ The Division of Emergency Management identifies two common types of sinkholes in Florida: “cover collapse sinkholes,” where the ceiling of an underground cavity can no longer support the overlying weight and collapses, forming a hole in the land surface; and “cover subsidence sinkholes,” where the ground slowly migrates down into fissures and cavities in the underlying rock, resulting in a depression in the land surface.³⁵

Land Subsidence and Sea-Level Rise

The experience of sea-level rise on each coast and community is different, depending on local factors such as land subsidence or accretion,³⁶ land use, and erosion.³⁷ Land subsidence can increase sea-level rise rates and affect the measurement of local sea-level rise.³⁸

“Relative sea level” is measured at the local level by a tide gauge, which measures the height of the surrounding water relative to a specific point on land.³⁹ “Eustatic sea level” is the elevation of the sea’s surface based on the total volume of water in the ocean.⁴⁰ Unlike eustatic sea level, relative sea level can change based on vertical movement of the land on which the tide gauge sits.⁴¹ Land subsidence can cause relative sea level to rise faster than the global average due to the downward vertical movement of the land.⁴²

Closely monitoring subsidence can help ensure the accuracy of sea level rise measurements.⁴³ Incorporating information on local land subsidence improves projections of future sea-level

³³ DEP, *Sinkhole FAQ*, <https://floridadep.gov/fgs/sinkholes/content/sinkhole-faq> (last visited Feb. 11, 2020); DEP, *Subsidence Incident Reports*, <https://floridadep.gov/fgs/sinkholes/content/subsidence-incident-reports> (last visited Feb. 6, 2020); see s. 627.706(2)(h), F.S. Providing a definition of sinkhole.

³⁴ DEP, *Subsidence Incident Reports*, <https://floridadep.gov/fgs/sinkholes/content/subsidence-incident-reports> (last visited Feb. 6, 2020); USGS, *What is the Difference Between a Sinkhole and Land Subsidence?*, https://www.usgs.gov/faqs/what-difference-between-a-sinkhole-and-land-subsidence?qt-news_science_products=0#qt-news_science_products (last visited Feb. 11, 2020). Land subsidence can affect areas that are thousands of square miles in size.

³⁵ *SHMP*, at 252-253, available at https://www.floridadisaster.org/globalassets/dem/mitigation/mitigate-fl--shmp/shmp-2018-full_final_approved.6.11.2018.pdf.

³⁶ Florida Living Shorelines, *Glossary of Terms*, <http://floridalivingshorelines.com/resources/> (last visited Feb. 10, 2020). “Accretion” is the gradual accumulation of sediment; see *NCA4*, at 690. Generally, accretion increases elevation; see *IPCC Ocean and Cryosphere*, at SPM-14, 5-113. Accretion in some coastal ecosystems can match the sea level rise rate.

³⁷ *NCA4*, at 855, available at https://nca2018.globalchange.gov/downloads/NCA4_2018_FullReport.pdf.

³⁸ *NCA4*, at 689, 1495.

³⁹ *SHMP*, at 107, available at https://www.floridadisaster.org/globalassets/dem/mitigation/mitigate-fl--shmp/shmp-2018-full_final_approved.6.11.2018.pdf; NOAA, *What is the Difference Between Local Sea Level and Global Sea Level?*, <https://oceanservice.noaa.gov/facts/sealevel-global-local.html> (last visited Feb. 10, 2020). While tide gauges measure local sea level, satellite measurements provide the average height of the entire ocean.

⁴⁰ *SHMP*, at 107.

⁴¹ *Id.*

⁴² *Id.*; *NCA4*, at 1495.

⁴³ Southeast Florida Regional Climate Change Compact Sea Level Rise Work Group, *Unified Sea Level Rise Projection, Southeast Florida*, 29 (2015), available at <https://southeastfloridaclimatecompact.org/wp-content/uploads/2015/10/2015-Compact-Unified-Sea-Level-Rise-Projection.pdf>.

rise.⁴⁴ However, global projections of sea level rise do not always take subsidence into account.⁴⁵ Reasons for this include that no global data sets for subsidence are available for the scenarios used in climate models, and that subsidence often takes place on a smaller scale than the spatial scale used in climate models.⁴⁶

III. Effect of Proposed Changes:

Section 1 creates s. 380.29, F.S., titled “Florida Land Subsidence Research Initiative.”

The bill states that it is the intent of the Legislature to establish an independent and coordinated effort among state universities to determine the rate of land subsidence in the state by measuring changes in land elevation.

The bill establishes the Florida Land Subsidence Research Initiative. The initiative is a partnership between the Department of Environmental Protection (DEP) and Florida International University (FIU). The goal of the initiative is to collect and analyze data using geodetic techniques, including global positioning system and other satellite approaches, to understand natural hazards, such as land subsidence and sinkholes, and their effects on sea-level rise.

The bill requires DEP to contract with FIU to implement the initiative. DEP must allocate funds specifically appropriated by the Legislature for the initiative to FIU to achieve the goals of the initiative. The bill requires FIU to use a portion of the funds to facilitate additional engagement with other state universities to assist in implementing the initiative statewide. FIU must collaborate with Florida State University, the University of Florida, the University of North Florida, and the University of South Florida to implement the initiative. FIU must develop specifications for the collection and reporting of data for the initiative that all participating state universities must use.

The bill requires FIU to submit a report every two years, beginning on July 1, 2022, to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The biennial report must provide an update on the progress of the research and include a summary and analysis of the data collected by each state university. FIU must submit a final report to the Governor and Legislature by July 1, 2030, in coordination with contributing state universities pursuant to the responsibilities of the initiative. The final report must include the following:

- The assessment methodologies for data collection used by each university.
- A summary of the data collected by each university.
- An analysis, using all relevant data, of the trends in land subsidence in the state.
- An estimation of current and future sea level risks, including land subsidence and other natural hazards, such as coastal flooding and sinkholes.

Section 2 states that the bill takes effect on July 1, 2020.

⁴⁴ *NCA4*, at 65.

⁴⁵ *IPCC Ocean and Cryosphere*, at 4-13.

⁴⁶ *Id.* at 4-30.

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.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill requires DEP to create a partnership with FIU. DEP must contract with FIU to implement the initiative, and allocate funds appropriated for the initiative to FIU. These duties may cause DEP to incur additional costs.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 380.29 of the Florida Statutes.

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.

By Senator Diaz

36-01825-20

20201284__

1 A bill to be entitled
2 An act relating to the Florida Land Subsidence
3 Research Initiative; creating s. 380.29, F.S.;
4 providing legislative intent; establishing the Florida
5 Land Subsidence Research Initiative as a partnership
6 between the Department of Environmental Protection and
7 Florida International University; providing the goal
8 of the initiative; directing the department to
9 contract with, and allocate certain funds to, Florida
10 International University to implement the initiative;
11 requiring Florida International University to
12 collaborate with other state universities, develop
13 data collection and reporting specifications, and
14 submit reports to the Governor and Legislature by
15 specified dates; providing report requirements;
16 providing an effective date.

17
18 Be It Enacted by the Legislature of the State of Florida:

19
20 Section 1. Section 380.29, Florida Statutes, is created to
21 read:

22 380.29 Florida Land Subsidence Research Initiative.—

23 (1) It is the intent of the Legislature to establish an
24 independent and coordinated effort among state universities to
25 determine the rate of land subsidence in the state by measuring
26 changes in land elevation.

27 (2) (a) The Florida Land Subsidence Research Initiative is
28 established as a partnership between the Department of
29 Environmental Protection and Florida International University.

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30 The goal of the initiative is to collect and analyze data using
31 geodetic techniques, including global positioning system and
32 other satellite approaches, to understand natural hazards, such
33 as land subsidence and sinkholes, and their effects on sea-level
34 rise.

35 (b) To implement the initiative, the department shall
36 contract with Florida International University, which shall
37 collaborate with Florida State University, the University of
38 Florida, the University of North Florida, and the University of
39 South Florida.

40 (c) Funds specifically appropriated by the Legislature for
41 the initiative shall be allocated by the department to Florida
42 International University to achieve the goals of the initiative.
43 Florida International University shall use a portion of the
44 funds to facilitate additional engagement with other state
45 universities to assist in implementing the initiative statewide.

46 (3) Florida International University shall develop
47 specifications for the collection and reporting of data for the
48 initiative that all participating state universities must use.

49 (4) (a) Beginning July 1, 2022, Florida International
50 University shall submit a biennial report to the Governor, the
51 President of the Senate, and the Speaker of the House of
52 Representatives. The report must provide an update on the
53 progress of the research and include a summary and analysis of
54 the data collected by each state university.

55 (b) By July 1, 2030, Florida International University, in
56 coordination with contributing state universities pursuant to
57 subsection (2), shall submit a final report to the Governor, the
58 President of the Senate, and the Speaker of the House of

36-01825-20

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59 Representatives. The final report must include the following:

60 1. The assessment methodologies for data collection used by
61 each university.

62 2. A summary of the data collected by each university.

63 3. An analysis, using all relevant data, of the trends in
64 land subsidence in the state.

65 4. An estimation of current and future sea level risks,
66 including land subsidence and other natural hazards, such as
67 coastal flooding and sinkholes.

68 Section 2. This act shall take effect July 1, 2020.



2020 AGENCY LEGISLATIVE BILL ANALYSIS

DEPARTMENT OF REVENUE

DL
B

<u>BILL INFORMATION</u>	
BILL NUMBER:	SB 1350
BILL TITLE:	Brownfields
BILL SPONSOR:	Senator Baxley
EFFECTIVE DATE:	07/01/2020

<u>COMMITTEES OF REFERENCE</u>
1) Environment and Natural Resources
2) Finance and Tax
3) Appropriations
4)
5)

<u>CURRENT COMMITTEE</u>
Environment and Natural Resources

<u>SIMILAR BILLS</u>	
BILL NUMBER:	
SPONSOR:	

<u>IDENTICAL BILLS</u>	
BILL NUMBER:	HB 1001
SPONSOR:	Representative Stone

<u>PREVIOUS LEGISLATION</u>
YEAR/BILL NUMBER/SPONSOR/LAST ACTION:

<u>BILL ANALYSIS INFORMATION</u>	
DATE OF ANALYSIS:	01/15/2020
LEAD AGENCY ANALYST:	Debbie Longman (850) 617-8324

POLICY ANALYSIS

1. ANALYSIS OF EACH SECTION THAT AFFECTS THE DEPARTMENT OF REVENUE.

Section 1. Building materials in redevelopment projects (pp. 2-5)

PRESENT SITUATION

Section 212.08(5)(o), F.S., provides for a refund of tax paid on all building materials used in a qualifying housing project or mixed-use project.

To qualify, a housing project must be constructed in an urban high-crime area, an enterprise zone, an empowerment zone, a Front Porch Florida Community, a designated brownfield area, or an urban infill area; must involve the conversion of an existing manufacturing or industrial building to housing units; and must have at least 20% of the housing units set aside for low-income or moderate-income persons. A housing project in a designated brownfield area that does not involve the conversion of an existing manufacturing or industrial building may still qualify if 100% of the housing units are for extremely-low-income, low-income, moderate-income, or very-low-income persons.

A qualifying mixed-use project must be constructed in an urban high-crime area, an enterprise zone, an empowerment zone, a Front Porch Florida Community, a designated brownfield area, or an urban infill area; must involve the conversion of an existing manufacturing or industrial building to mixed-use units that include artists' studios, art and entertainment services, or other compatible uses; and must have at least 20% of the square footage of the project set aside for low-income or moderate-income persons. Unlike the provision for housing projects, the provision for mixed-used projects contains no exception to the manufacturing or industrial building conversion requirement.

EFFECT OF THE BILL

The bill amends the definition of 'housing project' to allow for the construction of housing, rather than merely the conversion of an existing manufacturing or industrial building into housing, of affordable housing in a designated brownfield area. To qualify for the refund, the developer must set aside at least 20% of the housing units in any building, project, or development for extremely-low-income, low-income, moderate-income, or very-low-income persons, regardless of whether the affordable housing is part of a larger building, project, or development that includes market-rate housing. This change removes the requirement that 100% of the housing units be used for affordable housing.

The bill also amends the definition of 'mixed-use project' to allow for the construction of mixed-used units, rather than merely the conversion of an existing manufacturing or industrial building into mixed-used units, in a designated brownfield area. To qualify for the refund, the developer must set aside at least 20% of the square footage of the project for low-income and moderate-income housing.

Section 2. Tax credits for rehabilitation of drycleaning-solvent-contaminated sites and brownfield sites in designated brownfield areas; application process; rulemaking authority; revocation authority. (pp. 5-9):

PRESENT SITUATION

Subparagraphs 376.30781(3)(c)-(e), F.S., provide three additional opportunities to apply for additional tax credits in order to encourage the cleanup and development of brownfield sites:

- Tax credit applicants may claim an extra 25 percent of the total rehabilitation costs, not to exceed \$500,000, in the final year of cleanup after the Department of Environmental Protection has issued an order of "No Further Action" for the site.
- Tax credit applicants may claim an additional 25 percent of the total site rehabilitation costs that are eligible for tax credits under s. 376.30781, F.S., not to exceed \$500,000, by providing a certification

letter from the Florida Housing Corporation, the local housing authority, or other governmental agency indicating that the construction has received a certificate of occupancy and the brownfield site has properly recorded instrument that limits the use of the property to housing.

- Tax credit applicants may claim costs to address the solid waste removal defined under subparagraph (3)(e); the costs are eligible for a tax credit provided the applicant submits an affidavit stating that to the best of the applicant’s knowledge the brownfield site was never operated as a permitted solid waste disposal area or was never operated for monetary compensation.

The Department of Environmental Protection is required to notify each tax credit applicant by May 1 that it is subject to the annual January 31 application deadline of the applicant’s eligibility status and the amount of any tax credit due. The Department of Environmental Protection must provide each eligible tax credit applicant with a tax credit certificate that must be submitted with its tax return to the Department Revenue to claim the tax credit or to be transferred.

