

1
2 An act relating to brownfields redevelopment;
3 amending s. 376.77, F.S.; correcting a
4 cross-reference; amending s. 376.79, F.S.;
5 redefining terms and defining the term
6 "secretary"; amending s. 376.80, F.S.;
7 providing that closed military bases may be
8 designated as brownfield areas; clarifying the
9 job-creation criteria for the designation of a
10 brownfield site; clarifying certain terms;
11 amending s. 376.81, F.S.; deleting a
12 duplicative provision relating to the issuance
13 of no-further-action orders; amending s.
14 376.82, F.S.; providing clarification regarding
15 the eligibility of certain brownfield sites;
16 clarifying the provisions relating to the job
17 creation eligibility criteria; providing
18 liability protection for properties acquired by
19 local or state governments under certain
20 conditions; amending s. 376.83, F.S.;
21 correcting a cross-reference; amending s.
22 288.106, F.S.; providing that the wage
23 requirement criteria may be waived for a
24 designated brownfield area; requiring the
25 Director of the Office of Tourism, Trade, and
26 Economic Development to approve certain wage
27 requirement waiver requests; amending s.
28 288.107, F.S.; defining the terms "brownfield
29 area" and "brownfield site"; providing
30 legislative intent regarding the inefficient
31 use of public facilities and services in

1 brownfield areas; creating the Brownfield Areas
2 Loan Guarantee Program; creating the Brownfield
3 Areas Loan Guarantee Council; providing duties
4 and membership; providing that not more than \$5
5 million of the investment earnings on the
6 investment of the minimum balance of the
7 Nonmandatory Land Reclamation Trust Fund in a
8 fiscal year shall be at risk at any time on one
9 or more loan guarantees, or as loan loss
10 reserves; requiring lenders seeking loan
11 guarantees from the council to follow certain
12 specified procedures; limiting the
13 circumstances under which a lender may file a
14 claim for a loss pursuant to the guaranty;
15 providing the council with certain rulemaking
16 authority; authorizing the council to receive
17 certain funds; requiring the council to file an
18 annual report to the Legislature; providing for
19 future legislative review; amending s.
20 288.9602, F.S.; providing for the redevelopment
21 of brownfield areas to be included in the
22 declaration of findings regarding economic
23 development; amending s. 288.9605, F.S.;
24 expanding the powers and duties of the Florida
25 Development Finance Corporation to authorize
26 the corporation to make determinations
27 regarding participation in certain partnerships
28 and agreements concerning the redevelopment of
29 brownfield areas and the guaranty of revenue
30 bonds, loan guarantees, or loan loss reserves;
31 requiring the Board of Regents to establish a

1 Center for Brownfield Rehabilitation Assistance
2 in the Environmental Sciences and Policy
3 Program in the College of Arts and Sciences at
4 the University of South Florida; specifying the
5 purpose and duties of the center; amending s.
6 163.3187, F.S.; providing that local government
7 comprehensive plan amendments directly related
8 to proposed redevelopment of designated
9 brownfield areas may be approved without regard
10 to certain statutory limits on the frequency of
11 amendments to the local comprehensive plan;
12 providing legislative findings and intent
13 regarding lienholders on brownfield property;
14 providing that certain counties and
15 municipalities may apply for designation of an
16 enterprise zone encompassing a brownfield pilot
17 project under certain circumstances; amending
18 s. 376.313, F.S.; correcting references to the
19 Florida Administrative Code; repealing s. 21,
20 ch. 86-159, Laws of Florida, relating to the
21 scheduled repeal of s. 376.313(4), F.S.;

22

providing an effective date.

23

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

25

26 Section 1. Section 376.77, Florida Statutes, is
27 amended to read:28 376.77 Short title.--Sections 376.77-376.85 ~~376.83~~ may
29 be cited as the "Brownfields Redevelopment Act."30 Section 2. Section 376.79, Florida Statutes, is
31 amended to read:

1 376.79 Definitions.--As used in ss. 376.77-376.85, the
2 term:

3 (1) "Additive effects" means a scientific principle
4 that the toxicity that occurs as a result of exposure is the
5 sum of the toxicities of the individual chemicals to which the
6 individual is exposed.

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

11 (3) "Brownfield sites" means sites that are generally
12 abandoned, idled, or underused industrial and commercial
13 properties where expansion or redevelopment is complicated by
14 actual or perceived environmental contamination.

15 (4) "Brownfield area" means a contiguous area of one
16 or more brownfield sites, some of which may not be
17 contaminated, and which has been designated by a local
18 government by resolution. Such areas may include all or
19 portions of community redevelopment areas, enterprise zones,
20 empowerment zones, other such designated economically deprived
21 communities and areas, and Environmental Protection
22 Agency-designated brownfield pilot projects.

23 (5) "Contaminated site" means any contiguous land,
24 surface water, or groundwater areas that contain contaminants
25 that may be harmful to human health or the environment.

26 (6) "Department" means the Department of Environmental
27 Protection.

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

3 (8) "Environmental justice" means the fair treatment
4 of all people of all races, cultures, and incomes with respect
5 to the development, implementation, and enforcement of
6 environmental laws, regulations, and policies.

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

12 (10) "Local pollution control program" means a local
13 pollution control program that has received delegated
14 authority from the Department of Environmental Protection
15 under s. 403.182 and s. 376.80(11).

16 (11) "Natural attenuation" means the verifiable
17 reduction of contaminants through natural processes, which may
18 include diffusion, dispersion, adsorption ~~absorption~~, and
19 biodegradation.

20 (12) "Person responsible for brownfield site
21 rehabilitation" means the individual or entity that is
22 designated by the local government ~~in its resolution~~
23 ~~establishing a brownfield area~~ to enter into the brownfield
24 site rehabilitation agreement with the department or an
25 approved local pollution control program and enters into an
26 agreement with the local government for redevelopment of the
27 site.

28 (13) "Person" means any individual, partner, joint
29 venture, or corporation; any group of the foregoing, organized
30 or united for a business purpose; or any governmental entity.

31

1 (14) "Secretary" means the Secretary of the Department
2 of Environmental Protection.

3 (15)~~(14)~~ "Site rehabilitation" means the assessment of
4 site contamination and the remediation activities that reduce
5 the levels of contaminants at a site through accepted
6 treatment methods to meet the cleanup target levels
7 established for that site.

8 (16)~~(15)~~ "Source removal" means the removal of free
9 product or contaminants from soil that has been contaminated
10 to the extent that leaching to groundwater has or is
11 occurring.

12 (17)~~(16)~~ "Synergistic effects" means a scientific
13 principle that the toxicity that occurs as a result of
14 exposure is more than the sum of the toxicities of the
15 individual chemicals to which the individual is exposed.

