

By the Committee on Environmental Protection and
Representatives Constantine, Eggelletion, Crow, Murman,
Peaden, Greene and Putnam

1 A bill to be entitled
2 An act relating to brownfields redevelopment;
3 creating ss. 376.77-376.84, F.S., the
4 Brownfields Redevelopment Act; providing
5 legislative intent; providing definitions;
6 providing duties of a local government that
7 designates a brownfield area for
8 rehabilitation; providing for notice to the
9 Department of Environmental Protection;
10 providing for public hearings; providing
11 requirements for such designation and
12 specifying effect thereof; requiring
13 establishment of an advisory committee;
14 providing for a brownfield site rehabilitation
15 agreement and providing requirements with
16 respect thereto; providing requirements for
17 contractors performing site rehabilitation and
18 for professional engineers and geologists;
19 providing consequences of failure to comply
20 with a rehabilitation agreement; authorizing
21 the department to enter into delegation
22 agreements with local pollution control
23 programs; encouraging state and local
24 governments to offer redevelopment incentives;
25 specifying financial, local, regulatory, and
26 technical assistance incentives that may be
27 included; directing the department to establish
28 by rule criteria for determining the tasks that
29 comprise a rehabilitation program and the level
30 at which tasks and programs may be deemed
31 completed; providing requirements for such

1 criteria; providing that source removal may be
2 required under certain conditions; providing
3 eligibility requirements for participation in
4 brownfield rehabilitation; providing liability
5 protection for persons who successfully
6 complete a rehabilitation agreement; providing
7 requirements for issuance of a "no further
8 action" letter evidencing completion of
9 rehabilitation; authorizing negotiation with
10 the United States Environmental Protection
11 Agency regarding enforcement; providing certain
12 liability protection for state and local
13 governments and for certain nonprofit land
14 conservation corporations; providing conditions
15 under which further rehabilitation may be
16 required; providing liability protection for
17 certain financial institutions; specifying
18 violations and providing penalties; requiring
19 an annual report; providing an effective date.

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21 Be It Enacted by the Legislature of the State of Florida:

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23 Section 1. Section 376.77, Florida Statutes, is
24 created to read:

25 376.77 Short title.--Sections 376.77-376.84 may be
26 cited as the "Brownfields Redevelopment Act."

27 Section 2. Section 376.78, Florida Statutes, is
28 created to read:

29 376.78 Legislative intent.--The Legislature finds and
30 declares the following:

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1 (1) The reduction of public health and environmental
2 hazards on existing commercial and industrial sites is vital
3 to their use and reuse as sources of employment, housing,
4 recreation, and open-space areas. The productive reuse of
5 land is an important component of sound land-use policy that
6 will help prevent the premature development of prime farmland,
7 open-space areas, and natural areas, and reduce public costs
8 for installing new water, sewer, and highway infrastructure.

9 (2) The abandonment or underuse of brownfield sites
10 also results in the inefficient use of public facilities and
11 services, as well as land and other natural resources; extends
12 conditions of blight in local communities; and contributes to
13 concerns about environmental equity and the distribution of
14 environmental risks across population groups.

15 (3) Incentives should be put in place to encourage
16 responsible persons to voluntarily develop and implement
17 cleanup plans without the use of taxpayer funds or the need
18 for enforcement actions by state and local governments.

19 (4) Environmental and public health hazards cannot be
20 eliminated without clear, predictable remediation standards
21 that provide for the protection of the environment and public
22 health.

23 (5) Site rehabilitation should be based on the actual
24 risk that contamination may pose to the environment and public
25 health, taking into account current and future use and the
26 degree to which contamination may spread and expose the public
27 or the environment to risk.

28 (6) Environmental justice considerations, which
29 include but are not limited to the impact of environmentally
30 hazardous sites on minority and low-income communities and the
31 fair treatment of all people, relating to the redevelopment of

1 hazardous sites should be inherent in meaningful public
2 participation elements of a brownfields redevelopment program.

3 (7) That a commitment exists to consider appropriate
4 pollution prevention measures and to implement those that the
5 person determines are reasonable and cost-effective, taking
6 into account the ultimate use or uses of the brownfield site.

7 Such measures may include improved inventory or production
8 controls and procedures for preventing a loss, spills, and
9 leaks of hazardous waste and materials, and include goals for
10 the reduction of releases of toxic materials.

11 (8) Cooperation among federal, state, and local
12 agencies, local community development organizations, current
13 owners, and prospective purchasers of brownfield sites is
14 required to accomplish timely cleanup activities and the
15 redevelopment or reuse of brownfield sites.

16 Section 3. Section 376.79, Florida Statutes, is
17 created to read:

18 376.79 Definitions.--As used in ss. 376.77-376.84,
19 unless the context otherwise indicates:

20 (1) "Additive effects" means a scientific principle
21 that the toxicity that occurs as a result of exposure is the
22 sum of the toxicities of the individual chemicals to which the
23 individual is exposed.

24 (2) "Antagonistic effects" means a scientific
25 principle that the toxicity that occurs as a result of
26 exposure is less than the sum of the toxicities of the
27 individual chemicals to which the individual is exposed.