EFFECT OF THE BILL

The bill amends the three additional tax credits which may be claimed. The amendments are as follows, respectively:

- The Department of Environmental Protection issues an order of “No Further Action” once approving the applicant’s annual site rehabilitation applications. The applicants must submit the claim for the additional 25 percent within 2 years of receipt of the “No Further Action” order.
- Rehabilitation sites intended for housing will now include projects with mixed use and projects including market-rate housing, providing that the developer agrees to set aside at least 20 percent of the housing units for persons described in s. 420.0004(9), (11), (12), or 17, or s. 159.603(7), F.S.
- Applicants will no longer need to submit an affidavit assuring the site was never operated as a permitted solid waste disposal area, but must meet the eligibility requirements of s. 376.82(1), F.S.
 - The bill also amends definitions related to solid waste disposal.

The Department of Environmental Protection will now have until June 1 to notify tax credit applicants that are subject to the January 31 application deadline.

Section 3. through Section 6. (pp. 9-18): These sections do not affect the Department.

Section 7. (p. 18): Provides an effective date of July 1, 2020.

2. DOES THE DEPARTMENT EXPECT TO DEVELOP, ADOPT, MODIFY OR ELIMINATE ANY RULES, REGULATIONS, POLICIES, OR PROCEDURES? YES NO

If yes, explain:	
Rule(s) impacted (provide references to F.A.C., etc.):	

3. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS? N/A

4. DOES THE BILL REQUIRE THE DEPARTMENT TO SUBMIT, MODIFY OR DELETE ANY REPORTS, STUDIES OR PLANS? YES NO

If yes, provide a description:	
Date Due:	
Bill Section Number(s):	

5. ARE THERE ANY GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. REQUIRED BY THIS BILL? YES NO

Board:	
Board Purpose:	
Who Appoints:	
Changes:	
Bill Section Number(s):	

FISCAL ANALYSIS

6. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT? The Department of Revenue does not conduct this analysis. The Revenue Estimating Conference will determine the revenue impact, if any, to local governments.

7. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT?

Revenues:	The Department of Revenue does not conduct this analysis. The Revenue Estimating Conference will determine the revenue impact, if any, to state government.
Expenditures: <i>(only expenditure impacts on the Department are identified)</i>	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> YES, BUT INSIGNIFICANT <input type="checkbox"/> UNABLE TO DETERMINE See Additional Comments section below if it is determined there is a significant operational impact to the Department.
Does the legislation contain an appropriation to the Department?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO

8. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR? The Department of Revenue does not conduct this analysis.

9. DOES THE BILL INCREASE OR DECREASE TAXES, FEES OR FINES? The Department of Revenue does not conduct this analysis. The Revenue Estimating Conference will determine the revenue impact on state and local government, if any.

TECHNOLOGY IMPACT

If any, see attached Fiscal Impact Analysis.

FEDERAL IMPACT

If any, see Additional Comments section below.

ADDITIONAL COMMENTS

10. STATUTE(S) AFFECTED: Sections 212.08, 376.30781, 376.313, 376.78, 376.80, 376.82, F.S.

11. HAS BILL LANGUAGE BEEN ANALYZED EARLIER THIS SESSION? YES NO

If no, go to #12. If yes:

A. Identify bill number or source.

B. Were issues/problems identified? YES NO

a. If yes, have they been resolved? YES NO If no, briefly explain.

C. Are new issues/problems created? YES NO If yes, briefly identify.

12. DOES THE BILL PRESENT DIFFICULTY IN IMPLEMENTATION, ADMINISTRATION OR ENFORCEMENT? YES NO

If yes, describe administrative problems, technical errors, or other difficulties:

Section 1. Sales, rental, use, consumption, distribution, and storage tax; specified exemptions. (pp. 2-6)

1. It is unclear how the percentage of affordable housing should be determined under the amended definition of 'housing project'. The new language provides that a developer must set aside 20% 'of the housing units in any building, project, or development [for low-income persons] regardless of whether the affordable housing is part of a larger building, project, or development that includes market-rate housing.' A 120-unit housing development could consist of 100 single-family homes and 20 townhomes, with 5 townhomes to a single building. One reading of the new provision could be that so long as 20% of one of the townhome buildings (or 1 unit) are affordable housing, then the entire development will qualify. It is not clear if this is the sponsor's intent.
3. The term "market-rate housing," on page 3, lines 73- 74, is used. However, that term is not defined in paragraph 212.08(5)(o), F.S.
4. It is unclear if the "mixed-use" projects contemplated in new sub-sub-subparagraph 212.08(5)(o)1.c.(II), F.S., have the same requirement to include "artists' studios, art and entertainment services, or other compatible uses, as required by the existing language now appearing in sub-sub-subparagraph 212.08(5)(o)1.c.(I), F.S., as amended.

Section 2. (pp. 6-11):

1. Currently, subparagraphs (3)(c)-(e) of s. 376.30781, F.S., are identical to subparagraphs (2)(h)-(j) of 220.1845, F.S. However, the bill does not amend s. 220. 1845, F.S., which is the section of statute governing the authorization of credits that may be claimed under the provisions of s. 376.30781, F.S.

It would be helpful to insert a new section in bill, so the same amendments proposed for s. 376.30781, F.S., are proposed for s. 220.1845, F.S.

13. OTHER: N/A



2020 AGENCY LEGISLATIVE BILL ANALYSIS

AGENCY: Florida Housing Finance Corporation (FHFC)

<u>BILL INFORMATION</u>	
BILL NUMBER:	SB 1350
BILL TITLE:	Brownfields
BILL SPONSOR:	Senator Baxley
EFFECTIVE DATE:	7/1/2020

<u>COMMITTEES OF REFERENCE</u>
1) Environment and Natural Resources
2) Finance and Tax
3) Appropriations
4) Click or tap here to enter text.
5) Click or tap here to enter text.

<u>CURRENT COMMITTEE</u>
Click or tap here to enter text.

<u>SIMILAR BILLS</u>	
BILL NUMBER:	Click or tap here to enter text.
SPONSOR:	Click or tap here to enter text.

<u>PREVIOUS LEGISLATION</u>	
BILL NUMBER:	Click or tap here to enter text.
SPONSOR:	Click or tap here to enter text.
YEAR:	Click or tap here to enter text.
LAST ACTION:	Click or tap here to enter text.

<u>IDENTICAL BILLS</u>	
BILL NUMBER:	HB 1001
SPONSOR:	Representative Stone

<u>Is this bill part of an agency package?</u>
Click or tap here to enter text.

<u>BILL ANALYSIS INFORMATION</u>	
DATE OF ANALYSIS:	January 14, 2020
LEAD AGENCY ANALYST:	Tracy Banner
ADDITIONAL ANALYST(S):	Click or tap here to enter text.
LEGAL ANALYST:	Chris McGuire
FISCAL ANALYST:	Laura Cox, Elizabeth Thorp

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

SB 1350 addresses the development or redevelopment of brownfield sites and expands the criteria related to the development and financing of affordable housing within brownfield boundaries.

2. SUBSTANTIVE BILL ANALYSIS

1. PRESENT SITUATION:

One of the primary goals of the Brownfield Redevelopment Act is to “create financial and regulatory incentives to encourage voluntary cleanup and redevelopment of sites”. With respect to affordable housing, current law

- defines a “housing project” as any affordable housing for persons defined as extremely low income, very low income, low income or moderate income;
- defines “mixed use project” as a project to convert existing manufacturing or industrial buildings to residential and services uses;
- allows an additional tax credit for the construction of affordable housing; and
- allows certain persons who would otherwise not be entitled to participate in a Brownfield project to do so if the project results in the creation of jobs.

2. EFFECT OF THE BILL:

The bill revises the definitions of “housing project” and “mixed use project” for the purposes of specifying the projects eligible for certain tax exemptions, revises the criteria for determining applicants who are redeveloping brownfield sites who may be eligible for certain tax credits and revises the entities that may propose brownfield designations.

More specifically, the bill

- Clarifies the definition of “housing project” to specify that at least 20 percent of the housing units in any building, project, or development must be set aside for persons meeting the specified income levels.
- Expands the definition of “mixed use project” to include the construction of mixed use units in brownfields that set aside at least 20 percent of the square footage of the project for low and moderate income housing.
- Expands the current tax credit for the construction of affordable housing to also include portions of a project that include affordable housing, as long as the project includes the 20 percent minimum set aside. The bill requires an applicant to obtain certification from Florida Housing that the certificate of occupancy has been issued and the EUA/LURA has been recorded indicating set asides for affordable housing.
- Expands the ability to participate in brownfield projects to those that provide affordable housing.

Florida Housing records indicate there are currently a number of affordable housing projects financed through the corporation that are located within brownfield boundaries.

3. DOES THE BILL DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES? Y N

If yes, explain:	Click or tap here to enter text.
Is the change consistent with the agency’s core mission?	Y <input type="checkbox"/> N <input type="checkbox"/>
Rule(s) impacted (provide references to F.A.C., etc.):	Click or tap here to enter text.

4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?

Proponents and summary of position:	Click or tap here to enter text.
Opponents and summary of position:	Click or tap here to enter text.

5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL? Y N

If yes, provide a description:	Click or tap here to enter text.
Date Due:	Click or tap here to enter text.
Bill Section Number(s):	Click or tap here to enter text.

6. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. REQUIRED BY THIS BILL? Y N

Board:	Click or tap here to enter text.
Board Purpose:	Click or tap here to enter text.
Who Appoints:	Click or tap here to enter text.
Changes:	Click or tap here to enter text.
Bill Section Number(s):	Click or tap here to enter text.

FISCAL ANALYSIS

1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT? Y N

Revenues:	Click or tap here to enter text.
Expenditures:	Click or tap here to enter text.
Does the legislation increase local taxes or fees? If yes, explain.	Click or tap here to enter text.
If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase?	Click or tap here to enter text.

2. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT? Y N

Revenues:	Click or tap here to enter text.
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Expenditures:	Click or tap here to enter text.
Does the legislation contain a State Government appropriation?	Click or tap here to enter text.
If yes, was this appropriated last year?	Click or tap here to enter text.

3. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR? Y N

Revenues:	Click or tap here to enter text.
Expenditures:	Click or tap here to enter text.
Other:	Click or tap here to enter text.

4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES? Y N

If yes, explain impact.	Click or tap here to enter text.
Bill Section Number:	Click or tap here to enter text.

TECHNOLOGY IMPACT

1. **DOES THE BILL IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E. IT SUPPORT, LICENSING SOFTWARE, DATA STORAGE, ETC.)?** Y N

If yes, describe the anticipated impact to the agency including any fiscal impact.	Click or tap here to enter text.
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FEDERAL IMPACT

1. **DOES THE BILL HAVE A FEDERAL IMPACT (I.E. FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)?** Y N

If yes, describe the anticipated impact including any fiscal impact.	Click or tap here to enter text.
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ADDITIONAL COMMENTS

Click or tap here to enter text.

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments:	Click or tap here to enter text.
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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: CS/SB 1350

INTRODUCER: Environment and Natural Resources and Senator Baxley

SUBJECT: Contamination

DATE: February 17, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Schreiber	Rogers	EN	Fav/CS
2.			FT	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1350 makes the following changes pertaining to Florida's brownfield program:

- Revises a corporate income tax credit for 25 percent of the total rehabilitation costs for a brownfield site upon completion, not to exceed \$500,000, to remove the requirement that the tax credit be claimed in the final year of cleanup.
- Revises a corporate income tax credit for 50 percent of the solid waste removal costs for a brownfield site, not to exceed \$500,000, to require that the site was never used as a solid waste disposal area permitted under DEP's current rules for solid waste management facilities or the predecessor rules. The effect of this change is to authorize the credit for solid waste removal for unpermitted solid waste disposal areas regardless of whether the site was operated for monetary compensation.
- Limits statutory causes of action under s. 376.313(3), F.S., to only damages to real or personal property directly resulting from pollution, and requires that the pollution was not authorized by any government approval or permit.
- Describes defenses to causes of action under 376.313(3), F.S., as strict-liability exceptions instead of defenses.
- Adds to the liability protection in the brownfield program relief from statutory causes of action arising under s. 376.313(3), F.S., which impose strict liability for damages from pollution for certain sites.
- Provides the liability protection in the brownfield program to any subsequent property owner of a brownfield site.

- Requires subsequent property owners of brownfield sites to comply with applicable institutional or engineering controls required for site rehabilitation to retain liability protection.
- Authorizes governmental entities to propose brownfield area designations under designation criteria that may require adoption by the local government with jurisdiction.
- Broadens the procedures for negotiating brownfield site rehabilitation agreements so that a designation simply entitles any person to negotiate an agreement, rather than the person identified as the person responsible for brownfield site rehabilitation.
- Creates an exception to the brownfield program eligibility requirement of creating at least 10 new jobs if the project provides benefits including affordable housing, recreation areas, conservation areas, or parks, or cultural or historical preservation.

II. Present Situation:

Florida's Brownfield Program

A brownfield is a property of which the expansion, redevelopment, or reuse may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.¹ Unsafe levels of environmental contamination on a brownfield may result from past or current industrial, commercial, residential, agricultural, or recreational uses and practices.² Contaminants may be found in soil, water or air.

In 1995, the U.S. Environmental Protection Agency (EPA) initiated a program to empower states, communities, and other stakeholders in economic redevelopment to work together in a timely manner to prevent, assess, safely clean up, and reuse brownfields.³ Under the program, states and tribes use a risk-based approach to determine the required level of cleanup necessary at brownfield properties.⁴ Cleaning up contaminants on a brownfield reduces or eliminates potential health risks to residents, workers, pets, and the surrounding environment. The degree of cleanup necessary depends on the specific contaminants found at the brownfield, the extent of contamination, and how the property will be reused.⁵

In 1997, the Legislature adopted the state's Brownfields Redevelopment Act (Act).⁶ The Act was created to provide incentives for local governments and individuals to voluntarily clean up and redevelop brownfield sites.⁷ The primary goals of the Act are to reduce public health and

¹ EPA, *Overview of EPA's Brownfields Program*, <https://www.epa.gov/brownfields/overview-epas-brownfields-program> (last visited Feb. 12, 2020).

