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 1152
INTRODUCER:	Senator Broxson
SUBJECT:	Brownfield Site Rehabilitation
DATE:	January 31, 2020
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Schreiber	Rogers	EN	**Pre-meeting**
2.			FT	
3.			AP	

I. Summary:

SB 1152 creates the following definition for the term "PFAS," as used in the Brownfields Redevelopment Act: "perfluoroalkyl and polyfluoroalkyl substances, including perfluorooctanoic acid and perfluorooctane sulfonate, which are used in fire suppressants and firefighting foams."

The bill provides that potential brownfield sites owned by the state or a local government which are impacted by PFAS are eligible for participation in a brownfield site rehabilitation agreement, regardless of whether such contamination was caused or contributed to by the state or local government after July 1, 1997.

The bill increases the annual authorization for the voluntary cleanup tax credit from $10 million to $12 million.

II. Present Situation:

The Brownfields Redevelopment Act

Florida's Brownfields Redevelopment Act (Act) was adopted in 1997 to provide incentives for local governments and individuals to voluntarily clean up and redevelop brownfield sites.[1] A "brownfield site" is defined as real property, the expansion, redevelopment, or reuse of which may be complicated by actual or perceived environmental contamination.[2] The primary goals of the Act are to reduce public health and 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

[1] Chapter 97-277, Laws of Fla; ss. 376.77-376.85, F.S.; 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.

[2] Section 376.79(4), F.S.

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.[3] 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.[4]

For a property to participate in the program, a local government must first designate the site as a brownfield area by resolution.[5] The local government may then identify a "person responsible for brownfield site rehabilitation," which simply entitles the identified person to voluntarily execute a "brownfield site rehabilitation agreement" with DEP or an approved local program.[6] If actual contamination exists at the site, the person must enter into such an agreement.[7] Pursuant to the Act, a brownfield site rehabilitation agreement must contain several elements, including a brownfield site rehabilitation schedule; a commitment to conduct site rehabilitation activities in accordance with applicable cleanup criteria; a commitment to implement reasonable pollution prevention measures; and certification that the local government approves of the proposed redevelopment.[8] 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.[9]

Florida law contains cleanup criteria governing rehabilitation occurring at a contaminated site.[10] A cleanup target level (CTL) is the concentration for each identified contaminant at which a site rehabilitation program is deemed complete.[11] DEP's rules contain default CTLs for surface water, groundwater, and soil contaminants that are applicable to site rehabilitation performed under a brownfield site rehabilitation agreement.[12] The rules also contain methods for establishing CTLs for substances not listed in the rules, based on site-specific circumstances.[13] Pursuant to the Act, CTLs for groundwater contaminants are the applicable state water quality standards, and if no such standards exist DEP establishes applicable CTLs for groundwater based on specified factors.[14] The Act also specifies criteria that DEP must follow to establish

[3] DEP, *Brownfields Program*, https://floridadep.gov/waste/waste-cleanup/content/brownfields-program (last visited Jan. 28, 2020).
[4] *DEP Brownfields Report*, at 3, *available at* https://floridadep.gov/sites/default/files/Florida%20Brownfields%20Annual%20Report%20August%201%2C%202019.pdf.
[5] Section 376.80, F.S.; *see* s. 376.79(5), F.S. A "brownfield area" is defined as 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.
[6] Section 376.80(2)(d), F.S.; *see* s. 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"; *DEP Brownfields Report*, at 9. DEP has delegated authority to administer the program to three county governments: Broward, Hillsborough, and Miami-Dade counties.
[7] Section 376.80(5), F.S.
[8] Section 376.80(5), F.S.; *see* Fla. Admin. Code Ch. 62-780. This chapter contains cleanup criteria requirements that apply to site rehabilitation governed by a brownfield site rehabilitation agreement.
[9] *DEP Brownfields Report*, at 5; Section 376.82(2)(e), F.S.; Fla. Admin. Code R. 62-780.680.
[10] Section 376.81, F.S.; Fla. Admin. Code Ch. 62-780.
[11] Section 376.301(8), F.S.; Fla. Admin. Code R. 62-780.200(13).
[12] Fla. Admin. Code Ch. 62-777; *see* s. 376.79(14), F.S. The rules also contain standards for natural attenuation, which allows natural processes to contain the spread of contamination and reduce concentrations of contaminants in groundwater and soil.
[13] Fla. Admin. Code Ch. 62-777.
[14] Section 376.81(1)(g), F.S.