28 (3) "Brownfield" means a site or a contiguous area of
29 one or more sites, which have been designated by local
30 government by resolution, that are generally abandoned, idled,
31 or underused industrial and commercial properties where

1 expansion or redevelopment is complicated by actual or
2 perceived environmental contamination. Such areas may
3 include, but are not limited to, portions of community
4 redevelopment areas, enterprise zones, empowerment zones,
5 other such designated economically deprived communities and
6 areas, and United States Environmental Protection Agency
7 designated brownfield pilot projects.

8 (4) "Department" means the Department of Environmental
9 Protection.

10 (5) "Engineering controls" means modifications to a
11 site to reduce or eliminate the potential for exposure to
12 contaminants. Such modifications may include, but are not
13 limited to, physical or hydraulic control measures, capping,
14 point of use treatments, or slurry walls.

15 (6) "Institutional controls" means the restriction on
16 use or access to a site to eliminate or minimize exposure to
17 contaminants. Such restrictions may include, but are not
18 limited to, deed restrictions, use restrictions, or
19 restrictive zoning.

20 (7) "Local pollution control program" means a local
21 pollution control program that has received delegated
22 authority from the Department of Environmental Protection
23 under s. 403.182.

24 (8) "Natural attenuation" means the verifiable
25 reduction of contaminants through natural processes, which may
26 include diffusion, dispersion, absorption, and biodegradation.

27 (9) "Person responsible for brownfield site
28 rehabilitation" means the individual or entity that is
29 designated by the local government in its resolution
30 establishing a brownfield area to enter into the brownfield
31 site rehabilitation agreement with the department.

1 (10) "Person" means any individual, partner, joint
2 venture, or corporation; any group of the foregoing, organized
3 or united for a business purpose; or any governmental entity.

4 (11) "Site rehabilitation" means the assessment of
5 site contamination and the remediation activities that reduce
6 the levels of contaminants at a site through accepted
7 treatment methods to meet the cleanup target levels
8 established for that site.

9 (12) "Source removal" means the removal of free
10 product or contaminants from soil that has been contaminated
11 to the extent that leaching to groundwater has or is
12 occurring.

13 (13) "Synergistic effects" means a scientific
14 principle that the toxicity that occurs as a result of
15 exposure is more than the sum of the toxicities of the
16 individual chemicals to which the individual is exposed.

17 Section 4. Section 376.80, Florida Statutes, is
18 created to read:

19 376.80 Brownfield program administration process.--

20 (1) A local government with jurisdiction over a
21 brownfield area must notify the department of its decision to
22 designate a brownfield area for rehabilitation for the
23 purposes of ss. 376.77-376.84. The notification must include
24 a resolution by the local government body to which is attached
25 a map adequate to clearly delineate exactly which parcels are
26 to be included in the brownfield area or, alternatively, a
27 less detailed map accompanied by a detailed legal description
28 of the brownfield area. If a property owner within the area
29 proposed for designation by the local government requests in
30 writing to have his or her property removed from the proposed
31 designation, the local government shall grant the request. For

1 municipalities, the governing body shall adopt the resolution
2 in accordance with the procedures outlined in s. 166.041,
3 except that the notice for the public hearings on the proposed
4 resolution must be in the form established in s.
5 166.041(3)(c)2. For counties, the governing body shall adopt
6 the resolution in accordance with the procedures outlined in
7 s. 125.66, except that the notice for the public hearings on
8 the proposed resolution shall be in the form established in s.
9 125.66(4)(b)2.

10 (2) If a local government proposes to designate a
11 brownfield area that is outside community redevelopment areas,
12 enterprise zones, empowerment zones, or brownfield pilot
13 project areas designated by the United States Environmental
14 Protection Agency, the local government must conduct at least
15 one public hearing in the area to be designated to provide an
16 opportunity for public input on the size of the area, the
17 objectives for rehabilitation, job opportunities and economic
18 developments anticipated, neighborhood residents'
19 considerations, and other local concerns. Notice of the
20 public hearing must be made in a newspaper of general
21 circulation in the area and such notice must be at least 6
22 inches square in size, must be in ethnic newspapers or local
23 community bulletins, must be posted in the affected area, and
24 must be announced at a scheduled meeting of the local
25 governing body prior to the actual public hearing. In
26 determining the areas to be designated, the local government
27 must consider:

28 (a) Whether the brownfield area has a reasonable
29 potential for economic development activities.
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1 (b) Whether the proposed area to be designated
2 represents a reasonably focused approach and is not overly
3 large in geographic coverage.

4 (c) Whether the area has interest from the private
5 sector to participate in rehabilitation.

6 (d) Whether the area contains sites or parts of sites
7 suitable for limited recreational open space or cultural or
8 historical preservation purposes.

9 (3) A local government shall designate a brownfield
10 area under the provisions of this act provided that:

11 (a) A person who owns or controls a potential
12 brownfield site is requesting the designation and has agreed
13 to rehabilitate and redevelop the brownfield site.

14 (b) The rehabilitation and redevelopment of the
15 proposed brownfield site will result in economic productivity
16 of the area along with the creation of new jobs which are not
17 associated with the implementation of the rehabilitation
18 agreement.

19 (c) The redevelopment of the proposed brownfield site
20 is consistent with the local comprehensive plan and is a
21 permissible use under the applicable local land development
22 regulations.