² EPA, *Cleaning Up Brownfield Sites* (2019), available at https://www.epa.gov/sites/production/files/2019-10/documents/cleaning_up_brownfield_sites.pdf.

³ EPA, *Overview of EPA's Brownfields Program*, <https://www.epa.gov/brownfields/overview-epas-brownfields-program> (last visited Feb. 12, 2020); EPA, *Brownfields Community Reinvestment Act (CRA) Fact Sheet*, <https://www.epa.gov/brownfields/brownfields-community-reinvestment-act-cra-fact-sheet> (last visited Feb. 12, 2020).

⁴ EPA, *Cleaning Up Brownfield Sites* (2019), available at https://www.epa.gov/sites/production/files/2019-10/documents/cleaning_up_brownfield_sites.pdf.

⁵ *Id.*

⁶ Chapter 97-277, Laws of Fla; ss. 376.77–376.85, F.S.

⁷ DEP, *Florida Brownfields Redevelopment Program, Annual Report: August 2019*, 3 (2019)[hereinafter *DEP Brownfields Report*], available at <https://floridadep.gov/sites/default/files/Florida%20Brownfields%20Annual%20Report%20August%201%2C%202019.pdf>.

environmental hazards on existing commercial and industrial sites that are abandoned or underused due to these hazards; create financial and regulatory incentives to encourage voluntary cleanup and redevelopment of sites; derive cleanup target levels and a process for obtaining a "No Further Action" letter using risk-based corrective action principles; and provide the opportunity for environmental equity and justice.⁸ The Act authorizes the Department of Environmental Protection's (DEP) Brownfields Redevelopment Program. Participation in the program results in environmental cleanup, protection of public health, reuse of infrastructure, and job creation.⁹

Brownfield Designations

Under the Act, a brownfield area is defined as a contiguous area of one or more brownfield sites,¹⁰ some of which may not be contaminated, and which has been designated by a local government resolution.¹¹ Brownfield areas may include all or portions of community redevelopment areas, enterprise zones, empowerment zones, other such designated economically deprived communities and areas, and EPA-designated brownfield pilot projects.¹²

For a property to participate in the program, the local government with jurisdiction over the property must first adopt a resolution designating the area as a brownfield area.¹³ A brownfield area designation may be proposed by the jurisdictional local government or any person other than a governmental entity.¹⁴ Different designation criteria may apply based on the entity proposing the designation, and the criteria for designations proposed by persons other than a governmental entity require the local government with jurisdiction to provide notice and adopt the resolution if a person establishes five particular criteria.¹⁵ To designate a brownfield area, the jurisdictional local government must pass a resolution that includes a map clearly delineating the parcels to be included in the brownfield area.¹⁶ If a property owner within the proposed area requests in writing to have his or her property removed from the proposed designation, then the local government must grant the request.¹⁷ The governing bodies of municipalities and counties must notice and conduct hearings on proposed resolutions and adopt resolutions in accordance with the applicable statutory procedures.¹⁸

Eligibility Criteria

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 conditions

⁸ DEP, *Brownfields Program*, <https://floridadep.gov/waste/waste-cleanup/content/brownfields-program> (last visited Feb. 12, 2020).

⁹ *DEP Brownfields Report*, at 3.

¹⁰ Section 376.79(4), F.S. "Brownfield sites" means real property, the expansion, redevelopment, or reuse of which may be complicated by actual or perceived environmental contamination.

¹¹ Section 376.79(5), F.S.

¹² *Id.*

¹³ Section 376.80(1), F.S.

¹⁴ *Id.*

¹⁵ Section 376.80(2)(c), F.S.

¹⁶ Section 376.80(1), F.S.

¹⁷ *Id.*

¹⁸ Section 376.80(1)(c)2., F.S.; *see ss.* 125.66 and 166.041, F.S.

specified in the Act.¹⁹ For example, persons who are subject to ongoing corrective action or enforcement under certain environmental laws are only eligible to participate in a brownfield site rehabilitation agreement if:

- The proposed brownfield site is currently idle or underutilized as a result of the contamination, and participation will immediately result in increased economic productivity at the site, including the creation of at least 10 new permanent jobs that are not part of implementing the brownfield site rehabilitation agreement; 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 program.²⁰

Brownfield Site Rehabilitation Agreements (BSRA)

Following designation of a brownfield area by resolution, the local government may identify a person responsible for brownfield site rehabilitation,²¹ which simply entitles the identified person to negotiate a Brownfield Site Rehabilitation Agreement (BSRA) with DEP or an approved local pollution control program.²² If actual contamination exists at the site, the responsible person must enter into such a BSRA.²³ A BSRA provides assurance to DEP and the public that site rehabilitation will be conducted in accordance with applicable legal requirements, and it provides limited liability protection for the responsible person.²⁴ BSRA's must include each of the following elements:

- A brownfield site rehabilitation schedule;
- A commitment to conduct site rehabilitation activities under the observation of professional engineers or geologists who are registered in accordance with applicable law;
- A commitment to conduct site rehabilitation in accordance with DEP quality assurance rules;
- A commitment to conduct site rehabilitation consistent with the brownfield site contamination cleanup criteria;²⁵
- Timeframes for DEP's review of technical reports and plans submitted in accordance with the BSRA;
- A commitment to secure site access for DEP or the approved local program to all brownfield sites within the eligible brownfield area for activities associated with site rehabilitation;
- A commitment to consider appropriate pollution prevention measures and to implement those that are reasonable and cost-effective, taking into account the ultimate use or uses of the brownfield site;
- Certification that the person responsible for brownfield site rehabilitation has consulted with the local government about the proposed redevelopment of the brownfield site, that the local

¹⁹ Section 376.82, F.S.

²⁰ Section 376.82(1)(b), F.S.

²¹ Section 376.79(15), F.S. The Act defines "person responsible for brownfield site rehabilitation" as "the individual or entity that is designated by the local government to enter into the brownfield site rehabilitation agreement with the department or an approved local pollution control program and enters into an agreement with the local government for redevelopment of the site."

²² Section 376.80(2)(d), F.S.; *DEP Brownfields Report*, at 9. DEP has delegated authority to administer the program to three county governments: Broward, Hillsborough, and Miami-Dade counties.

²³ Section 376.80(5), F.S.

²⁴ *DEP Brownfields Report*, at 5.

²⁵ Section 376.81, F.S.; Fla. Admin. Code Ch. 62-780. This chapter contains cleanup criteria requirements that apply to site rehabilitation governed by a BSRA.

government approves the proposed redevelopment, and that the proposed redevelopment complies with applicable laws and requirements for such redevelopment; and

- Any other provisions that the person responsible for brownfield site rehabilitation and DEP agree upon.²⁶

DEP issues site rehabilitation completion orders for sites that have completed cleanup of property to standards protective of human health and the environment and for which no further action is required at that time.²⁷ Since the program's inception in 1997, Florida has amassed 481 designated brownfield areas in 151 communities across the state, averaging 22 newly designated brownfield areas each year.²⁸ From those designations, 137 site rehabilitation orders have been issued, approximately 66,600 confirmed and projected direct and indirect jobs have been created, and \$2.86 billion in capital investment is projected in designated brownfield areas.²⁹

Liability Protection

Any person, including his or her successors and assigns, who executes and implements to successful completion a BSRA 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, including, but not limited to, diminished value of real property or improvements; 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 BSRA.³⁰

This liability protection takes effect upon execution of a BSRA and remains effective provided that the responsible person complies with the terms of the BSRA.³¹ If the responsible person fails to comply with the BSRA, and the project is not returned to compliance with the BSRA or a modification cannot be negotiated, the immunity provisions are revoked.³² Upon completion of site rehabilitation in compliance with the Act, no additional site rehabilitation is required unless certain conditions are demonstrated.³³

²⁶ Section 376.80(5), F.S.

²⁷ *DEP Brownfields Report*, at 5; Fla. Admin. Code R. 62-780.680; *see also* s. 376.82(2)(e), F.S.

²⁸ *DEP Brownfields Report*, at 4.

²⁹ *Id* at 1, 5.

³⁰ Section 376.82(2)(a)1.-3. The relief of liability for claims of property damages applies to causes of action accruing on or after July 1, 2014, and 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.

³¹ Section 376.82(2)(d), F.S.; *see s.* 376.82(2)(b) and (c), F.S. This liability protection does not limit the right of a third party other than the state to pursue an action for damages to persons for bodily harm; however, such an action may not compel site rehabilitation in excess of that required in the approved BSRA or otherwise required by DEP or a local program. Section 376.82, F.S., does not affect the ability or authority to seek contribution from any person who may have liability with respect to the contaminated site and who did not receive cleanup liability protection under the Act.

³² Section 376.80(8), F.S.

³³ Section 376.82(3)(a)-(e), F.S.

Voluntary Cleanup Tax Credit

In 1998, the Legislature created the voluntary cleanup tax credit to encourage participants to conduct voluntary cleanup of certain drycleaning-solvent-contaminated sites and brownfield sites in designated brownfield areas.³⁴ For participants meeting the eligibility criteria in the Act who have entered into a BSRA, DEP awards tax credit certificates valid against the Florida corporate income tax.³⁵ There are five types of such tax credits available.³⁶

An annual site rehabilitation tax credit may be claimed in the amount of 50 percent of the costs of voluntary cleanup activity that is integral to site rehabilitation at a brownfield site in a designated brownfield area.³⁷ Eligible tax credit applicants may receive up to \$500,000 per site per year in tax credits.³⁸ Applicants for the site rehabilitation credit have an annual application deadline of January 31 of the year following the calendar year for which an applicant is claiming site rehabilitation costs.³⁹ By May 1 of each year, DEP must inform each applicant of their eligibility status and the amount of any tax credit due.⁴⁰

To encourage the completion of site rehabilitation, an additional one-time tax credit may be claimed in the amount of 25 percent of the total site rehabilitation costs, not to exceed \$500,000, in the final year of cleanup as evidenced by DEP issuing a “No Further Action” order for the site.⁴¹

To encourage the construction of affordable housing, an additional one-time tax credit may be claimed in the amount of 25 percent of the total site rehabilitation costs, not to exceed \$500,000, for brownfield sites at which the land use is restricted to affordable housing.⁴² In order to receive this tax credit, the applicant must provide a certification letter from a governmental agency that is a party to the use agreement indicating that the brownfield site has received a certificate of occupancy and has a recorded instrument limiting the use of the property to housing.⁴³

To encourage the redevelopment of a brownfield site that is hindered by the presence of solid waste,⁴⁴ an additional one-time tax credit may be claimed in the amount of 50 percent of the costs, not to exceed \$500,000, for the complete costs of solid waste removal for the brownfield

³⁴ DEP, *Voluntary Cleanup Tax Credit*, <https://floridadep.gov/waste/waste-cleanup/content/voluntary-cleanup-tax-credit> (last visited Feb. 12, 2020).

³⁵ *Id.*

³⁶ Sections 220.1845(2)(k) and 376.30781(3)(f), F.S. In addition to the four tax credits described below, a tax credit is available for the construction or operation of a health care facility or health care provider on a brownfield site.

³⁷ Sections 220.1845(2)(a) and 376.30781(3)(a), F.S.

³⁸ Sections 220.1845(2)(b) and 376.30781(3)(b), F.S.

³⁹ Section 376.30781(5)(a), F.S.; DEP, *Voluntary Cleanup Tax Credit*, <https://floridadep.gov/waste/waste-cleanup/content/voluntary-cleanup-tax-credit> (last visited Feb. 12, 2020).

⁴⁰ Section 376.30781(9), F.S.

⁴¹ Sections 220.1845(2)(h) and 376.30781(3)(c), F.S.

⁴² Sections 220.1845(2)(i) and 376.30781(3)(d), F.S.

⁴³ *Id.*

⁴⁴ Section 403.703(36), F.S. “Solid Waste” means sludge unregulated under the federal Clean Water Act or Clean Air Act, sludge from a waste treatment works, water supply treatment plant, or air pollution control facility, or garbage, rubbish, refuse, special waste, or other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from domestic, industrial, commercial, mining, agricultural, or governmental operations.

site.⁴⁵ The term “solid waste removal” includes removing or excavating, sorting or screening prior to removal, or depositing solid waste at a waste management facility.⁴⁶ To qualify for the tax credit, applicants must submit an affidavit to DEP, following consultation with DEP and appropriate local government officials, stating the brownfield site was never operated as a permitted solid waste disposal area or operated for monetary compensation.⁴⁷ “Solid waste disposal area” is defined as a landfill, dump, or other area where solid waste has been disposed.⁴⁸ “Monetary compensation” is defined as fees or assessments for the disposal of solid waste at a solid waste disposal area.⁴⁹

The total amount of tax credits for all sites that may be granted by DEP each fiscal year is capped at \$10 million.⁵⁰ In the event that approved tax credit applications exceed the \$10 million annual authorization, remaining applications roll over into the next fiscal year to receive tax credits from the next year’s authorization.⁵¹ As of July 1, 2018, there was approximately \$21.6 million in approved tax credits, with \$3.2 million carried over as the backlog.⁵² DEP received 135 voluntary cleanup tax credit applications for 2018 calendar year expenses, and \$14.6 million of this was allocated for tax credits for 122 brownfield sites.⁵³

Affordable Housing

Affordable housing is generally defined in relation to the annual area median household income adjusted for family size. Section 420.0004, F.S., defines the term “affordable” to mean that monthly rents or monthly mortgage payments including taxes, insurance, and utilities do not exceed 30 percent of the amount that represents the percentage of the median adjusted gross annual income for:

- Extremely-low-income households, i.e., total annual household income does not exceed 30 percent of the median annual adjusted gross income for households within the state;⁵⁴
- Very-low-income households, i.e., total annual gross household income does not exceed 50 percent of the median annual income within the state or the metropolitan statistical area, whichever is greater;⁵⁵
- Low-income households, i.e., total annual gross household income does not exceed 80 percent of the median annual income within the state or the area, whichever is greater;⁵⁶

⁴⁵ Sections 220.1845(2)(j) and 376.30781(3)(e), F.S.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ Sections 220.1845(2)(f) and 376.30781(4), F.S.

