

By the Committees on General Government Appropriations,
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 and environmental protection; creating ss.
4 376.77-376.84, F.S., the Brownfields
5 Redevelopment Act; providing legislative
6 intent; providing definitions; providing duties
7 of a local government that designates a
8 brownfield for rehabilitation and
9 redevelopment; providing for notice to the
10 Department of Environmental Protection;
11 providing for public hearings; providing
12 requirements for such designation and
13 specifying effect thereof; requiring
14 establishment of an advisory committee;
15 providing for a brownfield site rehabilitation
16 agreement and providing requirements with
17 respect thereto; providing requirements for
18 contractors performing site rehabilitation and
19 for professional engineers and geologists;
20 providing consequences of failure to comply
21 with a rehabilitation agreement; authorizing
22 the department to enter into delegation
23 agreements with local pollution control
24 programs; providing requirements for local
25 pollution control programs; encouraging state
26 and local governments to offer redevelopment
27 incentives; specifying financial, local,
28 regulatory, and technical assistance incentives
29 that may be included; creating a brownfield
30 redevelopment bonus refund program; providing
31 for refunds from the Economic Development

1 Incentive Account to certain qualified target
2 industry businesses for jobs created in a
3 brownfield; providing criteria for
4 participation; providing procedures and
5 requirements for payment of refunds; providing
6 penalties; providing for administration;
7 amending s. 288.095, F.S., to conform;
8 directing the department to establish by rule
9 criteria for determining the tasks that
10 comprise a rehabilitation program and the level
11 at which tasks and programs may be deemed
12 completed; providing requirements for such
13 criteria; providing that source removal may be
14 required under certain conditions; providing
15 eligibility requirements for participation in
16 brownfield rehabilitation; providing liability
17 protection for persons who successfully
18 complete a rehabilitation agreement; providing
19 requirements for issuance of a "no further
20 action" letter evidencing completion of
21 rehabilitation; authorizing negotiation with
22 the United States Environmental Protection
23 Agency regarding enforcement; providing certain
24 liability protection for state and local
25 governments and for certain nonprofit land
26 conservation corporations; providing conditions
27 under which further rehabilitation may be
28 required; providing liability protection for
29 certain lenders; specifying violations and
30 providing penalties; requiring an annual
31 report; providing for the award of grants to

1 certain pilot projects; amending s. 376.3071,
2 F.S.; revising application deadlines for
3 cleanup reimbursement from the Inland
4 Protection Trust Fund; providing for audits by
5 the Comptroller; revising eligibility criteria
6 relating to the petroleum cleanup participation
7 program; amending s. 376.30711, F.S.; providing
8 for competitive bidding for certain site
9 rehabilitation; amending s. 376.3072, F.S.;
10 specifying the process for applying certain
11 supplemental deductibles under the Florida
12 Petroleum Liability and Restoration Insurance
13 Program; providing an effective date.

14
15 Be It Enacted by the Legislature of the State of Florida:

16
17 Section 1. Section 376.77, Florida Statutes, is
18 created to read:

19 376.77 Short title.--Sections 376.77-376.84 may be
20 cited as the "Brownfields Redevelopment Act."

21 Section 2. Section 376.78, Florida Statutes, is
22 created to read:

23 376.78 Legislative intent.--The Legislature finds and
24 declares the following:

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

3 (2) The abandonment or underuse of brownfield sites
4 also results in the inefficient use of public facilities and
5 services, as well as land and other natural resources; extends
6 conditions of blight in local communities; and contributes to
7 concerns about environmental equity and the distribution of
8 environmental risks across population groups.

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

13 (4) Environmental and public health hazards cannot be
14 eliminated without clear, predictable remediation standards
15 that provide for the protection of the environment and public
16 health.

17 (5) Site rehabilitation should be based on the actual
18 risk that contamination may pose to the environment and public
19 health, taking into account current and future use and the
20 degree to which contamination may spread and expose the public
21 or the environment to risk.

22 (6) Environmental justice considerations, which
23 include but are not limited to the impact of environmentally
24 hazardous sites on minority and low-income communities and the
25 fair treatment of all people, relating to the redevelopment of
26 hazardous sites should be inherent in meaningful public
27 participation elements of a brownfields redevelopment program.

28 (7) Cooperation among federal, state, and local
29 agencies, local community development organizations, current
30 owners, and prospective purchasers of brownfield sites is
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1 required to accomplish timely cleanup activities and the
2 redevelopment or reuse of brownfield sites.

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

5 376.79 Definitions.--As used in ss. 376.77-376.84,
6 unless the context otherwise indicates:

7 (1) "Additive effects" means a scientific principle
8 that the toxicity that occurs as a result of exposure is the
9 sum of the toxicities of the individual chemicals to which the
10 individual is exposed.

11 (2) "Antagonistic effects" means a scientific
12 principle that the toxicity that occurs as a result of
13 exposure is less than the sum of the toxicities of the
14 individual chemicals to which the individual is exposed.

15 (3) "Brownfield" or "brownfield site" means a parcel
16 or a contiguous area of one or more parcels, which have been
17 designated by local government by resolution, that are
18 generally abandoned, idled, or underused industrial and
19 commercial properties where expansion or redevelopment is
20 complicated by actual or perceived environmental
21 contamination. Such areas may include, but are not limited
22 to, portions of community redevelopment areas, enterprise
23 zones, empowerment zones, other such designated economically
24 deprived communities and areas, and United States
25 Environmental Protection Agency designated brownfield pilot
26 projects.

27 (4) "Contaminated site" means any contiguous land,
28 surface water, or groundwater areas that contain contaminants
29 that may be harmful to human health or the environment.

30 (5) "Department" means the Department of Environmental
31 Protection.

1 (6) "Engineering controls" means modifications to a
2 site to reduce or eliminate the potential for exposure to
3 contaminants. Such modifications may include, but are not
4 limited to, physical or hydraulic control measures, capping,
5 point of use treatments, or slurry walls.

6 (7) "Institutional controls" means the restriction on
7 use or access to a site to eliminate or minimize exposure to
8 contaminants. Such restrictions may include, but are not
9 limited to, deed restrictions, use restrictions, or
10 restrictive zoning.

11 (8) "Local pollution control program" means a local
12 pollution control program that has received delegated
13 authority from the Department of Environmental Protection
14 under s. 403.182.

15 (9) "Natural attenuation" means the verifiable
16 reduction of contaminants through natural processes, which may
17 include diffusion, dispersion, absorption, and biodegradation.

18 (10) "Person responsible for brownfield site
19 rehabilitation" means the individual or entity that is
20 designated by the local government in its resolution
21 establishing a brownfield to enter into the brownfield site
22 rehabilitation agreement with the department.

