

By the Committee on Natural Resources and Senator Latvala

312-1704A-00

1 A bill to be entitled
2 An act relating to brownfield economic
3 redevelopment; amending s. 288.047, F.S.;
4 requiring Enterprise Florida, Inc., to set
5 aside each fiscal year a certain amount of the
6 appropriation for the Quick Response Training
7 Program for businesses located in a brownfield
8 area; amending s. 288.107, F.S.; redefining the
9 term "eligible business"; providing for bonus
10 refunds for businesses that can demonstrate a
11 fixed capital investment in certain mixed use
12 activities in the brownfield area; amending s.
13 288.905, F.S.; requiring Enterprise Florida,
14 Inc., to develop comprehensive marketing
15 strategies for redevelopment of brownfield
16 areas; amending s. 376.301, F.S.; redefining
17 the terms "antagonistic effects," "discharge,"
18 "institutional controls," "natural
19 attenuation," and "site rehabilitation" and
20 defining the term "risk reduction"; creating s.
21 376.30701, F.S.; extending application of
22 risk-based corrective action principles to all
23 contaminated sites resulting from a discharge
24 of pollutants or hazardous substances;
25 providing for contamination cleanup criteria
26 that incorporates risk-based corrective actions
27 to be adopted by rule; providing clarification
28 that cleanup criteria do not apply to offsite
29 relocation or treatment; providing the
30 conditions under which further rehabilitation
31 may be required; amending s. 376.3078, F.S.;

1 providing for rehabilitation criteria; amending
2 s. 376.79, F.S.; defining the terms
3 "contaminant" and "risk reduction"; redefining
4 the terms "natural attenuation," "institutional
5 control," and "source removal"; amending s.
6 376.80, F.S.; allowing local governments or
7 persons responsible for brownfield area
8 rehabilitation and redevelopment to use an
9 existing advisory committee; deleting the
10 requirement that the advisory committee must
11 review and provide recommendations to the local
12 government with jurisdiction on the proposed
13 brownfield site rehabilitation agreement;
14 providing that the person responsible for site
15 rehabilitation must notify the advisory
16 committee of the intent to rehabilitate and
17 redevelop the site before executing the
18 brownfield site rehabilitation agreement;
19 requiring the person responsible for site
20 rehabilitation to hold a meeting or attend a
21 regularly scheduled meeting of the advisory
22 committee to inform the advisory committee of
23 the outcome of the environmental assessment;
24 requiring the person responsible for site
25 rehabilitation to enter into a brownfield site
26 rehabilitation agreement only if actual
27 contamination exists; clarifying that the
28 provisions relating to the required
29 comprehensive general liability and
30 comprehensive automobile liability insurance;
31 amending s. 376.81, F.S.; providing direction

1 regarding the risk-based corrective action
2 rule; requiring the department to establish
3 alternative cleanup levels under certain
4 circumstances; amending s. 376.82, F.S.;
5 providing immunity for liability regarding
6 contaminated site remediation under certain
7 circumstances; creating s. 376.88, F.S.;
8 providing for the Brownfield Program Review
9 Advisory Council; providing duties and
10 responsibilities; amending s. 403.973, F.S.;
11 providing that projects located in a designated
12 brownfield area are eligible for the expedited
13 permitting process; amending s. 190.012, F.S.;
14 authorizing community development districts to
15 fund certain environmental costs under certain
16 circumstances; amending ss. 712.01, 712.03,
17 F.S.; prohibiting subsequent property owners
18 from removing certain deed restrictions under
19 other provisions of the Marketable Record Title
20 Act; providing an effective date.

21

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

23

24 Section 1. Subsection (5) of section 288.047, Florida
25 Statutes, is amended to read:

26 288.047 Quick-response training for economic
27 development.--

28 (5) For the first 6 months of each fiscal year,
29 Enterprise Florida, Inc., shall set aside 30 percent of the
30 amount appropriated for the Quick-Response Training Program by
31 the Legislature to fund instructional programs for businesses

1 located in an enterprise zone or brownfield area ~~to instruct~~
2 ~~residents of an enterprise zone~~. Any unencumbered funds
3 remaining undisbursed from this set-aside at the end of the
4 6-month period may be used to provide funding for any program
5 qualifying for funding pursuant to this section.

6 Section 2. Section 288.107, Florida Statutes, is
7 amended to read:

8 288.107 Brownfield redevelopment bonus refunds.--

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

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

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

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

25 (d) "Director" means the director of the Office of
26 Tourism, Trade, and Economic Development.

27 (e) "Eligible business" means a qualified target
28 industry business as defined in s. 288.106(2)(o) or other
29 business that can demonstrate a fixed capital investment of at
30 least \$2 million in mixed-use business activities, including
31 multi-unit housing, commercial, retail, and industrial in

1 brownfield areas and which pays wages that are within 20
2 percent of the average of all private-sector wages in the
3 county in which the business is located.

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

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

14 (h) "Project" means the creation of a new business or
15 the expansion of an existing business as defined in s.
16 288.106.

17 (2) BROWNFIELD REDEVELOPMENT BONUS REFUND.--There
18 shall be allowed from the account a bonus refund of \$2,500 to
19 any qualified target industry business or other eligible
20 business as defined in paragraph (1)(e)for each new Florida
21 job created in a brownfield which is claimed on the qualified
22 target industry business's annual refund claim authorized in
23 s. 288.106(6) or other similar annual claim procedure for
24 other eligible business as defined in paragraph (1)(e)and
25 approved by the office as specified in the final order issued
26 by the director.

27 (3) CRITERIA.--The minimum criteria for participation
28 in the brownfield redevelopment bonus refund are:

29 (a) The creation of at least 10 new full-time
30 permanent jobs. Such jobs shall not include construction or
31

1 site rehabilitation jobs associated with the implementation of
2 a brownfield site agreement as described in s. 376.80(5).

3 (b) The completion of a fixed capital investment of at
4 least \$2 million in mixed-use business activities, including
5 multi-unit housing, commercial, retail, and industrial in
6 brownfield areas and which pay wages that are within 20
7 percent of the average of all private-sector wages in the
8 county in which the business is located.

9 (c)~~(b)~~ That the designation as a brownfield will
10 diversify and strengthen the economy of the area surrounding
11 the site.

12 (d)~~(c)~~ That the designation as a brownfield will
13 promote capital investment in the area beyond that
14 contemplated for the rehabilitation of the site.

15 (4) PAYMENT OF BROWNFIELD REDEVELOPMENT BONUS
16 REFUNDS.--

17 (a) To be eligible to receive a bonus refund for new
18 Florida jobs created in a brownfield, a business must have
19 been certified as a qualified target industry business under
20 s. 288.106 or eligible business as defined in paragraph (1)(e)
21 and must have indicated on the qualified target industry tax
22 refund application form submitted in accordance with s.
23 288.106(4) or other similar agreement for other eligible
24 business as defined in paragraph (1)(e) that the project for
25 which the application is submitted is or will be located in a
26 brownfield and that the business is applying for certification
27 as a qualified brownfield business under this section, and
28 must have signed a qualified target industry tax refund
29 agreement with the office which indicates that the business
30 has been certified as a qualified target industry business
31 located in a brownfield and specifies the schedule of

1 brownfield redevelopment bonus refunds that the business may
2 be eligible to receive in each fiscal year.

3 (b) To be considered to receive an eligible brownfield
4 redevelopment bonus refund payment, the business meeting the
5 requirements of paragraph (a) must submit a claim once each
6 fiscal year on a claim form approved by the office which
7 indicates the location of the brownfield, the address of the
8 business facility's brownfield location, the name of the
9 brownfield in which it is located, the number of jobs created,
10 and the average wage of the jobs created by the business
11 within the brownfield as defined in s. 288.106 or other
12 eligible business as defined in paragraph (1)(e) and the
13 administrative rules and policies for that section.

14 (c) The bonus refunds shall be available on the same
15 schedule as the qualified target industry tax refund payments
16 scheduled in the qualified target industry tax refund
17 agreement authorized in s. 288.106 or other similar agreement
18 for other eligible businesses as defined in paragraph (1)(e).

19 (d) After entering into a tax refund agreement as
20 provided in s. 288.106 or other similar agreement for other
21 eligible businesses as defined in paragraph (1)(e), an
22 eligible business may receive brownfield redevelopment bonus
23 refunds from the account pursuant to s. 288.106(3)(c).

24 (e) An eligible business that fraudulently claims a
25 refund under this section:

26 1. Is liable for repayment of the amount of the refund
27 to the account, plus a mandatory penalty in the amount of 200
28 percent of the tax refund, which shall be deposited into the
29 General Revenue Fund.

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

1 (f) The office shall review all applications submitted
2 under s. 288.106 or other similar application forms for other
3 eligible businesses as defined in paragraph (1)(e) which
4 indicate that the proposed project will be located in a
5 brownfield and determine, with the assistance of the
6 Department of Environmental Protection, that the project
7 location is within a brownfield as provided in this act.