16 Section 3. Section 376.80, Florida Statutes, is
17 amended to read:

18 376.80 Brownfield program administration process.--

19 (1) A local government with jurisdiction over the
20 brownfield area must notify the department of its decision to
21 designate a brownfield area for rehabilitation for the
22 purposes of ss. 376.77-376.85 ~~ss. 376.77-376.84~~. The
23 notification must include a resolution, by the local
24 government body, to which is attached a map adequate to
25 clearly delineate exactly which parcels are to be included in
26 the brownfield area or alternatively a less-detailed map
27 accompanied by a detailed legal description of the brownfield
28 area. If a property owner within the area proposed for
29 designation by the local government requests in writing to
30 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)(a) If a local government proposes to designate a
11 brownfield area that is outside community redevelopment areas,
12 enterprise zones, empowerment zones, closed military bases, or
13 designated brownfield pilot project areas, the local
14 government must conduct at least one public hearing in the
15 area to be designated to provide an opportunity for public
16 input on the size of the area, the objectives for
17 rehabilitation, job opportunities and economic developments
18 anticipated, neighborhood residents' considerations, and other
19 relevant local concerns. Notice of the public hearing must be
20 made in a newspaper of general circulation in the area and the
21 notice must be at least 16 square inches in size, must be in
22 ethnic newspapers or local community bulletins, must be posted
23 in the affected area, and must be announced at a scheduled
24 meeting of the local governing body before the actual public
25 hearing. In determining the areas to be designated, the local
26 government must consider:

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

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

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

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

11 1. 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 2. The rehabilitation and redevelopment of the
15 proposed brownfield site will result in economic productivity
16 of the area, along with the creation of at least 10 new
17 permanent jobs, whether full-time or part-time, which are not
18 associated with the implementation of the rehabilitation
19 agreement or an agreement, between the person responsible for
20 site rehabilitation and the local government with
21 jurisdiction, which contains terms for the redevelopment of
22 the brownfield site or brownfield area;

23 3. The redevelopment of the proposed brownfield site
24 is consistent with the local comprehensive plan and is a
25 permissible use under the applicable local land development
26 regulations;

27 4. Notice of the proposed rehabilitation of the
28 brownfield area has been provided to neighbors and nearby
29 residents of the proposed area to be designated, and the
30 person proposing the area for designation has afforded to
31 those receiving notice the opportunity for comments and

1 suggestions about rehabilitation. Notice pursuant to this
2 subsection must be made in a newspaper of general circulation
3 in the area, at least 16 square inches in size, and the notice
4 must be posted in the affected area; and

5 5. The person proposing the area for designation has
6 provided reasonable assurance that he or she has sufficient
7 financial resources to implement and complete the
8 rehabilitation agreement and redevelopment plan.

9 (c) The designation of a brownfield area and the
10 identification of a person responsible for brownfield site
11 rehabilitation simply entitles the identified person to
12 negotiate a brownfield site rehabilitation agreement with the
13 department or approved local pollution control program
14 government.

15 (3) When there is a person responsible for brownfield
16 site rehabilitation, the local government must notify the
17 department of the identity of that person.~~The local~~
18 ~~government must at the time of the adoption of the resolution~~
19 ~~notify the department of the entity that it is designating as~~
20 ~~the person responsible for brownfield site rehabilitation.~~If
21 the agency or person who will be responsible for the
22 coordination changes during the approval process specified in
23 subsections (4), (5), and (6), the department or the affected
24 approved local pollution control program must notify the
25 affected local government when the change occurs.

26 (4) Local governments or persons responsible for
27 rehabilitation and redevelopment of brownfield areas must
28 establish an advisory committee for the purpose of improving
29 public participation and receiving public comments on
30 rehabilitation and redevelopment of the brownfield area,
31 future land use, local employment opportunities, community

1 safety, and environmental justice. Such advisory committee
2 should include residents within or adjacent to the brownfield
3 area, businesses operating within the brownfield area, and
4 others deemed appropriate. The advisory committee must review
5 and provide recommendations to the board of the local
6 government with jurisdiction on the proposed site
7 rehabilitation agreement provided in subsection (5).

8 (5) The person responsible for brownfield site
9 rehabilitation must enter into a brownfield site
10 rehabilitation agreement with the department or an approved
11 local pollution control ~~environmental~~ program. The brownfield
12 site rehabilitation agreement must include:

13 (a) A brownfield site rehabilitation schedule,
14 including milestones for completion of site rehabilitation
15 tasks and submittal of technical reports and rehabilitation
16 plans as agreed upon by the parties to the agreement;

17 (b) A commitment to conduct site rehabilitation
18 activities under the observation of professional engineers or
19 geologists who are registered in accordance with the
20 requirements of chapter 471 or chapter 492, respectively.
21 Submittals provided by the person responsible for brownfield
22 site rehabilitation must be signed and sealed by a
23 professional engineer registered under chapter 471, or a
24 professional geologist registered under chapter 492,
25 certifying that the submittal and associated work comply with
26 the law and rules of the department and those governing the
27 profession. In addition, upon completion of the approved
28 remedial action, the department shall require a professional
29 engineer registered under chapter 471 or a professional
30 geologist registered under chapter 492 to certify that the
31 corrective action was, to the best of his or her knowledge,

1 completed in substantial conformance with the plans and
2 specifications approved by the department;

3 (c) A commitment to conduct site rehabilitation in
4 accordance with an approved comprehensive quality assurance
5 plan under department rules;

6 (d) A commitment to conduct site rehabilitation
7 consistent with state, federal, and local laws and consistent
8 with the brownfield site contamination cleanup criteria in s.
9 376.81, including any applicable requirements for risk-based
10 corrective action;

11 (e) Timeframes for the department's review of
12 technical reports and plans submitted in accordance with the
13 agreement. The department shall make every effort to adhere
14 to established agency goals for reasonable timeframes for
15 review of such documents;

16 (f) A commitment to secure site access for the
17 department or approved local pollution control ~~environmental~~
18 program to all brownfield sites within the eligible brownfield
19 area for activities associated with site rehabilitation;

20 (g) Other provisions that the person responsible for
21 brownfield site rehabilitation and the department agree upon,
22 that are consistent with ss. 376.77-376.85 ~~ss. 376.77-376.84~~,
23 and that will improve or enhance the brownfield site
24 rehabilitation process;

25 (h) A commitment to consider appropriate pollution
26 prevention measures and to implement those that the person
27 responsible for brownfield site rehabilitation determines are
28 reasonable and cost-effective, taking into account the
29 ultimate use or uses of the brownfield site. Such measures
30 may include improved inventory or production controls and
31 procedures for preventing loss, spills, and leaks of hazardous

1 waste and materials, and include goals for the reduction of
2 releases of toxic materials; and

3 (i) Certification that an agreement exists between the
4 person responsible for brownfield site rehabilitation and the
5 local government with jurisdiction over the brownfield area.
6 Such agreement shall contain terms for the redevelopment of
7 the brownfield area.

8 (6) Any contractor performing site rehabilitation
9 program tasks must demonstrate to the department that the
10 contractor:

11 (a) Meets all certification and license requirements
12 imposed by law; and

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

15 (7) The contractor must certify to the department that
16 the contractor:

17 (a) Complies with applicable OSHA regulations.

18 (b) Maintains workers' compensation insurance for all
19 employees as required by the Florida Workers' Compensation
20 Law.

21 (c) Maintains comprehensive general liability and
22 comprehensive automobile liability insurance with minimum
23 limits of at least \$1 million per occurrence and \$1 million
24 annual aggregate, sufficient to protect it from claims for
25 damage for personal injury, including accidental death, as
26 well as claims for property damage which may arise from
27 performance of work under the program, designating the state
28 as an additional insured party.

29 (d) Maintains professional liability insurance of at
30 least \$1 million per occurrence and \$1 million annual
31 aggregate.

1 (e) Has the capacity to perform or directly supervise
2 the majority of the work at a site in accordance with s.
3 489.113(9).

4 (8) Any professional engineer or geologist providing
5 professional services relating to site rehabilitation program
6 tasks must carry professional liability insurance with a
7 coverage limit of at least \$1 million.