⁵¹ DEP, *Voluntary Cleanup Tax Credit*, <https://floridadep.gov/waste/waste-cleanup/content/voluntary-cleanup-tax-credit> (last visited Feb. 12, 2020).

⁵² *DEP Brownfields Report*, at 7.

⁵³ *Id.*

⁵⁴ Section 420.0004(9), F.S. The Florida Housing Finance Corporation may adjust this amount annually by rule to provide that in lower income counties, extremely low income may exceed 30 percent of area median income and that in higher income counties, extremely low income may be less than 30 percent of area median income.

⁵⁵ Section 420.0004(17), F.S.

⁵⁶ Section 420.0004(11), F.S.

- Moderate-income households, i.e., total annual gross household income does not exceed 120 percent of the median annual income within the state or the area, whichever is greater.⁵⁷

According to the Florida Housing Finance Corporation, Florida housing records indicate there are currently a number of affordable housing projects financed through the corporation that are located within brownfield boundaries.⁵⁸

Water Quality Assurance Act

In 1983, the Legislature passed the Water Quality Assurance Act.⁵⁹ These sections of law outline a comprehensive administrative procedure to clean up contaminated sites.⁶⁰

Section 376.313(3), F.S., creates a private cause of action for all damages resulting from a discharge⁶¹ or other condition of pollution which is covered by the Water Quality Assurance Act.⁶² Section 376.313(3), F.S., imposes strict liability for such pollution, as it is not necessary to show negligence, it is only necessary to show that the prohibited discharge or other pollutive condition occurred.⁶³ The section allows for joint and several liability.⁶⁴ The only defenses to such statutory causes of action are those specified in s. 376.308, F.S. These defenses include: an act of war; an act of government; an act of God, meaning an unforeseeable act of the violence of nature without the interference of human agency; or an act or omission of a third party.⁶⁵ These defenses create exceptions to the strict liability imposed by the statute.⁶⁶

The Water Quality Assurance Act does not define the term “damages.” In a 2010 case involving a claim arising under s. 376.313(3), F.S., the Florida Supreme Court applied a definition from a different portion of ch. 376, F.S., which defines damages as “the documented extent of any destruction to or loss of any real or personal property, or the documented extent...of any destruction of the environment and natural resources, including all living things except human beings, as the direct result of the discharge of a pollutant.”⁶⁷ In 2019, the Florida Supreme Court

⁵⁷ Section 420.0004(12), F.S.

⁵⁸ Florida Housing Finance Corporation, *2020 Agency Legislative Bill Analysis: SB 1350, 2* (2020)(on file with the Senate Environment and Natural Resources Committee).

⁵⁹ Chapter 83-310, Laws of Fla.; ss. 376.30–376.317, F.S.

⁶⁰ *Irizarry v. Orlando Utilities Comm'n*, 393 F. Supp. 3d 1110, 1118 (M.D. Fla. 2019).

⁶¹ Section 376.301(13), F.S. “Discharge” includes, but is not limited to, any spilling, leaking, seeping, pouring, misapplying, emitting, emptying, releasing, or dumping of any pollutant or hazardous substance which occurs and which affects lands and the surface and ground waters of the state not regulated by the Water Quality Assurance Act.

⁶² Section 376.313(3), F.S.

⁶³ *Id.* Certain exceptions exist for suits involving petroleum storage systems or drycleaning facility or wholesale supply facility; see *Irizarry*, 393 F. Supp. 3d 1110 at 1116 (explaining that to state a plausible claim under s. 376.313(3), F.S., a plaintiff must allege: (1) a prohibited discharge or other pollutive condition occurred; and (2) damages).

⁶⁴ Section 376.313(3), F.S.; see BLACK’S LAW DICTIONARY 997 (9th ed. 2009). Joint and several liability generally means liability that may be apportioned among two or more parties.

⁶⁵ Section 376.308, F.S. The section contains additional defenses, including those involving discharges of petroleum or drycleaning solvents.

⁶⁶ See *Gen. Dynamics Corp. v. Brottem*, 53 So. 3d 334, 337 (Fla. Dist. Ct. App. 2010)(describing the defenses as “fault-focused defenses or, put another way, strict liability exceptions”).

⁶⁷ *Curd v. Mosaic Fertilizer, LLC*, 39 So. 3d 1216, 1221 (Fla. 2010); s. 376.031(5), F.S.

receded from the application of this definition, and held that the meaning of “all damages” in s. 376.313(3), F.S., includes personal injury damages.⁶⁸

In addition to providing a statutory cause of action, s. 376.313(3), F.S., expressly preserves common law causes of action.⁶⁹ This means a plaintiff may also pursue common law causes of action to obtain relief for damages resulting from pollution covered by the Water Quality Assurance Act.⁷⁰ However, the strict liability provisions applying to statutory causes of action arising under s. 376.313(3), F.S., would not apply to causes of action arising under common law.

Solid Waste Disposal Facilities

DEP is responsible for implementing and enforcing Florida’s solid waste management laws in ch. 403, F.S.⁷¹ These statutes provide the authority for ch. 62-701, F.A.C., which are DEP’s current rules for solid waste management facilities.⁷² The rules define solid waste management facilities as any solid waste disposal area, transfer station, materials recovery facility, or other facility (including landfills), the purpose of which is resource recovery or the disposal, recycling, processing, or storage of solid waste.⁷³ No person may store, process, or dispose of solid waste except as authorized at a permitted solid waste management facility.⁷⁴ A permit from DEP is required for the construction, operation, or closure of a solid waste management facility.⁷⁵

DEP’s rules for landfills require compliance with water quality and air quality standards, and they establish minimum requirements for water quality monitoring.⁷⁶ Landfills that close must comply with DEP’s requirements for closure permitting and long-term care.⁷⁷ Consultation with DEP is required prior to conducting any activities at closed landfill areas.⁷⁸ DEP provides guidance on requirements and recommendations for disturbing or using old, closed landfills or disposal areas.⁷⁹ These areas include old waste disposal areas that were operated and closed without permits and which may have had few or no records available of their operations.⁸⁰ In these old waste disposal areas, DEP prefers uses such as recreational facilities instead of residential housing, and discourages some construction due to issues such as landfill gas and settlement problems.⁸¹

⁶⁸ *Charles L. Lieupo v. Simon’s Trucking, Inc.*, 286 So. 3d 143, 147 (Fla. 2019).

⁶⁹ Section 376.313(3), F.S.; see *Courtney Enterprises, Inc. v. Publix Super Markets, Inc.*, 788 So. 2d 1045, 1050 (Fla. Dist. Ct. App. 2001)(stating that section 376.313(3), F.S. preserves common law causes of action by its very terms).

⁷⁰ *Irizarry*, 393 F. Supp. 3d at 1118.

⁷¹ Section 403.704, F.S.; see DEP, *Solid Waste Section*, <https://floridadep.gov/waste/permitting-compliance-assistance/content/solid-waste-section> (last visited Feb. 13, 2020).

⁷² Fla. Admin. Code Ch. 62-701.

⁷³ Fla. Admin. Code R. 62-701.200(112).

⁷⁴ Fla. Admin. Code R. 62-701.300.

⁷⁵ Section 403.707, F.S.; Fla. Admin. Code R. 62-701.320. The rule specifies certain exemptions.

⁷⁶ Fla. Admin. Code Rules 62-701.340 and 62-701.510.

⁷⁷ Fla. Admin. Code Rules 62-701.600 and 62-701.620.

⁷⁸ Fla. Admin. Code R. 62-701.610(1).

⁷⁹ DEP, *Guidance For Disturbance and Use of Old Closed Landfills or Waste Disposal Areas in Florida, Version 2.3*, 1 (Apr. 2, 2019), available at https://floridadep.gov/sites/default/files/Old_Dump_Guidance-02Apr2019.pdf.

⁸⁰ *Id.* at 2.

⁸¹ *Id.* at 16-18.

III. Effect of Proposed Changes:

Section 1 amends s. 376.30781, F.S., which authorizes various tax credits for rehabilitation of brownfield sites.

The bill changes from May 1 to June 1 the date on or before which the Department of Environmental Protection (DEP) must inform each applicant for the annual site rehabilitation tax credit of the applicant's eligibility status and the amount of any tax credit due.

The bill revises the one-time tax credit for 25 percent of the total site rehabilitation costs for a brownfield site, not to exceed \$500,000, for site rehabilitation completion. To be eligible for the tax credit, DEP must have approved the applicant's annual site rehabilitation applications and issued a "No Further Action" order for the site. The bill also requires the applicant to submit the claim within 2 years of receipt of the order and deletes the requirement that the claim be made in the final year of cleanup.

The bill revises the one-time tax credit for an additional 25 percent of the total site rehabilitation costs for a brownfield site, not to exceed \$500,000, which limits the use of the property to housing. The bill requires the applicant to have a certification letter indicating that the construction on the brownfield site, instead of the brownfield site itself, has a properly recorded instrument limiting the use of the property to housing.

The bill revises the one-time tax credit for 50 percent of the costs for solid waste removal on a brownfield site, not to exceed \$500,000. The bill deletes requirements that applicants for this credit must submit an affidavit making certain statements, after consultation with appropriate local government officials and DEP, and to the best of the applicant's knowledge based upon such consultation and available historical records. The bill requires the applicant to meet eligibility requirements for participation in the brownfield program, and requires that the site has never been used as a permitted solid waste disposal area under DEP's current rules regulating solid waste management facilities⁸² or the predecessor rules. The bill deletes the requirement that the site was never operated for monetary compensation. The effect of these changes is to authorize credits for unpermitted solid waste disposal areas (often sites that existed before the current regulatory scheme was in place) even if those solid waste disposal areas received monetary compensation.

Section 2 amends s. 376.313(3), F.S., which provides a cause of action and defenses for damages resulting from pollution.

The bill limits causes of action arising under s. 376.313(3), F.S., to damages to real or personal property directly resulting from pollution, and requires that the pollution was not authorized by any government approval or permit. The effect of this change is to remove personal injury from the types of damages that may be recovered through causes of action arising under s. 376.313(3), F.S., overturning the Florida Supreme Court's recent decision in *Lieupo v. Simon's Trucking*.⁸³

⁸² Fla. Admin. Code Ch. 62-701.

⁸³ *Lieupo*, 286 So. 3d at 147.

The bill changes the description from “defenses” to “strict-liability exceptions,” since s. 376.313(3), F.S., imposes strict liability.

The bill adds to the defenses for a cause of action arising under s. 376.313(3), F.S., the liability protection provided to any person who executes and implements to successful completion a Brownfield Site Rehabilitation Agreement (BSRA). This liability protection would also apply to the successors and assigns of the person who executed and implemented the BSRA, as well as subsequent property owners of the brownfield site.

Section 3 amends s. 376.78, F.S., which provides the legislative intent for the Brownfields Redevelopment Act.

The bill expands the first legislative finding to state that the reduction of public health and environmental hazards on any existing sites is vital to their use and reuse. This broadens the existing language, which only applies to commercial and industrial sites.

Section 4 amends s. 376.80, F.S., which establishes the general procedures that apply to Florida’s brownfield program.

The bill allows government entities and trusts to propose brownfield area designations under the designation criteria that, in existing law, apply to any person other than a governmental entity. The bill changes the heading for the applicable criteria to “brownfield area designation proposed by specified persons,” removing language that does not allow that criteria to apply to governmental entities.⁸⁴

The bill revises the procedures for negotiating BSRAs. The bill states that the designation of a brownfield area simply entitles a person to negotiate a BSRA with DEP or a local program. This broadens the existing language which states that designating the brownfield area “and the identification of a person responsible for brownfield site rehabilitation simply entitles the *identified* person to negotiate”⁸⁵ a BSRA with DEP or a local program.⁸⁶ The effect of this language may be to authorize “a person,” not just the person identified as responsible for brownfield site rehabilitation, to negotiate the BSRA.

The bill revises the respective procedures required for municipalities and counties to adopt resolutions designating brownfield areas, applying the specified procedures only to the notices for the public hearings and not all of the procedures for the public hearings. This removes requirements for municipalities and counties to follow certain specific procedures for public hearings on proposed resolutions.

⁸⁴ Section 376.79(16), F.S. The definition of “person” in the Brownfields Redevelopment Act expressly includes any governmental entity.

⁸⁵ Emphasis added.

⁸⁶ Section 376.79(15), F.S. The Act defines “person responsible for brownfield site rehabilitation” as “the individual or entity that is designated by the local government to enter into the brownfield site rehabilitation agreement with the department or an approved local pollution control program and enters into an agreement with the local government for redevelopment of the site.”

The bill provides a clarifying definition for the term “brownfield area” as used in the procedures for local government-proposed brownfield area designations outside specified redevelopment areas.⁸⁷

Section 5 amends s. 376.82, F.S., which establishes eligibility criteria and liability protection for Florida’s brownfield program.

The bill revises the list of liability protections for persons who execute and implement to successful completion a BSRA. The bill adds relief from statutory causes of action arising under s. 376.313(3), F.S., to the list of liability protections. This protects those who execute and implement BSRAs, and their successors and assigns and any subsequent property owners, from statutory causes of action regarding damages to real or personal property directly resulting from pollution in which a strict liability standard is imposed.

The bill also expands the other liability protection for persons who execute and implement BSRAs to any subsequent property owner of the brownfield site, in addition to the person who cleans up the site and their successors or assigns.