23 (11) "Person" means any individual, partner, joint
24 venture, or corporation; any group of the foregoing, organized
25 or united for a business purpose; or any governmental entity.

26 (12) "Site rehabilitation" means the assessment of
27 site contamination and the remediation activities that reduce
28 the levels of contaminants at a site through accepted
29 treatment methods to meet the cleanup target levels
30 established for that site.

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1 (13) "Source removal" means the removal of free
2 product or contaminants from soil that has been contaminated
3 to the extent that leaching to groundwater has or is
4 occurring.

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

9 Section 4. Section 376.80, Florida Statutes, is
10 created to read:

11 376.80 Brownfield program administration process.--

12 (1) A local government with jurisdiction over a
13 brownfield must notify the department of its decision to
14 designate a brownfield for rehabilitation for the purposes of
15 ss. 376.77-376.84. The notification must include a resolution
16 by the local government body to which is attached a map
17 adequate to clearly delineate exactly which parcels are to be
18 included in the brownfield or, alternatively, a less detailed
19 map accompanied by a detailed legal description of the
20 brownfield. If a property owner within the brownfield
21 proposed for designation by the local government requests in
22 writing to have his or her property removed from the proposed
23 designation, the local government shall grant the request. For
24 municipalities, the governing body shall adopt the resolution
25 in accordance with the procedures outlined in s. 166.041,
26 except that the notice for the public hearings on the proposed
27 resolution must be in the form established in s.
28 166.041(3)(c)2. For counties, the governing body shall adopt
29 the resolution in accordance with the procedures outlined in
30 s. 125.66, except that the notice for the public hearings on

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1 the proposed resolution shall be in the form established in s.
2 125.66(4)(b)2.

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

21 (a) Whether the brownfield has a reasonable potential
22 for economic development activities.

23 (b) Whether the proposed brownfield represents a
24 reasonably focused approach and is not overly large in
25 geographic coverage.

26 (c) Whether the brownfield has interest from the
27 private sector to participate in rehabilitation.

28 (d) Whether the brownfield contains parcels or parts
29 of parcels suitable for limited recreational open space or
30 cultural or historical preservation purposes.

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1 (3) A local government shall designate a brownfield
2 under the provisions of this act provided that:

3 (a) A person who owns or controls a proposed
4 brownfield site is requesting the designation and has agreed
5 to rehabilitate and redevelop the proposed brownfield site.

6 (b) The rehabilitation and redevelopment of the
7 proposed brownfield site will result in economic productivity
8 of the area along with the creation of new jobs which are not
9 associated with the implementation of the rehabilitation
10 agreement.

11 (c) The redevelopment of the proposed brownfield site
12 is consistent with the local comprehensive plan and is a
13 permissible use under the applicable local land development
14 regulations.

15 (d) Notice of the proposed rehabilitation and
16 redevelopment of the brownfield has been provided to adjacent
17 property owners and residents of the proposed brownfield and
18 the person proposing the brownfield for designation has
19 afforded to those receiving notice the opportunity for
20 comments and suggestions about site rehabilitation. Notice
21 pursuant to this paragraph must be made in a newspaper of
22 general circulation in the area, must be at least 16 inches
23 square in size, and must be posted in the affected area.

24 (e) The person proposing the brownfield for
25 designation has provided reasonable assurance that he or she
26 has sufficient financial resources to implement and complete
27 the rehabilitation agreement and development plan.

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29 The designation of a brownfield and the identification of a
30 person responsible for brownfield site rehabilitation simply
31 entitles the identified person to negotiate a brownfield site

1 rehabilitation agreement with the department or approved local
2 pollution control program.

3 (4) The local government must at the time of the
4 adoption of the resolution notify the department of the entity
5 that it is designating as the person responsible for
6 brownfield site rehabilitation. If the agency or person who
7 will be responsible for the coordination changes during the
8 approval process specified in this section, the department or
9 the affected local pollution control program must notify the
10 affected local government when the change occurs.

11 (5) Local governments or persons responsible for
12 rehabilitation of a brownfield must establish an advisory
13 committee for the purpose of improving public participation
14 and receiving public comments on rehabilitation, remediation,
15 and redevelopment of the brownfield, future land use, local
16 employment opportunities, community safety, and environmental
17 justice. Such advisory committee should include residents
18 within or adjacent to the brownfield, businesses operating
19 within the brownfield, and others deemed appropriate.

20 (6) The person responsible for brownfield site
21 rehabilitation must enter into a brownfield site
22 rehabilitation agreement with the department or an approved
23 local pollution control program. The brownfield site
24 rehabilitation agreement must include:

25 (a) A brownfield site rehabilitation schedule,
26 including milestones for completion of site rehabilitation
27 tasks, submittal of technical reports, rehabilitation plans,
28 and timeframes for the review of assessments, reports,
29 completed cleanup phases or tasks by the department or
30 approved local pollution control program as agreed upon by the
31 parties to the agreement.

1 (b) A commitment to conduct site rehabilitation
2 activities under the observation of professional engineers or
3 geologists who are registered in accordance with the
4 requirements of chapter 471 or chapter 492, respectively.
5 Submittals provided by the person responsible for brownfield
6 site rehabilitation must be signed and sealed by a
7 professional engineer registered under chapter 471, or a
8 professional geologist registered under chapter 492,
9 certifying that the submittal and associated work comply with
10 the law and rules of the department and those governing the
11 profession. In addition, upon completion of the approved
12 remedial action, the department shall require a professional
13 engineer registered under chapter 471 or a professional
14 geologist registered under chapter 492 to certify that the
15 corrective action was, to the best of his or her knowledge,
16 completed in substantial conformance with the plans and
17 specifications approved by the department.

18 (c) A commitment to conduct site rehabilitation in
19 accordance with an approved comprehensive quality assurance
20 plan under department rules.

21 (d) A commitment to conduct site rehabilitation
22 consistent with federal, state, and local laws consistent with
23 the brownfield contamination cleanup criteria in s. 376.82,
24 including any applicable requirements for risk-based
25 corrective action.

26 (e) A commitment to secure access for the department
27 or approved local pollution control program to all parcels
28 within the eligible brownfield for activities associated with
29 site rehabilitation.

30 (f) Other provisions that the person responsible for
31 brownfield site rehabilitation and the department agree upon,

1 that are consistent with ss. 376.77-376.84 and that will
2 improve or enhance the brownfield site rehabilitation process.

3 (g) An agreement to develop within 2 years an
4 appropriate pollution prevention plan as determined by the
5 person responsible for brownfield site rehabilitation. Such
6 plans may include improved inventory or production controls
7 and procedures for preventing a loss, spills, and leaks of
8 hazardous waste and materials, and include goals for the
9 reduction of releases of toxic materials, and shall be
10 available to the public.