appropriate CTLs for surface water and soil.[15] DEP is also authorized to establish alternative CTLs, under careful evaluation on a site-specific basis, in conjunction with institutional and engineering controls.[16]

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 brownfields program, subject to conditions specified in the Act.[17] For example, potential brownfield sites owned by the state or a local government which contain contamination for which a government entity is potentially responsible for and which are already designated as a federal brownfield pilot project or have filed an application for federal designation are eligible to participate in a brownfield site rehabilitation agreement.[18] Participation in Florida's brownfields program provides certain liability protection to any person who executes and completely implements a brownfield site rehabilitation agreement.[19] This is in addition to the various loans, tax refunds, and other incentives available through the program.[20]

Since 1997, Florida has amassed 481 locally designated brownfield areas encompassing approximately 271,684 acres, and 137 site rehabilitation completion orders have been issued.[21]

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.[22] For brownfield sites, only those with an executed brownfield site rehabilitation agreement are eligible to apply for this incentive.[23] At eligible sites, a tax credit of 50 percent of the costs of voluntary cleanup activity is allowed, with a maximum of $500,000 per site per year.[24] DEP is responsible for allocating the tax credits, which may not exceed an overall total of $10 million per year.[25] The tax credit certificates are valid against Florida corporate income tax.[26] The Voluntary Cleanup Tax Credit program has approved approximately $108 million in tax credits since it began.[27]

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[15] Section 376.81(g) and (i), F.S.
[16] Section 376.30701(2)(g)3., F.S.
[17] Section 376.82(1), F.S.
[18] Section 376.82(1)(c), F.S.
[19] Section 376.82(2), F.S.
[20] *See* ss. 376.84 and 376.86, F.S.
[21] *DEP Brownfields Report*, at 4-5, *available at* https://floridadep.gov/sites/default/files/Florida%20Brownfields%20Annual%20Report%20August%201%2C%202019.pdf.
[22] Sections 376.30781 and 220.1845, F.S.; DEP, *Voluntary Cleanup Tax Credit*, https://floridadep.gov/waste/waste-cleanup/content/voluntary-cleanup-tax-credit (last visited Jan. 29, 2020).
[23] Section 376.30781(5), F.S.
[24] Section 376.30781(3), F.S.
[25] Sections 376.30781(4) and 220.1845(2)(f), F.S. The authorization for the tax credits was $18.5 million in the 2018-2019 fiscal year, but it decreased to $10 million for each year thereafter; *see also DEP Brownfields Report*, at 7. The Legislature increased the annual tax credit authorization from $2 million to $5 million in 2011, then to $10 million in 2017.
[26] DEP, *Voluntary Cleanup Tax Credit*, https://floridadep.gov/waste/waste-cleanup/content/voluntary-cleanup-tax-credit (last visited Jan. 29, 2020).
[27] *DEP Brownfields Report*, at 6.

Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS)

Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS) are a group of thousands of man-made compounds developed to provide oil and water repellency, temperature resistance, and friction reduction.[28] Perfluorooctanesulfonic acid (PFOS) and perfluorooctanoic acid (PFOA) are the most common and the best-studied of these compounds.[29] PFAS have been used over the last several decades as coatings in a variety of products, such as non-stick cookware, waterproof and stain-resistant fabrics, cleaning products, food packaging, and firefighting foams.[30] While U.S. manufacturers have voluntarily phased out use of the chemicals,[31] they persist in the environment, particularly at fire colleges, airports, and military installations.[32] Additionally, although PFOA and PFOS are no longer manufactured in the United States, they are still produced internationally and can be imported into the United States in consumer goods such as carpet, leather and apparel, textiles, paper and packaging, coatings, rubber, and plastics.[33]

PFAS chemicals do not break down in the environment, can move through soil and water, and can accumulate in fish and wildlife.[34] Because of the widespread use and ease of transport, they can be found virtually everywhere. The Centers for Disease Control and Prevention has detected PFAS in nearly all persons it has tested, indicating widespread exposure in the U.S. population.[35] Drinking water with significant levels of PFOA and PFOS for an extended period of time may increase the risk of low birthweight, developmental problems, liver damage, kidney damage, immune system disorders, high cholesterol, or thyroid disease.[36]