8 (9) During the cleanup process, if the department or
9 local program fails to complete review of a technical document
10 within the timeframe specified in the brownfield site
11 rehabilitation agreement, the person responsible for
12 brownfield site rehabilitation may proceed to the next site
13 rehabilitation task. However, the person responsible for
14 brownfield site rehabilitation does so at its own risk and may
15 be required by the department or local program to complete
16 additional work on a previous task. Exceptions to this
17 subsection include requests for "no further action,"
18 "monitoring only proposals," and feasibility studies, which
19 must be approved prior to implementation.

20 (10) If the person responsible for brownfield site
21 rehabilitation fails to comply with the brownfield site
22 rehabilitation agreement, the department shall allow 90 days
23 for the person responsible for brownfield site rehabilitation
24 to return to compliance with the provision at issue or to
25 negotiate a modification to the brownfield site rehabilitation
26 agreement with the department for good cause shown. If an
27 imminent hazard exists, the 90-day grace period shall not
28 apply. If the project is not returned to compliance with the
29 brownfield site rehabilitation agreement and a modification
30 cannot be negotiated, the immunity provisions of s. 376.82 are
31 revoked.

1 (11) The department is specifically authorized and
2 encouraged to enter into delegation agreements with local
3 pollution control programs approved under s. 403.182 to
4 administer the brownfield program within their jurisdictions,
5 thereby maximizing the integration of this process with the
6 other local development processes needed to facilitate
7 redevelopment of a brownfield area. When determining whether
8 a delegation pursuant to this subsection of all or part of the
9 brownfields program to a local pollution control program is
10 appropriate, the department shall consider the following. The
11 local pollution control program must:

12 (a) Have and maintain the administrative organization,
13 staff, and financial and other resources to effectively and
14 efficiently implement and enforce the statutory requirements
15 of the delegated brownfields program; and

16 (b) Provide for the enforcement of the requirements of
17 the delegated brownfields program, and for notice and a right
18 to challenge governmental action, by appropriate
19 administrative and judicial process, which shall be specified
20 in the delegation.

21
22 The local pollution control program shall not be delegated
23 authority to take action on or to make decisions regarding any
24 brownfield site on land owned by the local government. Any
25 delegation agreement entered into pursuant to this subsection
26 shall contain such terms and conditions necessary to ensure
27 the effective and efficient administration and enforcement of
28 the statutory requirements of the brownfields program as
29 established by the act and the relevant rules and other
30 criteria of the department.

31

1 (12) Local governments are encouraged to use the full
2 range of economic and tax incentives available to facilitate
3 and promote the rehabilitation of brownfield areas, to help
4 eliminate the public health and environmental hazards, and to
5 promote the creation of jobs and economic development in these
6 previously run-down, blighted, and underutilized areas.

7 Section 4. Section 376.81, Florida Statutes, is
8 amended to read:

9 376.81 Brownfield site and brownfield areas
10 contamination cleanup criteria.--

11 (1) It is the intent of the Legislature to protect the
12 health of all people under actual circumstances of exposure.
13 By July 1, 1998, the secretary of the department shall
14 establish criteria by rule for the purpose of determining, on
15 a site-specific basis, the rehabilitation program tasks that
16 comprise a site rehabilitation program and the level at which
17 a rehabilitation program task and a site rehabilitation
18 program may be deemed completed. In establishing the rule,
19 the department shall incorporate, to the maximum extent
20 feasible, risk-based corrective action principles to achieve
21 protection of human health and safety and the environment in a
22 cost-effective manner as provided in this subsection. The
23 rule shall also include protocols for the use of natural
24 attenuation and the issuance of "no further action" letters.
25 The criteria for determining what constitutes a rehabilitation
26 program task or completion of a site rehabilitation program
27 task or site rehabilitation program must:

28 (a) Consider the current exposure and potential risk
29 of exposure to humans and the environment, including multiple
30 pathways of exposure. The physical, chemical, and biological
31 characteristics of each contaminant must be considered in

1 order to determine the feasibility of risk-based corrective
2 action assessment.

3 (b) Establish the point of compliance at the source of
4 the contamination. However, the department is authorized to
5 temporarily move the point of compliance to the boundary of
6 the property, or to the edge of the plume when the plume is
7 within the property boundary, while cleanup, including cleanup
8 through natural attenuation processes in conjunction with
9 appropriate monitoring, is proceeding. The department also is
10 authorized, pursuant to criteria provided for in this section,
11 to temporarily extend the point of compliance beyond the
12 property boundary with appropriate monitoring, if such
13 extension is needed to facilitate natural attenuation or to
14 address the current conditions of the plume, provided human
15 health, public safety, and the environment are protected.
16 When temporarily extending the point of compliance beyond the
17 property boundary, it cannot be extended further than the
18 lateral extent of the plume at the time of execution of the
19 brownfield site rehabilitation agreement, if known, or the
20 lateral extent of the plume as defined at the time of site
21 assessment. Temporary extension of the point of compliance
22 beyond the property boundary, as provided in this paragraph,
23 must include actual notice by the person responsible for
24 brownfield site rehabilitation to local governments and the
25 owners of any property into which the point of compliance is
26 allowed to extend and constructive notice to residents and
27 business tenants of the property into which the point of
28 compliance is allowed to extend. Persons receiving notice
29 pursuant to this paragraph shall have the opportunity to
30 comment within 30 days of receipt of the notice.

31

1 (c) Ensure that the site-specific cleanup goal is that
2 all contaminated brownfield sites and brownfield areas
3 ultimately achieve the applicable cleanup target levels
4 provided in this section. In the circumstances provided below,
5 and after constructive notice and opportunity to comment
6 within 30 days from receipt of the notice to local government,
7 to owners of any property into which the point of compliance
8 is allowed to extend, and to residents on any property into
9 which the point of compliance is allowed to extend, the
10 department may allow concentrations of contaminants to
11 temporarily exceed the applicable cleanup target levels while
12 cleanup, including cleanup through natural attenuation
13 processes in conjunction with appropriate monitoring, is
14 proceeding, if human health, public safety, and the
15 environment are protected.

16 (d) Allow brownfield site and brownfield area
17 rehabilitation programs to include the use of institutional or
18 engineering controls, where appropriate, to eliminate or
19 control the potential exposure to contaminants of humans or
20 the environment. The use of controls must be preapproved by
21 the department and only after constructive notice and
22 opportunity to comment within 30 days from receipt of notice
23 is provided to local governments, to owners of any property
24 into which the point of compliance is allowed to extend, and
25 to residents on any property into which the point of
26 compliance is allowed to extend. When institutional or
27 engineering controls are implemented to control exposure, the
28 removal of the controls must have prior department approval
29 and must be accompanied by the resumption of active cleanup,
30 or other approved controls, unless cleanup target levels under
31 this section have been achieved.

1 (e) Consider the additive effects of contaminants.
2 The synergistic and antagonistic effects shall also be
3 considered when the scientific data become available.

4 (f) Take into consideration individual site
5 characteristics, which shall include, but not be limited to,
6 the current and projected use of the affected groundwater and
7 surface water in the vicinity of the site, current and
8 projected land uses of the area affected by the contamination,
9 the exposed population, the degree and extent of
10 contamination, the rate of contaminant migration, the apparent
11 or potential rate of contaminant degradation through natural
12 attenuation processes, the location of the plume, and the
13 potential for further migration in relation to site property
14 boundaries.