11 (h) A site plan that at a minimum specifies the size
12 of the brownfield, the types of uses proposed, a development
13 completion date, and a list of capital improvements.

14 (i) An agreement between the person responsible for
15 site rehabilitation and the local government with jurisdiction
16 over the brownfield. Such agreement shall contain terms for
17 the redevelopment of the brownfield.

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

28 (8) Any contractor performing site rehabilitation
29 program tasks must demonstrate to the department that the
30 contractor:

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1 (a) Meets all certification and license requirements
2 imposed by law.

3 (b) Has obtained approval for the comprehensive
4 quality-assurance plan prepared under department rules.

5 (9) The contractor must certify to the department that
6 the contractor:

7 (a) Complies with applicable OSHA regulations.

8 (b) Maintains workers' compensation insurance for all
9 employees as required by the Florida Workers' Compensation
10 Law.

11 (c) Maintains comprehensive general liability and
12 comprehensive automobile liability insurance with minimum
13 limits of at least \$1 million per occurrence and \$1 million
14 annual aggregate, sufficient to protect it from claims for
15 damage for personal injury, including accidental death, as
16 well as claims for property damage which may arise from
17 performance of work under this program, designating the state
18 as an additional insured party.

19 (d) Maintains professional liability insurance of at
20 least \$1 million per occurrence and \$1 million annual
21 aggregate.

22 (e) Has the capacity to perform or directly supervise
23 the majority of the work at a site in accordance with s.
24 489.113(9).

25 (10) Any professional engineer or geologist providing
26 professional services relating to site rehabilitation program
27 tasks must carry professional liability insurance with a
28 coverage limit of at least \$1 million.

29 (11) During the cleanup process, the person
30 responsible for brownfield site rehabilitation may proceed
31 from one phase or task of cleanup to the next prior to

1 obtaining approval of the technical document for the next
2 phase or task of cleanup. However, the person responsible for
3 brownfield site rehabilitation will be required to complete
4 any additional tasks identified by the department or local
5 pollution control program found during the reviews provided
6 for by subsection (6). Exceptions to this subsection include
7 requests for "no further action," "monitoring only proposals,"
8 and feasibility studies, which must be approved prior to
9 implementation.

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

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

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

1 redevelopment of a brownfield. The department shall include
2 the following requirements when determining whether a
3 delegation of all or a part of the brownfields program to a
4 local pollution control program is appropriate under this
5 subsection. The local pollution control program must:

6 (a) Have and maintain the administrative organization,
7 staff, and financial and other resources to effectively and
8 efficiently implement and enforce the statutory requirements
9 of the delegated brownfields program; and

10 (b) Apply chapter 120, as appropriate, to activities
11 and actions taken pursuant to the brownfields program.

12
13 The local pollution control program shall not be delegated
14 authority to take action on or make decisions regarding any
15 brownfield where a potential conflict of interest exists. Any
16 delegation agreement entered into pursuant to this subsection
17 shall contain such terms and conditions as necessary to ensure
18 the effective and efficient administration and enforcement of
19 the statutory requirements of the brownfields program as
20 established by the act and the rules and other criteria of the
21 department relative to the brownfields program.

22 Section 5. Section 376.81, Florida Statutes, is
23 created to read:

24 376.81 Brownfield redevelopment economic
25 incentives.--It is the intent of the Legislature that
26 brownfield redevelopment activities be viewed as opportunities
27 to significantly improve the utilization, general condition,
28 and appearance of these sites. Different standards than those
29 in place for new development, as allowed under current state
30 and local laws, should be used to the fullest extent to
31 encourage the redevelopment of a brownfield. State and local

1 governments are encouraged to offer redevelopment incentives
2 for this purpose, as an ongoing public investment in
3 infrastructure and services, to help eliminate the public
4 health and environmental hazards, and to promote the creation
5 of jobs in these areas. Such incentives may include
6 financial, regulatory, and technical assistance to persons and
7 businesses involved in the redevelopment of the brownfield
8 pursuant to this act.

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

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

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

15 (c) Safe neighborhood improvement districts as
16 provided in ss. 163.501-163.523.

17 (d) Waiver, reduction, or limitation by line of
18 business with respect to occupational license taxes pursuant
19 to chapter 205.

20 (e) Tax exemption for historic properties as provided
21 in s. 196.1997.

22 (f) Residential electricity exemption of up to the
23 first 500 kilowatts of use may be exempted from the municipal
24 public service tax pursuant to s. 166.231.

25 (g) Minority business enterprise programs as provided
26 in s. 287.0943.

27 (h) Electric and gas tax exemption as provided in s.
28 166.231(6).

29 (i) Economic development tax abatement as provided in
30 s. 196.1995.

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- 1 (j) Grants, including community development block
2 grants.
- 3 (k) Pledging of revenues to secure bonds.
- 4 (l) Low-interest revolving loans and zero-interest
5 loan pools.
- 6 (m) Local grant programs for facade, storefront,
7 signage, and other business improvements.
- 8 (n) Governmental coordination of loan programs with
9 lenders, such as microloans, business reserve fund loans,
10 letter of credit enhancements, gap financing, land lease and
11 sublease loans, and private equity.
- 12 (o) Payment schedules over time for payment of fees,
13 within criteria, and marginal cost pricing.
- 14 (2) Regulatory incentives may include, but not be
15 limited to:
- 16 (a) Cities' absorption of developers' concurrency
17 needs.
- 18 (b) Developers' performance of certain analyses.
- 19 (c) Exemptions and lessening of state and local review
20 requirements.
- 21 (d) Water and sewer regulatory incentives.
- 22 (e) Waiver of transportation impact fees and permit
23 fees.
- 24 (f) Zoning incentives to reduce review requirements
25 for redevelopment changes in use and occupancy; establishment
26 of code criteria for specific uses; and institution of credits
27 for previous use within the area.
- 28 (g) Flexibility in parking standards and buffer zone
29 standards.
- 30 (h) Environmental management through specific code
31 criteria and conditions allowed by current law.

1 (i) Maintenance standards and activities by ordinance
2 and otherwise, and increased security and crime prevention
3 measures available through special assessments.

4 (j) Traffic-calming measures.

5 (k) Historic preservation ordinances, loan programs,
6 and review and permitting procedures.

7 (l) One-stop permitting and streamlined development
8 and permitting process.

9 (3) Technical assistance incentives may include, but
10 not be limited to:

11 (a) Expedited development applications.

12 (b) Formal and informal information on business
13 incentives and financial programs.

14 (c) Site design assistance.