In addition to regulated contaminants, the United States Environmental Protection Agency (EPA) also prioritizes research and data collection for new chemicals that are being discovered in water that previously had not been detected or are being detected at levels that may be different than expected.[37] These are called "contaminants of emerging concern" (CEC). While CECs do not have regulatory limits, there may be a long-term potential risk to human health or the environment associated with them. As part of EPA's data collection on CECs, all large and selected smaller public water systems across the U.S. are required to monitor for CECs.[38] Once

[28] Interstate Technology Regulatory Council, *History and Use of PFAS*, 1 (Nov. 2017), *available at* https://pfas-1.itrcweb.org/wp-content/uploads/2017/11/pfas_fact_sheet_history_and_use__11_13_17.pdf.
[29] DOH, *What are PFAS?*, http://www.floridahealth.gov/environmental-health/hazardous-waste-sites/contaminant-facts/hw-pfas.html (last visited Jan. 29, 2020).
[30] Interstate Technology Regulatory Council, *History and Use of PFAS*, 1, 8 (Nov. 2017).
[31] DEP, *PFAS Update, Presentation to the Florida Senate Committee on Environment and Natural Resources*, 18:00 (Dec. 9, 2019)[hereinafter *DEP PFAS Update*], *available at* https://thefloridachannel.org/videos/12-9-19-senate-committee-on-environment-and-natural-resources/. In the U.S., PFOS was phased out of production around 2002, and PFOA was phased out around 2015.
[32] EPA, *Basic Information on PFAS, What are PFAS?*, https://www.epa.gov/pfas/basic-information-pfas (last visited Jan. 26, 2020).
[33] *Id*.
[34] Centers for Disease Control and Prevention, *Per- and Polyfluorinated Substances (PFAS) Factsheet*, https://www.cdc.gov/biomonitoring/PFAS_FactSheet.html (last visited Jan. 19, 2020).
[35] *Id*.
[36] DOH, *Per- and Polyfluoroalkyl Substances (PFAS)*, http://www.floridahealth.gov/environmental-health/hazardous-waste-sites/contaminant-facts/hw-pfas.html (last visited Jan. 21, 2020).
[37] DEP, *Regulated Drinking Water Contaminants and Contaminants of Emerging Concern*, https://floridadep.gov/comm/press-office/content/regulated-drinking-water-contaminants-and-contaminants-emerging-concern (last visited Jan. 19, 2020).
[38] *Id*.

EPA's study and evaluation is complete, if EPA decides not to regulate a CEC, then it may decide to develop a health advisory level (HAL) for the detected contaminants. While HALs are non-enforceable federal limits, they serve as technical guidance for federal, state, and local officials.[39] For drinking water, the EPA has established a HAL of 70 parts per trillion for PFOA and PFOS.[40] Florida's Department of Health has adopted the same HAL for those compounds.[41]

DEP has established provisional CTLs for PFAS to enable site cleanup under DEP's contaminated site cleanup criteria, which apply to Florida's brownfields program.[42] DEP has created numerical provisional CTLs and screening levels for PFOS and PFOA in the following categories: Provisional Groundwater CTLs, Provisional Soil CTLs, Provisional Irrigation Water Screening Levels, and Surface Water Screening Levels.[43] These provisional standards are designed to protect human health, and the provisional groundwater CTLs are the same as the EPA's HAL for drinking water.

PFAS is common in firefighting foams that have been stored and used for fire suppression, fire training, and flammable vapor suppression.[44] These firefighting agents include Class B fluorine-containing firefighting foams, such as aqueous film-forming foam (AFFF).[45] PFAS are so prevalent in firefighting agents that at least nine states have passed legislation to restrict or prohibit the use of PFAS in firefighting agents or activities.[46] In Florida, DEP has already assessed each fire training facility in the state to ensure that PFAS-containing firefighting agents are disposed of and that only firefighting agents that do not have PFAS are being used.[47] However, 18 of the 25 certified fire training facilities in the state are above the HAL of 70 parts per trillion for PFOA and PFOS.[48] Where contamination is identified, DEP will help the facility develop a cleanup plan to remove or contain the contamination to prevent future environmental impact and human exposure.[49]