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

11 (h) The director, with such assistance as may be
12 required from the office and the Department of Environmental
13 Protection, shall specify by written final order the amount of
14 the brownfield redevelopment bonus refund that is authorized
15 for the qualified target industry business for the fiscal year
16 within 30 days after the date that the claim for the annual
17 tax refund is received by the office.

18 (i) The total amount of the bonus refunds approved by
19 the director under this section in any fiscal year must not
20 exceed the total amount appropriated to the Economic
21 Development Incentives Account for this purpose for the fiscal
22 year. In the event that the Legislature does not appropriate
23 an amount sufficient to satisfy projections by the office for
24 brownfield redevelopment bonus refunds under this section in a
25 fiscal year, the office shall, not later than July 15 of such
26 year, determine the proportion of each brownfield
27 redevelopment bonus refund claim which shall be paid by
28 dividing the amount appropriated for tax refunds for the
29 fiscal year by the projected total of brownfield redevelopment
30 bonus refund claims for the fiscal year. The amount of each
31 claim for a brownfield redevelopment bonus tax refund shall be

1 multiplied by the resulting quotient. If, after the payment
2 of all such refund claims, funds remain in the Economic
3 Development Incentives Account for brownfield redevelopment
4 tax refunds, the office shall recalculate the proportion for
5 each refund claim and adjust the amount of each claim
6 accordingly.

7 (j) Upon approval of the brownfield redevelopment
8 bonus refund, payment shall be made for the amount specified
9 in the final order. If the final order is appealed, payment
10 may not be made for a refund to the qualified target industry
11 business until the conclusion of all appeals of that order.

12 (5) ADMINISTRATION.--

13 (a) The office is authorized to verify information
14 provided in any claim submitted for tax credits under this
15 section with regard to employment and wage levels or the
16 payment of the taxes to the appropriate agency or authority,
17 including the Department of Revenue, the Department of Labor
18 and Employment Security, or any local government or authority.

19 (b) To facilitate the process of monitoring and
20 auditing applications made under this program, the office may
21 provide a list of qualified target industry businesses to the
22 Department of Revenue, to the Department of Labor and
23 Employment Security, to the Department of Environmental
24 Protection, or to any local government authority. The office
25 may request the assistance of those entities with respect to
26 monitoring the payment of the taxes listed in s. 288.106(3).

27 Section 3. Paragraph (b) of subsection (3) of section
28 288.905, Florida Statutes, is amended to read:

29 288.905 Duties of the board of directors of Enterprise
30 Florida, Inc.--

31 (3)

1 (b)1. The strategic plan required under this section
2 shall include specific provisions for the stimulation of
3 economic development and job creation in rural areas and
4 midsize cities and counties of the state.

5 2. Enterprise Florida, Inc., shall involve local
6 governments, local and regional economic development
7 organizations, and other local, state, and federal economic,
8 international, and workforce development entities, both public
9 and private, in developing and carrying out policies,
10 strategies, and programs, seeking to partner and collaborate
11 to produce enhanced public benefit at a lesser cost.

12 3. Enterprise Florida, Inc., shall involve rural,
13 urban, small-business, and minority-business development
14 agencies and organizations, both public and private, in
15 developing and carrying out policies, strategies, and
16 programs.

17 4. Enterprise Florida, Inc., shall develop a
18 comprehensive marketing plan for redevelopment of brownfield
19 areas designated pursuant to s. 376.80. The plan must include,
20 but is not limited to, strategies to distribute information
21 about current designated brownfield areas and the available
22 economic incentives for redevelopment of brownfield areas.
23 Such strategies are to be used in the promotion of business
24 formation, expansion, recruitment, retention, and work-force
25 development programs.

26 Section 4. Section 376.301, Florida Statutes, is
27 amended to read:

28 376.301 Definitions of terms used in ss.
29 376.30-376.319, 376.70, and 376.75.--When used in ss.
30 376.30-376.319, 376.70, and 376.75, unless the context clearly
31 requires otherwise, the term:

1 (1) "Aboveground hazardous substance tank" means any
2 stationary aboveground storage tank and onsite integral piping
3 that contains hazardous substances which are liquid at
4 standard temperature and pressure and has an individual
5 storage capacity greater than 110 gallons.

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

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

14 (4) "Backlog" means reimbursement obligations incurred
15 pursuant to s. 376.3071(12), prior to March 29, 1995, or
16 authorized for reimbursement under the provisions of s.
17 376.3071(12), pursuant to chapter 95-2, Laws of Florida.
18 Claims within the backlog are subject to adjustment, where
19 appropriate.

20 (5) "Barrel" means 42 U.S. gallons at 60 degrees
21 Fahrenheit.

22 (6) "Bulk product facility" means a waterfront
23 location with at least one aboveground tank with a capacity
24 greater than 30,000 gallons which is used for the storage of
25 pollutants.

26 (7) "Cattle-dipping vat" means any structure,
27 excavation, or other facility constructed by any person, or
28 the site where such structure, excavation, or other facility
29 once existed, for the purpose of treating cattle or other
30 livestock with a chemical solution pursuant to or in
31 compliance with any local, state, or federal governmental

1 program for the prevention, suppression, control, or
2 eradication of any dangerous, contagious, or infectious
3 diseases.

4 (8) "Compression vessel" means any stationary
5 container, tank, or onsite integral piping system, or
6 combination thereof, which has a capacity of greater than 110
7 gallons, that is primarily used to store pollutants or
8 hazardous substances above atmospheric pressure or at a
9 reduced temperature in order to lower the vapor pressure of
10 the contents. Manifold compression vessels that function as a
11 single vessel shall be considered as one vessel.

12 (9) "Contaminant" means any physical, chemical,
13 biological, or radiological substance present in any medium
14 which may result in adverse effects to human health or the
15 environment or which creates an adverse nuisance,
16 organoleptic, or aesthetic condition in groundwater.

17 (10) "Contaminated site" means any contiguous land,
18 sediment, surface water, or groundwater areas that contain
19 contaminants that may be harmful to human health or the
20 environment.

21 (11) "Department" means the Department of
22 Environmental Protection.

23 (12) "Discharge" includes, but is not limited to, any
24 spilling, leaking, seeping, pouring, misapplying, emitting,
25 emptying, releasing, or dumping of any pollutant or hazardous
26 substance which occurs and which affects lands and the surface
27 and ground waters of the state not regulated by ss.
28 376.011-376.21.

29 (13) "Drycleaning facility" means a commercial
30 establishment that operates or has at some time in the past
31 operated for the primary purpose of drycleaning clothing and

1 other fabrics utilizing a process that involves any use of
2 drycleaning solvents. The term "drycleaning facility" includes
3 laundry facilities that use drycleaning solvents as part of
4 their cleaning process. The term does not include a facility
5 that operates or has at some time in the past operated as a
6 uniform rental company or a linen supply company regardless of
7 whether the facility operates as or was previously operated as
8 a drycleaning facility.

9 (14) "Drycleaning solvents" means any and all
10 nonaqueous solvents used in the cleaning of clothing and other
11 fabrics and includes perchloroethylene (also known as
12 tetrachloroethylene) and petroleum-based solvents, and their
13 breakdown products. For purposes of this definition,
14 "drycleaning solvents" only includes those drycleaning
15 solvents originating from use at a drycleaning facility or by
16 a wholesale supply facility.

17 (15) "Dry drop-off facility" means any commercial
18 retail store that receives from customers clothing and other
19 fabrics for drycleaning or laundering at an offsite
20 drycleaning facility and that does not clean the clothing or
21 fabrics at the store utilizing drycleaning solvents.

22 (16) "Engineering controls" means modifications to a
23 site to reduce or eliminate the potential for exposure to
24 petroleum products' chemicals of concern, drycleaning
25 solvents, or other contaminants. Such modifications may
26 include, but are not limited to, physical or hydraulic control
27 measures, capping, point of use treatments, or slurry walls.

28 (17) "Wholesale supply facility" means a commercial
29 establishment that supplies drycleaning solvents to
30 drycleaning facilities.

31

1 (18) "Facility" means a nonresidential location
2 containing, or which contained, any underground stationary
3 tank or tanks which contain hazardous substances or pollutants
4 and have individual storage capacities greater than 110
5 gallons, or any aboveground stationary tank or tanks which
6 contain pollutants which are liquids at standard ambient
7 temperature and pressure and have individual storage
8 capacities greater than 550 gallons. This subsection shall not
9 apply to facilities covered by chapter 377, or containers
10 storing solid or gaseous pollutants, and agricultural tanks
11 having storage capacities of less than 550 gallons.