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

16 Section 6. Paragraphs (a), (b), and (d) of subsection
17 (3) of section 288.095, Florida Statutes, 1996 Supplement, are
18 amended to read:

19 288.095 Economic Development Trust Fund.--

20 (3)(a) Contingent upon an annual appropriation by the
21 Legislature, the Office of Tourism, Trade, and Economic
22 Development may approve not more than the lesser of \$10
23 million in tax refunds pursuant to ss. 288.104, ~~and~~ 288.106,
24 and 376.815 or the amount appropriated to the Economic
25 Development Incentives Account for such tax refunds, for a
26 fiscal year pursuant to paragraph (b).

27 (b) The total amount of tax refunds approved by the
28 Office of Tourism, Trade, and Economic Development pursuant to
29 ss. 288.104, ~~and~~ 288.106, and 376.815 shall not exceed the
30 amount appropriated to the Economic Development Incentives
31 Account for such purposes for the fiscal year. In the event

1 the Legislature does not appropriate an amount sufficient to
2 satisfy projections by the department for tax refunds under
3 ss. 288.104,~~and~~ 288.106, and 376.815 in a fiscal year, the
4 Office of Tourism, Trade, and Economic Development shall, not
5 later than July 15 of such year, determine the proportion of
6 each refund claim which shall be paid by dividing the amount
7 appropriated for tax refunds for the fiscal year by the
8 projected total of refund claims for the fiscal year. The
9 amount of each claim for a tax refund shall be multiplied by
10 the resulting quotient. If, after the payment of all such
11 refund claims, funds remain in the Economic Development
12 Incentives Account for tax refunds, the secretary shall
13 recalculate the proportion for each refund claim and adjust
14 the amount of each claim accordingly.

15 (d) Moneys in the Economic Development Incentives
16 Account may be used only to pay tax refunds and other payments
17 authorized under s. 288.104,~~or~~ s. 288.106, or s. 376.815.

18 Section 7. Section 376.815, Florida Statutes, is
19 created to read:

20 376.815 Brownfield redevelopment bonus refunds.--

21 (1) DEFINITIONS.--As used in this section:

22 (a) "Account" means the Economic Development
23 Incentives Account as authorized in s. 288.095.

24 (b) "Brownfield" or "brownfield site" means a parcel
25 or a contiguous area of one or more parcels, which have been
26 designated by local government by resolution, that are
27 generally abandoned, idled, or underused industrial and
28 commercial properties where expansion or redevelopment is
29 complicated by actual or perceived environmental
30 contamination. Such areas may include, but are not limited
31 to, portions of community redevelopment areas, enterprise

1 zones, empowerment zones, other such designated economically
2 deprived communities and areas, and United States
3 Environmental Protection Agency designated brownfield pilot
4 projects.

5 (c) "Director" means the director of the Office of
6 Tourism, Trade, and Economic Development.

7 (d) "Eligible business" means a qualified target
8 industry business as defined in s. 288.106(2)(o).

9 (e) "Jobs" means full-time equivalent positions,
10 consistent with the use of such terms by the Department of
11 Labor and Employment Security for the purpose of unemployment
12 compensation tax, resulting directly from a project in this
13 state. This number does not include temporary construction
14 jobs involved with the construction of facilities for the
15 project and which are not associated with the implementation
16 of the corrective action plan as provided in s. 376.80.

17 (f) "Office" means the Office of Tourism, Trade, and
18 Economic Development.

19 (g) "Project" means the creation of a new business or
20 the expansion of an existing business as defined in s.
21 288.106.

22 (2) BROWNFIELD REDEVELOPMENT BONUS REFUND.--There
23 shall be allowed from the account a bonus refund of \$2,500 to
24 any qualified target industry business for each new Florida
25 job created in a brownfield which is claimed on the qualified
26 target industry business's annual refund claim authorized in
27 s. 288.106(6) and approved by the office as specified in the
28 final order issued by the director.

29 (3) CRITERIA.--The minimum criteria for participation
30 in the brownfield redevelopment bonus refund are:
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1 (a) The creation of at least 10 new full-time
2 permanent jobs. Such jobs shall not include construction or
3 site rehabilitation jobs associated with the implementation of
4 a brownfield site agreement as described in 376.80(6).

5 (b) That the designation as a brownfield will
6 diversify and strengthen the economy of the area surrounding
7 the site.

8 (c) That the designation as a brownfield will promote
9 capital investment in the area beyond that contemplated for
10 the rehabilitation of the site.

11 (4) PAYMENT OF BROWNFIELD REDEVELOPMENT BONUS
12 REFUNDS.--

13 (a) To be eligible to receive a bonus refund for new
14 Florida jobs created in a brownfield, a business must have
15 been certified as a qualified target industry business under
16 s. 288.106 and must have indicated on the qualified target
17 industry tax refund application form submitted in accordance
18 with s. 288.106(4) that the project for which the application
19 is submitted is or will be located in a brownfield and that
20 the business is applying for certification as a qualified
21 brownfield business under this section, and must have signed a
22 qualified target industry tax refund agreement with the office
23 which indicates that the business has been certified as a
24 qualified target industry business located in a brownfield and
25 specifies the schedule of brownfield redevelopment bonus
26 refunds that the business may be eligible to receive in each
27 fiscal year.

28 (b) To be considered to receive an eligible brownfield
29 redevelopment bonus refund payment, the business meeting the
30 requirements of paragraph (a) must submit a claim once each
31 fiscal year on a claim form approved by the office which

1 indicates the location of the brownfield, the address of the
2 business facility's brownfield location, the name of the
3 brownfield in which it is located, the number of jobs created,
4 and the average wage of the jobs created by the business
5 within the brownfield as defined in s. 288.106 and the
6 administrative rules and policies for that section.

7 (c) The bonus refunds shall be available on the same
8 schedule as the qualified target industry tax refund payments
9 scheduled in the qualified target industry tax refund
10 agreement authorized in s. 288.106.

11 (d) After entering into a tax refund agreement as
12 provided in s. 288.106, an eligible business may receive
13 brownfield redevelopment bonus refunds from the account
14 pursuant to s. 288.106(3)(c).

15 (e) An eligible business that fraudulently claims a
16 refund under this section:

17 1. Is liable for repayment of the amount of the refund
18 to the account, plus a mandatory penalty in the amount of 200
19 percent of the tax refund, which shall be deposited into the
20 General Revenue Fund.

21 2. Commits a felony of the third degree, punishable as
22 provided in s. 775.082, s. 775.083, or s. 775.084.

23 (f) The office shall review all applications submitted
24 under s. 288.106 which indicate that the proposed project will
25 be located in a brownfield and determine, with the assistance
26 of the Department of Environmental Protection, that the
27 project location is within a brownfield as provided in this
28 act.

29 (g) The office shall approve all claims for a
30 brownfield redevelopment bonus refund payment that are found
31 to meet the requirements of paragraphs (b) and (d).

