

1                                   A bill to be entitled  
2           An act relating to brownfield loan guarantees;  
3           amending s. 376.79, F.S.; revising the  
4           definition of "brownfield sites"; amending s.  
5           376.80, F.S.; revising a condition under which  
6           a local government is required to designate a  
7           brownfield area; revising a required component  
8           of a brownfield site rehabilitation agreement;  
9           revising a requirement of a contractor  
10          performing site rehabilitation program tasks;  
11          revising contractor requirements that must be  
12          certified to the Department of Environmental  
13          Protection; revising and providing additional  
14          insurance requirements; amending s. 376.82,  
15          F.S.; revising terminology with respect to  
16          eligibility to participate in the brownfield  
17          rehabilitation program; authorizing a county  
18          and the Department of Environmental Protection  
19          to enter into a written agreement for the  
20          performance, funding, and reimbursement of  
21          investigative and remedial acts necessary for a  
22          property that escheats to the county; amending  
23          s. 376.86, F.S.; revising certain restrictions  
24          on investing funds maintained in the Inland  
25          Protection Trust Fund; providing a schedule for  
26          legislative review of the Brownfield Areas Loan  
27          Guarantee Program; providing an effective date.

28  
29   Be It Enacted by the Legislature of the State of Florida:  
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1 Section 1. Subsection (3) of section 376.79, Florida  
2 Statutes, is amended to read:

3 376.79 Definitions relating to Brownfields  
4 Redevelopment Act.--As used in ss. 376.77-376.85, the term:

5 (3) "Brownfield sites" means real property, the  
6 expansion, redevelopment, or reuse of which may be ~~sites that~~  
7 ~~are generally abandoned, idled, or underused industrial and~~  
8 ~~commercial properties where expansion or redevelopment is~~  
9 complicated by actual or perceived environmental  
10 contamination.

11 Section 2. Paragraph (b) of subsection (2), paragraph  
12 (c) of subsection (5), paragraph (b) of subsection (6) and  
13 subsection (7) of section 376.80, Florida Statutes, are  
14 amended to read:

15 376.80 Brownfield program administration process.--  
16 (2)

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

19 1. A person who owns or controls a potential  
20 brownfield site is requesting the designation and has agreed  
21 to rehabilitate and redevelop the brownfield site;

22 2. The rehabilitation and redevelopment of the  
23 proposed brownfield site will result in economic productivity  
24 of the area, along with the creation of at least 10 new  
25 permanent jobs at the brownfield site, whether full-time or  
26 part-time, which are not associated with the implementation of  
27 the brownfield site rehabilitation agreement and are not  
28 associated with redevelopment project demolition or  
29 construction activities pursuant to the redevelopment  
30 agreement required under paragraph (5)(i) ~~or an agreement,~~  
31 ~~between the person responsible for site rehabilitation and the~~

1 ~~local government with jurisdiction, which contains terms for~~  
2 ~~the redevelopment of the brownfield site or brownfield area;~~

3         3. The redevelopment of the proposed brownfield site  
4 is consistent with the local comprehensive plan and is a  
5 permittable use under the applicable local land development  
6 regulations;

7         4. Notice of the proposed rehabilitation of the  
8 brownfield area has been provided to neighbors and nearby  
9 residents of the proposed area to be designated, and the  
10 person proposing the area for designation has afforded to  
11 those receiving notice the opportunity for comments and  
12 suggestions about rehabilitation. Notice pursuant to this  
13 subsection must be made in a newspaper of general circulation  
14 in the area, at least 16 square inches in size, and the notice  
15 must be posted in the affected area; and

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

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

26             (c) A commitment to conduct site rehabilitation in  
27 accordance with department quality assurance rules ~~an approved~~  
28 ~~comprehensive quality assurance plan under department rules;~~

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

1           (b) Has obtained the necessary approvals for  
2 conducting sample collection and analyses pursuant to approval  
3 ~~for the comprehensive quality assurance plan prepared under~~  
4 department rules.

5           (7) The contractor who is performing the majority of  
6 the site rehabilitation program tasks pursuant to a brownfield  
7 site rehabilitation agreement or supervising the performance  
8 of such tasks by licensed subcontractors in accordance with  
9 the provisions of s. 489.113(9) must certify to the department  
10 that the contractor:

11           (a) Complies with applicable OSHA regulations.

12           (b) Maintains workers' compensation insurance for all  
13 employees as required by the Florida Workers' Compensation  
14 Law.