23 (d) Notice of the proposed rehabilitation of the
24 brownfield area has been provided to adjacent property owners
25 and residents of the proposed brownfield area and the person
26 proposing the brownfield area for designation has afforded to
27 those receiving notice the opportunity for comments and
28 suggestions about site rehabilitation. Notice pursuant to
29 this paragraph must be made in a newspaper of general
30 circulation in the area, must be at least 6 inches square in
31 size, and must be posted in the affected area.

1 (e) The person proposing the area for designation has
2 provided reasonable assurance that he or she has sufficient
3 financial resources to implement and complete the
4 rehabilitation agreement and development plan.

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6 The designation of a brownfield area and the identification of
7 a person responsible for brownfield site rehabilitation simply
8 entitles the identified person to negotiate a brownfield
9 rehabilitation agreement with the department or approved local
10 government.

11 (4) The local government must at the time of the
12 adoption of the resolution notify the department of the entity
13 that it is designating as the person responsible for
14 brownfield site rehabilitation. If the agency or person who
15 will be responsible for the coordination changes during the
16 approval process specified in this section, the department or
17 the affected local pollution control program must notify the
18 affected local government when the change occurs.

19 (5) Local governments or persons responsible for
20 rehabilitation of brownfield areas must establish an advisory
21 committee for the purpose of improving public participation
22 and receiving public comments on rehabilitation and
23 remediation of the brownfield area, future land use, local
24 employment opportunities, community safety, and environmental
25 justice. Such advisory committee should include residents
26 within or adjacent to the brownfield area, businesses
27 operating within the brownfield area, and others deemed
28 appropriate.

29 (6) The person responsible for brownfield site
30 rehabilitation must enter into a brownfield site
31 rehabilitation agreement with the department or an approved

1 local pollution control program. The brownfield site
2 rehabilitation agreement must include:
3 (a) A brownfield site rehabilitation schedule,
4 including milestones for completion of site rehabilitation
5 tasks, submittal of technical reports, rehabilitation plans,
6 and timeframes for the review of assessments, reports,
7 completed cleanup phases or tasks by the department or
8 approved local pollution control program as agreed upon by the
9 parties to the agreement.
10 (b) A commitment to conduct site rehabilitation
11 activities under the observation of professional engineers or
12 geologists who are registered in accordance with the
13 requirements of chapter 471 or chapter 492, respectively.
14 Submittals provided by the person responsible for brownfield
15 site rehabilitation must be signed and sealed by a
16 professional engineer registered under chapter 471, or a
17 professional geologist registered under chapter 492,
18 certifying that the submittal and associated work comply with
19 the law and rules of the department and those governing the
20 profession. In addition, upon completion of the approved
21 remedial action, the department shall require a professional
22 engineer registered under chapter 471 or a professional
23 geologist registered under chapter 492 to certify that the
24 corrective action was, to the best of his or her knowledge,
25 completed in substantial conformance with the plans and
26 specifications approved by the department.
27 (c) A commitment to conduct site rehabilitation in
28 accordance with an approved comprehensive quality assurance
29 plan under department rules.
30 (d) A commitment to conduct site rehabilitation
31 consistent with federal, state, and local laws consistent with

1 the brownfield site contamination cleanup criteria in s.
2 376.82, including any applicable requirements for risk-based
3 corrective action.

4 (e) A commitment to secure site access for the
5 department or approved local pollution control program to all
6 brownfield sites within the eligible brownfield area for
7 activities associated with site rehabilitation.

8 (f) Other provisions that the person responsible for
9 brownfield site rehabilitation and the department agree upon,
10 that are consistent with ss. 376.77-376.84 and that will
11 improve or enhance the brownfield site rehabilitation process.

12 (g) An agreement to develop within 2 years an
13 appropriate pollution prevention plan as determined by the
14 person responsible for brownfield site rehabilitation. Such
15 plans may include improved inventory or production controls
16 and procedures for preventing a loss, spills, and leaks of
17 hazardous waste and materials, and include goals for the
18 reduction of releases of toxic materials, and shall be
19 available to the public.

20 (7) Failure by the department or approved local
21 pollution control program to adhere to site rehabilitation
22 agreement milestones as described in subsection (6) concerning
23 the review of assessments, reports, completed cleanup phases,
24 or tasks shall constitute approval of the specific assessment,
25 report, phase, or task, and the eligible party may proceed
26 with site rehabilitation. Exceptions to the provisions of
27 subsection (6) and this subsection include requests for "No
28 Further Action," "Monitoring Only Proposals," and feasibility
29 studies which must be approved prior to implementation.

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- 1 (8) Any contractor performing site rehabilitation
2 program tasks must demonstrate to the department that the
3 contractor:
- 4 (a) Meets all certification and license requirements
5 imposed by law.
- 6 (b) Has obtained approval for the comprehensive
7 quality-assurance plan prepared under department rules.
- 8 (9) The contractor must certify to the department that
9 the contractor:
- 10 (a) Complies with applicable OSHA regulations.
- 11 (b) Maintains workers' compensation insurance for all
12 employees as required by the Florida Workers' Compensation
13 Law.
- 14 (c) Maintains comprehensive general liability and
15 comprehensive automobile liability insurance with minimum
16 limits of at least \$1 million per occurrence and \$1 million
17 annual aggregate, sufficient to protect it from claims for
18 damage for personal injury, including accidental death, as
19 well as claims for property damage which may arise from
20 performance of work under this program, designating the state
21 as an additional insured party.
- 22 (d) Maintains professional liability insurance of at
23 least \$1 million per occurrence and \$1 million annual
24 aggregate.
- 25 (e) Has the capacity to perform or directly supervise
26 the majority of the work at a site in accordance with s.
27 489.113(9).
- 28 (10) Any professional engineer or geologist providing
29 professional services relating to site rehabilitation program
30 tasks must carry professional liability insurance with a
31 coverage limit of at least \$1 million.