The bill provides that the liability protection becomes effective upon execution of a BSRA and remains effective as to any person responsible for brownfield site rehabilitation. Each person responsible for brownfield site rehabilitation must comply with the BSRA, and any subsequent property owner of the brownfield site must maintain compliance with any applicable institutional or engineering controls required for site rehabilitation to retain the liability protections for brownfield site cleanups.

The bill revises the participation eligibility requirement for persons subject to ongoing corrective action or enforcement of environmental law to create at least 10 new permanent jobs that are not associated with implementing the BSRA. The job creation requirement does not apply to the rehabilitation and redevelopment of a brownfield site that will provide affordable housing⁸⁸ or create recreational areas, conservation areas, or parks, or be maintained for cultural or historical preservation purposes.

Section 6 states that the act takes effect July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

⁸⁷ Section 376.79(5), F.S. In this context, the bill defines “brownfield area” as the following: “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. Such areas may include all or portions of community redevelopment areas, enterprise zones, empowerment zones, other such designated economically deprived communities and areas, and Environmental Protection Agency-designated brownfield pilot projects.”

⁸⁸ Section 420.0004, F.S. The bill references this section for the definition of “affordable housing.”

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.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The revenue estimating conference performed an analysis of the changes to the Corporate Income Tax credits in HB 1001, the House of Representatives' companion to SB 1350.⁸⁹ The analysis found that the bill is expected to have no impact, because, regardless of expected growth of the applicant pool, the available tax credits are still capped at \$10 million.⁹⁰

VI. Technical Deficiencies:

In existing law, ss. 376.30781(3)(c)-(e) and 220.1845(2)(h)-(j), F.S., are identical, and together they authorize certain tax credits. Lines 39-117 of the bill amend s. 376.30781(3)(c)-(e), F.S., but the bill does not make the same amendments to s. 220.1845(2)(h)-(j), F.S. Revising the bill to make the same changes in both of these sections of law, so that the aforementioned subsections remain identical, is recommended.⁹¹

⁸⁹ Office of Economic and Demographic Research, Revenue Estimating Conference, *HB 1001, Section 2*, 251-253 (Jan. 17, 2020), available at http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2020/_pdf/Impact0117.pdf.

⁹⁰ *Id.* at 253.

⁹¹ See Department of Revenue, *2020 Agency Legislative Bill Analysis: SB 1350*, 5 (2020)(on file with the Senate Environment and Natural Resources Committee).

Lines 84-85 refer to ch. 62-701, F.A.C. It is preferable that bills not include references to specific administrative rules.⁹² According to the Florida Senate Manual for Drafting Legislation, because of the rule of statutory construction governing specific cross-references, a law that incorporates an agency's rule by specific reference prevents the agency from later amending that rule.⁹³ Therefore, revising the bill to refer to rules adopted under s. 403.704, F.S., regarding permitting solid waste management facilities is recommended.

The title of the bill does not mention that the bill provides the brownfield program liability protection to subsequent property owners of brownfield sites or that relief from statutory causes of action arising under s. 376.313(3), F.S., is added to this liability protection. Amending the title to include these changes is recommended.

VII. Related Issues:

Lines 43-45 require that DEP has approved the applicant's annual site rehabilitation applications for eligibility for the rehabilitation completion tax credit. Given the bill's current language, this is a requirement for an applicant to receive a credit, not a modification or clarification of the amount of the credit. If the intent was for DEP to use the annual applications to determine which costs are eligible for the 25 percent tax credit calculation then the following language or a similar clarification is recommended: the site rehabilitation costs for the purposes of this paragraph consist of those costs that the Department of Environmental Protection has approved as part of the applicant's annual site rehabilitation applications.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 212.08, 376.30781, 376.313, 376.78, 376.80, and 376.82.

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 Committee on February 17, 2019:

- Removes the expanded application of the sales tax exemption for building materials to the construction of affordable housing projects on lands abutting brownfield areas where the developer sets aside at least 20 percent of housing units for affordable housing, and the construction of mixed-use units on lands in and abutting brownfield areas where the developer sets aside at least 20 percent of the project's square footage for low- and moderate-income housing.
- Removes the expanded application of the corporate income tax exemption for affordable housing on brownfield sites to projects with mixed uses and projects that include market-rate housing, where the developer sets aside at least 20 percent of the housing units for affordable housing, and the tax credit is based on a pro rata share of

⁹² Florida Senate, Office of Bill Drafting Services, *Manual for Drafting Legislation*, 82 (2009), available at <http://intranet.flsenate.gov/Document?filePath=/Publications%20and%20Forms/Publications/&fileName=Bill%20Drafting%20Manual.pdf>.

⁹³ *Id.*

affordable housing compared to the overall square footage or market-rate housing units.

- Removes the change to the definition of “sold waste disposal area” for the corporate income tax credit for solid waste removal from a brownfield site.
- Limits statutory causes of action under s. 376.313(3), F.S., to damages to real or personal property directly resulting from the pollution.
- Revises the statutory cause of action in s. 376.313(3), F.S., requiring that the pollution at issue was not authorized by any government approval or permit, as opposed to not authorized under ch. 403, F.S.
- Changes the description of the defenses to s. 376.313(3), F.S., to “strict-liability exceptions” instead of defenses.
- Changes the title of the bill from “brownfields” to “contamination.”

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/17/2020	.	
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The Committee on Environment and Natural Resources (Baxley) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Paragraphs (c), (d), and (e) of subsection (3) and subsection (9) of section 376.30781, Florida Statutes, are amended to read:

376.30781 Tax credits for rehabilitation of drycleaning-solvent-contaminated sites and brownfield sites in designated brownfield areas; application process; rulemaking authority;



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11 revocation authority.-

12 (3)

13 (c) In order to encourage completion of site rehabilitation
14 at contaminated sites that are being voluntarily cleaned up and
15 that are eligible for a tax credit under this section, the tax
16 credit applicant may claim an additional 25 percent of the total
17 site rehabilitation costs, not to exceed \$500,000, if the
18 Department of Environmental Protection has approved the
19 applicant's annual site rehabilitation applications and has
20 issued in the final year of cleanup as evidenced by the
21 Department of Environmental Protection issuing a "No Further
22 Action" order for that site. The tax credit applicant must
23 submit the claim for the additional 25 percent within 2 years of
24 receipt of the "No Further Action" order for that site.

25 (d) In order to encourage the construction of housing that
26 meets the definition of affordable provided in s. 420.0004, an
27 applicant for the tax credit may claim an additional 25 percent
28 of the total site rehabilitation costs that are eligible for tax
29 credits under this section, not to exceed \$500,000. To receive
30 this additional tax credit, the applicant must provide a
31 certification letter from the Florida Housing Finance
32 Corporation, the local housing authority, or other governmental
33 agency that is a party to the use agreement indicating that the
34 construction on the brownfield site has received a certificate
35 of occupancy and ~~the brownfield site~~ has a properly recorded
36 instrument that limits the use of the property to housing.
37 Notwithstanding that only one application may be submitted each
38 year for each site, an application for the additional credit
39 provided for in this paragraph shall be submitted after all



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40 requirements to obtain the additional tax credit have been met.
41 (e) In order to encourage the redevelopment of a brownfield
42 site, as defined in the brownfield site rehabilitation
43 agreement, that is hindered by the presence of solid waste, as
44 defined in s. 403.703, costs related to solid waste removal may
45 also be claimed under this section. A tax credit applicant, or
46 multiple tax credit applicants working jointly to clean up a
47 single brownfield site, may also claim costs to address the
48 solid waste removal as defined in this paragraph in accordance
49 with department rules. Multiple tax credit applicants shall be
50 granted tax credits in the same proportion as each applicant's
51 contribution to payment of solid waste removal costs. These
52 costs are eligible for a tax credit provided the applicant meets
53 the eligibility requirements of s. 376.82(1) and submits an
54 affidavit stating that, after consultation with appropriate
55 local government officials and the department, to the best of
56 the applicant's knowledge based upon such consultation and
57 available historical records, the brownfield site was never
58 operated as a permitted solid waste disposal area under chapter
59 62-701, Florida Administrative Code, or the predecessor rules ~~or~~
60 ~~was never operated for monetary compensation, and the applicant~~
61 ~~submits all other documentation and certifications required by~~
62 ~~this section.~~ In this section, where reference is made to "site
63 rehabilitation," the department shall instead consider whether
64 the costs claimed are for solid waste removal. Tax credit
65 applications claiming costs pursuant to this paragraph shall not
66 be subject to the calendar-year limitation and January 31 annual
67 application deadline, and the department shall accept a one-time
68 application filed subsequent to the completion by the tax credit



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69 applicant of the applicable requirements listed in this
70 subsection. A tax credit applicant may claim 50 percent of the
71 costs for solid waste removal, not to exceed \$500,000, after the
72 applicant has determined solid waste removal is completed for
73 the brownfield site. A solid waste removal tax credit
74 application may be filed only once per brownfield site. For the
75 purposes of this section, the term:

76 1. "Solid waste disposal area" means a landfill, dump, or
77 other area where solid waste has been disposed.

78 2. ~~"Monetary compensation" means the fees that were charged~~
79 ~~or the assessments that were levied for the disposal of solid~~
80 ~~waste at a solid waste disposal area.~~

81 3. "Solid waste removal" means removal of solid waste from
82 the land surface or excavation of solid waste from below the
83 land surface and removal of the solid waste from the brownfield
84 site. The term also includes:

85 a. Transportation of solid waste to a licensed or exempt
86 solid waste management facility or to a temporary storage area.

87 b. Sorting or screening of solid waste prior to removal
88 from the site.

89 c. Deposition of solid waste at a permitted or exempt solid
90 waste management facility, whether the solid waste is disposed
91 of or recycled.

92 (9) On or before June ~~May~~ 1, the Department of
93 Environmental Protection shall inform each tax credit applicant
94 that is subject to the January 31 annual application deadline of
95 the applicant's eligibility status and the amount of any tax
96 credit due. The department shall provide each eligible tax
97 credit applicant with a tax credit certificate that must be



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98 submitted with its tax return to the Department of Revenue to
99 claim the tax credit or be transferred pursuant to s.
100 220.1845(2)(g). The June ~~May~~ 1 deadline for annual site
101 rehabilitation tax credit certificate awards shall not apply to
102 any tax credit application for which the department has issued a
103 notice of deficiency pursuant to subsection (8). The department
104 shall respond within 90 days after receiving a response from the
105 tax credit applicant to such a notice of deficiency. Credits may
106 not result in the payment of refunds if total credits exceed the
107 amount of tax owed.

108 Section 2. Subsection (3) of section 376.313, Florida
109 Statutes, is amended to read:

110 376.313 Nonexclusiveness of remedies and individual cause
111 of action for damages under ss. 376.30-376.317.—

112 (3) Except as provided in s. 376.3078(3) and (11), nothing
113 contained in ss. 376.30-376.317 prohibits any person from
114 bringing a cause of action in a court of competent jurisdiction
115 for all damages to real or personal property directly resulting
116 from a discharge or other condition of pollution covered by ss.
117 376.30-376.317 and which was not authorized by any government
118 approval or permit pursuant to chapter 403. Nothing in this
119 chapter shall prohibit or diminish a party's right to
120 contribution from other parties jointly or severally liable for
121 a prohibited discharge of pollutants or hazardous substances or
122 other pollution conditions. Except as otherwise provided in
123 subsection (4) or subsection (5), in any such suit, it is not
124 necessary for such person to plead or prove negligence in any
125 form or manner. Such person need only plead and prove the fact
126 of the prohibited discharge or other pollutive condition and



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127 that it has occurred. The only strict-liability exceptions
128 ~~defenses~~ to such cause of action shall be those specified in s.
129 376.308 or s. 376.82.

130 Section 3. Subsection (1) of section 376.78, Florida
131 Statutes, is amended to read:

132 376.78 Legislative intent.—The Legislature finds and
133 declares the following:

134 (1) The reduction of public health and environmental
135 hazards on existing ~~commercial and industrial~~ sites is vital to
136 their use and reuse as sources of employment, housing,
137 recreation, and open space areas. The reuse of industrial land
138 is an important component of sound land use policy for
139 productive urban purposes which will help prevent the premature
140 development of farmland, open space areas, and natural areas,
141 and reduce public costs for installing new water, sewer, and
142 highway infrastructure.

143 Section 4. Subsections (1) and (2) of section 376.80,
144 Florida Statutes, are amended to read:

145 376.80 Brownfield program administration process.—

146 (1) The following general procedures apply to brownfield
147 designations:

148 (a) The local government with jurisdiction over a proposed
149 brownfield area shall designate such area pursuant to this
150 section.

151 (b) For a brownfield area designation proposed by:

152 1. The jurisdictional local government, the designation
153 criteria under paragraph (2) (a) apply, except if the local
154 government proposes to designate as a brownfield area a
155 specified redevelopment area as provided in paragraph (2) (b).



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156 2. Any person, ~~other than a governmental entity,~~ including,
157 but not limited to, individuals, corporations, partnerships,
158 trusts, limited liability companies, community-based
159 organizations, or not-for-profit corporations, the designation
160 criteria under paragraph (2) (c) apply.

161 (c) Except as otherwise provided, the following provisions
162 apply to all proposed brownfield area designations:

163 1. Notification to department following adoption.—A local
164 government with jurisdiction over the brownfield area must
165 notify the department, and, if applicable, the local pollution
166 control program under s. 403.182, of its decision to designate a
167 brownfield area for rehabilitation for the purposes of ss.
168 376.77–376.86. The notification must include a resolution
169 adopted by the local government body. The local government shall
170 notify the department, and, if applicable, the local pollution
171 control program under s. 403.182, of the designation within 30
172 days after adoption of the resolution.