12 (19) "Flow-through process tank" means an aboveground
13 tank that contains hazardous substances or specified mineral
14 acids as defined in s. 376.321 and that forms an integral part
15 of a production process through which there is a steady,
16 variable, recurring, or intermittent flow of materials during
17 the operation of the process. Flow-through process tanks
18 include, but are not limited to, seal tanks, vapor recovery
19 units, surge tanks, blend tanks, feed tanks, check and delay
20 tanks, batch tanks, oil-water separators, or tanks in which
21 mechanical, physical, or chemical change of a material is
22 accomplished.

23 (20) "Hazardous substances" means those substances
24 defined as hazardous substances in the Comprehensive
25 Environmental Response, Compensation and Liability Act of
26 1980, Pub. L. No. 96-510, 94 Stat. 2767, as amended by the
27 Superfund Amendments and Reauthorization Act of 1986.

28 (21) "Institutional controls" means the restriction on
29 use or access to a site to eliminate or minimize exposure to
30 petroleum products' chemicals of concern, drycleaning
31 solvents, or other contaminants. Such restrictions may

1 include, but are not limited to, deed restrictions,
2 restrictive covenants, or conservation easements ~~use~~
3 ~~restrictions, or restrictive zoning.~~

4 (22) "Laundering on a wash, dry, and fold basis" means
5 the service provided by the owner or operator of a
6 coin-operated laundry to its customers whereby an employee of
7 the laundry washes, dries, and folds laundry for its
8 customers.

9 (23) "Marine fueling facility" means a commercial or
10 recreational coastal facility, excluding a bulk product
11 facility, providing fuel to vessels.

12 (24) "Natural attenuation" means a verifiable ~~an~~
13 approach to site rehabilitation that allows natural processes
14 to contain the spread of contamination and reduce the
15 concentrations of contaminants in contaminated groundwater and
16 soil. Natural attenuation processes may include the following:
17 sorption, biodegradation, chemical reactions with subsurface
18 materials, diffusion, dispersion, and volatilization.

19 (25) "Operator" means any person operating a facility,
20 whether by lease, contract, or other form of agreement.

21 (26) "Owner" means any person owning a facility.

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

25 (28) "Person in charge" means the person on the scene
26 who is in direct, responsible charge of a facility from which
27 pollutants are discharged, when the discharge occurs.

28 (29) "Person responsible for conducting site
29 rehabilitation" means the site owner, operator, or the person
30 designated by the site owner or operator on the reimbursement
31 application. Mortgage holders and trust holders may be

1 eligible to participate in the reimbursement program pursuant
2 to s. 376.3071(12).

3 (30) "Petroleum" includes:

4 (a) Oil, including crude petroleum oil and other
5 hydrocarbons, regardless of gravity, which are produced at the
6 well in liquid form by ordinary methods and which are not the
7 result of condensation of gas after it leaves the reservoir;
8 and

9 (b) All natural gas, including casinghead gas, and all
10 other hydrocarbons not defined as oil in paragraph (a).

11 (31) "Petroleum product" means any liquid fuel
12 commodity made from petroleum, including, but not limited to,
13 all forms of fuel known or sold as diesel fuel, kerosene, all
14 forms of fuel known or sold as gasoline, and fuels containing
15 a mixture of gasoline and other products, excluding liquefied
16 petroleum gas and American Society for Testing and Materials
17 (ASTM) grades no. 5 and no. 6 residual oils, bunker C residual
18 oils, intermediate fuel oils (IFO) used for marine bunkering
19 with a viscosity of 30 and higher, asphalt oils, and
20 petrochemical feedstocks.

21 (32) "Petroleum products' chemicals of concern" means
22 the constituents of petroleum products, including, but not
23 limited to, xylene, benzene, toluene, ethylbenzene,
24 naphthalene, and similar chemicals, and constituents in
25 petroleum products, including, but not limited to, methyl
26 tert-butyl ether (MTBE), lead, and similar chemicals found in
27 additives, provided the chemicals of concern are present as a
28 result of a discharge of petroleum products.

29 (33) "Petroleum storage system" means a stationary
30 tank not covered under the provisions of chapter 377, together
31 with any onsite integral piping or dispensing system

1 associated therewith, which is used, or intended to be used,
2 for the storage or supply of any petroleum product. Petroleum
3 storage systems may also include oil/water separators, and
4 other pollution control devices installed at petroleum product
5 terminals as defined in this chapter and bulk product
6 facilities pursuant to, or required by, permits or best
7 management practices in an effort to control surface discharge
8 of pollutants. Nothing herein shall be construed to allow a
9 continuing discharge in violation of department rules.

10 (34) "Pollutants" includes any "product" as defined in
11 s. 377.19(11), pesticides, ammonia, chlorine, and derivatives
12 thereof, excluding liquefied petroleum gas.

13 (35) "Pollution" means the presence on the land or in
14 the waters of the state of pollutants in quantities which are
15 or may be potentially harmful or injurious to human health or
16 welfare, animal or plant life, or property or which may
17 unreasonably interfere with the enjoyment of life or property,
18 including outdoor recreation.

19 (36) "Real property owner" means the individual or
20 entity that is vested with ownership, dominion, or legal or
21 rightful title to the real property, or which has a ground
22 lease interest in the real property, on which a drycleaning
23 facility or wholesale supply facility is or has ever been
24 located.

25 (37) "Response action" means any activity, including
26 evaluation, planning, design, engineering, construction, and
27 ancillary services, which is carried out in response to any
28 discharge, release, or threatened release of a hazardous
29 substance, pollutant, or other contaminant from a facility or
30 site identified by the department under the provisions of ss.
31 376.30-376.319.

1 (38) "Response action contractor" means a person who
2 is carrying out any response action, including a person
3 retained or hired by such person to provide services relating
4 to a response action.

5 (39) "Risk reduction" means the lowering or
6 elimination of the level of risk posed to human health or the
7 environment through interim remedial actions, remedial action,
8 or institutional and, if appropriate, engineering controls.

9 ~~(40)(39)~~ "Secretary" means the Secretary of
10 Environmental Protection.

11 ~~(41)(40)~~ "Site rehabilitation" means the assessment of
12 site contamination and the remediation activities that reduce
13 the levels of contaminants at a site through accepted
14 treatment methods to meet the cleanup target levels
15 established for that site. For purposes of sites subject to
16 the Resource Conservation and Recovery Act, as amended, the
17 term includes removal, decontamination, and corrective action
18 of releases of hazardous substances.

19 ~~(42)(41)~~ "Source removal" means the removal of free
20 product, or the removal of contaminants from soil or sediment
21 that has been contaminated to the extent that leaching to
22 groundwater or surface water has occurred or is occurring.

23 ~~(43)(42)~~ "Storage system" means a stationary tank not
24 covered under the provisions of chapter 377, together with any
25 onsite integral piping or dispensing system associated
26 therewith, which is or has been used for the storage or supply
27 of any petroleum product, pollutant, or hazardous substance as
28 defined herein, and which is registered with the Department of
29 Environmental Protection under this chapter or any rule
30 adopted pursuant hereto.

31

1 (44)~~(43)~~ "Synergistic effects" means a scientific
2 principle that the toxicity that occurs as a result of
3 exposure is more than the sum of the toxicities of the
4 individual chemicals to which the individual is exposed.

5 (45)~~(44)~~ "Terminal facility" means any structure,
6 group of structures, motor vehicle, rolling stock, pipeline,
7 equipment, or related appurtenances which are used or capable
8 of being used for one or more of the following purposes:
9 pumping, refining, drilling for, producing, storing, handling,
10 transferring, or processing pollutants, provided such
11 pollutants are transferred over, under, or across any water,
12 estuaries, tidal flats, beaches, or waterfront lands,
13 including, but not limited to, any such facility and related
14 appurtenances owned or operated by a public utility or a
15 governmental or quasi-governmental body. In the event of a
16 ship-to-ship transfer of pollutants, the vessel going to or
17 coming from the place of transfer and a terminal facility
18 shall also be considered a terminal facility. For the purposes
19 of ss. 376.30-376.319, the term "terminal facility" shall not
20 be construed to include spill response vessels engaged in
21 response activities related to removal of pollutants, or
22 temporary storage facilities created to temporarily store
23 recovered pollutants and matter, or waterfront facilities
24 owned and operated by governmental entities acting as agents
25 of public convenience for persons engaged in the drilling for
26 or pumping, storing, handling, transferring, processing, or
27 refining of pollutants. However, each person engaged in the
28 drilling for or pumping, storing, handling, transferring,
29 processing, or refining of pollutants through a waterfront
30 facility owned and operated by such a governmental entity
31 shall be construed as a terminal facility.

1 ~~(46)(45)~~ "Transfer" or "transferred" includes
2 onloading, offloading, fueling, bunkering, lightering, removal
3 of waste pollutants, or other similar transfers, between
4 terminal facility and vessel or vessel and vessel.