1 (11) During the cleanup process, an eligible party may
2 proceed from one phase or task of cleanup to the next prior to
3 obtaining approval of the technical document for the next
4 phase or task of cleanup. However, the eligible party will be
5 required to complete any additional tasks identified by the
6 department or local pollution control program found during the
7 reviews provided for by subsection (6).

8 (12) If the person responsible for brownfield site
9 rehabilitation fails to comply with the brownfield site
10 rehabilitation agreement, the department or approved local
11 pollution control program shall allow 90 days for such person
12 to return to compliance with the provision at issue or to
13 negotiate a modification to the brownfield site rehabilitation
14 agreement for good cause shown. If an imminent hazard exists,
15 the 90-day grace period shall not apply. If the project is not
16 returned to compliance with the brownfield site rehabilitation
17 agreement and a modification cannot be negotiated, the
18 immunity provisions of s. 376.83 are revoked.

19 (13) Any agreement to extend the completion date of a
20 site rehabilitation agreement shall not be for a term longer
21 than 180 days. One additional extension, not to exceed 180
22 days, may be granted if deemed appropriate by the department
23 or the local pollution control program.

24 (14) The department is specifically authorized and
25 encouraged to enter into delegation agreements with local
26 pollution control programs approved under s. 403.182 to
27 administer the brownfield program within their jurisdiction,
28 thereby maximizing the integration of this process with the
29 other local development processes needed to facilitate
30 redevelopment of a brownfield area.

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1 Section 5. Section 376.81, Florida Statutes, is
2 created to read:

3 376.81 Brownfield redevelopment economic
4 incentives.--It is the intent of the Legislature that
5 brownfield redevelopment activities be viewed as opportunities
6 to significantly improve the utilization, general condition,
7 and appearance of these sites and areas. Different standards
8 than those in place for new development, as allowed under
9 current state and local laws, should be used to the fullest
10 extent to encourage the redevelopment of a brownfield site or
11 area. State and local governments are encouraged to offer
12 redevelopment incentives for this purpose, as an ongoing
13 public investment in infrastructure and services, to help
14 eliminate the public health and environmental hazards, and to
15 promote the creation of jobs in these areas. Such incentives
16 may include financial, regulatory, and technical assistance to
17 persons and businesses involved in the redevelopment of the
18 brownfield sites or areas pursuant to this act.

19 (1) Financial incentives and local incentives for
20 redevelopment may include, but not be limited to:

21 (a) Tax increment financing through community
22 redevelopment agencies pursuant to part III of chapter 163.

23 (b) Enterprise zone tax exemptions for businesses
24 pursuant to chapter 196 and chapter 290.

25 (c) Safe neighborhood improvement districts as
26 provided in ss. 163.501-163.523.

27 (d) Waiver, reduction, or limitation by line of
28 business with respect to occupational license taxes pursuant
29 to chapter 205.

30 (e) Tax exemption for historic properties as provided
31 in s. 196.1997.

- 1 (f) Residential electricity exemption of up to the
2 first 500 kilowatts of use may be exempted from the municipal
3 public service tax pursuant to s. 166.231.
4 (g) Minority business enterprise programs as provided
5 in s. 287.0943.
6 (h) Electric and gas tax exemption as provided in s.
7 166.231(6).
8 (i) Economic development tax abatement as provided in
9 s. 196.1995.
10 (j) Grants, including community development block
11 grants.
12 (k) Pledging of revenues to secure bonds.
13 (l) Low-interest revolving loans and zero-interest
14 loan pools.
15 (m) Local grant programs for facade, storefront,
16 signage, and other business improvements.
17 (n) Governmental coordination of loan programs with
18 lenders, such as microloans, business reserve fund loans,
19 letter of credit enhancements, gap financing, land lease and
20 sublease loans, and private equity.
21 (o) Payment schedules over time for payment of fees,
22 within criteria, and marginal cost pricing.
23 (2) Regulatory incentives may include, but not be
24 limited to:
25 (a) Cities' absorption of developers' concurrency
26 needs.
27 (b) Developers' performance of certain analyses.
28 (c) Exemptions and lessening of state and local review
29 requirements.
30 (d) Water and sewer regulatory incentives.
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1 (e) Waiver of transportation impact fees and permit
2 fees.

3 (f) Zoning incentives to reduce review requirements
4 for redevelopment changes in use and occupancy; establishment
5 of code criteria for specific uses; and institution of credits
6 for previous use within the area.

7 (g) Flexibility in parking standards and buffer zone
8 standards.

9 (h) Environmental management through specific code
10 criteria and conditions allowed by current law.