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

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

27 2. Where surface waters are exposed to contaminated
28 groundwater, the cleanup target levels for the contaminants
29 shall be based on the surface water standards as established
30 by department rule. The point of measuring compliance with
31

1 the surface water standards shall be in the groundwater
2 immediately adjacent to the surface water body.

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

23 ~~(h) Provide for the department to issue a "no further~~
24 ~~action order" when alternative cleanup target levels~~
25 ~~established pursuant to subparagraph (g)3. have been achieved.~~

26 (h)(i) Provide for the department to issue a "no
27 further action order," with conditions, where appropriate,
28 when alternative cleanup target levels established pursuant to
29 subparagraph (g)3. have been achieved, or when the person
30 responsible for brownfield site rehabilitation can demonstrate
31 that the cleanup target level is unachievable within available

1 technologies. Prior to issuing such an order, the department
2 shall consider the feasibility of an alternative site
3 rehabilitation technology in the brownfield area.

4 (i)~~(j)~~ Establish appropriate cleanup target levels for
5 soils.

6 1. In establishing soil cleanup target levels for
7 human exposure to each contaminant found in soils from the
8 land surface to 2 feet below land surface, the department
9 shall consider the following, as appropriate: calculations
10 using a lifetime cancer risk level of 1.0E-6; a hazard index
11 of 1 or less; the best achievable detection limit; or the
12 naturally occurring background concentration. Institutional
13 controls or other methods shall be used to prevent human
14 exposure to contaminated soils more than 2 feet below the land
15 surface. Any removal of such institutional controls shall
16 require such contaminated soils to be remediated.

17 2. Leachability-based soil target levels shall be
18 based on protection of the groundwater cleanup target levels
19 or the alternate cleanup target levels for groundwater
20 established pursuant to this paragraph, as appropriate. Source
21 removal and other cost-effective alternatives that are
22 technologically feasible shall be considered in achieving the
23 leachability soil target levels established by the department.
24 The leachability goals shall not be applicable if the
25 department determines, based upon individual site
26 characteristics, that contaminants will not leach into the
27 groundwater at levels which pose a threat to human health,
28 public safety, and the environment.

29 3. The department may set alternative cleanup target
30 levels based upon an applicant's demonstration, using
31

1 site-specific modeling and risk assessment studies, that human
2 health, public safety, and the environment are protected.

3 (2) The department shall require source removal, if
4 warranted and cost-effective. Once source removal at a site
5 is complete, the department shall reevaluate the site to
6 determine the degree of active cleanup needed to continue.
7 Further, the department shall determine if the reevaluated
8 site qualifies for monitoring only or if no further action is
9 required to rehabilitate the site. If additional site
10 rehabilitation is necessary to reach "no further action"
11 status, the department is encouraged to utilize natural
12 attenuation and monitoring where site conditions warrant.

13 Section 5. Section 376.82, Florida Statutes, is
14 amended to read:

15 376.82 Eligibility criteria and liability
16 protection.--

17 (1) ELIGIBILITY.--Any person who has not caused or
18 contributed to the contamination of a brownfield site on or
19 after July 1, 1997, is eligible to participate in the
20 brownfield rehabilitation program established in ss.
21 376.77-376.85 ~~ss. 376.77-376.84~~, subject to the following:

22 (a) Potential brownfield sites that are subject to an
23 ongoing formal judicial or administrative enforcement action
24 or corrective action pursuant to federal authority, including,
25 but not limited to, the Comprehensive Environmental Response
26 Compensation and Liability Act, 42 U.S.C. ss. 9601, et seq.,
27 as amended; the Safe Drinking Water Act, 42 U.S.C. ss.
28 300f-300i, as amended; the Clean Water Act, 33 U.S.C. ss.
29 1251-1387, as amended; or under an order from the United
30 States Environmental Protection Agency pursuant to s. 3008(h)
31 of the Resource Conservation and Recovery Act, as amended (42

1 U.S.C.A. s. 6928(h)); or that have obtained or are required to
2 obtain a permit for the operation of a hazardous waste
3 treatment, storage, or disposal facility; a postclosure
4 permit; or a permit pursuant to the federal Hazardous and
5 Solid Waste Amendments of 1984, are not eligible for
6 participation unless specific exemptions are secured by a
7 memorandum of agreement with the United States Environmental
8 Protection Agency pursuant to paragraph (2)(e). A brownfield
9 site within an eligible brownfield area that subsequently
10 becomes subject to formal judicial or administrative
11 enforcement action or corrective action under such federal
12 authority shall have its eligibility revoked unless specific
13 exemptions are secured by a memorandum of agreement with the
14 United States Environmental Protection Agency pursuant to
15 paragraph (2)(g).

16 (b) Persons who have not caused or contributed to the
17 contamination of a brownfield site on or after July 1, 1997,
18 and who, prior to the department's approval of a brownfield
19 site rehabilitation agreement, are subject to ongoing
20 corrective action or enforcement under state authority
21 established in this chapter or chapter 403, including those
22 persons subject to a pending consent order with the state, are
23 eligible for participation in a brownfield corrective action
24 if:

25 1. The proposed brownfield site is currently idle or
26 underutilized as a result of the contamination, and
27 participation in the brownfield program will immediately,
28 after cleanup or sooner, result in increased economic
29 productivity at the site, including at a minimum the creation
30 of 10 new permanent jobs, whether full-time ~~permanent~~ or
31

1 part-time, which are not associated with implementation of the
2 brownfield site corrective action plan; and

3 2. The person is complying in good faith with the
4 terms of an existing consent order or department-approved
5 corrective action plan, or responding in good faith to an
6 enforcement action, as evidenced by a determination issued by
7 the department or an approved local pollution control program.

8 (c) Potential brownfield sites owned by the state or a
9 local government which contain contamination for which a
10 governmental entity is potentially responsible and which are
11 already designated as federal brownfield pilot projects or
12 have filed an application for designation to the United States
13 Environmental Protection Agency are eligible for participation
14 in a brownfield corrective action.

15 (d) After July 1, 1997, petroleum and drycleaning
16 contamination sites shall not receive both restoration funding
17 assistance available for the discharge under this chapter and
18 any state assistance available under s. 288.107. Nothing in
19 this act shall affect the cleanup criteria, priority ranking,
20 and other rights and obligations inherent in petroleum
21 contamination and drycleaning contamination site
22 rehabilitation under ss. 376.30-376.319, or the availability
23 of economic incentives otherwise provided for by law.

24 (2) LIABILITY PROTECTION.--

25 (a) Any person, including his or her successors and
26 assigns, who executes and implements to successful completion
27 a brownfield site rehabilitation agreement, shall be relieved
28 of further liability for remediation of the contaminated site
29 or sites to the state and to third parties and of liability in
30 contribution to any other party who has or may incur cleanup
31 liability for the contaminated site or sites.

1 (b) This section shall not be construed as a
2 limitation on the right of a third party other than the state
3 to pursue an action for damages to property or person;
4 however, such an action may not compel site rehabilitation in
5 excess of that required in the approved brownfield site
6 rehabilitation agreement or otherwise required by the
7 department or approved local pollution control program.

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

12 (d) The liability protection provided under this
13 section shall become effective upon execution of a brownfield
14 site rehabilitation agreement and shall remain effective,
15 provided the person responsible for brownfield site
16 rehabilitation complies with the terms of the site
17 rehabilitation agreement. Any statute of limitations that
18 would bar the department from pursuing relief in accordance
19 with its existing authority is tolled from the time the
20 agreement is executed until site rehabilitation is completed
21 or immunity is revoked pursuant to s. 376.80(10).