5 Section 5. Section 376.30701, Florida Statutes, is
6 created to read:

7 376.30701 Application of risk-based corrective action
8 principles to contaminated sites; applicability; legislative
9 intent; rulemaking authority; contamination cleanup criteria;
10 limitations; reopeners; mapping; registry.--

11 (1) APPLICABILITY.--

12 (a) This section shall not create or establish any new
13 liability for site rehabilitation at contaminated sites. This
14 section is intended only to establish the criteria for
15 developing a risk-based corrective action process to be
16 applied at sites where legal responsibility for site
17 rehabilitation exists pursuant to other provisions of chapter
18 376 or chapter 403.

19 (b) This section shall apply to all contaminated sites
20 resulting from a discharge of pollutants or hazardous
21 substances where legal responsibility for site rehabilitation
22 exists pursuant to other provisions of chapter 376 or chapter
23 403 except for those contaminated sites subject to the
24 risk-based corrective action cleanup criteria established for
25 the petroleum, brownfields, and drycleaning programs pursuant
26 to ss. 376.3071, 376.81, and 376.3078, respectively.

27 (c) This section shall apply to a variety of site
28 rehabilitation scenarios including, but not limited to, site
29 rehabilitation conducted voluntarily, conducted pursuant to
30 the department's enforcement authority, or conducted as a
31 state-managed cleanup by the department.

1 (d) This section, and any rules adopted pursuant
2 thereto, shall apply retroactively to all existing
3 contaminated sites where legal responsibility for site
4 rehabilitation exists pursuant to other provisions of chapter
5 376 or chapter 403 except those sites for which as of March 1,
6 2000, a report has been submitted to the department which
7 documents that cleanup has been completed, at sites for which
8 cleanup target levels have been accepted by the department in
9 an approved technical document, current permit, or other
10 written agreement, and at those sites that have received a No
11 Further Action Order or a Site Rehabilitation Completion Order
12 from the department. However, the person responsible for site
13 rehabilitation can elect to have the provisions of this
14 section, including cleanup target levels established pursuant
15 thereto, apply in lieu of those in an approved technical
16 document, current permit, or other written agreement.

17 (e) The cleanup criteria established in subsection (2)
18 shall apply as Applicable or Relevant and Appropriate
19 Requirements to all contaminated sites in Florida that have
20 been identified to qualify for listing, or are listed, on the
21 National Priority List pursuant to the Comprehensive
22 Environmental Response, Compensation, and Liability Act of
23 1980 as amended by the Superfund Amendments and
24 Reauthorization Act of 1986, and as subsequently amended.

25 (f) This section does not affect the goal of
26 expediency in emergency response actions to releases to soil
27 that result in soil contamination at levels above the soil
28 target cleanup levels. The need for uniformity in requirements
29 and accountability necessitates that emergency response
30 actions to releases be subject solely to the requirements of
31 the department, the Department of Community Affairs, and any

1 federal agencies with statewide enforcement authority that are
2 given jurisdiction over releases by federal law. The
3 risk-based corrective action process at these sites shall
4 allow department-recognized field screening techniques to be
5 used.

6 (2) INTENT; RULEMAKING AUTHORITY; CLEANUP

7 CRITERIA.--It is the intent of the Legislature to protect the
8 health of all people under actual circumstances of exposure.
9 By July 1, 2001, the secretary of the department shall
10 establish criteria by rule for the purpose of determining, on
11 a site-specific basis, the rehabilitation program tasks that
12 comprise a site rehabilitation program, including a voluntary
13 site rehabilitation program, and the level at which a
14 rehabilitation program task and a site rehabilitation program
15 may be deemed completed. In establishing these rules, the
16 department shall apply, to the maximum extent feasible, a
17 risk-based corrective action process to achieve protection of
18 human health and safety and the environment in a
19 cost-effective manner based on the principles set forth in
20 this subsection. These rules shall prescribe a phased
21 risk-based corrective-action process that is iterative and
22 that tailors site rehabilitation tasks to site-specific
23 conditions and risk. The department and the person responsible
24 for site rehabilitation are encouraged to establish decision
25 points at which risk management decisions will be made. The
26 department shall provide an early decision, when requested,
27 regarding applicable exposure factors and a risk management
28 approach based on the current and future land use at the site.
29 These rules must also include protocols for the use of natural
30 attenuation, the use of institutional and engineering
31 controls, and the issuance of "no further action" letters. The

1 criteria for determining what constitutes a rehabilitation
2 program task or completion of a site rehabilitation program
3 task or site rehabilitation program, including a voluntary
4 site rehabilitation program, must:

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

11 (b) Establish the point of compliance at the source of
12 the contamination. However, the department is authorized to
13 temporarily move the point of compliance to the boundary of
14 the property, or to the edge of the plume when the plume is
15 within the property boundary, while cleanup, including cleanup
16 through natural attenuation processes in conjunction with
17 appropriate monitoring, is proceeding. The department also is
18 authorized, pursuant to criteria provided for in this section,
19 to temporarily extend the point of compliance beyond the
20 property boundary with appropriate monitoring, if such
21 extension is needed to facilitate natural attenuation or to
22 address the current conditions of the plume, provided that
23 human health, public safety, and the environment are
24 protected. When temporarily extending the point of compliance
25 beyond the property boundary, it cannot be extended further
26 than the lateral extent of the plume, if known, at the time of
27 execution of a cleanup agreement, if required, or the lateral
28 extent of the plume as defined at the time of site assessment.
29 Temporary extension of the point of compliance beyond the
30 property boundary, as provided in this paragraph, must include
31 actual notice by the person responsible for site

1 rehabilitation to local governments and the owners of any
2 property into which the point of compliance is allowed to
3 extend and constructive notice to residents and business
4 tenants of the property into which the point of compliance is
5 allowed to extend. Persons receiving notice pursuant to this
6 paragraph shall have the opportunity to comment within 30 days
7 of receipt of the notice.

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

23 (d) Allow the use of institutional or engineering
24 controls at contaminated sites being cleaned up under this
25 section, where appropriate, to eliminate or control the
26 potential exposure to contaminants of humans or the
27 environment. The use of controls must be preapproved by the
28 department and only after constructive notice and opportunity
29 to comment within 30 days from receipt of notice is provided
30 to local governments, to owners of any property into which the
31 point of compliance is allowed to extend, and to residents on

1 any property into which the point of compliance is allowed to
2 extend. When institutional or engineering controls are
3 implemented to control exposure, the removal of the controls
4 must have prior department approval and must be accompanied by
5 the resumption of active cleanup, or other approved controls,
6 unless cleanup target levels under this section have been
7 achieved.

8 (e) Consider the additive effects of contaminants.
9 The synergistic and antagonistic effects must also be
10 considered when the scientific data become available.

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

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

23 1. Cleanup target levels for each contaminant found in
24 groundwater shall be the applicable state water quality
25 standards. Where such standards do not exist, the cleanup
26 target levels for groundwater shall be based on the minimum
27 criteria specified in department rule. The department shall
28 apply the following, as appropriate, in establishing the
29 applicable cleanup target levels: calculations using a
30 lifetime cancer risk level of 1.0E-6; a hazard index of 1 or
31 less; the best achievable detection limit; and nuisance,

1 organoleptic, and aesthetic considerations. However, the
2 department shall not require site rehabilitation to achieve a
3 cleanup target level for any individual contaminant that is
4 more stringent than the site-specific, naturally occurring
5 background concentration for that contaminant.

6 2. Where surface waters are exposed to contaminated
7 groundwater, the cleanup target levels for the contaminants
8 shall be based on the more protective of the groundwater or
9 surface water standards as established by department rule. The
10 point of measuring compliance with the surface water standards
11 shall be in the groundwater immediately adjacent to the
12 surface water body.

13 3. The department shall approve alternative cleanup
14 target levels in conjunction with institutional and
15 engineering controls, if needed, based upon the applicant's
16 demonstration, using site-specific data, modeling results,
17 risk assessment studies, risk-reduction techniques, or a
18 combination thereof, that human health, public safety, and the
19 environment are protected to the same degree as provided in
20 subparagraphs 1. and 2. Where a state water-quality standard
21 is applicable, a deviation may not result in the application
22 of cleanup target levels more stringent than the standard. In
23 determining whether it is appropriate to establish alternative
24 cleanup target levels at a site, the department must consider
25 the effectiveness of source removal, if any, that has been
26 completed at the site and the practical likelihood of the use
27 of low yield or poor quality groundwater, the use of
28 groundwater near marine surface water bodies, the current and
29 projected use of the affected groundwater in the vicinity of
30 the site, or the use of groundwater in the immediate vicinity
31 of the contaminated area, where it has been demonstrated that

1 the groundwater contamination is not migrating away from such
2 localized source, provided human health, public safety, and
3 the environment are protected.