11 (i) Maintenance standards and activities by ordinance
12 and otherwise, and increased security and crime prevention
13 measures available through special assessments.

14 (j) Traffic-calming measures.

15 (k) Historic preservation ordinances, loan programs,
16 and review and permitting procedures.

17 (l) One-stop permitting and streamlined development
18 and permitting process.

19 (3) Technical assistance incentives may include, but
20 not be limited to:

21 (a) Expedited development applications.

22 (b) Formal and informal information on business
23 incentives and financial programs.

24 (c) Site design assistance.

25 (d) Marketing and promotion of projects or areas.

26 Section 6. Section 376.82, Florida Statutes, is
27 created to read:

28 376.82 Brownfield sites and brownfield area
29 contamination cleanup criteria.--

30 (1) It is the intent of the Legislature to protect the
31 health of all people under actual circumstances of exposure.

1 By January 1, 1998, the secretary of the department shall
2 establish criteria by rule for the purpose of determining, on
3 a site-specific basis, the rehabilitation program tasks that
4 comprise a site rehabilitation program and the level at which
5 a rehabilitation program task and a site rehabilitation
6 program may be deemed completed. In establishing the rule,
7 the department shall incorporate, to the maximum extent
8 feasible, risk-based corrective-action principles to achieve
9 protection of human health and safety and the environment in a
10 cost-effective manner as provided in this subsection. The
11 criteria for determining what constitutes a rehabilitation
12 program task or completion of a site rehabilitation program
13 task or site rehabilitation program must:

14 (a) Consider the current exposure and potential risk
15 of exposure to humans and the environment, including multiple
16 pathways of exposure. The physical, chemical, and biological
17 characteristics of each contaminant must be considered in
18 order to determine the feasibility of risk-based
19 corrective-action assessment.

20 (b) Establish the point of compliance at the source of
21 the contamination. However, the department is authorized to
22 temporarily move the point of compliance to the boundary of
23 the property, or to the edge of the plume when the plume is
24 within the property boundary, while cleanup, including cleanup
25 through natural attenuation processes in conjunction with
26 appropriate monitoring, is proceeding. The department also is
27 authorized, pursuant to criteria provided for in this section,
28 to temporarily extend the point of compliance beyond the
29 property boundary with appropriate monitoring, if such
30 extension is needed to facilitate natural attenuation or to
31 address the current conditions of the plume, provided human

1 health, public safety, and the environment are adequately
2 protected. Temporary extension of the point of compliance
3 beyond the property boundary, as provided in this paragraph,
4 shall include notice to local governments and owners of any
5 property into which the point of compliance is allowed to
6 extend.

7 (c) Ensure that the site-specific cleanup goal is that
8 all contaminated brownfield sites and brownfield areas
9 ultimately achieve the applicable cleanup target levels
10 provided in this section. However, the department is
11 authorized to allow concentrations of contaminants to
12 temporarily exceed the applicable cleanup target levels while
13 cleanup, including cleanup through natural attenuation
14 processes in conjunction with appropriate monitoring, is
15 proceeding, provided human health, public safety, and the
16 environment are adequately protected.

17 (d) Allow brownfield site and brownfield area
18 rehabilitation programs to include the use of institutional or
19 engineering controls to eliminate or control the potential
20 exposure to contaminants to humans or the environment. Use of
21 such controls must be preapproved by the department. When
22 institutional or engineering controls are implemented to
23 control exposure, the removal of such controls must have prior
24 department approval and must be accompanied by the resumption
25 of active cleanup, or other approved controls, unless cleanup
26 target levels pursuant to this section have been achieved.

27 (e) Consider the synergistic, antagonistic, and
28 additive effects of contaminants when the scientific data
29 become available.

30 (f) Take into consideration individual site
31 characteristics, which shall include, but not be limited to,

1 the current and projected use of the affected groundwater and
2 surface water in the vicinity of the site, current and
3 projected land uses of the area affected by the contamination,
4 the exposed population, the degree and extent of
5 contamination, the rate of contaminant migration, the apparent
6 or potential rate of contaminant degradation through natural
7 attenuation processes, the location of the plume, and the
8 potential for further migration in relation to site property
9 boundaries.

10 (g) Apply state water quality standards as follows:

11 1. Cleanup target levels for each contaminant found in
12 groundwater shall be the applicable state water quality
13 standards. Where such standards do not exist, the cleanup
14 target levels for groundwater shall be based on the minimum
15 criteria specified in department rule. The department shall
16 consider the following, as appropriate, in establishing the
17 applicable minimum criteria: calculations using a lifetime
18 cancer risk level of 1.0E-6; a hazard index of 1 or less; the
19 best achievable detection limit; the naturally occurring
20 background concentration; or nuisance, organoleptic, and
21 aesthetic considerations.

22 2. Where surface waters are exposed to contaminated
23 groundwater, the cleanup target levels for the contaminants
24 shall be based on the surface water standards as established
25 by department rule. The point of measuring compliance with
26 the surface water standards shall be in the groundwater
27 immediately adjacent to the surface water body.