173 2. Resolution adoption.—The brownfield area designation
174 must be carried out by a resolution adopted by the
175 jurisdictional local government, which includes a map adequate
176 to clearly delineate exactly which parcels are to be included in
177 the brownfield area or alternatively a less-detailed map
178 accompanied by a detailed legal description of the brownfield
179 area. For municipalities, the governing body shall adopt the
180 resolution in accordance with the procedures outlined in s.
181 166.041, except that the notices ~~procedures~~ for the public
182 hearings on the proposed resolution must be in the form
183 established in s. 166.041(3)(c)2. For counties, the governing
184 body shall adopt the resolution in accordance with the



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185 procedures outlined in s. 125.66, except that the notices
186 ~~procedures~~ for the public hearings on the proposed resolution
187 shall be in the form established in s. 125.66(4)(b).

188 3. Right to be removed from proposed brownfield area.—If a
189 property owner within the area proposed for designation by the
190 local government requests in writing to have his or her property
191 removed from the proposed designation, the local government
192 shall grant the request.

193 4. Notice and public hearing requirements for designation
194 of a proposed brownfield area outside a redevelopment area or by
195 a nongovernmental entity. Compliance with the following
196 provisions is required before designation of a proposed
197 brownfield area under paragraph (2)(a) or paragraph (2)(c):

198 a. At least one of the required public hearings shall be
199 conducted as closely as is reasonably practicable to the area to
200 be designated to provide an opportunity for public input on the
201 size of the area, the objectives for rehabilitation, job
202 opportunities and economic developments anticipated,
203 neighborhood residents' considerations, and other relevant local
204 concerns.

205 b. Notice of a public hearing must be made in a newspaper
206 of general circulation in the area, must be made in ethnic
207 newspapers or local community bulletins, must be posted in the
208 affected area, and must be announced at a scheduled meeting of
209 the local governing body before the actual public hearing.

210 (2)(a) *Local government-proposed brownfield area*
211 *designation outside specified redevelopment areas.*—If a local
212 government proposes to designate a brownfield area that is
213 outside a community redevelopment area, enterprise zone,



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214 empowerment zone, closed military base, or designated brownfield
215 pilot project area, the local government shall provide notice,
216 adopt the resolution, and conduct public hearings pursuant to
217 paragraph (1)(c). At a public hearing to designate the proposed
218 area as a brownfield area, as defined in s. 376.79, the local
219 government must consider:

220 1. Whether the brownfield area warrants economic
221 development and has a reasonable potential for such activities;

222 2. Whether the proposed area to be designated represents a
223 reasonably focused approach and is not overly large in
224 geographic coverage;

225 3. Whether the area has potential to interest the private
226 sector in participating in rehabilitation; and

227 4. Whether the area contains sites or parts of sites
228 suitable for limited recreational open space, cultural, or
229 historical preservation purposes.

230 (b) *Local government-proposed brownfield area designation*
231 *within specified redevelopment areas.*—Paragraph (a) does not
232 apply to a proposed brownfield area if the local government
233 proposes to designate the brownfield area inside a community
234 redevelopment area, enterprise zone, empowerment zone, closed
235 military base, or designated brownfield pilot project area and
236 the local government complies with paragraph (1)(c).

237 (c) *Brownfield area designation proposed by specified*
238 *persons ~~other than a governmental entity~~.*—For designation of a
239 brownfield area that is proposed by a person under this
240 subsection ~~other than the local government~~, the local government
241 with jurisdiction over the proposed brownfield area shall
242 provide notice and adopt a resolution to designate the



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243 brownfield area pursuant to paragraph (1)(c) if, at the public
244 hearing to adopt the resolution, the person establishes all of
245 the following with respect to the proposed brownfield area:

246 1. A person who owns or controls a potential brownfield
247 site is requesting the designation and has agreed to
248 rehabilitate and redevelop the brownfield site.

249 2. The rehabilitation and redevelopment of the proposed
250 brownfield site will result in economic productivity of the
251 area, along with the creation of at least 5 new permanent jobs
252 at the brownfield site that are full-time equivalent positions
253 not associated with the implementation of the brownfield site
254 rehabilitation agreement and that are not associated with
255 redevelopment project demolition or construction activities
256 pursuant to the redevelopment of the proposed brownfield site or
257 area. However, the job creation requirement does not apply to
258 the rehabilitation and redevelopment of a brownfield site that
259 will provide affordable housing as defined in s. 420.0004 or the
260 creation of recreational areas, conservation areas, or parks.

261 3. The redevelopment of the proposed brownfield site is
262 consistent with the local comprehensive plan and is a
263 permittable use under the applicable local land development
264 regulations.

265 4. Notice of the proposed rehabilitation of the brownfield
266 area has been provided to neighbors and nearby residents of the
267 proposed area to be designated pursuant to paragraph (1)(c), and
268 the person proposing the area for designation has afforded to
269 those receiving notice the opportunity for comments and
270 suggestions about rehabilitation. Notice pursuant to this
271 subparagraph must be posted in the affected area.



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272 5. The person proposing the area for designation has
273 provided reasonable assurance that he or she has sufficient
274 financial resources to implement and complete the rehabilitation
275 agreement and redevelopment of the brownfield site.

276 (d) *Negotiation of brownfield site rehabilitation*
277 *agreement.*—The designation of a brownfield area ~~and the~~
278 ~~identification of a person responsible for brownfield site~~
279 ~~rehabilitation~~ simply entitles a ~~the identified~~ person to
280 negotiate a brownfield site rehabilitation agreement with the
281 department or approved local pollution control program.

282 Section 5. Paragraph (b) of subsection (1) and paragraphs
283 (a), (c), and (d) of subsection (2) of section 376.82, Florida
284 Statutes, are amended to read:

285 376.82 Eligibility criteria and liability protection.—

286 (1) ELIGIBILITY.—Any person who has not caused or
287 contributed to the contamination of a brownfield site on or
288 after July 1, 1997, is eligible to participate in the brownfield
289 program established in ss. 376.77-376.85, subject to the
290 following:

291 (b) Persons who have not caused or contributed to the
292 contamination of a brownfield site on or after July 1, 1997, and
293 who, prior to the department's approval of a brownfield site
294 rehabilitation agreement, are subject to ongoing corrective
295 action or enforcement under state authority established in this
296 chapter or chapter 403, including those persons subject to a
297 pending consent order with the state, are eligible for
298 participation in a brownfield site rehabilitation agreement if:

299 1. The proposed brownfield site is currently idle or
300 underutilized as a result of the contamination, and



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301 participation in the brownfield program will immediately, after
302 cleanup or sooner, result in increased economic productivity at
303 the site, including at a minimum the creation of 10 new
304 permanent jobs, whether full-time or part-time, which are not
305 associated with implementation of the brownfield site
306 rehabilitation agreement. However, the job creation requirement
307 does not apply to the rehabilitation and redevelopment of a
308 brownfield site that will provide affordable housing as defined
309 in s. 420.0004 or create recreational areas, conservation areas,
310 or parks, or be maintained for cultural or historical
311 preservation purposes; and

312 2. The person is complying in good faith with the terms of
313 an existing consent order or department-approved corrective
314 action plan, or responding in good faith to an enforcement
315 action, as evidenced by a determination issued by the department
316 or an approved local pollution control program.

317 (2) LIABILITY PROTECTION.—

318 (a) Any person, ~~including his or her successors and~~
319 ~~assigns~~, who executes and implements to successful completion a
320 brownfield site rehabilitation agreement, his or her successors
321 and assigns, and any subsequent property owner of the brownfield
322 site, is relieved of:

323 1. Further liability for remediation of the contaminated
324 site or sites to the state and to third parties.

325 2. Liability in contribution to any other party who has or
326 may incur cleanup liability for the contaminated site or sites.

327 3. Liability for claims of property damages, including, but
328 not limited to, diminished value of real property or
329 improvements; lost or delayed rent, sale, or use of real



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330 property or improvements; or stigma to real property or
331 improvements caused by contamination addressed by a brownfield
332 site rehabilitation agreement. Notwithstanding any other
333 provision of this chapter, this subparagraph applies to causes
334 of action accruing on or after July 1, 2014. This subparagraph
335 does not apply to a person who discharges contaminants on
336 property subject to a brownfield site rehabilitation agreement,
337 who commits fraud in demonstrating site conditions or completing
338 site rehabilitation of a property subject to a brownfield site
339 rehabilitation agreement, or who exacerbates contamination of a
340 property subject to a brownfield site rehabilitation agreement
341 in violation of applicable laws which causes property damages.

342 4. Statutory causes of action arising under s. 376.313(3).

343 (c) This section does ~~shall~~ not affect the ability or
344 authority to seek contribution from any person who may have
345 liability with respect to the contaminated site and who did not
346 receive cleanup liability protection under this act.

347 (d) The liability protection provided under this section
348 shall become effective upon execution of a brownfield site
349 rehabilitation agreement and shall remain effective as to any
350 person responsible for brownfield site rehabilitation, provided
351 each ~~the~~ person responsible for brownfield site rehabilitation
352 complies with the terms of the site rehabilitation agreement,
353 and as to any subsequent property owner of the brownfield site,
354 such owner maintains compliance, as applicable, with any
355 institutional controls or engineering controls required for site
356 rehabilitation. Any statute of limitations that would bar the
357 department from pursuing relief in accordance with its existing
358 authority is tolled from the time the agreement is executed



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359 until site rehabilitation is completed or immunity is revoked
360 pursuant to s. 376.80(8).

361 Section 6. This act shall take effect July 1, 2020.

362

363 ===== T I T L E A M E N D M E N T =====

364 And the title is amended as follows:

365 Delete everything before the enacting clause
366 and insert:

367 A bill to be entitled
368 An act relating to contamination; amending s.
369 376.30781, F.S.; revising the conditions under which
370 an applicant that has rehabilitated a contaminated
371 site may submit and claim certain tax credits;
372 specifying a timeframe within which such tax credit
373 applications must be submitted; revising the criteria
374 for determining applicants who are redeveloping
375 brownfield sites who may be eligible for certain tax
376 credits; revising the date by which the Department of
377 Environmental Protection must issue annual site
378 rehabilitation tax credit certificate awards; amending
379 s. 376.313, F.S.; revising available damages and
380 exceptions to specified causes of action concerning
381 certain discharges or other types of pollution
382 resulting from certain discharges or pollution;
383 amending s. 376.78, F.S.; conforming provisions to
384 changes made by the act; amending s. 376.80, F.S.;
385 revising the entities that may propose brownfield
386 designations using specified criteria; removing the
387 requirement that certain persons be identified before



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388 negotiating a brownfield site rehabilitation
389 agreement; amending s. 376.82, F.S.; exempting certain
390 job creation requirements otherwise needed for
391 eligibility for specified brownfield site
392 rehabilitation agreements; providing an effective
393 date.

By Senator Baxley

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1 A bill to be entitled
2 An act relating to brownfields; amending s. 212.08,
3 F.S.; revising the definition of the terms "housing
4 project" and "mixed-use project" for purposes of
5 specifying the projects eligible for certain tax
6 exemptions; amending s. 376.30781, F.S.; revising the
7 conditions under which an applicant that has
8 rehabilitated a contaminated site may submit and claim
9 certain tax credits; specifying a timeframe within
10 which such tax credit applications must be submitted;
11 revising the types of projects which are eligible for
12 a specified tax credit; revising the criteria for
13 determining applicants who are redeveloping brownfield
14 sites who may be eligible for certain tax credits;
15 revising the definition of "solid waste disposal
16 area"; revising the date by which the Department of
17 Environmental Protection must issue annual site
18 rehabilitation tax credit certificate awards; amending
19 s. 376.313, F.S.; specifying defenses to specified
20 causes of action concerning certain discharges or
21 other types of pollution resulting from certain
22 discharges or pollution; amending s. 376.78, F.S.;
23 conforming provisions to changes made by the act;
24 amending s. 376.80, F.S.; revising the entities that
25 may propose brownfield designations using specified
26 criteria; removing the requirement that certain
27 persons be identified before negotiating a brownfield
28 site rehabilitation agreement; amending s. 376.82,
29 F.S.; exempting certain job creation requirements

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30 otherwise needed for eligibility for specified
31 brownfield site rehabilitation agreements; providing
32 an effective date.
33

34 Be It Enacted by the Legislature of the State of Florida:
35

36 Section 1. Paragraph (o) of subsection (5) of section
37 212.08, Florida Statutes, is amended to read:

38 212.08 Sales, rental, use, consumption, distribution, and
39 storage tax; specified exemptions.—The sale at retail, the
40 rental, the use, the consumption, the distribution, and the
41 storage to be used or consumed in this state of the following
42 are hereby specifically exempt from the tax imposed by this
43 chapter.

44 (5) EXEMPTIONS; ACCOUNT OF USE.—

45 (o) *Building materials in redevelopment projects.*—

46 1. As used in this paragraph, the term:

47 a. "Building materials" means tangible personal property
48 that becomes a component part of a housing project or a mixed-
49 use project.

50 b. "Housing project" means:

51 (I) The conversion of an existing manufacturing or
52 industrial building to a housing unit which is in an urban high-
53 crime area, an enterprise zone, an empowerment zone, a Front
54 Porch Florida Community, a designated brownfield site for which
55 a rehabilitation agreement with the Department of Environmental
56 Protection or a local government delegated by the Department of
57 Environmental Protection has been executed under s. 376.80 and
58 any abutting real property parcel within a brownfield area, or

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59 an urban infill area; and in which the developer agrees to set
60 aside at least 20 percent of the housing units in the project
61 for low-income and moderate-income persons; or

62 (II) The construction of affordable housing in a designated
63 brownfield area of affordable housing for persons described in
64 s. 420.0004(9), (11), (12), or (17) or in s. 159.603(7), in
65 designated brownfield areas for which a brownfield site
66 rehabilitation agreement with the Department of Environmental
67 Protection or a local government delegated by the Department of
68 Environmental Protection has been executed under s. 376.80, and
69 any real property parcel abutting the brownfield area, if the
70 developer agrees to set aside at least 20 percent of the housing
71 units in any building, project, or development for such persons
72 regardless of whether the affordable housing is part of a larger
73 building, project, or development that includes market-rate
74 housing.