4 (h) Provide for the department to issue a "no further
5 action order," with conditions including, but not limited to,
6 the use of institutional or engineering controls where
7 appropriate, when alternative cleanup target levels
8 established pursuant to subparagraph (g)3. have been achieved,
9 or when the person responsible for site rehabilitation can
10 demonstrate that the cleanup target level is unachievable
11 within available technologies. Prior to issuing such an
12 order, the department shall consider the feasibility of an
13 alternative site rehabilitation technology at the contaminated
14 site.

15 (i) Establish appropriate cleanup target levels for
16 soils.

17 1. In establishing soil cleanup target levels for
18 human exposure to each contaminant found in soils from the
19 land surface to 2 feet below land surface, the department
20 shall apply the following, as appropriate: calculations using
21 a lifetime cancer risk level of 1.0E-6; a hazard index of 1 or
22 less; and the best achievable detection limit. However, the
23 department shall not require site rehabilitation to achieve a
24 cleanup target level for an individual contaminant that is
25 more stringent than the site-specific, naturally occurring
26 background concentration for that contaminant. 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. Source
5 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 and in conjunction with institutional and
11 engineering controls, if needed, that contaminants will not
12 leach into the groundwater at levels that pose a threat to
13 human health, public safety, or the environment.

14 3. The department shall approve alternative cleanup
15 target levels in conjunction with institutional and
16 engineering controls, if needed, based upon an applicant's
17 demonstration using site-specific data, modeling results, risk
18 assessment studies, risk-reduction techniques, or a
19 combination thereof, that human health, public safety, and the
20 environment are protected to the same degree as provided in
21 subparagraphs 1. and 2.

22
23 The department shall require source removal, if warranted and
24 cost-effective. Once source removal at a site is complete,
25 the department shall reevaluate the site to determine the
26 degree of active cleanup needed to continue. Further, the
27 department shall determine if the reevaluated site qualifies
28 for monitoring only or if no further action is required to
29 rehabilitate the site. If additional site rehabilitation is
30 necessary to reach "no further action" status, the department

31

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

3 (3) LIMITATIONS.--The cleanup criteria established
4 pursuant to this section govern only site rehabilitation
5 activities occurring at the contaminated site. Removal of
6 contaminated media from a site for offsite relocation or
7 treatment must be in accordance with all applicable federal,
8 state, and local laws and regulations.

9 (4) REOPENERS.--Upon completion of site rehabilitation
10 in compliance with subsection (2), additional site
11 rehabilitation is not required unless it is demonstrated:

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

14 (b) That new information confirms the existence of an
15 area of previously unknown contamination that exceeds the
16 site-specific rehabilitation levels established in accordance
17 with subsection (2), or that otherwise poses the threat of
18 real and substantial harm to public health, safety, or the
19 environment;

20 (c) That the remediation efforts failed to achieve the
21 site rehabilitation criteria established under this section;

22 (d) That the level of risk is increased beyond the
23 acceptable risk established under subsection (2) due to
24 substantial changes in exposure conditions, such as a change
25 in land use from nonresidential to residential use. Any person
26 who changes the land use of the site, thus causing the level
27 of risk to increase beyond the acceptable risk level, may be
28 required by the department to undertake additional remediation
29 measures to assure that human health, public safety, and the
30 environment are protected consistent with this section; or
31

1 (e) That a new discharge of pollutants or hazardous
2 substances or disposal of solid waste or hazardous waste
3 occurs at the site subsequent to the issuance of a "no further
4 action" letter or site rehabilitation completion order
5 associated with the original contamination being addressed
6 pursuant to this section.

7 (5) MAPPING.--Notwithstanding the exceptions in
8 paragraph (1)(b), if an institutional control is implemented
9 at any contaminated site, including sites in the petroleum,
10 brownfields, or drycleaning programs, the property owner must
11 provide information regarding the institutional control to the
12 local government for mapping purposes. The local government
13 must then note the existence of the institutional control on
14 any relevant local land use and zoning maps with a
15 cross-reference to the department's site registry developed
16 pursuant to subsection (6). If the type of institutional
17 control used requires recording with the local government,
18 then the map notation shall also provide a cross-reference to
19 the book and page number where recorded. When a local
20 government is provided with evidence that the department has
21 subsequently issued a No Further Action Order without
22 institutional controls for a site currently noted on such
23 maps, the local government shall remove the notation.

24 (6) REGISTRY.--Notwithstanding the exceptions in
25 paragraph (1)(b), the department shall prepare and maintain a
26 registry of all contaminated sites subject to institutional
27 and engineering controls, in order to provide a mechanism for
28 the public and local governments to: monitor the status of
29 these controls; monitor the department's short-term and
30 long-term protection of human health and the environment in
31 relation to these sites; and evaluate economic revitalization

1 efforts in these areas. At a minimum, the registry shall
2 include the type of institutional or engineering controls
3 employed at a particular site, types of contaminants and
4 affected media, land use limitations, and the county in which
5 the site is located. Sites listed on the registry at which the
6 department has subsequently issued a No Further Action Order
7 without institutional controls shall be removed from the
8 registry. The department shall make the registry available to
9 the public and local governments within 1 year after the
10 effective date of this act. The department shall provide local
11 governments with actual notice when the registry becomes
12 available. Local zoning and planning offices shall post
13 information on how to access the registry in public view.

14 Section 6. Paragraph (i) of subsection (4) of section
15 376.3078, Florida Statutes, is amended to read:

16 376.3078 Drycleaning facility restoration; funds;
17 uses; liability; recovery of expenditures.--

18 (4) REHABILITATION CRITERIA.--It is the intent of the
19 Legislature to protect the health of all people under actual
20 circumstances of exposure. By July 1, 1999, the secretary of
21 the department shall establish criteria by rule for the
22 purpose of determining, on a site-specific basis, the
23 rehabilitation program tasks that comprise a site
24 rehabilitation program, including a voluntary site
25 rehabilitation program, and the level at which a
26 rehabilitation program task and a site rehabilitation program
27 may be deemed completed. In establishing the rule, the
28 department shall incorporate, to the maximum extent feasible,
29 risk-based corrective action principles to achieve protection
30 of human health and safety and the environment in a
31 cost-effective manner as provided in this subsection. The

1 rule shall also include protocols for the use of natural
2 attenuation and the issuance of "no further action" letters.
3 The criteria for determining what constitutes a rehabilitation
4 program task or completion of a site rehabilitation program
5 task or site rehabilitation program, including a voluntary
6 site rehabilitation program, must:

7 (i) Establish appropriate cleanup target levels for
8 soils.

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

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

1 3. The department may set alternative cleanup target
2 levels based upon the person responsible for site
3 rehabilitation demonstrating, using site-specific modeling and
4 risk assessment studies, that human health, public safety, and
5 the environment are protected.

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

17 Section 7. Section 376.79, Florida Statutes, is
18 amended to read:

19 376.79 Definitions.--As used in ss. 376.77-376.85, the
20 term:

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

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

29 (3) "Brownfield sites" means sites that are generally
30 abandoned, idled, or underused industrial and commercial
31

1 properties where expansion or redevelopment is complicated by
2 actual or perceived environmental contamination.

3 (4) "Brownfield area" means a contiguous area of one
4 or more brownfield sites, some of which may not be
5 contaminated, and which has been designated by a local
6 government by resolution. Such areas may include all or
7 portions of community redevelopment areas, enterprise zones,
8 empowerment zones, other such designated economically deprived
9 communities and areas, and Environmental Protection
10 Agency-designated brownfield pilot projects.

11 (5) "Contaminant" means any physical, chemical,
12 biological, or radiological substance present in any medium
13 which may result in adverse effects to human health or the
14 environment or which creates an adverse nuisance,
15 organoleptic, or aesthetic condition in groundwater.

16 ~~(6)(5)~~ "Contaminated site" means any contiguous land,
17 surface water, or groundwater areas that contain contaminants
18 that may be harmful to human health or the environment.

19 ~~(7)(6)~~ "Department" means the Department of
20 Environmental Protection.

21 ~~(8)(7)~~ "Engineering controls" means modifications to a
22 site to reduce or eliminate the potential for exposure to
23 contaminants. Such modifications may include, but are not
24 limited to, physical or hydraulic control measures, capping,
25 point of use treatments, or slurry walls.

26 ~~(9)(8)~~ "Environmental justice" means the fair
27 treatment of all people of all races, cultures, and incomes
28 with respect to the development, implementation, and
29 enforcement of environmental laws, regulations, and policies.

30 ~~(10)(9)~~ "Institutional controls" means the restriction
31 on use of or access to a site to eliminate or minimize

1 exposure to contaminants. Such restrictions may include, but
2 are not limited to, deed restrictions, restrictive covenants,
3 or conservation easements ~~use restrictions, or restrictive~~
4 ~~zoning.~~

5 (11)~~(10)~~ "Local pollution control program" means a
6 local pollution control program that has received delegated
7 authority from the Department of Environmental Protection
8 under ss. 376.80(11) and 403.182.