28 3. The department may set alternative cleanup target
29 levels based upon an applicant's demonstration, using
30 site-specific modeling and risk assessment studies, that human
31 health, public safety, and the environment are adequately

1 protected to the same degree as provided in subparagraphs 1.
2 and 2. Where a state water quality standard is applicable, a
3 deviation may not result in the application of cleanup target
4 levels more stringent than the standard. In determining
5 whether it is appropriate to establish alternative cleanup
6 target levels at a site, the department must consider the
7 effectiveness of source removal that has been completed at the
8 site and the practical likelihood of the use of low-yield or
9 poor quality groundwater, the use of groundwater near marine
10 surface water bodies, the current and projected use of the
11 affected groundwater in the vicinity of the site, or the use
12 of groundwater in the immediate vicinity of the contaminated
13 area, where it has been demonstrated that the groundwater
14 contamination is not migrating away from such localized
15 source, provided human health, public safety, and the
16 environment are adequately protected.

17 (h) Provide for the department to issue a "no further
18 action order" when alternative cleanup target levels
19 established pursuant to subparagraph (g)3. have been achieved
20 or issue a "no further action order" based upon the degree to
21 which the desired cleanup target level is achievable and can
22 be reasonably and cost-effectively implemented within
23 available technologies or engineering and institutional
24 control strategies.

25 (i) Establish appropriate cleanup target levels for
26 soils.

27 1. In establishing soil cleanup target levels for
28 human exposure to each contaminant found in soils from the
29 land surface to 2 feet below land surface, the department
30 shall consider the following, as appropriate: calculations
31 using a lifetime cancer risk level of 1.0E-6; a hazard index

1 of 1 or less; the best achievable detection limit; or the
2 naturally occurring background concentration. Institutional
3 controls or other methods shall be used to prevent human
4 exposure to contaminated soils more than 2 feet below the land
5 surface. Any removal of such institutional controls shall
6 require such contaminated soils to be remediated.

7 2. Leachability-based soil target levels shall be
8 based on protection of the groundwater cleanup target levels
9 or the alternate cleanup target levels for groundwater
10 established pursuant to this paragraph, as appropriate.
11 Source removal and other cost-effective alternatives that are
12 technologically feasible shall be considered in achieving the
13 leachability soil target levels established by the department.
14 The leachability goals shall not be applicable if the
15 department determines, based upon individual site
16 characteristics, that contaminants will not leach into the
17 groundwater at levels which pose a threat to human health,
18 public safety, and the environment.

19 3. The department may set alternative cleanup target
20 levels based upon an applicant's demonstration, using
21 site-specific modeling and risk assessment studies, that human
22 health, public safety, and the environment are adequately
23 protected.

24 (2) The department shall require source removal, if
25 warranted and cost-effective. Once source removal at a site
26 is complete, the department shall reevaluate the site to
27 determine the degree of active cleanup needed to continue.
28 Further, the department shall determine if the reevaluated
29 site qualifies for monitoring only or if no further action is
30 required to rehabilitate the site. If additional site
31 rehabilitation is necessary to reach no-further-action status,

1 the department is encouraged to utilize natural attenuation
2 and monitoring where site conditions warrant.

3 Section 7. Section 376.83, Florida Statutes, is
4 created to read:

5 376.83 Eligibility criteria and liability
6 protection.--

7 (1) ELIGIBILITY.--Any person who has not caused or
8 contributed to the contamination of a brownfield site after
9 July 1, 1997, is eligible to participate in the brownfield
10 rehabilitation program established in ss. 376.77-376.84,
11 subject to the following:

12 (a) Potential brownfield sites that are subject to an
13 ongoing formal judicial or administrative enforcement action
14 or corrective action pursuant to federal authority, including,
15 but not limited to, the Comprehensive Environmental Response
16 Compensation and Liability Act, 42 U.S.C. ss. 9601 et seq., as
17 amended; the Safe Drinking Water Act, 42 U.S.C. ss. 300f-300i,
18 as amended; the Clean Water Act, 33 U.S.C. ss. 1251-1387, as
19 amended, or under an order from the United States
20 Environmental Protection Agency pursuant to s. 3008(h) of the
21 Resource Conservation and Recovery Act, as amended, 42
22 U.S.C.A. s. 6928(h), or that have obtained or are required to
23 obtain a permit for the operation of a hazardous waste
24 treatment, storage, or disposal facility, a postclosure
25 permit, or a permit pursuant to the federal Hazardous and
26 Solid Waste Amendments of 1984, are not eligible for
27 participation unless specific exemptions are secured by a
28 memorandum of agreement with the United States Environmental
29 Protection Agency pursuant to paragraph (2)(f). A brownfield
30 site within an eligible brownfield area that subsequently
31 becomes subject to formal judicial or administrative

1 enforcement action or corrective action under such federal
2 authority shall have its eligibility revoked unless specific
3 exemptions are secured by a memorandum of agreement with the
4 United States Environmental Protection Agency pursuant to
5 paragraph (2)(f).

6 (b) Persons who have not caused or contributed to the
7 contamination of a brownfield site after July 1, 1997, and
8 who, prior to the department's approval of a brownfield site
9 rehabilitation agreement, are subject to ongoing corrective
10 action or enforcement under state authority established in
11 this chapter or chapter 403, including those persons subject
12 to a pending consent order with the state, are eligible for
13 participation in a brownfield corrective action if:

14 1. The proposed brownfield site is currently idle or
15 underutilized as a result of the contamination, and
16 participation in the brownfield program will immediately,
17 after cleanup or sooner, result in increased economic
18 productivity at the site, including the creation of new jobs,
19 whether permanent or part time, which are not associated with
20 implementation of the brownfield site corrective-action plan;
21 and

22 2. The person is complying in good faith with the
23 terms of an existing consent order or department-approved
24 corrective-action plan, or responding in good faith to an
25 enforcement action, as evidenced by a determination issued by
26 the department or an approved local pollution control program.