15           (c) Maintains comprehensive general liability coverage  
16 with limits of not less than \$1 million per occurrence and \$2  
17 million general aggregate for bodily injury and property  
18 damage and comprehensive automobile liability coverage  
19 ~~insurance~~ with ~~minimum~~ limits of not less than \$2 at least \$1  
20 million combined single limit. The contractor shall also  
21 maintain pollution liability coverage with limits of not less  
22 than \$3 million aggregate for personal injury or death, \$1  
23 million per occurrence for personal injury or death, and \$1  
24 million per occurrence for property damage. The contractor's  
25 certificate of insurance shall name per claim and \$1 million  
26 ~~annual aggregate, sufficient to protect it from claims for~~  
27 ~~damage for personal injury, including accidental death, as~~  
28 ~~well as claims for property damage which may arise from~~  
29 ~~performance of work under the program, designating the state~~  
30 as an additional insured party.  
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1 (d) Maintains professional liability insurance of at  
2 least \$1 million per claim ~~occurrence~~ and \$1 million annual  
3 aggregate.

4 ~~(e) Has the capacity to perform or directly supervise~~  
5 ~~the majority of the work at a site in accordance with s.~~  
6 ~~489.113(9).~~

7 Section 3. Subsection (1) of section 376.82, Florida  
8 Statutes, is amended, and paragraph (1) is added to subsection  
9 (2) of said section, to read:

10 376.82 Eligibility criteria and liability  
11 protection.--

12 (1) ELIGIBILITY.--Any person who has not caused or  
13 contributed to the contamination of a brownfield site on or  
14 after July 1, 1997, is eligible to participate in the  
15 brownfield ~~rehabilitation~~ program established in ss.  
16 376.77-376.85, subject to the following:

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

1 participation unless specific exemptions are secured by a  
2 memorandum of agreement with the United States Environmental  
3 Protection Agency pursuant to paragraph (2)(g). A brownfield  
4 site within an eligible brownfield area that subsequently  
5 becomes subject to formal judicial or administrative  
6 enforcement action or corrective action under such federal  
7 authority shall have its eligibility revoked unless specific  
8 exemptions are secured by a memorandum of agreement with the  
9 United States Environmental Protection Agency pursuant to  
10 paragraph (2)(g).

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

20 1. The proposed brownfield site is currently idle or  
21 underutilized as a result of the contamination, and  
22 participation in the brownfield program will immediately,  
23 after cleanup or sooner, result in increased economic  
24 productivity at the site, including at a minimum the creation  
25 of 10 new permanent jobs, whether full-time or part-time,  
26 which are not associated with implementation of the brownfield  
27 site rehabilitation agreement ~~corrective action plan~~; and

28 2. The person is complying in good faith with the  
29 terms of an existing consent order or department-approved  
30 corrective action plan, or responding in good faith to an  
31

1 enforcement action, as evidenced by a determination issued by  
2 the department or an approved local pollution control program.

3 (c) Potential brownfield sites owned by the state or a  
4 local government which contain contamination for which a  
5 governmental entity is potentially responsible and which are  
6 already designated as federal brownfield pilot projects or  
7 have filed an application for designation to the United States  
8 Environmental Protection Agency are eligible for participation  
9 in a brownfield site rehabilitation agreement ~~corrective~~  
10 ~~action~~.

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

20 (2) LIABILITY PROTECTION.--

21 (1) When a property, including a brownfield site,  
22 escheats to a county, the county is not subject to any  
23 liability imposed by this chapter or chapter 403 for  
24 preexisting soil or groundwater contamination due solely to  
25 its ownership. However, this paragraph does not affect the  
26 rights or liabilities of any past or future owners of the  
27 escheated property and does not affect the liability of any  
28 governmental entity for the results of its actions that create  
29 or exacerbate a pollution source. The county and the  
30 Department of Environmental Protection may enter into a  
31 written agreement for the performance, funding, and

1 reimbursement of the investigative and remedial acts necessary  
 2 for a property that escheats to the county.

3 Section 4. Subsections (3) and (8) of section 376.86,  
 4 Florida Statutes, as amended by section 56 of chapter  
 5 2003-399, Laws of Florida, are amended to read:

6 376.86 Brownfield Areas Loan Guarantee Program.--

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

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

22 (b) Such funds at risk at any time ~~The investment~~  
 23 ~~earnings~~ may not be used to guarantee any loan guaranty or  
 24 loan loss reserve agreement for a period longer than 5 years.

25 (8) The council shall provide an annual report to the  
 26 Legislature by February 1 of each year describing its  
 27 activities and agreements approved relating to redevelopment  
 28 of brownfield areas. This section shall be reviewed by the  
 29 Legislature by January 1, 2007 ~~October 1, 2003~~, and a  
 30 determination made related to the need to continue or modify  
 31 this section. New loan guarantees may not be approved in 2007



1 | ~~2003~~ until the review by the Legislature has been completed  
2 | and a determination has been made as to the feasibility of  
3 | continuing the use of the Inland Protection ~~Nonmandatory Land~~  
4 | ~~Reclamation~~ Trust Fund to guarantee portions of loans under  
5 | this section.

6 |           Section 5. This act shall take effect July 1, 2004.  
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