1 (h) The director, with such assistance as may be
2 required from the office and the Department of Environmental
3 Protection, shall specify by written final order the amount of
4 the brownfield redevelopment bonus refund that is authorized
5 for the qualified target industry business for the fiscal year
6 within 30 days after the date that the claim for the annual
7 tax refund is received by the office.

8 (i) The total amount of the bonus refunds approved by
9 the director under this section in any fiscal year must not
10 exceed the total amount appropriated to the Economic
11 Development Incentives Account for this purpose for the fiscal
12 year. In the event that the Legislature does not appropriate
13 an amount sufficient to satisfy projections by the office for
14 brownfield redevelopment bonus refunds under this section in a
15 fiscal year, the office shall, not later than July 15 of such
16 year, determine the proportion of each brownfield
17 redevelopment bonus refund claim which shall be paid by
18 dividing the amount appropriated for tax refunds for the
19 fiscal year by the projected total of brownfield redevelopment
20 bonus refund claims for the fiscal year. The amount of each
21 claim for a brownfield redevelopment bonus tax refund shall be
22 multiplied by the resulting quotient. If, after the payment
23 of all such refund claims, funds remain in the Economic
24 Development Incentives Account for brownfield redevelopment
25 tax refunds, the office shall recalculate the proportion for
26 each refund claim and adjust the amount of each claim
27 accordingly.

28 (j) Upon approval of the brownfield redevelopment
29 bonus refund, the Comptroller shall issue a warrant for the
30 amount specified in the final order. If the final order is
31 appealed, the Comptroller shall not issue a warrant for a

1 refund to the qualified target industry business until the
2 conclusion of all appeals of that order.

3 (5) ADMINISTRATION.--

4 (a) The office is authorized to verify information
5 provided in any claim submitted for tax credits under this
6 section with regard to employment and wage levels or the
7 payment of the taxes to the appropriate agency or authority,
8 including the Department of Revenue, the Department of Labor
9 and Employment Security, or any local government or authority.

10 (b) To facilitate the process of monitoring and
11 auditing applications made under this program, the office may
12 provide a list of qualified target industry businesses to the
13 Department of Revenue, to the Department of Labor and
14 Employment Security, to the Department of Environmental
15 Protection, or to any local government authority. The office
16 may request the assistance of those entities with respect to
17 monitoring the payment of the taxes listed in 288.106(3).

18 Section 8. Section 376.82, Florida Statutes, is
19 created to read:

20 376.82 Brownfield contamination cleanup criteria.--

21 (1) It is the intent of the Legislature to protect the
22 health of all people under actual circumstances of exposure.
23 By July 1, 1998, the secretary of the department shall
24 establish criteria by rule for the purpose of determining, on
25 a site-specific basis, the rehabilitation program tasks that
26 comprise a site rehabilitation program and the level at which
27 a rehabilitation program task and a site rehabilitation
28 program may be deemed completed. In establishing the rule,
29 the department shall incorporate, to the maximum extent
30 feasible, risk-based corrective-action principles to achieve
31 protection of human health and safety and the environment in a

1 cost-effective manner as provided in this subsection. The
2 rule shall also include protocols for the use of natural
3 attenuation and the issuance of "no further action" letters.
4 The criteria for determining what constitutes a rehabilitation
5 program task or completion of a site rehabilitation program
6 task or site rehabilitation program must:

7 (a) Consider the current exposure and potential risk
8 of exposure to humans and the environment, including multiple
9 pathways of exposure. The physical, chemical, and biological
10 characteristics of each contaminant must be considered in
11 order to determine the feasibility of risk-based
12 corrective-action assessment.

13 (b) Establish the point of compliance at the source of
14 the contamination. However, the department is authorized to
15 temporarily move the point of compliance to the boundary of
16 the property, or to the edge of the plume when the plume is
17 within the property boundary, while cleanup, including cleanup
18 through natural attenuation processes in conjunction with
19 appropriate monitoring, is proceeding. The department also is
20 authorized, pursuant to criteria provided for in this section,
21 to temporarily extend the point of compliance beyond the
22 property boundary with appropriate monitoring, if such
23 extension is needed to facilitate natural attenuation or to
24 address the current conditions of the plume, provided human
25 health, public safety, and the environment are adequately
26 protected. Temporary extension of the point of compliance
27 beyond the property boundary, as provided in this paragraph,
28 must include actual notice to local governments and owners of
29 any property into which the point of compliance is allowed to
30 extend.

31

1 (c) Ensure that the site-specific cleanup goal is that
2 all contaminated brownfields ultimately achieve the applicable
3 cleanup target levels provided in this section. However, the
4 department is authorized to allow concentrations of
5 contaminants to temporarily exceed the applicable cleanup
6 target levels while cleanup, including cleanup through natural
7 attenuation processes in conjunction with appropriate
8 monitoring, is proceeding, provided human health, public
9 safety, and the environment are adequately protected.

10 (d) Allow brownfield rehabilitation programs to
11 include the use of institutional or engineering controls where
12 appropriate to eliminate or control the potential exposure to
13 contaminants to humans or the environment. Use of such
14 controls must be preapproved by the department. When
15 institutional or engineering controls are implemented to
16 control exposure, the removal of such controls must have prior
17 department approval and must be accompanied by the resumption
18 of active cleanup, or other approved controls, unless cleanup
19 target levels pursuant to this section have been achieved.

20 (e) Consider the synergistic, antagonistic, and
21 additive effects of contaminants when the scientific data
22 become available.

23 (f) Take into consideration individual site
24 characteristics, which shall include, but not be limited to,
25 the current and projected use of the affected groundwater and
26 surface water in the vicinity of the site, current and
27 projected land uses of the area affected by the contamination,
28 the exposed population, the degree and extent of
29 contamination, the rate of contaminant migration, the apparent
30 or potential rate of contaminant degradation through natural
31 attenuation processes, the location of the plume, and the

1 potential for further migration in relation to site property
2 boundaries.

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

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

15 2. Where surface waters are exposed to contaminated
16 groundwater, the cleanup target levels for the contaminants
17 shall be based on the surface water standards as established
18 by department rule. The point of measuring compliance with
19 the surface water standards shall be in the groundwater
20 immediately adjacent to the surface water body.

21 3. The department may set alternative cleanup target
22 levels based upon an applicant's demonstration, using
23 site-specific modeling and risk assessment studies, that human
24 health, public safety, and the environment are adequately
25 protected to the same degree as provided in subparagraphs 1.
26 and 2. Where a state water quality standard is applicable, a
27 deviation may not result in the application of cleanup target
28 levels more stringent than the standard. In determining
29 whether it is appropriate to establish alternative cleanup
30 target levels at a site, the department must consider the
31 effectiveness of source removal that has been completed at the

1 site and the practical likelihood of the use of low-yield or
2 poor quality groundwater, the use of groundwater near marine
3 surface water bodies, the current and projected use of the
4 affected groundwater in the vicinity of the site, or the use
5 of groundwater in the immediate vicinity of the contaminated
6 area, where it has been demonstrated that the groundwater
7 contamination is not migrating away from such localized
8 source, provided human health, public safety, and the
9 environment are adequately protected.

