

## Practice Update

# Brownfield Legislation Passes 2014 Florida Legislative Session, Expanding Range of Redevelopment Tools

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By [Jason S. Lichtstein](#)

The Florida Legislature passed new Brownfield legislation in the 2014 legislative session that concluded in May 2014. The bill will be sent to Governor Rick Scott. If enacted into law, the legislation will expand the range of incentives and tools under Florida's Brownfield program, designed to encourage the cleanup and redevelopment of Brownfield sites and investment in targeted areas. If enacted, the law would go into effect on July 1, 2014. Brownfields are properties with environmental contamination concerns or impacts.

The key feature of the legislation is a new liability protection, which would protect developers of Brownfield sites under approved Brownfield cleanup agreements with the Florida Department of Environmental Protection (FDEP) from potential third-party property damage claims. Third-party claims could include claims for diminution in value, lost or delayed rent, sale, or use of the property, or stigma.

This enhanced protection can be important to real estate transactions and development projects where contamination is present or extends off site, often presenting significant environmental liability and litigation risk to a prospective buyer. Now, a

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party voluntarily agreeing to conduct cleanup under a Brownfield Site Rehabilitation Agreement (BSRA) would be protected if they comply with, and successfully implement, the Brownfield agreement.

The new liability protection would not apply in certain situations, such as to parties that caused the contamination or if impacts are exacerbated during cleanup in violation of applicable laws in a manner causing property damages. The legislation would apply to causes of action accruing on or after July 1, 2014.

### **Highlights of Florida's Brownfield Program**

Florida's Brownfield program provides legal, regulatory, and financial incentives and assists in managing liability risk when acquiring and developing often complex sites affected by environmental legacy issues. According to FDEP's 2013 Brownfield Annual Report, Florida's Brownfield program has led to:

- Capital investment of approximately \$2.4 billion in Brownfield areas since 1997
- More than 340 Brownfield areas designated by local governments across Florida
- More than 185 BSRAs executed with FDEP or local approved programs
- More than 50,000 confirmed and projected direct and indirect jobs created

### **Simplified, Clarified Brownfield Area Designation Process**

The 2014 Brownfield legislation also simplifies and provides clarity as to the process and criteria for local government designation of "Brownfield areas." The legislation clarifies many of these procedures and the hearing and notice requirements. This includes those that govern when a local government proposes a Brownfield area designation - such as to promote or further cleanup and redevelopment in a targeted area (community

redevelopment areas and enterprise zones) - or when a landowner or redeveloper proposes the designation.

### **If Contamination is Present, Move Directly to Model Brownfield Agreement and Maximize Incentives**

If contamination is present at a site located in an existing or newly designated Brownfield area, the site is eligible to move directly to a model Brownfield cleanup agreement with FDEP or the local program. After putting in place a Brownfield agreement, the redeveloper is eligible for the range of regulatory and financial incentives under Florida's Brownfield program, including Florida's Voluntary Cleanup Tax Credit (VCTC).

### **Record Number of Brownfield Tax Credit Applications for 2013 Calendar Year**

Florida's VCTC tax credit remains a strong incentive for Brownfield site cleanup and redevelopment. In the 2013 calendar year VCTC application cycle, FDEP received a record number of VCTC applications for environmental work performed at Brownfield and drycleaner sites.

FDEP received a record 80 total VCTC applications for the 2013 cycle, compared to 68 VCTC applications for the 2012 cycle. According to FDEP's most recent data, FDEP has so far approved about \$7.2 million in VCTC credits out of a total of \$8.3 million sought in the 2013 cycle.

Florida's VCTC incentive provides a 50% state tax credit on environmental assessment and cleanup costs paid in a calendar year. To be eligible, the party paying the costs must be the BSRA agreement signatory. These tax credits apply to state corporate income tax and are transferable to third parties on an open, active market. Additional 25% VCTC bonuses are also available after site closure and for sites with affordable housing or qualified health care facilities. The VCTC program has an annual state

funding authorization of \$5 million. Stakeholder efforts continue to raise additional VCTC funding.

Akerman's Brownfield cleanup and redevelopment team works closely with both Akerman's Real Estate and Economic Development & Incentives practice groups to identify and pursue incentives that meet clients' needs and advance redevelopment projects.

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