22 (e) Completion of the performance of the remediation
23 obligations at the brownfield site shall be evidenced by a
24 site rehabilitation completion letter or a "no further action"
25 letter issued by the department or the approved local
26 pollution control program, which letter shall include the
27 following statement: "Based upon the information provided by
28 (property owner) concerning property located at (address), it
29 is the opinion of (the Florida Department of Environmental
30 Protection or approved local pollution control program) that
31 (party) has successfully and satisfactorily implemented the

1 approved brownfield site rehabilitation agreement schedule
2 and, accordingly, no further action is required to assure that
3 any land use identified in the brownfield site rehabilitation
4 agreement is consistent with existing and proposed uses."

5 (f) Compliance with the agreement referenced in s.
6 376.80(5)(i) must be evidenced by a finding by the local
7 government with jurisdiction over the brownfield area that the
8 terms of the agreement have been met.

9 (g) The Legislature recognizes its limitations in
10 addressing cleanup liability under federal pollution control
11 programs. In an effort to secure federal liability protection
12 for persons willing to undertake remediation responsibility at
13 a brownfield site, the department shall attempt to negotiate a
14 memorandum of agreement or similar document with the United
15 States Environmental Protection Agency, whereby the United
16 States Environmental Protection Agency agrees to forego
17 enforcement of federal corrective action authority at
18 brownfield sites ~~brownfields~~ that have received a site
19 rehabilitation completion or "no further action" determination
20 from the department or the approved local pollution control
21 program or that are in the process of implementing a
22 brownfield site rehabilitation agreement in accordance with
23 this act.

24 (h) No unit of state or local government may be held
25 liable for implementing corrective actions at a contaminated
26 site within an eligible brownfield area as a result of the
27 involuntary ownership of the site through bankruptcy, tax
28 delinquency, abandonment, or other circumstances in which the
29 state or local government involuntarily acquires title by
30 virtue of its function as a sovereign, or as a result of
31 ownership from donation, ~~or~~ gift, or foreclosure unless the

1 state or local government has otherwise caused or contributed
2 to a release of a contaminant at the brownfield site.

3 (i) The Legislature finds and declares that certain
4 brownfield sites ~~brownfields~~ may be redeveloped for open
5 space, or limited recreational, cultural, or historical
6 preservation purposes, and that such facilities enhance the
7 redeveloped environment, attract visitors, and provide
8 wholesome activities for employees and residents of the area.
9 Further, the Legislature finds that purchasers of contaminated
10 sites who are nonprofit conservation organizations acting for
11 the public interest and who did not cause or contribute to the
12 release of contamination on the site warrant protection from
13 liability.

14 (j) Notwithstanding any provision of this chapter,
15 chapter 403, other laws, or ordinances of local governments, a
16 nonprofit, charitable, federal tax-exempt, s. 501(c)(3)
17 national land conservation corporation which purchases title
18 to property in the state for the purpose of conveying such
19 land to any governmental entity for conservation, historical
20 preservation or cultural resource, park, greenway, or other
21 similar uses shall not be liable to the state, local
22 government, or any third party for penalties or remediation
23 costs in connection with environmental contamination found in
24 the soil or groundwater of such property, provided that such
25 corporation did not cause the original deposit or release of
26 the environmental contaminants, and provided the department
27 and local pollution control program and responsible parties
28 have access to the land for investigation, remediation, or
29 monitoring purposes.

30 (3) REOPENERS.--Upon completion of site rehabilitation
31 in compliance with ss. 376.77-376.85 ~~ss. 376.77-376.84~~, no

1 additional site rehabilitation shall be required unless it is
2 demonstrated:

3 (a) That fraud was committed in demonstrating site
4 conditions or completion of site rehabilitation;

5 (b) That new information confirms the existence of an
6 area of previously unknown contamination which exceeds the
7 site-specific rehabilitation levels established in accordance
8 with s. 376.81, or which otherwise poses the threat of real
9 and substantial harm to public health, safety, or the
10 environment in violation of the terms of ss. 376.77-376.85 ~~ss.~~
11 ~~376.77-376.84~~;

12 (c) That the remediation efforts failed to achieve the
13 site rehabilitation criteria established under s. 376.81;

14 (d) That the level of risk is increased beyond the
15 acceptable risk established under s. 376.81 due to substantial
16 changes in exposure conditions, such as a change in land use
17 from nonresidential to residential use. Any person who changes
18 the land use of the brownfield site thus causing the level of
19 risk to increase beyond the acceptable risk level may be
20 required by the department to undertake additional remediation
21 measures to assure that human health, public safety, and the
22 environment are protected to levels consistent with s. 376.81;
23 or

24 (e) That a new release occurs at the brownfield site
25 subsequent to a determination of eligibility for participation
26 in the brownfield program established under s. 376.80.

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

28 (a) The Legislature declares that, in order to achieve
29 the economic redevelopment and site rehabilitation of
30 brownfield sites ~~brownfields~~ in accordance with this act, it
31 is imperative to encourage financing of real property

1 transactions involving brownfield site rehabilitation plans.
2 Accordingly, lenders, including those serving as a trustee,
3 personal representative, or in any other fiduciary capacity,
4 in connection with a loan, are entitled to the liability
5 protection established in subsection (2) if they have not
6 caused or contributed to a release of a contaminant at the
7 brownfield site.

8 (b) Lenders who hold indicia of ownership of a parcel
9 within a brownfield area primarily to protect a security
10 interest or who own a parcel within a brownfield area as a
11 result of foreclosure or a deed in lieu of foreclosure of a
12 security interest and who seek to sell, transfer, or otherwise
13 divest the parcel via sale at the earliest practicable time
14 are not liable for the release or discharge of a contaminant
15 from the parcel; for the failure of the person responsible for
16 brownfield site rehabilitation to comply with the brownfield
17 site rehabilitation agreement; or for future site
18 rehabilitation activities required pursuant to a reopener
19 provision established in subsection (3) where the lender has
20 not divested the borrower of, or otherwise engaged in,
21 decisionmaking control of the site rehabilitation or site
22 operations or undertaken management activities beyond those
23 required to protect its financial interest while making a good
24 faith effort to sell the site as soon as practicable and when
25 an act or omission of the lender has not otherwise caused or
26 contributed to a release of a contaminant at the brownfield
27 site.

28 (c) The economic incentives that were granted to a
29 person responsible for site rehabilitation by state or local
30 governments shall not accrue to a lender who obtains ownership
31 of the brownfield site by one of the methods described in this

1 subsection. The economic incentives are abated during the
2 lender's ownership, but they may be transferred and reinstated
3 upon the sale of the brownfield site.

4 Section 6. Section 376.83, Florida Statutes, is
5 amended to read:

6 376.83 Violation; penalties.--

7 (1) It is a violation of ss. 376.77-376.85 ~~ss.~~
8 ~~376.77-376.82~~, and it is prohibited for any person, to
9 knowingly make any false statement, representation, or
10 certification in any application, record, report, plan, or
11 other document filed or required to be maintained, or to
12 falsify, tamper with, or knowingly render inaccurate any
13 monitoring device or method required to be maintained under
14 ss. 376.77-376.85 ~~ss. 376.77-376.82~~, or by any permit, rule,
15 or order issued under this chapter or chapter 403.