10 (h) Provide for the department to issue a "no further
11 action order" when alternative cleanup target levels
12 established pursuant to subparagraph (g)3. have been achieved
13 or issue a "no further action order" based upon the degree to
14 which the desired cleanup target level is achievable and can
15 be reasonably and cost-effectively implemented within
16 available technologies or engineering and institutional
17 control strategies.

18 (i) Establish appropriate cleanup target levels for
19 soils.

20 1. In establishing soil cleanup target levels for
21 human exposure to each contaminant found in soils from the
22 land surface to 2 feet below land surface, the department
23 shall consider the following, as appropriate: calculations
24 using a lifetime cancer risk level of 1.0E-6; a hazard index
25 of 1 or less; the best achievable detection limit; or the
26 naturally occurring background concentration. Institutional
27 controls or other methods shall be used to prevent human
28 exposure to contaminated soils more than 2 feet below the land
29 surface. Any removal of such institutional controls shall
30 require such contaminated soils to be remediated.

31

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

13 3. The department may set alternative cleanup target
14 levels based upon an applicant's demonstration, using
15 site-specific modeling and risk assessment studies, that human
16 health, public safety, and the environment are adequately
17 protected.

18 (2) The department shall require source removal, if
19 warranted and cost-effective. Once source removal at a site
20 is complete, the department shall reevaluate the site to
21 determine the degree of active cleanup needed to continue.
22 Further, the department shall determine if the reevaluated
23 site qualifies for monitoring only or if no further action is
24 required to rehabilitate the site. If additional site
25 rehabilitation is necessary to reach no-further-action status,
26 the department is encouraged to utilize natural attenuation
27 and monitoring where site conditions warrant.

28 Section 9. Section 376.83, Florida Statutes, is
29 created to read:

30 376.83 Eligibility criteria and liability
31 protection.--

1 (1) ELIGIBILITY.--Any person who has not caused or
2 contributed to the contamination of a brownfield after July 1,
3 1997, is eligible to participate in the brownfield
4 rehabilitation program established in ss. 376.77-376.84,
5 subject to the following:

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

30 (b) Persons who have not caused or contributed to the
31 contamination of a proposed brownfield after July 1, 1997, and

1 who, prior to the department's approval of a brownfield site
2 rehabilitation agreement, are subject to ongoing corrective
3 action or enforcement under state authority established in
4 this chapter or chapter 403, including those persons subject
5 to a pending consent order with the state, are eligible for
6 participation in a brownfield corrective action if:

7 1. The proposed brownfield is currently idle or
8 underutilized as a result of the contamination, and
9 participation in the brownfield program will immediately,
10 after cleanup or sooner, result in increased economic
11 productivity at the brownfield, including the creation of new
12 jobs, whether permanent or part time, which are not associated
13 with implementation of the brownfield site rehabilitation
14 agreement; and

15 2. The person is complying in good faith with the
16 terms of an existing consent order or department-approved
17 corrective-action plan, or responding in good faith to an
18 enforcement action, as evidenced by a determination issued by
19 the department or an approved local pollution control program.

20 (c) Proposed brownfields owned by the state or a local
21 government which contain contamination for which a
22 governmental entity is potentially responsible and which are
23 already designated as federal brownfield pilot projects or
24 have filed an application for designation to the United States
25 Environmental Protection Agency are eligible for participation
26 in a brownfield program.

27 (d) Petroleum sites and drycleaning sites eligible for
28 state sponsored cleanups as provided by this chapter are not
29 eligible for participation in the program under ss.
30 376.77-376.84 unless the site owner waives his or her
31 eligibility for the state-sponsored cleanup. Proof of waiver

1 must be evidenced by a letter from the site owner to the
2 department requesting that the petroleum site or drycleaning
3 site be removed from the department's list of eligible sites.

4 (2) LIABILITY PROTECTION.--

5 (a) Any person, including his or her successors and
6 assigns, who executes and implements to successful completion
7 a brownfield site rehabilitation agreement, shall be relieved
8 of further liability for remediation of the contaminated site
9 or sites to the state and to third parties and of liability in
10 contribution to any other party who has or may incur cleanup
11 liability for the contaminated site or sites.

12 (b) This section shall not be construed as a
13 limitation on the right of a third party other than the state
14 to pursue an action for damages to property or person;
15 however, such an action may not compel site rehabilitation in
16 excess of that required in the approved brownfield site
17 rehabilitation agreement or otherwise required by the
18 department or approved local pollution control program.

19 (c) This section shall not affect the ability or
20 authority to seek contribution from any person who may have
21 liability with respect to the contaminated site and who did
22 not receive cleanup liability protection under this act.

23 (d) The liability protection provided under this
24 section shall become effective upon execution of a brownfield
25 site rehabilitation agreement and shall remain effective,
26 provided the person responsible for brownfield site
27 rehabilitation complies with the terms of the site
28 rehabilitation agreement. Any statute of limitations that
29 would bar the department from pursuing relief in accordance
30 with its existing authority is tolled from the time the
31

1 agreement is executed until site rehabilitation is completed
2 or immunity is revoked pursuant to s. 376.80(12).

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

17 (f) Compliance with the agreement referenced in s.
18 376.80(6)(i) must be evidenced by a finding by the local
19 government with jurisdiction over the brownfield that the
20 terms of the agreement have been met.

21 (g) The Legislature recognizes its limitations in
22 addressing cleanup liability under federal pollution control
23 programs. In an effort to secure federal liability protection
24 for persons willing to undertake remediation responsibility at
25 a brownfield, the department shall attempt to negotiate a
26 memorandum of agreement or similar document with the United
27 States Environmental Protection Agency, whereby the United
28 States Environmental Protection Agency agrees to forgo
29 enforcement of federal corrective-action authority at
30 brownfields that have received a site rehabilitation
31 completion or "no further action" determination from the

1 department or the approved local pollution control program or
2 that are in the process of implementing a brownfield site
3 rehabilitation agreement in accordance with this act.

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

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

24 (j) Notwithstanding any provision of this chapter,
25 chapter 403, other laws, or ordinances of local governments, a
26 nonprofit, charitable, federal tax exempt, 501(c)(3) national
27 land conservation corporation which purchases title to
28 property in the state for the purpose of conveying such land
29 to any governmental entity for conservation, historical
30 preservation or cultural resource, park, greenway, or other
31 similar uses shall not be liable to the state, local

1 government, or any third party for penalties or remediation
2 costs in connection with environmental contamination found in
3 the soil or groundwater of such property, provided that such
4 corporation did not cause the original deposit or release of
5 the environmental contaminants, and provided the department
6 and local pollution control program and responsible parties
7 have access to the land for investigation, remediation, or
8 monitoring purposes.