75 c. "Mixed-use project" means:

76 (I) The conversion of an existing manufacturing or
77 industrial building to mixed-use units that include artists'
78 studios, art and entertainment services, or other compatible
79 uses. A mixed-use conversion project must be located in an urban
80 high-crime area, an enterprise zone, an empowerment zone, a
81 Front Porch Florida Community, a designated brownfield site for
82 which a rehabilitation agreement with the Department of
83 Environmental Protection or a local government delegated by the
84 Department of Environmental Protection has been executed under
85 s. 376.80 and any abutting real property parcel within a
86 brownfield area, or an urban infill area; and the developer must
87 agree to set aside at least 20 percent of the square footage of

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88 the project for low-income and moderate-income housing; or
89 (II) The construction of mixed-use units in a designated
90 brownfield site for which a rehabilitation agreement with the
91 Department of Environmental Protection or a local government
92 delegated by the Department of Environmental Protection has been
93 executed under s. 376.80 and any real property parcel abutting
94 the brownfield area, if the developer agrees to set aside at
95 least 20 percent of the square footage of the project for low-
96 income and moderate-income housing.

97 d. "Substantially completed" has the same meaning as
98 provided in s. 192.042(1).

99 2. Building materials used in the construction of a housing
100 project or mixed-use project are exempt from the tax imposed by
101 this chapter upon an affirmative showing to the satisfaction of
102 the department that the requirements of this paragraph have been
103 met. This exemption inures to the owner through a refund of
104 previously paid taxes. To receive this refund, the owner must
105 file an application under oath with the department which
106 includes:

107 a. The name and address of the owner.

108 b. The address and assessment roll parcel number of the
109 project for which a refund is sought.

110 c. A copy of the building permit issued for the project.

111 d. A certification by the local building code inspector
112 that the project is substantially completed.

113 e. A sworn statement, under penalty of perjury, from the
114 general contractor licensed in this state with whom the owner
115 contracted to construct the project, which statement lists the
116 building materials used in the construction of the project and

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117 the actual cost thereof, and the amount of sales tax paid on
118 these materials. If a general contractor was not used, the owner
119 shall provide this information in a sworn statement, under
120 penalty of perjury. Copies of invoices evidencing payment of
121 sales tax must be attached to the sworn statement.

122 3. An application for a refund under this paragraph must be
123 submitted to the department within 6 months after the date the
124 project is deemed to be substantially completed by the local
125 building code inspector. Within 30 working days after receipt of
126 the application, the department shall determine if it meets the
127 requirements of this paragraph. A refund approved pursuant to
128 this paragraph shall be made within 30 days after formal
129 approval of the application by the department.

130 4. The department shall establish by rule an application
131 form and criteria for establishing eligibility for exemption
132 under this paragraph.

133 5. The exemption shall apply to purchases of materials on
134 or after July 1, 2000.

135 Section 2. Paragraphs (c), (d), and (e) of subsection (3)
136 and subsection (9) of section 376.30781, Florida Statutes, are
137 amended to read:

138 376.30781 Tax credits for rehabilitation of drycleaning-
139 solvent-contaminated sites and brownfield sites in designated
140 brownfield areas; application process; rulemaking authority;
141 revocation authority.-

142 (3)

143 (c) In order to encourage completion of site rehabilitation
144 at contaminated sites that are being voluntarily cleaned up and
145 that are eligible for a tax credit under this section, the tax

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146 credit applicant may claim an additional 25 percent of the total
147 site rehabilitation costs, not to exceed \$500,000, if the
148 Department of Environmental Protection has approved the
149 applicant's annual site rehabilitation applications and has
150 issued in the final year of cleanup as evidenced by the
151 Department of Environmental Protection issuing a "No Further
152 Action" order for that site. The tax credit applicant must
153 submit the claim for the additional 25 percent within 2 years of
154 receipt of the "No Further Action" order for that site.

155 (d) In order to encourage the construction of projects that
156 include housing that meets the definition of affordable provided
157 in s. 420.0004, an applicant for the tax credit may claim an
158 additional 25 percent of the total site rehabilitation costs
159 that are eligible for tax credits under this section, not to
160 exceed \$500,000. Projects with mixed uses and projects that
161 include market-rate housing are eligible for the tax credit
162 based on a pro rata share of the square footage of affordable
163 housing compared to the overall square footage of the mixed-use
164 project or the number of affordable housing units compared to
165 market-rate housing units in a project with only residential
166 uses, provided that the developer agrees to set aside at least
167 20 percent of the housing units for persons described in s.
168 420.0004(9), (11), (12), or (17) or s. 159.603(7). To receive
169 this additional tax credit, the applicant must provide a
170 certification letter from the Florida Housing Finance
171 Corporation, the local housing authority, or other governmental
172 agency that is a party to the use agreement indicating that the
173 construction of the affordable housing portion of the project on
174 the brownfield site has received a certificate of occupancy and

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175 ~~the brownfield site~~ has a properly recorded instrument that
176 limits the use of the residential portion of the property to
177 housing and specifies the requisite square footage or number of
178 units set aside for affordable housing. Notwithstanding that
179 only one application may be submitted each year for each site,
180 an application for the additional credit provided for in this
181 paragraph shall be submitted after all requirements to obtain
182 the additional tax credit have been met.

183 (e) In order to encourage the redevelopment of a brownfield
184 site, as defined in the brownfield site rehabilitation
185 agreement, that is hindered by the presence of solid waste, as
186 defined in s. 403.703, costs related to solid waste removal may
187 also be claimed under this section. A tax credit applicant, or
188 multiple tax credit applicants working jointly to clean up a
189 single brownfield site, may also claim costs to address the
190 solid waste removal as defined in this paragraph in accordance
191 with department rules. Multiple tax credit applicants shall be
192 granted tax credits in the same proportion as each applicant's
193 contribution to payment of solid waste removal costs. These
194 costs are eligible for a tax credit provided the applicant meets
195 the eligibility requirements of s. 376.82(1) and ~~submits an~~
196 ~~affidavit stating that, after consultation with appropriate~~
197 ~~local government officials and the department, to the best of~~
198 ~~the applicant's knowledge based upon such consultation and~~
199 ~~available historical records,~~ the brownfield site was never
200 operated as a permitted solid waste disposal area under chapter
201 62-701, Florida Administrative Code, or the predecessor rules ~~or~~
202 ~~was never operated for monetary compensation, and the applicant~~
203 ~~submits all other documentation and certifications required by~~

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204 ~~this section.~~ In this section, where reference is made to "site
205 rehabilitation," the department shall instead consider whether
206 the costs claimed are for solid waste removal. Tax credit
207 applications claiming costs pursuant to this paragraph shall not
208 be subject to the calendar-year limitation and January 31 annual
209 application deadline, and the department shall accept a one-time
210 application filed subsequent to the completion by the tax credit
211 applicant of the applicable requirements listed in this
212 subsection. A tax credit applicant may claim 50 percent of the
213 costs for solid waste removal, not to exceed \$500,000, after the
214 applicant has determined solid waste removal is completed for
215 the brownfield site. A solid waste removal tax credit
216 application may be filed only once per brownfield site. For the
217 purposes of this section, the term:

218 1. "Solid waste disposal area" means a property, group of
219 properties, portion of property, or localized area at, upon, or
220 within which solid waste is or was disposed and for which no
221 federal, state, or local permit for such disposal had been
222 obtained at the time of waste disposal cessation of activities
223 ~~landfill, dump, or other area where solid waste has been~~
224 ~~disposed.~~

225 2. ~~"Monetary compensation" means the fees that were charged~~
226 ~~or the assessments that were levied for the disposal of solid~~
227 ~~waste at a solid waste disposal area.~~

228 2.3. "Solid waste removal" means removal of solid waste
229 from the land surface or excavation of solid waste from below
230 the land surface and removal of the solid waste from the
231 brownfield site. The term also includes:

232 a. Transportation of solid waste to a licensed or exempt

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233 solid waste management facility or to a temporary storage area.

234 b. Sorting or screening of solid waste prior to removal
235 from the site.

236 c. Deposition of solid waste at a permitted or exempt solid
237 waste management facility, whether the solid waste is disposed
238 of or recycled.

239 (9) On or before June ~~May~~ 1, the Department of
240 Environmental Protection shall inform each tax credit applicant
241 that is subject to the January 31 annual application deadline of
242 the applicant's eligibility status and the amount of any tax
243 credit due. The department shall provide each eligible tax
244 credit applicant with a tax credit certificate that must be
245 submitted with its tax return to the Department of Revenue to
246 claim the tax credit or be transferred pursuant to s.
247 220.1845(2)(g). The June ~~May~~ 1 deadline for annual site
248 rehabilitation tax credit certificate awards shall not apply to
249 any tax credit application for which the department has issued a
250 notice of deficiency pursuant to subsection (8). The department
251 shall respond within 90 days after receiving a response from the
252 tax credit applicant to such a notice of deficiency. Credits may
253 not result in the payment of refunds if total credits exceed the
254 amount of tax owed.

255 Section 3. Subsection (3) of section 376.313, Florida
256 Statutes, is amended to read:

257 376.313 Nonexclusiveness of remedies and individual cause
258 of action for damages under ss. 376.30-376.317.—

259 (3) Except as provided in s. 376.3078(3) and (11), nothing
260 contained in ss. 376.30-376.317 prohibits any person from
261 bringing a cause of action in a court of competent jurisdiction

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262 for all damages resulting from a discharge or other condition of
263 pollution covered by ss. 376.30-376.317 and which was not
264 authorized pursuant to chapter 403. Nothing in this chapter
265 shall prohibit or diminish a party's right to contribution from
266 other parties jointly or severally liable for a prohibited
267 discharge of pollutants or hazardous substances or other
268 pollution conditions. Except as otherwise provided in subsection
269 (4) or subsection (5), in any such suit, it is not necessary for
270 such person to plead or prove negligence in any form or manner.
271 Such person need only plead and prove the fact of the prohibited
272 discharge or other pollutive condition and that it has occurred.
273 The only defenses to such cause of action shall be those
274 specified in s. 376.308 or s. 376.82.

275 Section 4. Subsection (1) of section 376.78, Florida
276 Statutes, is amended to read:

277 376.78 Legislative intent.—The Legislature finds and
278 declares the following:

279 (1) The reduction of public health and environmental
280 hazards on existing ~~commercial and industrial~~ sites is vital to
281 their use and reuse as sources of employment, housing,
282 recreation, and open space areas. The reuse of industrial land
283 is an important component of sound land use policy for
284 productive urban purposes which will help prevent the premature
285 development of farmland, open space areas, and natural areas,
286 and reduce public costs for installing new water, sewer, and
287 highway infrastructure.

288 Section 5. Subsections (1) and (2) of section 376.80,
289 Florida Statutes, are amended to read:

290 376.80 Brownfield program administration process.—

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291 (1) The following general procedures apply to brownfield
292 designations:

293 (a) The local government with jurisdiction over a proposed
294 brownfield area shall designate such area pursuant to this
295 section.

296 (b) For a brownfield area designation proposed by:

297 1. The jurisdictional local government, the designation
298 criteria under paragraph (2)(a) apply, except if the local
299 government proposes to designate as a brownfield area a
300 specified redevelopment area as provided in paragraph (2)(b).

301 2. Any person, ~~other than a governmental entity,~~ including,
302 but not limited to, individuals, corporations, partnerships,
303 trusts, limited liability companies, community-based
304 organizations, or not-for-profit corporations, the designation
305 criteria under paragraph (2)(c) apply.

306 (c) Except as otherwise provided, the following provisions
307 apply to all proposed brownfield area designations:

308 1. Notification to department following adoption.—A local
309 government with jurisdiction over the brownfield area must
310 notify the department, and, if applicable, the local pollution
311 control program under s. 403.182, of its decision to designate a
312 brownfield area for rehabilitation for the purposes of ss.
313 376.77-376.86. The notification must include a resolution
314 adopted by the local government body. The local government shall
315 notify the department, and, if applicable, the local pollution
316 control program under s. 403.182, of the designation within 30
317 days after adoption of the resolution.

318 2. Resolution adoption.—The brownfield area designation
319 must be carried out by a resolution adopted by the

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320 jurisdictional local government, which includes a map adequate
321 to clearly delineate exactly which parcels are to be included in
322 the brownfield area or alternatively a less-detailed map
323 accompanied by a detailed legal description of the brownfield
324 area. For municipalities, the governing body shall adopt the
325 resolution in accordance with the procedures outlined in s.
326 166.041, except that the notices ~~procedures~~ for the public
327 hearings on the proposed resolution must be in the form
328 established in s. 166.041(3)(c)2. For counties, the governing
329 body shall adopt the resolution in accordance with the
330 procedures outlined in s. 125.66, except that the notices
331 ~~procedures~~ for the public hearings on the proposed resolution
332 shall be in the form established in s. 125.66(4)(b).

333 3. Right to be removed from proposed brownfield area.—If a
334 property owner within the area proposed for designation by the
335 local government requests in writing to have his or her property
336 removed from the proposed designation, the local government
337 shall grant the request.

338 4. Notice and public hearing requirements for designation
339 of a proposed brownfield area outside a redevelopment area or by
340 a nongovernmental entity. Compliance with the following
341 provisions is required before designation of a proposed
342 brownfield area under paragraph (2)(a) or paragraph (2)(c):

343 a. At least one of the required public hearings shall be
344 conducted as closely as is reasonably practicable to the area to
345 be designated to provide an opportunity for public input on the
346 size of the area, the objectives for rehabilitation, job
347 opportunities and economic developments anticipated,
348 neighborhood residents' considerations, and other relevant local

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349 concerns.

350 b. Notice of a public hearing must be made in a newspaper
351 of general circulation in the area, must be made in ethnic
352 newspapers or local community bulletins, must be posted in the
353 affected area, and must be announced at a scheduled meeting of
354 the local governing body before the actual public hearing.