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

22 Section 7. Subsection (4) of section 288.106, Florida
23 Statutes, is amended to read:

24 288.106 Tax refund program for qualified target
25 industry businesses.--

26 (4) APPLICATION AND APPROVAL PROCESS.--

27 (a) To apply for certification as a qualified target
28 industry business under this section, the business must file
29 an application with the office before the business has made
30 the decision to locate a new business in this state or before
31 the business had made the decision to expand an existing

1 business in this state. The application shall include, but is
2 not limited to, the following information:

3 1. The applicant's federal employer identification
4 number and the applicant's state sales tax registration
5 number.

6 2. The permanent location of the applicant's facility
7 in this state at which the project is or is to be located.

8 3. A description of the type of business activity or
9 product covered by the project, including four-digit SIC codes
10 for all activities included in the project.

11 4. The number of full-time equivalent jobs in this
12 state that are or will be dedicated to the project and the
13 average wage of those jobs. If more than one type of business
14 activity or product is included in the project, the number of
15 jobs and average wage for those jobs must be separately stated
16 for each type of business activity or product.

17 5. The total number of full-time equivalent employees
18 employed by the applicant in this state.

19 6. The anticipated commencement date of the project.

20 7. The amount of:

21 a. Taxes on sales, use, and other transactions paid
22 under chapter 212;

23 b. Corporate income taxes paid under chapter 220;

24 c. Intangible personal property taxes paid under
25 chapter 199;

26 d. Emergency excise taxes paid under chapter 221; and

27 e. Excise taxes on documents paid under chapter 201.

28 8. The estimated amount of tax refunds to be claimed
29 in each fiscal year.

30

31

1 9. A brief statement concerning the role that the tax
2 refunds requested will play in the decision of the applicant
3 to locate or expand in this state.

4 10. An estimate of the proportion of the sales
5 resulting from the project that will be made outside this
6 state.

7 11. A resolution adopted by the governing board of the
8 county or municipality in which the project will be located,
9 which resolution recommends that certain types of businesses
10 be approved as a qualified target industry business and states
11 that the commitments of local financial support necessary for
12 the target industry business exist. Before adoption of the
13 resolution, the governing board may review the proposed public
14 or private sources of such support and determine whether the
15 proposed sources of local financial support can be provided.

16 12. Any additional information requested by the
17 office.

18 (b) To qualify for review by the office, the
19 application of a target industry business must, at a minimum,
20 establish the following to the satisfaction of the office:

21 1. The jobs proposed to be provided under the
22 application, pursuant to subparagraph (a)4., must pay an
23 estimated annual average wage equaling at least 115 percent of
24 the average private sector wage in the area where the business
25 is to be located or the statewide private sector average wage.
26 The office may waive this average wage requirement at the
27 request of the local governing body recommending the project
28 and Enterprise Florida, Inc. The wage requirement may only be
29 waived for a project located in a brownfield area designated
30 under s. 376.80 or in a rural city or county or in an
31 enterprise zone and only when the merits of the individual

1 project or the specific circumstances in the community in
2 relationship to the project warrant such action. If the local
3 governing body and Enterprise Florida, Inc., make such a
4 recommendation, it must be transmitted in writing and the
5 specific justification for the waiver recommendation must be
6 explained. If the director elects to waive the wage
7 requirement, the waiver must be stated in writing and the
8 reasons for granting the waiver must be explained.

9 2. The target industry business's project must result
10 in the creation of at least 10 jobs at such project.

11 3. The business activity or product for the
12 applicant's project is within an industry or industries that
13 have been identified by the office to be high-value-added
14 industries that contribute to the area and to the economic
15 growth of the state and that produce a higher standard of
16 living for citizens of this state in the new global economy or
17 that can be shown to make an equivalent contribution to the
18 area and state's economic progress. The director must approve
19 requests to waive the wage requirement for brownfield areas
20 designated under s. 376.80 unless it is demonstrated that such
21 action is not in the public interest.

22 (c) Each application meeting the requirements of
23 paragraph (b) must be submitted to the office for
24 determination of eligibility. The office shall review and
25 evaluate each application based on, but not limited to, the
26 following criteria:

27 1. Expected contributions to the state strategic
28 economic development plan adopted by Enterprise Florida, Inc.,
29 taking into account the long-term effects of the project and
30 of the applicant on the state economy.

31

1 2. The economic benefit of the jobs created by the
2 project in this state, taking into account the cost and
3 average wage of each job created.

4 3. The amount of capital investment to be made by the
5 applicant in this state.

6 4. The local commitment and support for the project.

7 5. The effect of the project on the local community,
8 taking into account the unemployment rate for the county where
9 the project will be located.

10 6. The effect of any tax refunds granted pursuant to
11 this section on the viability of the project and the
12 probability that the project will be undertaken in this state
13 if such tax refunds are granted to the applicant, taking into
14 account the expected long-term commitment of the applicant to
15 economic growth and employment in this state.

16 7. The expected long-term commitment to this state
17 resulting from the project.

18 8. A review of the business's past activities in this
19 state or other states, including whether such business has
20 been subjected to criminal or civil fines and penalties.
21 Nothing in this subparagraph shall require the disclosure of
22 confidential information.

23 (d) The office shall forward its written findings and
24 evaluation concerning each application meeting the
25 requirements of paragraph (b) to the director within 45
26 calendar days after receipt of a complete application. The
27 office shall notify each target industry business when its
28 application is complete, and of the time when the 45-day
29 period begins. In its written report to the director, the
30 office shall specifically address each of the factors
31 specified in paragraph (c) and shall make a specific

1 assessment with respect to the minimum requirements
2 established in paragraph (b). The office shall include in its
3 report projections of the tax refund claim that will be sought
4 by the target industry business in each fiscal year based on
5 the information submitted in the application.

6 (e)1. Within 30 days after receipt of the office's
7 findings and evaluation, the director shall enter a final
8 order that either approves or disapproves the application of
9 the target industry business. The decision must be in writing
10 and must provide the justifications for approval or
11 disapproval.

12 2. If appropriate, the director shall enter into a
13 written agreement with the qualified target industry business
14 pursuant to subsection (5).

15 (f) The director may not enter a final order that
16 certifies any target industry business as a qualified target
17 industry business if the value of tax refunds to be included
18 in that final order exceeds the available amount of authority
19 to enter final orders as determined in s. 288.095(3). A final
20 order that approves an application must specify the maximum
21 amount of tax refund that will be available to the qualified
22 industry business in each fiscal year and the total amount of
23 tax refunds that will be available to the business for all
24 fiscal years.

25 (g) Nothing in this section shall create a presumption
26 that an applicant will receive any tax refunds under this
27 section. However, the office may issue nonbinding opinion
28 letters, upon the request of prospective applicants, as to the
29 applicants' eligibility and the potential amount of refunds.