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

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

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

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

23 (d) That the level of risk is increased beyond the
24 acceptable risk established in this act due to substantial
25 changes in exposure conditions, such as in a change in land
26 use from nonresidential use to residential use. Any person
27 who changes the land use of the brownfield, thus causing the
28 level of risk to increase beyond the acceptable risk level,
29 may be required by the department or approved local pollution
30 control program to undertake additional remediation measures
31

1 to assure that human health, public safety, and the
2 environment are protected to levels consistent with this act.

3 (e) That a new release occurs at the brownfield
4 subsequent to a determination of eligibility for participation
5 in the brownfield program established in this act.

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

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

17 (b) Lenders who hold indicia of ownership of a parcel
18 within a brownfield solely to protect a security interest or
19 who own a parcel within a brownfield as a result of
20 foreclosure or a deed in lieu of foreclosure of a security
21 interest and who seek to sell, transfer, or otherwise divest
22 the parcel via sale at the earliest practicable time are not
23 liable for the release or discharge of a contaminant from the
24 parcel; for the failure of the person responsible for
25 brownfield site rehabilitation to comply with the brownfield
26 site rehabilitation agreement; or for future site
27 rehabilitation activities required pursuant to a reopener
28 provision established in subsection (3) where the lender has
29 not divested the borrower of, or otherwise engaged in,
30 decisionmaking control of the site rehabilitation or site
31 operations or undertaken management activities beyond those

1 required to protect its financial interest while making a good
2 faith effort to sell the site as soon as practicable and when
3 an act or omission of the lender has not otherwise caused or
4 contributed to a release of a contaminant at the brownfield.

5 (c) Lenders who obtain ownership of brownfields by
6 methods described in this subsection shall not be eligible for
7 economic incentives that were granted to a person responsible
8 for site rehabilitation by state or local governments.

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

11 376.84 Violations; penalties--

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

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

27 Section 11. The Department of Environmental Protection
28 shall prepare an annual report to the Speaker of the House of
29 Representatives and the President of the Senate, beginning in
30 December 1998, which shall include, but not be limited to:

31

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

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

5 (3) The number and size of brownfields that have been
6 designated.

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

9 (5) The number of brownfields 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 12. (1) The Legislature recognizes that the
24 United States Environmental Protection Agency has created
25 several pilot projects for redevelopment of brownfields to
26 gather information on the best ways to return old industrial
27 and commercial sites to productive use in situations where
28 redevelopment is complicated by potential environmental
29 contamination. These pilot project areas will perform initial
30 work to seek developers to restore the sites, and will also
31 incorporate the efforts of lenders, regulators, and other

1 groups. The United States Environmental Protection Agency is
2 flexible, allowing local governments to use a variety of
3 approaches to rehabilitate abandoned or underutilized sites,
4 neighborhoods, and small regional areas.

5 (2) The Legislature has determined that it would be
6 beneficial to provide similar incentives in this state for the
7 rehabilitation and redevelopment of brownfields. Accordingly,
8 the department shall, contingent upon funds being available in
9 the General Appropriations Act for fiscal year 1997-1998,
10 award grants in the amount of \$1 million to each United States
11 Environmental Protection national or regional brownfield pilot
12 project. These grants shall be awarded to existing pilot
13 projects and to any additional pilot projects that receive
14 designation prior to December 31, 1997.

15 Section 13. The introductory paragraph and paragraph
16 (k) of subsection (12) and paragraph (g) of subsection (13) of
17 section 376.3071, Florida Statutes, 1996 Supplement, are
18 amended to read:

19 376.3071 Inland Protection Trust Fund; creation;
20 purposes; funding.--

21 (12) REIMBURSEMENT FOR CLEANUP EXPENSES.--Except as
22 provided in s. 2(3), chapter 95-2, Laws of Florida, this
23 subsection shall not apply to any site rehabilitation program
24 task initiated after March 29, 1995. Effective August 1, 1996,
25 no further site rehabilitation work on sites eligible for
26 state-funded cleanup from the Inland Protection Trust Fund
27 shall be eligible for reimbursement pursuant to this
28 subsection. The person responsible for conducting site
29 rehabilitation may seek reimbursement for site rehabilitation
30 program task work conducted after March 28, 1995, in
31 accordance with s. 2(2) and (3), chapter 95-2, Laws of

1 Florida, regardless of whether the site rehabilitation program
2 task is completed. A site rehabilitation program task shall
3 be considered to be initiated when actual onsite work or
4 engineering design, pursuant to chapter 62-770, Florida
5 Administrative Code, which is integral to performing a site
6 rehabilitation program task has begun and shall not include
7 contract negotiation and execution, site research, or project
8 planning. All reimbursement applications pursuant to this
9 subsection must be submitted to the department by January 3,
10 1997 ~~December 31, 1996~~. The department shall not accept any
11 applications for reimbursement or pay any claims on
12 applications for reimbursement received after that date;
13 however, if an application was returned by the department on
14 the grounds of untimely filing, it shall be refiled within 30
15 days after the effective date of this act in order to be
16 processed.

17 (k) Audits.--

18 1. The department is authorized to perform financial
19 and technical audits in order to certify site restoration
20 costs and ensure compliance with this chapter. The department
21 shall seek recovery of any overpayments based on the findings
22 of these audits. The department must commence any audit within
23 5 years after the date of reimbursement, except in cases where
24 the department alleges specific facts indicating fraud.

25 2. Upon determination by the department that any
26 portion of costs which have been reimbursed are disallowed,
27 the department shall give written notice to the applicant
28 setting forth with specificity the allegations of fact which
29 justify the department's proposed action and ordering
30 repayment of disallowed costs within 60 days of notification
31 of the applicant.

1 3. In the event the applicant does not make payment to
2 the department within 60 days of receipt of such notice, the
3 department shall seek recovery in a court of competent
4 jurisdiction to recover reimbursement overpayments made to the
5 person responsible for conducting site rehabilitation, unless
6 the department finds the amount involved too small or the
7 likelihood of recovery too uncertain.

8 4. In addition to the amount of any overpayment, the
9 applicant shall be liable to the department for interest of 1
10 percent per month or the prime rate, whichever is less, on the
11 amount of overpayment, from the date of overpayment by the
12 department until the applicant satisfies the department's
13 request for repayment pursuant to this paragraph. The
14 calculation of interest shall be tolled during the pendency of
15 any litigation.