9 (12)~~(11)~~ "Natural attenuation" means a verifiable
10 approach to site rehabilitation which allows natural processes
11 to contain the spread of contamination and reduce the
12 concentrations of contaminants in contaminated groundwater and
13 soil. Natural attenuation processes may include sorption,
14 biodegradation, chemical reactions with subsurface materials,
15 diffusion, dispersion, and volatilization.~~the verifiable~~
16 ~~reduction of contaminants through natural processes, which may~~
17 ~~include diffusion, dispersion, adsorption, and biodegradation.~~

18 (13)~~(12)~~ "Person responsible for brownfield site
19 rehabilitation" means the individual or entity that is
20 designated by the local government to enter into the
21 brownfield site rehabilitation agreement with the department
22 or an approved local pollution control program and enters into
23 an agreement with the local government for redevelopment of
24 the site.

25 (14)~~(13)~~ "Person" means any individual, partner, joint
26 venture, or corporation; any group of the foregoing, organized
27 or united for a business purpose; or any governmental entity.

28 (15) "Risk reduction" means the lowering or
29 elimination of the level of risk posed to human health or the
30 environment through interim remedial actions, remedial action,
31 or institutional, and if appropriate, engineering controls.

1 ~~(16)(14)~~ "Secretary" means the secretary of the
2 Department of Environmental Protection.

3 ~~(17)(15)~~ "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 ~~(18)(16)~~ "Source removal" means the removal of free
9 product, or the removal of contaminants from soil or sediment
10 that has been contaminated to the extent that leaching to
11 groundwater or surface water has occurred or is occurring.

12 ~~(19)(17)~~ "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 8. Subsections (4) and (5) and paragraph (c)
17 of subsection (7) of section 376.80, Florida Statutes, are
18 amended to read:

19 376.80 Brownfield program administration process.--

20 (4) Local governments or persons responsible for
21 rehabilitation and redevelopment of brownfield areas must
22 establish an advisory committee or use an existing advisory
23 committee that has formally expressed its intent to address
24 redevelopment of the specific brownfield area for the purpose
25 of improving public participation and receiving public
26 comments on rehabilitation and redevelopment of the brownfield
27 area, future land use, local employment opportunities,
28 community safety, and environmental justice. Such advisory
29 committee should include residents within or adjacent to the
30 brownfield area, businesses operating within the brownfield
31 area, and others deemed appropriate. The person responsible

1 for site rehabilitation must notify the advisory committee of
2 the intent to rehabilitate and redevelop the site before
3 executing the brownfield site rehabilitation agreement, and
4 provide the committee with a copy of the draft plan for site
5 rehabilitation which addresses elements required by subsection
6 (5). This includes disclosing potential reuse of the property
7 as well as environmental activities, if any, to be performed.
8 The advisory committee shall review and provide comments, if
9 appropriate, to the board of the local government with
10 jurisdiction over the brownfield on the draft plan for
11 redevelopment of the brownfield area. The advisory committee
12 must receive a copy of the executed brownfield site
13 rehabilitation agreement. When an environmental assessment or
14 remediation document is submitted to the department or the
15 local pollution control program for review, the person
16 responsible for site rehabilitation must hold a meeting or
17 attend the regularly scheduled meeting to inform the advisory
18 committee of responses planned to the assessment or
19 remediation document. ~~The advisory committee must review and~~
20 ~~provide recommendations to the board of the local government~~
21 ~~with jurisdiction on the proposed site rehabilitation~~
22 ~~agreement provided in subsection (5).~~

23 (5) The person responsible for brownfield site
24 rehabilitation must enter into a brownfield site
25 rehabilitation agreement with the department or an approved
26 local pollution control program if actual contamination exists
27 at the brownfield site. The brownfield site rehabilitation
28 agreement must include:

29 (a) A brownfield site rehabilitation schedule,
30 including milestones for completion of site rehabilitation

31

1 tasks and submittal of technical reports and rehabilitation
2 plans as agreed upon by the parties to the agreement;

3 (b) A commitment to conduct site rehabilitation
4 activities under the observation of professional engineers or
5 geologists who are registered in accordance with the
6 requirements of chapter 471 or chapter 492, respectively.

7 Submittals provided by the person responsible for brownfield
8 site rehabilitation must be signed and sealed by a
9 professional engineer registered under chapter 471, or a
10 professional geologist registered under chapter 492,
11 certifying that the submittal and associated work comply with
12 the law and rules of the department and those governing the
13 profession. In addition, upon completion of the approved
14 remedial action, the department shall require a professional
15 engineer registered under chapter 471 or a professional
16 geologist registered under chapter 492 to certify that the
17 corrective action was, to the best of his or her knowledge,
18 completed in substantial conformance with the plans and
19 specifications approved by the department;

20 (c) A commitment to conduct site rehabilitation in
21 accordance with an approved comprehensive quality assurance
22 plan under department rules;

23 (d) A commitment to conduct site rehabilitation
24 consistent with state, federal, and local laws and consistent
25 with the brownfield site contamination cleanup criteria in s.
26 376.81, including any applicable requirements for risk-based
27 corrective action;

28 (e) Timeframes for the department's review of
29 technical reports and plans submitted in accordance with the
30 agreement. The department shall make every effort to adhere
31

1 to established agency goals for reasonable timeframes for
2 review of such documents;

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

7 (g) Other provisions that the person responsible for
8 brownfield site rehabilitation and the department agree upon,
9 that are consistent with ss. 376.77-376.85, and that will
10 improve or enhance the brownfield site rehabilitation process;

11 (h) A commitment to consider appropriate pollution
12 prevention measures and to implement those that the person
13 responsible for brownfield site rehabilitation determines are
14 reasonable and cost-effective, taking into account the
15 ultimate use or uses of the brownfield site. Such measures
16 may include improved inventory or production controls and
17 procedures for preventing loss, spills, and leaks of hazardous
18 waste and materials, and include goals for the reduction of
19 releases of toxic materials; and

20 (i) Certification that an agreement exists between the
21 person responsible for brownfield site rehabilitation and the
22 local government with jurisdiction over the brownfield area.
23 Such agreement shall contain terms for the redevelopment of
24 the brownfield area.

25 (7) The contractor must certify to the department that
26 the contractor:

27 (c) Maintains comprehensive general liability and
28 comprehensive automobile liability insurance with minimum
29 limits of at least \$1 million per claim ~~occurrence~~ and \$1
30 million annual aggregate, sufficient to protect it from claims
31 for damage for personal injury, including accidental death, as

1 well as claims for property damage which may arise from
2 performance of work under the program, designating the state
3 as an additional insured party.

4 Section 9. Section 376.81, Florida Statutes, is
5 amended to read:

6 376.81 Brownfield site and brownfield areas
7 contamination cleanup criteria.--

8 (1) It is the intent of the Legislature to protect the
9 health of all people under actual circumstances of exposure.
10 By July 1, 2001 ~~1998~~, the secretary of the department shall
11 establish criteria by rule for the purpose of determining, on
12 a site-specific basis, the rehabilitation program tasks that
13 comprise a site rehabilitation program and the level at which
14 a rehabilitation program task and a site rehabilitation
15 program may be deemed completed. In establishing the rule,
16 the department shall apply ~~incorporate~~, to the maximum extent
17 feasible, a risk-based corrective action process principles to
18 achieve protection of human health and safety and the
19 environment in a cost-effective manner based on the principles
20 set forth as provided in this subsection. The rule must
21 prescribe a phased risk-based corrective action process that
22 is iterative and that tailors site rehabilitation tasks to
23 site-specific conditions and risks. The department and the
24 person responsible for brownfield site rehabilitation are
25 encouraged to establish decision points at which risk
26 management decisions will be made. The department shall
27 provide an early decision, when requested, regarding
28 applicable exposure factors and a risk management approach
29 based on the current and future land use at the site.The rule
30 shall also include protocols for the use of natural
31 attenuation, the use of institutional and engineering

1 controls, and the issuance of "no further action" letters. The
2 criteria for determining what constitutes a rehabilitation
3 program task or completion of a site rehabilitation program
4 task or site rehabilitation program must:

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

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

1 brownfield site rehabilitation to local governments and the
2 owners of any property into which the point of compliance is
3 allowed to extend and constructive notice to residents and
4 business tenants of the property into which the point of
5 compliance is allowed to extend. Persons receiving notice
6 pursuant to this paragraph shall have the opportunity to
7 comment within 30 days of receipt of the notice.