30 Section 8. Subsection (1) of section 288.107, Florida
31 Statutes, is amended to read:

1 288.107 Brownfield redevelopment bonus refunds.--
2 (1) DEFINITIONS.--As used in this section:
3 (a) "Account" means the Economic Development
4 Incentives Account as authorized in s. 288.095.
5 (b) "Brownfield sites" means sites that are generally
6 abandoned, idled, or underused industrial and commercial
7 properties where expansion or redevelopment is complicated by
8 actual or perceived environmental contamination.
9 (c) "Brownfield area" means a contiguous area of one
10 or more brownfield sites, some of which may not be
11 contaminated, and which has been designated by a local
12 government by resolution. Such areas may include all or
13 portions of community redevelopment areas, enterprise zones,
14 empowerment zones, other such designated economically deprived
15 communities and areas, and
16 Environmental-Protection-Agency-designated brownfield pilot
17 projects. ~~"Brownfield" or "brownfield site" means a parcel or~~
18 ~~a contiguous area of one or more parcels, which have been~~
19 ~~designated by local government by resolution, that are~~
20 ~~generally abandoned, idled, or underused industrial and~~
21 ~~commercial properties where expansion or redevelopment is~~
22 ~~complicated by actual or perceived environmental~~
23 ~~contamination. Such areas may include, but are not limited~~
24 ~~to, portions of community redevelopment areas, enterprise~~
25 ~~zones, empowerment zones, other such designated economically~~
26 ~~deprived communities and areas, and United States~~
27 ~~Environmental Protection Agency designated brownfield pilot~~
28 ~~projects.~~
29 (d)~~(c)~~ "Director" means the director of the Office of
30 Tourism, Trade, and Economic Development.
31

1 ~~(e)(d)~~ "Eligible business" means a qualified target
2 industry business as defined in s. 288.106(2)(o).

3 ~~(f)(e)~~ "Jobs" means full-time equivalent positions,
4 consistent with the use of such terms by the Department of
5 Labor and Employment Security for the purpose of unemployment
6 compensation tax, resulting directly from a project in this
7 state. This number does not include temporary construction
8 jobs involved with the construction of facilities for the
9 project and which are not associated with the implementation
10 of the site rehabilitation as provided in s. 376.80.

11 ~~(g)(f)~~ "Office" means the Office of Tourism, Trade,
12 and Economic Development.

13 ~~(h)(g)~~ "Project" means the creation of a new business
14 or the expansion of an existing business as defined in s.
15 288.106.

16 Section 9. (1) The Legislature finds that the
17 underuse of brownfield areas results in the inefficient use of
18 public facilities and services, as well as of land and other
19 natural resources, extends conditions of blight in local
20 communities, and contributes to concerns about environmental
21 equity and the distribution of environmental risks across
22 population groups.

23 (2) The reuse and redevelopment of brownfield areas is
24 an important component of sound land-use policy for productive
25 urban purposes which will help prevent the premature
26 development of farm land, open space areas, and natural areas
27 and reduce public costs for installing new water, sewer, and
28 highway infrastructure.

29 (3) The Legislature finds that providing economic and
30 financial incentives to promote the redevelopment of
31

1 brownfield areas is an important and appropriate public
2 purpose.

3 Section 10. Brownfield Areas Loan Guarantee Program.--

4 (1) The Brownfield Areas Loan Guarantee Council is
5 created to review and approve or deny by a majority vote of
6 its membership, the situations and circumstances for
7 participation in partnerships by agreements with local
8 governments, financial institutions, and others associated
9 with the redevelopment of brownfield areas pursuant to the
10 Brownfield Redevelopment Act for a limited state guaranty of
11 up to 5 years of loan guarantees or loan loss reserves issued
12 pursuant to law. The limited state loan guaranty applies only
13 to 10 percent of the primary lenders loans for redevelopment
14 projects in brownfield areas. A limited state guaranty of
15 private loans or a loan loss reserve is authorized for lenders
16 licensed to operate in the state upon a determination by the
17 council that such an arrangement would be in the public
18 interest and the likelihood of the success of the loan is
19 great.

20 (2) The Council shall consist of the Secretary of the
21 Department of Environmental Protection or the secretary's
22 designee, the Secretary of the Department of Community Affairs
23 or the secretary's designee, the Executive Director of the
24 State Board of Administration or the executive director's
25 designee, the Executive Director of the Florida Housing
26 Finance Agency or the executive director's designee, and the
27 Director of the Governor's Office of Tourism, Trade, and
28 Economic Development or the director's designee. The
29 chairperson of the Council shall be the Director of the
30 Governor's Office of Tourism, Trade, Economic Development.

31

1 Staff services for activities of the Council shall be provided
2 as needed by the member agencies.

3 (3) The Council may enter into an investment agreement
4 with the Department of Environmental Protection and the State
5 Board of Administration concerning the investment of the
6 earnings accrued and collected upon the investment of the
7 balance of funds maintained in the Nonmandatory Land
8 Reclamation Trust Fund. The investment must be limited as
9 follows:

10 (a) Not more than \$5 million of the investment
11 earnings earned on the investment of the minimum balance of
12 the Nonmandatory Land Reclamation Trust Fund in a fiscal year
13 may be at risk at any time on loan guarantees or as loan loss
14 reserves. Of that amount, 15 percent shall be reserved for
15 investment agreements involving predominantly minority-owned
16 businesses which meet the requirements of subsection (4).

17 (b) The investment earnings may not be used to
18 guarantee any loan guaranty or loan loss reserve agreement for
19 a period longer than 5 years.

20 (4) A lender seeking a limited state guaranty for a
21 loan from the Brownfield Areas Loan Guaranty Council must
22 first provide to the council a report demonstrating that the
23 lender has reviewed the project for redevelopment of the
24 brownfield area and determined its feasibility in accordance
25 with its standard procedures. The procedures include, but are
26 not limited to:

27 (a) Obtaining a satisfactory credit report from a
28 source deemed reliable by the lender;

29 (b) Reviewing a report of environmental conditions at
30 the project and determining that actions are underway to
31 comply with specific recommendations;

1 (c) Investigating the background and experience of the
2 entity to receive the loan and manage the project and
3 determining that the managing entity appears to possess the
4 experience, competence, and capacity to manage the project;

5 (d) Determining that conditions exist to establish a
6 financially sound redevelopment project that exposes the state
7 loan guarantee program to a reasonable or acceptable level of
8 risk; and

9 (e) Determining that the local government with
10 jurisdiction over the area where the brownfield redevelopment
11 project is located has committed in-kind resources, local
12 financial incentives or local financial resources to the total
13 project cost.

14 (5) A lender covered by a limited state guaranty for a
15 loan is not entitled to file a claim for loss pursuant to the
16 guaranty unless all reasonable and normal remedies available
17 and customary for lending institutions for resolving problems
18 of loan repayments are exhausted. If the lender has received
19 collateral security in connection with the loan, the lender
20 must first exhaust all available remedies against the
21 collateral security.

22 (6) The council may, by rule, establish requirements
23 for the issuance of loan guarantees, including contractual
24 provisions to foster reimbursement, in the event of default,
25 to the guarantee fund.

26 (7) The council may receive public and private funds,
27 federal grants, and private donations in carrying out its
28 responsibilities.

29 (8) The Council shall provide an annual report to the
30 Legislature by February 1 of each year describing its
31 activities and agreements approved relating to redevelopment

1 of brownfield areas. This section shall be reviewed by the
2 Legislature by October 1, 2003, and a determination made
3 related to the need to continue or modify this section. New
4 loan guarantees may not be approved in 2003 until the review
5 by the Legislature has been completed and a determination has
6 been made as to the feasibility of continuing the use of the
7 Nonmandatory Land Reclamation Trust Fund to guarantee portions
8 of loans under this section.

9 Section 11. Subsections (1), (6), and (8) of section
10 288.9602, Florida Statutes, are amended to read:

11 288.9602 Findings and declarations of necessity.--The
12 Legislature finds and declares that:

13 (1) There is a need to enhance economic activity in
14 the cities and counties of the state by attracting
15 manufacturing, development, redevelopment of brownfield areas,
16 business enterprise management, and other activities conducive
17 to economic promotion in order to provide a stronger, more
18 balanced, and stable economy in the cities and counties of the
19 state.