27 (c) Potential brownfield sites owned by the state or a
28 local government which contain contamination for which a
29 governmental entity is potentially responsible and which are
30 already designated as federal brownfield pilot projects or
31 have filed an application for designation to the United States

1 Environmental Protection Agency are eligible for participation
2 in a brownfield corrective action.

3 (d) Petroleum sites and drycleaning sites eligible for
4 state sponsored cleanups as provided by this chapter are not
5 eligible for participation in the program under ss.
6 376.77-376.84 unless the site owner waives his or her
7 eligibility for the state-sponsored cleanup. Proof of waiver
8 must be evidenced by a letter from the site owner to the
9 department requesting that the petroleum site or drycleaning
10 site be removed from the department's list of eligible sites.

11 (2) LIABILITY PROTECTION.--

12 (a) Any person, including his or her successors and
13 assigns, who executes and implements to successful completion
14 a brownfield site rehabilitation agreement, shall be relieved
15 of further liability for remediation of the site to the state
16 and to third parties and of liability in contribution to any
17 other party who has or may incur cleanup liability for the
18 brownfield site.

19 (b) This section shall not be construed as a
20 limitation on the right of a third party other than the state
21 to pursue an action for damages to property or person;
22 however, such an action may not compel site rehabilitation in
23 excess of that required in the approved corrective-action
24 rehabilitation schedule or otherwise required by the
25 department or approved local pollution control program.

26 (c) This section shall not affect the ability or
27 authority to seek contribution from any person who may have
28 liability with respect to the site and who did not receive
29 cleanup liability protection under this act.

30 (d) The liability protection provided under this
31 section shall become effective upon execution of a brownfield

1 site rehabilitation agreement and shall remain effective,
2 provided the person responsible for brownfield site
3 rehabilitation complies with the terms of the agreement. Any
4 statute of limitations that would bar the department from
5 pursuing relief in accordance with its existing authority is
6 tolled from the time the agreement is executed until site
7 rehabilitation is completed or immunity is revoked pursuant to
8 s. 376.80(12).

9 (e) Completion of the performance of the remediation
10 obligations at the brownfield site shall be evidenced by a
11 site rehabilitation completion letter or a "no further action"
12 letter issued by the department or the approved local
13 pollution control program, which letter shall include the
14 following statement: "Based upon the information provided by
15 (property owner) concerning property located at (address), it
16 is the opinion of (the Florida Department of Environmental
17 Protection or approved local pollution control program) that
18 (party) has successfully and satisfactorily implemented the
19 approved brownfield site corrective action rehabilitation
20 schedule and, accordingly, no further action is required to
21 assure that any land use identified in the corrective action
22 rehabilitation schedule is consistent with existing and
23 proposed uses."

24 (f) The Legislature recognizes its limitations in
25 addressing cleanup liability under federal pollution control
26 programs. In an effort to secure federal liability protection
27 for persons willing to undertake remediation responsibility at
28 a brownfield site, the department shall attempt to negotiate a
29 memorandum of agreement or similar document with the United
30 States Environmental Protection Agency, whereby the United
31 States Environmental Protection Agency agrees to forgo

1 enforcement of federal corrective-action authority at
2 brownfield sites that have received a site rehabilitation
3 completion or "no further action" determination from the
4 department or the approved local pollution control program or
5 that are in the process of implementing a corrective action
6 rehabilitation schedule in accordance with this act.

7 (g) No unit of state or local government may be held
8 liable for implementing corrective actions at a brownfield
9 site within an eligible brownfield area as a result of the
10 involuntary ownership of the site through bankruptcy, tax
11 delinquency, abandonment, or other circumstances in which the
12 state or local government involuntarily acquires title by
13 virtue of its function as a sovereign, or as a result of
14 ownership from donation or gift, unless the state or local
15 government has otherwise caused or contributed to a release of
16 a contaminant at the brownfield site.

17 (h) The Legislature finds and declares that certain
18 brownfield sites and brownfield areas may be redeveloped for
19 open space, or limited recreational, cultural, or historical
20 preservation purposes, and that such facilities enhance the
21 redeveloped environment, attract visitors, and provide
22 wholesome activities for employees and residents of the area.
23 Further, the Legislature finds that purchasers of brownfield
24 sites who are nonprofit conservation organizations acting for
25 the public interest and who did not cause or contribute to the
26 release of contamination on the site warrant protection from
27 liability.

28 (i) Notwithstanding any provision of this chapter,
29 chapter 403, other laws, or ordinances of local governments, a
30 nonprofit, charitable, federal tax exempt, 501(c)(3) national
31 land conservation corporation which purchases title to

1 brownfield sites in the state for the purpose of conveying
2 such land to any governmental entity for conservation,
3 historical preservation or cultural resource, park, greenway,
4 or other similar uses shall not be liable to the state, local
5 government, or any third party for penalties or remediation
6 costs in connection with environmental contamination found in
7 the soil or groundwater of such sites, provided that such
8 corporation did not cause the original deposit or release of
9 the environmental contaminants, and provided the department
10 and local pollution control program and responsible parties
11 have access to the land for investigation, remediation, or
12 monitoring purposes.