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[39] EPA, *How EPA Regulates Drinking Water Contaminants*, https://www.epa.gov/dwregdev/how-epa-regulates-drinking-water-contaminants (last visited Jan. 18, 2020).
[40] EPA, *Drinking Water Health Advisories for PFOA and PFOS*, https://www.epa.gov/ground-water-and-drinking-water/drinking-water-health-advisories-pfoa-and-pfos (last visited Jan. 29, 2020).
[41] DOH, *Maximum Contaminant Levels and Health Advisory Levels*, 5 (2016) *available at* http://www.floridahealth.gov/environmental-health/drinking-water/_documents/hal-list.pdf.
[42] *DEP PFAS Update*, at 25:00, *available at* https://thefloridachannel.org/videos/12-9-19-senate-committee-on-environment-and-natural-resources/; *see* Fla. Admin. Code Ch. 62-780.
[43] DEP, *PFAS - Provisional Cleanup Target Levels and Screening Levels* (Sept. 2019), https://floridadep.gov/sites/default/files/PFAS-Presentation-CTLs_12Sep19_0.pdf (last visited Jan. 20, 2020).
[44] Interstate Technology Regulatory Council, *History and Use of PFAS*, 6 (Nov. 2017), *available at* https://pfas-1.itrcweb.org/wp-content/uploads/2017/11/pfas_fact_sheet_history_and_use__11_13_17.pdf.
[45] *Id.*
[46] National Law Review, *Expert Focus: US States Outpace EPA on PFAS Firefighting Foam Laws*, https://www.natlawreview.com/article/expert-focus-us-states-outpace-epa-pfas-firefighting-foam-laws (last visited Jan. 29, 2020); The New York State Senate, *Senate Bill S439A*, https://www.nysenate.gov/legislation/bills/2019/S439 (last visited Jan. 29, 2020).
[47] *DEP PFAS Update*, at 36:00.
[48] DEP, *PFAS Update, Presentation to the Senate Committee on Environment and Natural Resources*, 9 (Dec. 9, 2019), *available at* http://www.flsenate.gov/Committees/Show/EN/MeetingPacket/4761/8427_MeetingPacket_4761.9.19.pdf.
[49] DEP, *Fire Training Facilities Assessment for PFOA and PFOS*, https://floridadep.gov/waste/waste-cleanup/content/fire-training-facilities-assessment-pfoa-and-pfos (last visited Jan. 29, 2020).

III. Effect of Proposed Changes:

Sections 1 and 2 amend ss. 220.1845 and 376.30781, F.S., which authorize voluntary cleanup tax credits.

The bill increases the Department of Environmental Protection's (DEP) annual authorization to award voluntary cleanup tax credits from $10 million to $12 million.

Section 3 amends s. 376.79, F.S., a definition section for the Brownfields Redevelopment Act.[50]

The bill creates the following definition for "PFAS" as used in the Brownfields Redevelopment Act: "perfluoroalkyl and polyfluoroalkyl substances, including perfluorooctanoic acid and perfluorooctane sulfonate, which are used in fire suppressants and firefighting foams."

Section 4 amends s. 376.82(1), F.S., which establishes eligibility for participation in Florida's brownfields program.

The bill provides that potential brownfield sites owned by the state or a local government which are impacted by PFAS are eligible for participation in a brownfield site rehabilitation agreement, regardless of whether or not such contamination was caused or contributed to by the state or local government after July 1, 1997. This provision is added as an exception to the existing eligibility standard, which generally prevents parties who caused or contributed to the contamination of a brownfield site from participating in the brownfield program.

Section 5 states that the act shall take effect July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

[50] Sections 376.77-376.85, F.S.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill increases DEP's annual authorization to provide voluntary cleanup tax credits. These tax credits create a financially beneficial incentive for the private sector to participate in the brownfields program. Therefore, the bill may have an indeterminate, positive fiscal impact on the private sector.

C. Government Sector Impact:

The bill expands the eligibility of potential brownfield sites owned by state or local government to participate in the state brownfields program. The brownfields program offers numerous incentives and financial benefits for participation, and participation can substantially increase the value or productivity of a contaminated site. Therefore, this bill may have an indeterminate, positive fiscal impact on state or local government.

Because the Voluntary Cleanup Tax Credits are generally fully utilized,[51] increasing the cap on the tax credits would have a negative, recurring fiscal impact of $2 million to the state.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 220.1845, 376.30781, 376.79, 376.82.

IX. Additional Information:

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

None.

[51] *DEP Brownfields Report*, at 6, *available at* https://floridadep.gov/sites/default/files/Florida%20Brownfields%20Annual%20Report%20August%201%2C%202019.pdf.

B. Amendments:

None.