16 5. Financial and technical audits frequently are
17 conducted under this section many years after the site
18 rehabilitation activities were performed and the costs
19 examined in the course of the audit were incurred by the
20 person responsible for site rehabilitation. During the
21 intervening span of years, the department's rule requirements
22 and its related guidance and other nonrule policy directives
23 may have changed significantly. The Legislature finds that it
24 may be appropriate for the department to provide relief to
25 persons subject to such requirements in financial and
26 technical audits conducted pursuant to this section.

27 a. The department is authorized to grant variances and
28 waivers from the documentation requirements of subparagraph
29 (e)2. and from the requirements of rules applicable in
30 technical and financial audits conducted under this section.
31 Variances and waivers shall be granted when the person

1 responsible for site rehabilitation demonstrates to the
2 department that application of a financial or technical
3 auditing requirement would create a substantial hardship or
4 would violate principles of fairness. For purposes of this
5 subsection, "substantial hardship" means a demonstrated
6 economic, technological, legal, or other type of hardship to
7 the person requesting the variance or waiver. For purposes of
8 this subsection, "principles of fairness" are violated when
9 the application of a requirement affects a particular person
10 in a manner significantly different from the way it affects
11 other similarly situated persons who are affected by the
12 requirement or when the requirement is being applied
13 retroactively without due notice to the affected parties.

14 b. A person whose reimbursed costs are subject to a
15 financial and technical audit under this section may file a
16 written request to the department for grant of a variance or
17 waiver. The request shall specify:

18 (I) The requirement from which a variance or waiver is
19 requested.

20 (II) The type of action requested.

21 (III) The specific facts which would justify a waiver
22 or variance.

23 (IV) The reason or reasons why the requested variance
24 or waiver would serve the purposes of this section.

25 c. Within 90 days after receipt of a written request
26 for variance or waiver under this subsection, the department
27 shall grant or deny the request. If the request is not granted
28 or denied within 90 days of receipt, the request shall be
29 deemed approved. An order granting or denying the request
30 shall be in writing and shall contain a statement of the
31 relevant facts and reasons supporting the department's action.

1 The department's decision to grant or deny the petition shall
2 be supported by competent substantial evidence and is subject
3 to ss. 120.569 and 120.57. Once adopted, model rules
4 promulgated by the Administration Commission under s. 120.542
5 shall govern the processing of requests under this provision;
6 however, the department may process requests prior to the
7 adoption of those model rules.

8 6. The Comptroller may audit the records of persons
9 who receive or who have received payments pursuant to this
10 chapter in order to verify site restoration costs, ensure
11 compliance with this chapter, and verify the accuracy and
12 completeness of audits performed by the department pursuant to
13 this paragraph. The Comptroller may contract with entities or
14 persons to perform audits pursuant to this subparagraph. The
15 Comptroller shall commence any audit within 1 year after the
16 department's completion of an audit conducted pursuant to this
17 paragraph, except in cases where the department or the
18 Comptroller alleges specific facts indicating fraud.

19 (13) PETROLEUM CLEANUP PARTICIPATION PROGRAM.--To
20 encourage detection, reporting, and cleanup of contamination
21 caused by discharges of petroleum or petroleum products, the
22 department shall, within the guidelines established in this
23 subsection, implement a cost-sharing cleanup program to
24 provide rehabilitation funding assistance for all property
25 contaminated by discharges of petroleum or petroleum products
26 occurring before January 1, 1995, subject to a copayment
27 provided for in a preapproved site rehabilitation agreement.
28 Eligibility shall be subject to an annual appropriation from
29 the Inland Protection Trust Fund. Additionally, funding for
30 eligible sites shall be contingent upon annual appropriation
31 in subsequent years. Such continued state funding shall not

1 be deemed an entitlement or a vested right under this
2 subsection. Eligibility in the program shall be
3 notwithstanding any other provision of law, consent order,
4 order, judgment, or ordinance to the contrary.

5 (g) The following shall be excluded from participation
6 in the program:

7 1. Sites at which the department has been denied
8 reasonable site access to implement the provisions of this
9 section.

10 2. Sites that were active facilities when owned or
11 operated by the Federal Government.

12 3. Sites that are identified by the United States
13 Environmental Protection Agency to be on, or which qualify for
14 listing on, the National Priorities List under Superfund.
15 This exception does not apply to those sites for which
16 eligibility has been requested or granted as of the effective
17 date of this act under the Early Detection Incentive Program
18 established pursuant to s. 15, chapter 86-159, Laws of
19 Florida.

20 4. The contamination is covered under the Early
21 Detection Incentive Program, the Abandoned Tank Restoration
22 Program or the Petroleum Liability and Restoration Insurance
23 Program, in which case site rehabilitation funding assistance
24 shall continue under the respective program.

25 5. Any person who knowingly acquires title to
26 contaminated property shall not be eligible for restoration
27 funding pursuant to this subsection. The provisions of this
28 subsection do not relieve any person who has acquired title
29 subsequent to July 1, 1992, from the duty to establish by a
30 preponderance of the evidence that he or she undertook, at the
31 time of acquisition, all appropriate inquiry into the previous

1 ownership and use of the property consistent with good
2 commercial or customary practice in an effort to minimize
3 liability, as required by s. 376.308(1)(c). The provisions of
4 this subparagraph do not apply to any person who acquires
5 title by succession or devise.

6 Section 14. Subsection (8) is added to section
7 376.30711, Florida Statutes, 1996 Supplement, to read:

8 376.30711 Preapproved site rehabilitation, effective
9 March 29, 1995.--

10 (8) If site rehabilitation work pursuant to ss.
11 376.3071-376.3075 has not commenced by July 1, 1997, the
12 department shall only allow site rehabilitation on such sites
13 based on competitive bids for preapproved costs and
14 rehabilitation procedures.

15 Section 15. Subsection (3) of section 376.3072,
16 Florida Statutes, 1996 Supplement, is amended to read:

17 376.3072 Florida Petroleum Liability and Restoration
18 Insurance Program.--

19 (3) Sites that were certified as insured facilities
20 and that were denied coverage for a discharge under the
21 Petroleum Liability and Restoration Insurance Program may
22 request a reevaluation under the criteria in subsection (2).
23 Such request shall be made by December 31, 1996. If the
24 contamination is redetermined to be eligible, the deductible
25 and coverage limit in effect at the time the discharge was
26 reported shall be applicable. The redetermination shall not
27 affect the department's authority for assessing supplemental
28 deductibles or civil penalties. The department shall not
29 assess a supplemental deductible or civil penalty for alleged
30 failure to report or abate a discharge when the owner or
31 operator can establish no discharge occurred. Notwithstanding

1 any department order to the contrary, the supplemental
2 deductibles in subparagraph (2)(d)2.f. shall not be applied
3 cumulatively but, rather, the highest applicable supplemental
4 deductible shall be applied.

5 Section 16. This act shall take effect July 1, 1997.
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