20 (6) In order to improve the prosperity and welfare of
21 the cities and counties of this state and its inhabitants, to
22 improve and promote the financing of projects related to the
23 economic development of the cities and counties of this state,
24 including redevelopment of brownfield areas, and to increase
25 the purchasing power and opportunities for gainful employment
26 of citizens of the cities and counties of this state, it is
27 necessary and in the public interest to facilitate the
28 financing of such projects as provided for in this act and to
29 do so without regard to the boundaries between counties,
30 municipalities, special districts, and other local
31 governmental bodies or agencies in order to more effectively

1 and efficiently serve the interests of the greatest number of
2 people in the widest area practicable.

3 (8) In order to efficiently and effectively achieve
4 the purposes of this act, it is necessary and in the public
5 interest to create a special development finance authority to
6 cooperate and act in conjunction with public agencies of this
7 state and local governments of this state, through interlocal
8 agreements pursuant to the Florida Interlocal Cooperation Act
9 of 1969, in the promotion and advancement of projects related
10 to economic development, including redevelopment of brownfield
11 areas, throughout the state.

12 Section 12. Paragraph (w) is added to subsection (2)
13 of section 288.9605, Florida Statutes, to read:

14 288.9605 Exercise of powers by the corporation.--

15 (2) The corporation is authorized and empowered to:

16 (w) Determine the situations and circumstances for
17 participation in partnerships by agreement with local
18 governments, financial institutions, and others associated
19 with the redevelopment of brownfield areas pursuant to the
20 Brownfield Redevelopment Act for a limited state guaranty of
21 revenue bonds, loan guarantees, or loan loss reserves.

22 Section 13. Interdisciplinary Center for Brownfield
23 Rehabilitation Assistance.--The Board of Regents shall
24 establish a Center for Brownfield Rehabilitation Assistance in
25 the Environmental Sciences and Policy Program in the College
26 of Arts and Sciences at the University of South Florida with
27 the collaboration of other related disciplines such as
28 business administration, environmental science, and medicine.
29 The center shall work in conjunction with other colleges in
30 the State University System. The Center for Brownfield
31 Rehabilitation Assistance shall:

1 (1) Conduct research relating to problems and
2 solutions associated with rehabilitation and restoration of
3 brownfield areas as defined in section 376.79, Florida
4 Statutes. The research must include identifying innovative
5 solutions to removing contamination from brownfield sites to
6 reduce the threats to drinking water supplies and other
7 potential public health threats from contaminated sites.

8 (2) Provide public service to local, regional, and
9 state agencies, units of government, and authorities by
10 helping them to create workable mechanisms, partnerships with
11 public and private sectors and other techniques for
12 rehabilitating brownfield areas.

13 (3) Conduct special research relating to risk-based
14 corrective actions for rehabilitation of brownfield areas.

15 (4) Develop a base of informational and financial
16 support from the private sector for the activities of the
17 center.

18 Section 14. Paragraph (g) is added to subsection (1)
19 of section 163.3187, Florida Statutes, to read:

20 163.3187 Amendment of adopted comprehensive plan.--

21 (1) Amendments to comprehensive plans adopted pursuant
22 to this part may be made not more than two times during any
23 calendar year, except:

24 (g) Any local government comprehensive plan amendments
25 directly related to proposed redevelopment of brownfield areas
26 designated under s. 376.80 may be approved without regard to
27 statutory limits on the frequency of consideration of
28 amendments to the local comprehensive plan.

29 Section 15. Brownfield Property Ownership Clearance
30 Assistance.--

31

1 (1) The Legislature recognizes that some brownfield
2 redevelopment projects are more difficult to redevelop due to
3 the existence of various types of liens on the property and
4 complications from previous ownership having declared
5 bankruptcy. Oftentimes lien holders on brownfield property are
6 reluctant to foreclose on the property out of concern for
7 liability questions and may be willing to settle for a reduced
8 value on their lien to clear up any of their rights to the
9 property and to clear the way for organized efforts by a
10 private and public partnership to revitalize and redevelop
11 brownfield areas.

12 (2) The Legislature recognizes that a revolving loan
13 fund could assist in the early stages of redeveloping
14 brownfields by helping to clear prior liens on the property
15 through a negotiated process. Such a revolving loan fund could
16 be repaid in later years from the resale of brownfield
17 properties following site rehabilitation and other activities
18 that will enhance the properties' ultimate value.

19 Section 16. Notwithstanding any provision of law to
20 the contrary, the governing body of a municipality or county
21 containing a United States Environmental Protection Agency
22 brownfield pilot project that was designated as of May 1,
23 1997, may apply to the Office of Tourism, Trade, and Economic
24 Development for designation of one enterprise zone
25 encompassing the brownfield pilot project, if the project is
26 located in a county with a population less than 1 million. The
27 application must be submitted by December 31, 1999, and must
28 comply with the requirements of section 290.0055, Florida
29 Statutes, except section 290.0055(3), Florida Statutes.
30 Notwithstanding the provisions of section 290.0065, Florida
31 Statutes, limiting the total number of enterprise zones

1 designated and the number of enterprise zones within a
2 population category, the Office of Tourism, Trade, and
3 Economic Development shall designate one enterprise zone under
4 this section if the zone is consistent with the limitations
5 imposed under this section. The Office of Tourism, Trade, and
6 Economic Development shall establish the initial effective
7 date of the enterprise zone designated pursuant to this
8 section.

9 Section 17. Subsection (4) of section 376.313, Florida
10 Statutes, is amended to read:

11 376.313 Nonexclusiveness of remedies and individual
12 cause of action for damages under ss. 376.30-376.319.--

13 (4) In any civil action brought after July 1, 1986,
14 against the owner or operator of a petroleum storage system
15 for damages arising from a petroleum storage system discharge,
16 the provisions of subsection (3) shall not apply if it can be
17 proven that, at the time of the discharge:

18 (a) The alleged damages resulted solely from a
19 discharge from a petroleum storage system which was installed,
20 replaced, or retrofitted, and maintained, in a manner
21 consistent with the construction, operation, repair, and
22 maintenance standards established for such systems under
23 chapter 62-761 ~~17-61~~, Florida Administrative Code, as that
24 chapter may hereafter be amended. The requirement of
25 consistency with such standards may be satisfied only by being
26 in compliance with the standards at the time of the discharge,
27 regardless of the time specified for compliance under the
28 schedule provided in said chapter.

29 (b) A leak detection system or systems or a monitoring
30 well or wells were installed and operating in a manner
31 consistent with technical requirements of chapter 62-761

1 ~~17-61~~, Florida Administrative Code, as that chapter may
2 hereafter be amended; and

3 (c) All inventory, recordkeeping, and reporting
4 requirements of chapter 62-761 ~~17-61~~, Florida Administrative
5 Code, as that chapter may hereafter be amended, have been and
6 are being complied with.

7
8 Any person bringing such an action must prove negligence to
9 recover damages under this subsection. For the purposes of
10 this subsection, noncompliance with this act, or any of the
11 rules promulgated pursuant hereto, as the same may hereafter
12 be amended, shall be prima facie evidence of negligence.

13 Section 18. Section 21 of chapter 86-159, Laws of
14 Florida, is repealed.

15 Section 19. This act shall take effect July 1, 1998.

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