13 (3) REOPENERS.--Upon completion of site rehabilitation
14 in compliance with this act, no additional site rehabilitation
15 shall be required unless it is demonstrated:

16 (a) That fraud was committed in demonstrating site
17 conditions or completion of the site rehabilitation.

18 (b) That new information confirms the existence of an
19 area of previously unknown contamination which exceeds the
20 site-specific rehabilitation levels established in accordance
21 with s. 376.82 and poses the threat of imminent harm to public
22 health, safety, or the environment in violation of the terms
23 of ss. 376.77-376.84. The determination of imminent threat
24 must be made by the department.

25 (c) That the remediation efforts failed to achieve the
26 site rehabilitation criteria established by this act.

27 (d) That the level of risk is increased beyond the
28 acceptable risk established in this act due to substantial
29 changes in exposure conditions, such as in a change in land
30 use from nonresidential use to residential use. Any person
31 who changes the land use of the brownfield site or brownfield

1 area, thus causing the level of risk to increase beyond the
2 acceptable risk level, may be required by the department or
3 approved local pollution control program to undertake
4 additional remediation measures to assure that human health,
5 public safety, and the environment are protected to levels
6 consistent with this act.

7 (e) That a new release occurs at the brownfield site
8 subsequent to a determination of eligibility for participation
9 in the brownfield program established in this act.

10 (4) ADDITIONAL LIABILITY PROTECTION FOR LENDERS.--

11 (a) The Legislature declares that, in order to achieve
12 the economic redevelopment and site rehabilitation of
13 brownfield sites in accordance with this act, it is imperative
14 to encourage financing of real property transactions involving
15 brownfield site corrective action plans. Accordingly,
16 lenders, including those serving as a trustee, personal
17 representative, or in any other fiduciary capacity, are
18 entitled to the liability protection established in subsection
19 (2) if they have not caused or contributed to a release of a
20 contaminant at the brownfield site.

21 (b) Lenders who hold indicia of ownership at a
22 brownfield site within an eligible brownfield area primarily
23 to protect a security interest or who own a brownfield site
24 within an eligible brownfield area as a result of foreclosure
25 or a deed in lieu of foreclosure of a security interest and
26 who seek to sell, transfer, or otherwise divest the site via
27 sale at the earliest practicable time are not liable for the
28 release or discharge of a contaminant from a brownfield site
29 within an eligible brownfield area; for the failure of the
30 person responsible for brownfield site rehabilitation to
31 comply with the brownfield site rehabilitation agreement; or

1 for future site rehabilitation activities required pursuant to
2 a reopener provision established in subsection (3) where the
3 lender has not divested the borrower of, or otherwise engaged
4 in, decisionmaking control of the site rehabilitation or site
5 operations or undertaken management activities beyond those
6 required to protect its financial interest and when an act or
7 omission of the lender has not otherwise caused or contributed
8 to a release of a contaminant at the brownfield site within an
9 eligible brownfield area.

10 Section 8. Section 376.84, Florida Statutes, is
11 created to read:

12 376.84 Violations; penalties--

13 (1) It is a violation of ss. 376.77-376.83, and it is
14 prohibited for any person to knowingly make any false
15 statement, representation, or certification in any
16 application, record, report, plan, or other document filed or
17 required to be maintained, or to falsify, tamper with, or
18 knowingly render inaccurate any monitoring device or method
19 required to be maintained under ss. 376.77-376.83, or by any
20 permit, rule, or order issued under this chapter or chapter
21 403.

22 (2) Any person who willfully commits a violation
23 specified in subsection (1) is guilty of a misdemeanor of the
24 first degree, punishable by a fine of not more than \$10,000 or
25 by 6 months in jail, or both, for each offense. Each day
26 during any portion of which such violation occurs constitutes
27 a separate offense.

28 Section 9. The Department of Environmental Protection
29 shall prepare an annual report to the Speaker of the House of
30 Representatives and the President of the Senate, beginning in
31 December 1998, which shall include, but not be limited to:

1 (1) The number of sites that have been remediated
2 under the provisions of this act.

3 (2) The number of sites that are undergoing
4 remediation.

5 (3) The number and size of brownfield sites or areas
6 that have been designated.

7 (4) The number of petroleum and drycleaning sites that
8 are participating or have participated.

9 (5) The number of sites that have utilized
10 site-specific rehabilitation criteria, including those based
11 on risk-based corrective-action principles.

12 (6) The relationship of the state's program to the
13 United States Environmental Protection Agency brownfields
14 program.

15 (7) Local government incentives that have been offered
16 for brownfields and the locales where offered.

17
18 The report shall be available for public comment 60 days prior
19 to submittal to the Speaker of the House of Representatives
20 and the President of the Senate, and comment received shall be
21 submitted with the report to the Speaker of the House of
22 Representatives and the President of the Senate.

23 Section 10. This act shall take effect July 1, 1997.
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