355 (2) (a) *Local government-proposed brownfield area*
356 *designation outside specified redevelopment areas.*—If a local
357 government proposes to designate a brownfield area that is
358 outside a community redevelopment area, enterprise zone,
359 empowerment zone, closed military base, or designated brownfield
360 pilot project area, the local government shall provide notice,
361 adopt the resolution, and conduct public hearings pursuant to
362 paragraph (1) (c). At a public hearing to designate the proposed
363 area as a brownfield area, as defined in s. 376.79, the local
364 government must consider:

365 1. Whether the brownfield area warrants economic
366 development and has a reasonable potential for such activities;

367 2. Whether the proposed area to be designated represents a
368 reasonably focused approach and is not overly large in
369 geographic coverage;

370 3. Whether the area has potential to interest the private
371 sector in participating in rehabilitation; and

372 4. Whether the area contains sites or parts of sites
373 suitable for limited recreational open space, cultural, or
374 historical preservation purposes.

375 (b) *Local government-proposed brownfield area designation*
376 *within specified redevelopment areas.*—Paragraph (a) does not
377 apply to a proposed brownfield area if the local government

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378 proposes to designate the brownfield area inside a community
379 redevelopment area, enterprise zone, empowerment zone, closed
380 military base, or designated brownfield pilot project area and
381 the local government complies with paragraph (1)(c).

382 (c) *Brownfield area designation proposed by specified*
383 *persons ~~other than a governmental entity~~.*—For designation of a
384 brownfield area that is proposed by a person under this
385 subsection ~~other than the local government~~, the local government
386 with jurisdiction over the proposed brownfield area shall
387 provide notice and adopt a resolution to designate the
388 brownfield area pursuant to paragraph (1)(c) if, at the public
389 hearing to adopt the resolution, the person establishes all of
390 the following with respect to the proposed brownfield area:

391 1. A person who owns or controls a potential brownfield
392 site is requesting the designation and has agreed to
393 rehabilitate and redevelop the brownfield site.

394 2. The rehabilitation and redevelopment of the proposed
395 brownfield site will result in economic productivity of the
396 area, along with the creation of at least 5 new permanent jobs
397 at the brownfield site that are full-time equivalent positions
398 not associated with the implementation of the brownfield site
399 rehabilitation agreement and that are not associated with
400 redevelopment project demolition or construction activities
401 pursuant to the redevelopment of the proposed brownfield site or
402 area. However, the job creation requirement does not apply to
403 the rehabilitation and redevelopment of a brownfield site that
404 will provide affordable housing as defined in s. 420.0004 or the
405 creation of recreational areas, conservation areas, or parks.

406 3. The redevelopment of the proposed brownfield site is

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407 consistent with the local comprehensive plan and is a
408 permittable use under the applicable local land development
409 regulations.

410 4. Notice of the proposed rehabilitation of the brownfield
411 area has been provided to neighbors and nearby residents of the
412 proposed area to be designated pursuant to paragraph (1)(c), and
413 the person proposing the area for designation has afforded to
414 those receiving notice the opportunity for comments and
415 suggestions about rehabilitation. Notice pursuant to this
416 subparagraph must be posted in the affected area.

417 5. The person proposing the area for designation has
418 provided reasonable assurance that he or she has sufficient
419 financial resources to implement and complete the rehabilitation
420 agreement and redevelopment of the brownfield site.

421 (d) *Negotiation of brownfield site rehabilitation*
422 *agreement.*—The designation of a brownfield area ~~and the~~
423 ~~identification of a person responsible for brownfield site~~
424 ~~rehabilitation~~ simply entitles a ~~the identified~~ person to
425 negotiate a brownfield site rehabilitation agreement with the
426 department or approved local pollution control program.

427 Section 6. Paragraph (b) of subsection (1) and paragraphs
428 (a), (c), and (d) of subsection (2) of section 376.82, Florida
429 Statutes, are amended to read:

430 376.82 Eligibility criteria and liability protection.—

431 (1) ELIGIBILITY.—Any person who has not caused or
432 contributed to the contamination of a brownfield site on or
433 after July 1, 1997, is eligible to participate in the brownfield
434 program established in ss. 376.77-376.85, subject to the
435 following:

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436 (b) Persons who have not caused or contributed to the
437 contamination of a brownfield site on or after July 1, 1997, and
438 who, prior to the department's approval of a brownfield site
439 rehabilitation agreement, are subject to ongoing corrective
440 action or enforcement under state authority established in this
441 chapter or chapter 403, including those persons subject to a
442 pending consent order with the state, are eligible for
443 participation in a brownfield site rehabilitation agreement if:

444 1. The proposed brownfield site is currently idle or
445 underutilized as a result of the contamination, and
446 participation in the brownfield program will immediately, after
447 cleanup or sooner, result in increased economic productivity at
448 the site, including at a minimum the creation of 10 new
449 permanent jobs, whether full-time or part-time, which are not
450 associated with implementation of the brownfield site
451 rehabilitation agreement. However, the job creation requirement
452 does not apply to the rehabilitation and redevelopment of a
453 brownfield site that will provide affordable housing as defined
454 in s. 420.0004 or create recreational areas, conservation areas,
455 or parks, or be maintained for cultural or historical
456 preservation purposes; and

457 2. The person is complying in good faith with the terms of
458 an existing consent order or department-approved corrective
459 action plan, or responding in good faith to an enforcement
460 action, as evidenced by a determination issued by the department
461 or an approved local pollution control program.

462 (2) LIABILITY PROTECTION.—

463 (a) Any person, ~~including his or her successors and~~
464 ~~assigns,~~ who executes and implements to successful completion a

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465 brownfield site rehabilitation agreement, his or her successors
466 and assigns, and any subsequent property owner of the brownfield
467 site, is relieved of:

468 1. Further liability for remediation of the contaminated
469 site or sites to the state and to third parties.

470 2. Liability in contribution to any other party who has or
471 may incur cleanup liability for the contaminated site or sites.

472 3. Liability for claims of property damages, including, but
473 not limited to, diminished value of real property or
474 improvements; lost or delayed rent, sale, or use of real
475 property or improvements; or stigma to real property or
476 improvements caused by contamination addressed by a brownfield
477 site rehabilitation agreement. Notwithstanding any other
478 provision of this chapter, this subparagraph applies to causes
479 of action accruing on or after July 1, 2014. This subparagraph
480 does not apply to a person who discharges contaminants on
481 property subject to a brownfield site rehabilitation agreement,
482 who commits fraud in demonstrating site conditions or completing
483 site rehabilitation of a property subject to a brownfield site
484 rehabilitation agreement, or who exacerbates contamination of a
485 property subject to a brownfield site rehabilitation agreement
486 in violation of applicable laws which causes property damages.

487 4. Statutory causes of action arising under s. 376.313(3).

488 (c) This section does ~~shall~~ not affect the ability or
489 authority to seek contribution from any person who may have
490 liability with respect to the contaminated site and who did not
491 receive cleanup liability protection under this act.

492 (d) The liability protection provided under this section
493 shall become effective upon execution of a brownfield site

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494 rehabilitation agreement and shall remain effective as to any
495 person responsible for brownfield site rehabilitation, provided
496 each ~~the~~ person responsible for brownfield site rehabilitation
497 complies with the terms of the site rehabilitation agreement,
498 and as to any subsequent property owner of the brownfield site,
499 such owner maintains compliance, as applicable, with any
500 institutional controls or engineering controls required for site
501 rehabilitation. Any statute of limitations that would bar the
502 department from pursuing relief in accordance with its existing
503 authority is tolled from the time the agreement is executed
504 until site rehabilitation is completed or immunity is revoked
505 pursuant to s. 376.80(8).

506 Section 7. This act shall take effect July 1, 2020.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-17-2020
Meeting Date

1284
Bill Number (if applicable)

Topic Florida Land Subsidence Research Institute

Amendment Barcode (if applicable)

Name Carol Bowen

Job Title Chief Lobbyist

Address 3730 Coconut Creek Pkwy
Street

Phone (954) 465-6811

Coconut Creek FL 33006
City State Zip

Email cbowen@abcaofl.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Associated Builders and Contractors

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/17/20

Meeting Date

1350

Bill Number (if applicable)

181564

Amendment Barcode (if applicable)

Topic _____

Name Tim Nungesser

Job Title Legislative Director

Address 110 E. Jefferson St.

Street

Tallahassee

City

FL

State

32301

Zip

Phone 445-5361

Email timnungesser@nfb.org

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing National Federation of Independent Business

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/17/20

Meeting Date

1350

Bill Number (if applicable)

181564

Amendment Barcode (if applicable)

Topic Brownfields

Name Rebecca O'Hara

Job Title Deputy General Counsel

Address PO Box 1757

Street

Phone 222 9684

Tallah FL 32302

City

State

Zip

Email rohara@flcities.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Fla League of Cities

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/17/20

Meeting Date

1350

Bill Number (if applicable)

1815104

Amendment Barcode (if applicable)

Topic Brownfields

Name Carolyn Johnson

Job Title Policy Director

Address 130 S Bronough St
Street

Phone 521-1200

Tallahassee FL 32301
City State Zip

Email cjohnson@fldchamber.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing FL Chamber of Commerce

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/17/20

Meeting Date

1350

Bill Number (if applicable)

181564

Amendment Barcode (if applicable)

Topic Brownfields

Name Brewster Bevis

Job Title Senior Vice President

Address 516 N Adams St

Street

Phone 224-7173

Tallahassee

FL

32301

Email bbevis@aif.com

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Associated Industries of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/17/2020

Meeting Date

SB 1350

Bill Number (if applicable)

181564 LF DE

Amendment Barcode (if applicable)

Topic Contamination

Name Jessica Love

Job Title Government Consultant

Address P.O. Box 11189

Street

Tallahassee

City

FL

State

32309

Zip

Phone 850-577-9090

Email jessica.love@gray-robinson.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Brownfields Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/17/2020

Meeting Date

SB 1350 (as amended)

Bill Number (if applicable)

Topic Contamination

Amendment Barcode (if applicable)

Name Jessica Love

Job Title Government Consultant

Address P.O. Box 11189

Phone 850-577-9090

Street

Tallahassee

FL

32309

Email jessica.love@gray-robinson.com

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Brownfields Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/17/20

Meeting Date

1350

Bill Number (if applicable)

Topic Brownfields

Amendment Barcode (if applicable)

Name Brewster Bevis

Job Title Senior Vice President

Address 516 N Adams St

Phone 224-7173

Street

Tallahassee

FL

32301

Email bbevis@aif.com

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Associated Industries of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

CourtSmart Tag Report

Room: LL 37
Caption: Senate Environment and Natural Resources Committee

Case No.:

Type:
Judge:

Started: 2/17/2020 4:04:18 PM

Ends: 2/17/2020 4:32:51 PM

Length: 00:28:34

4:04:17 PM Meeting called to order
4:04:21 PM Roll call
4:04:24 PM Quorum is present
4:04:52 PM Pledge of Allegiance
4:05:10 PM Tab 1 SB 1284 by Senator Diaz
4:05:36 PM Pass gavel to Vice-Chair Albritton for Chair Montford to present the bill on behalf of Senator Diaz
4:06:17 PM Senator Montford explains the bill
4:06:29 PM Questions on the bill: none
4:07:05 PM 1 appearance card - Carol Bowen Associated Builders and Contractor in support
4:07:28 PM Senator Wright in debate
4:07:47 PM No further debate
4:07:51 PM Senator Montford waives close
4:07:53 PM Roll call on SB 1284
4:08:02 PM SB 1284 is reported favorably
4:08:19 PM Gavel has been passed back to Chair Montford. He makes remarks on the committee.
4:09:10 PM Senator Berman with comments about the committee.
4:10:09 PM Senator Wright with comments on the committee.
4:10:51 PM Staff Director Ellen Rogers with comments to the members and chair.
4:11:15 PM Vice-Chair Albritton with comments on the committee.
4:11:42 PM Informal recess called
4:12:46 PM Senator Mayfield has arrived and makes final comments on the committee.
4:13:19 PM Recess now takes effect
4:14:14 PM Recording Paused
4:24:10 PM Recording Resumed
4:24:13 PM Meeting called to order from recess
4:25:13 PM Take up tab 2 SB 1350 by Senator Baxley
4:25:29 PM Senator Baxley explains the bill
4:25:42 PM There is 1 amendment late filed delete all barcode 181564
4:26:22 PM Senator Baxley is recognized to explain the amendment.
4:27:32 PM Questions on the amendment:
4:28:32 PM Senator Berman with question
4:28:42 PM Senator Baxley with answer
4:28:54 PM Senator Berman with follow up
4:29:06 PM Senator Baxley with answer
4:29:28 PM Appearance forms
4:29:31 PM Jessica Love Government Consultant Florida Brownfields Association Tallahassee in support
4:29:37 PM Brewster Bevis Sr. vice President Associated Industries of Florida in support Tallahassee
4:29:42 PM Carolyn Johnson Policy Director FL Chamber of Commerce Tallahassee in support
4:29:48 PM Rebecca O'Hara Deputy General Counsel FL Legion of Cities in support
4:29:54 PM Tim Nungesser Legislative Director National Federation of Independednt Business Tallahassee in support
4:29:59 PM No debate
4:30:05 PM Senator Baxley waives close on the amendment
4:30:10 PM Any objection to the Amendment question
4:30:22 PM Amendment is adopted without objection
4:30:23 PM Jessica Love Govt Consultant FL Brownfields Association Tallahassee in support
4:30:29 PM Brewster Bevis Sr. Vice President Associated Industries of FL in support
4:30:46 PM No further public appearance
4:30:47 PM No debate
4:30:53 PM Senator Baxley closes on the bill
4:31:15 PM Roll call on CS for SB 1350
4:32:08 PM CS for SB 1350 is reported favorably
4:32:19 PM Senator Mayfield moves to be shown voting on tab 1 SB 1284 in the affirmative

4:32:30 PM No further business before the committee

4:32:31 PM Senator Berman moves we adjourn

4:32:40 PM Meeting is adjourned.