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

23 (d) Allow brownfield site and brownfield area
24 rehabilitation programs to include the use of institutional or
25 engineering controls, where appropriate, to eliminate or
26 control the potential exposure to contaminants of humans or
27 the environment. The use of controls must be preapproved by
28 the department and only after constructive notice and
29 opportunity to comment within 30 days from receipt of notice
30 is provided to local governments, to owners of any property
31 into which the point of compliance is allowed to extend, and

1 to residents on any property into which the point of
2 compliance is allowed to extend. When institutional or
3 engineering controls are implemented to control exposure, the
4 removal of the controls must have prior department approval
5 and must be accompanied by the resumption of active cleanup,
6 or other approved controls, unless cleanup target levels under
7 this section have been achieved.

8 (e) Consider the additive effects of contaminants.
9 The synergistic and antagonistic effects shall also be
10 considered when the scientific data become available.

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

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

23 1. Cleanup target levels for each contaminant found in
24 groundwater shall be the applicable state water quality
25 standards. Where such standards do not exist, the cleanup
26 target levels for groundwater shall be based on the minimum
27 criteria specified in department rule. The department shall
28 apply ~~consider~~ the following, as appropriate, in establishing
29 the applicable cleanup target levels ~~minimum criteria~~:
30 calculations using a lifetime cancer risk level of 1.0E-6; a
31 hazard index of 1 or less; the best achievable detection

1 limit; ~~and the naturally occurring background concentration;~~
2 or nuisance, organoleptic, and aesthetic considerations.
3 However, the department shall not require site rehabilitation
4 to achieve a cleanup target level for any individual
5 contaminant which is more stringent than the site-specific,
6 naturally occurring background concentration for that
7 contaminant.

8 2. Where surface waters are exposed to contaminated
9 groundwater, the cleanup target levels for the contaminants
10 shall be based on the more protective of the groundwater or
11 surface water standards as established by department rule.
12 The point of measuring compliance with the surface water
13 standards shall be in the groundwater immediately adjacent to
14 the surface water body.

15 3. The department shall approve ~~may set~~ alternative
16 cleanup target levels in conjunction with institutional and
17 engineering controls, if needed, based upon an applicant's
18 demonstration, using site-specific data, modeling results, and
19 risk assessment studies, risk reduction techniques, or a
20 combination thereof, that human health, public safety, and the
21 environment are protected to the same degree as provided in
22 subparagraphs 1. and 2. Where a state water quality standard
23 is applicable, a deviation may not result in the application
24 of cleanup target levels more stringent than the standard. In
25 determining whether it is appropriate to establish alternative
26 cleanup target levels at a site, the department must consider
27 the effectiveness of source removal, if any, which ~~that~~ has
28 been completed at the site and the practical likelihood of the
29 use of low yield or poor quality groundwater, the use of
30 groundwater near marine surface water bodies, the current and
31 projected use of the affected groundwater in the vicinity of

1 the site, or the use of groundwater in the immediate vicinity
2 of the contaminated area, where it has been demonstrated that
3 the groundwater contamination is not migrating away from such
4 localized source, provided human health, public safety, and
5 the environment are protected. When using alternative cleanup
6 target levels at a brownfield site, institutional controls
7 shall not be required if:

8 a. The only cleanup target levels exceeded are the
9 groundwater cleanup target levels derived from nuisance,
10 organoleptic, or aesthetic considerations;

11 b. Concentrations of all contaminants meet the state
12 water quality standards or minimum criteria, based on
13 protection of human health, provided in subparagraph 1.;

14 c. All of the groundwater cleanup target levels
15 established pursuant to subparagraph 1. are met at the
16 property boundary;

17 d. The person responsible for brownfield site
18 rehabilitation has demonstrated that the contaminants will not
19 migrate beyond the property boundary at concentrations
20 exceeding the groundwater cleanup target levels established
21 pursuant to subparagraph 1.;

22 e. The property has access to and is using an offsite
23 water supply and no unplugged private wells are used for
24 domestic purposes; and

25 f. The real property owner provides written acceptance
26 of the "no further action" proposal to the department or the
27 local pollution control program.

28 (h) Provide for the department to issue a "no further
29 action order," with conditions, including, but not limited to,
30 the use of institutional or engineering controls where
31 appropriate, when alternative cleanup target levels

1 established pursuant to subparagraph (g)3. have been achieved,
2 or when the person responsible for brownfield site
3 rehabilitation can demonstrate that the cleanup target level
4 is unachievable within available technologies. Prior to
5 issuing such an order, the department shall consider the
6 feasibility of an alternative site rehabilitation technology
7 in the brownfield area.

8 (i) Establish appropriate cleanup target levels for
9 soils.

10 1. In establishing soil cleanup target levels for
11 human exposure to each contaminant found in soils from the
12 land surface to 2 feet below land surface, the department
13 shall apply ~~consider~~ the following, as appropriate:
14 calculations using a lifetime cancer risk level of 1.0E-6; a
15 hazard index of 1 or less; and the best achievable detection
16 limit; ~~or the naturally occurring background concentration.~~
17 However, the department shall not require site rehabilitation
18 to achieve a cleanup target level for an individual
19 contaminant which is more stringent than the site-specific,
20 naturally occurring background concentration for that
21 contaminant. Institutional controls or other methods shall be
22 used to prevent human exposure to contaminated soils more than
23 2 feet below the land surface. Any removal of such
24 institutional controls shall require such contaminated soils
25 to be remediated.

26 2. Leachability-based soil target levels shall be
27 based on protection of the groundwater cleanup target levels
28 or the alternate cleanup target levels for groundwater
29 established pursuant to this paragraph, as appropriate. Source
30 removal and other cost-effective alternatives that are
31 technologically feasible shall be considered in achieving the

1 leachability soil target levels established by the department.
2 The leachability goals shall not be applicable if the
3 department determines, based upon individual site
4 characteristics, and in conjunction with institutional and
5 engineering controls, if needed, that contaminants will not
6 leach into the groundwater at levels that ~~which~~ pose a threat
7 to human health, public safety, and the environment.

8 3. The department shall approve ~~may set~~ alternative
9 cleanup target levels in conjunction with institutional and
10 engineering controls, if needed, based upon an applicant's
11 demonstration, using site-specific data, modeling results, ~~and~~
12 risk assessment studies, risk reduction techniques, or a
13 combination thereof, that human health, public safety, and the
14 environment are protected to the same degree as provided in
15 subparagraphs 1. and 2.

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

26 (3) The cleanup criteria established pursuant to this
27 section govern only site rehabilitation activities occurring
28 at the contaminated site. Removal of contaminated media from a
29 site for offsite relocation or treatment must be in accordance
30 with all applicable federal, state, and local laws and
31 regulations.

1 Section 10. Paragraph (k) is added to subsection (2)
2 of section 376.82, Florida Statutes, to read:

3 376.82 Eligibility criteria and liability
4 protection.--

5 (2) LIABILITY PROTECTION.--

6 (k) A person whose property becomes contaminated due
7 to geophysical or hydrologic reasons, including the migration
8 of contaminants onto their property from the operation of
9 facilities and activities on a nearby designated brownfield
10 area, and whose property has never been occupied by a business
11 that utilized or stored the contaminants or similar
12 constituents is not subject to administrative or judicial
13 action brought by or on behalf of another to compel the
14 rehabilitation of or the payment of the costs for the
15 rehabilitation of sites contaminated by materials that
16 migrated onto the property from the designated brownfield
17 area, if the person:

18 1. Does not own and has never held an ownership
19 interest in, or shared in the profits of, activities in the
20 designated brownfield area operated at the source location;

21 2. Did not participate in the operation or management
22 of the activities in the designated brownfield area operated
23 at the source location; and

24 3. Did not cause, contribute to, or exacerbate the
25 release or threat of release of any hazardous substance
26 through any act or omission.

27 Section 11. Section 376.88, Florida Statutes, is
28 created to read:

29 376.88 Brownfield Program Review Advisory Council.--

30 (1) The Brownfield Program Review Advisory Council is
31 created to provide for continuous review of the progress in

1 the administration of Florida's Brownfield Program and to make
2 recommendations for its improvement. The council shall consist
3 of the following:

4 (a) A representative of a city that participated in
5 the pilot grant program for brownfields sponsored by the U.S.
6 Environmental Protection Agency;

7 (b) A representative of a county that participated in
8 the pilot grant program for brownfields sponsored by the U.S.
9 Environmental Protection Agency;

10 (c) A representative of a statewide business
11 organization;

12 (d) A representative of Enterprise Florida, Inc.;

13 (e) A representative of response action contractor
14 companies involved in activities at brownfield sites;

15 (f) The Secretary of the Department of Environmental
16 Protection or his or her designee;

17 (g) The Secretary of the Department of Community
18 Affairs or his or her designee;

19 (h) The Director of the Office of Tourism, Trade, and
20 Economic Development in the Executive Office of the Governor;

21 (i) A representative of a financial institution;

22 (j) A representative of the Sierra Club; and

23 (k) A representative of the Community Environmental
24 Health Advisory Board.

25 (2) Duties and responsibilities.--The Brownfield
26 Program Review Advisory Council shall:

27 (a) Perform a comprehensive review of activities
28 related to rehabilitation of brownfield areas;

29 (b) Determine and recommend any additional economic
30 incentives that should be available to help accelerate
31 rehabilitation activities; and

1 (c) Review the administrative processes for approving
2 and permitting rehabilitation activities by the Department of
3 Environmental Protection and local programs and make
4 recommendations for improvements in these processes.

5 (3) Each member shall provide their own per diem and
6 expenses for travel while carrying out the business of the
7 council.

8 (4) The Secretary of the Department of Environmental
9 Protection or his or her designee shall appoint the council
10 members, serve as chairperson of the council, and convene the
11 council on at least a semi-annual basis.

12 (5) The council shall submit a report to the
13 Legislature as often as needed to address issues requiring
14 legislative changes or appropriations.

15 Section 12. Paragraph (d) is added to subsection (3)
16 of section 403.973, Florida Statutes, to read:

17 403.973 Expedited permitting; comprehensive plan
18 amendments.--

19 (3)

20 (d) Projects located in a designated brownfield area
21 are eligible for the expedited permitting process.

22 Section 13. Subsection (1) of section 190.012, Florida
23 Statutes, is amended to read:

24 190.012 Special powers; public improvements and
25 community facilities.--The district shall have, and the board
26 may exercise, subject to the regulatory jurisdiction and
27 permitting authority of all applicable governmental bodies,
28 agencies, and special districts having authority with respect
29 to any area included therein, any or all of the following
30 special powers relating to public improvements and community
31 facilities authorized by this act:

1 (1) To finance, fund, plan, establish, acquire,
2 construct or reconstruct, enlarge or extend, equip, operate,
3 and maintain systems, facilities, and basic infrastructures
4 for the following:

5 (a) Water management and control for the lands within
6 the district and to connect some or any of such facilities
7 with roads and bridges.

8 (b) Water supply, sewer, and wastewater management,
9 reclamation, and reuse or any combination thereof, and to
10 construct and operate connecting intercepting or outlet sewers
11 and sewer mains and pipes and water mains, conduits, or
12 pipelines in, along, and under any street, alley, highway, or
13 other public place or ways, and to dispose of any effluent,
14 residue, or other byproducts of such system or sewer system.

15 (c) Bridges or culverts that may be needed across any
16 drain, ditch, canal, floodway, holding basin, excavation,
17 public highway, tract, grade, fill, or cut and roadways over
18 levees and embankments, and to construct any and all of such
19 works and improvements across, through, or over any public
20 right-of-way, highway, grade, fill, or cut.

21 (d)1. District roads equal to or exceeding the
22 specifications of the county in which such district roads are
23 located, and street lights.

24 2. Buses, trolleys, transit shelters, ridesharing
25 facilities and services, parking improvements, and related
26 signage.

27 (e) Investigation and remediation costs associated
28 with the cleanup of actual or perceived environmental
29 contamination within the district under the supervision or
30 direction of a competent governmental authority unless the

31

1 covered costs benefit any person who is a landowner within the
2 district and who caused or contributed to the contamination.

3 (f)~~(e)~~ Conservation areas, mitigation areas, and
4 wildlife habitat, including the maintenance of any plant or
5 animal species, and any related interest in real or personal
6 property.

7 (g)~~(f)~~ Any other project within or without the
8 boundaries of a district when a local government issued a
9 development order pursuant to s. 380.06 or s. 380.061
10 approving or expressly requiring the construction or funding
11 of the project by the district, or when the project is the
12 subject of an agreement between the district and a
13 governmental entity and is consistent with the local
14 government comprehensive plan of the local government within
15 which the project is to be located.

16 Section 14. Section 712.01, Florida Statutes, is
17 amended to read:

18 712.01 Definitions.--As used in this law:

19 (1) The term "person" as used herein denotes singular
20 or plural, natural or corporate, private or governmental,
21 including the state and any political subdivision or agency
22 thereof as the context for the use thereof requires or denotes
23 and including any homeowners' association.

24 (2) "Root of title" means any title transaction
25 purporting to create or transfer the estate claimed by any
26 person and which is the last title transaction to have been
27 recorded at least 30 years prior to the time when
28 marketability is being determined. The effective date of the
29 root of title is the date on which it was recorded.

30 (3) "Title transaction" means any recorded instrument
31 or court proceeding which affects title to any estate or

1 interest in land and which describes the land sufficiently to
2 identify its location and boundaries.

3 (4) The term "homeowners' association" means a
4 homeowners' association as defined in s. 617.301(7), or an
5 association of parcel owners which is authorized to enforce
6 use restrictions that are imposed on the parcels.

7 (5) The term "parcel" means real property which is
8 used for residential purposes that is subject to exclusive
9 ownership and which is subject to any covenant or restriction
10 of a homeowners' association.

11 (6) The term "covenant or restriction" means any
12 agreement or limitation contained in a document recorded in
13 the public records of the county in which a parcel is located
14 which subjects the parcel to any use restriction which may be
15 enforced by a homeowners' association or which authorizes a
16 homeowners' association to impose a charge or assessment
17 against the parcel or the owner of the parcel or which may be
18 enforced by the Florida Department of Environmental Protection
19 pursuant to chapter 376 or chapter 403.

20 Section 15. Section 712.03, Florida Statutes, is
21 amended to read:

22 712.03 Exceptions to marketability.--Such marketable
23 record title shall not affect or extinguish the following
24 rights:

25 (1) Estates or interests, easements and use
26 restrictions disclosed by and defects inherent in the
27 muniments of title on which said estate is based beginning
28 with the root of title; provided, however, that a general
29 reference in any of such muniments to easements, use
30 restrictions or other interests created prior to the root of
31 title shall not be sufficient to preserve them unless specific

1 identification by reference to book and page of record or by
2 name of recorded plat be made therein to a recorded title
3 transaction which imposed, transferred or continued such
4 easement, use restrictions or other interests; subject,
5 however, to the provisions of subsection (5).

6 (2) Estates, interests, claims, or charges, or any
7 covenant or restriction, preserved by the filing of a proper
8 notice in accordance with the provisions hereof.

9 (3) Rights of any person in possession of the lands,
10 so long as such person is in such possession.

11 (4) Estates, interests, claims, or charges arising out
12 of a title transaction which has been recorded subsequent to
13 the effective date of the root of title.

14 (5) Recorded or unrecorded easements or rights,
15 interest or servitude in the nature of easements,
16 rights-of-way and terminal facilities, including those of a
17 public utility or of a governmental agency, so long as the
18 same are used and the use of any part thereof shall except
19 from the operation hereof the right to the entire use thereof.
20 No notice need be filed in order to preserve the lien of any
21 mortgage or deed of trust or any supplement thereto
22 encumbering any such recorded or unrecorded easements, or
23 rights, interest, or servitude in the nature of easements,
24 rights-of-way, and terminal facilities. However, nothing
25 herein shall be construed as preserving to the mortgagee or
26 grantee of any such mortgage or deed of trust or any
27 supplement thereto any greater rights than the rights of the
28 mortgagor or grantor.

29 (6) Rights of any person in whose name the land is
30 assessed on the county tax rolls for such period of time as
31 the land is so assessed and which rights are preserved for a

1 period of 3 years after the land is last assessed in such
2 person's name.

3 (7) State title to lands beneath navigable waters
4 acquired by virtue of sovereignty.

5 (8) A restriction or covenant recorded pursuant to
6 chapter 376 or chapter 403.

7 Section 16. This act shall take effect upon becoming a
8 law.

9

10 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
11 COMMITTEE SUBSTITUTE FOR
12 Senate Bill 1408

13 The committee substitute makes a number of technical changes
14 to correct inconsistencies and cross-references. Other changes
include the following.

- 15 1. Redefines the term "natural attenuation" and defines the
16 term "risk reduction" in s. 376.301, F.S.
- 17 2. Conforms the Global Risk-Based Corrective Action (RBCA)
18 provisions in s. 376.30701, F.S., to the brownfield RBCA
19 provisions. Allows such provisions to apply
20 retroactively except to certain specified sites.
21 Provides that the Global RBCA cleanup criteria shall
22 apply as Applicable or Relevant and Appropriate
23 Requirements to all contaminated sites qualified for
24 listing on the National Priority List. Requires the
25 property owner to provide information regarding
26 institutional controls to the local government for
27 mapping purposes. The local government must note the
28 existence of the institutional control on any relevant
29 land use or zoning maps with a cross reference to site
30 registry developed and maintained by the DEP.
- 31 3. Prohibits subsequent property owners from removing
certain deed restrictions under the Marketable Records
Title Act.