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1 A bill to be entitled

2 An act relating to rehabilitation of contaminated sites;
3 amending s. 376.86, F.S.; increasing the percentage of
4 primary lenders loans for redevelopment projects in
5 brownfield areas to which the limited state loan guaranty
6 under the Brownfield Areas Loan Guarantee Program applies;
7 revising provisions with respect to an authorized
8 investment agreement between the Brownfield Areas Loan
9 Guarantee Council and the Department of Environmental
10 Protection and the State Board of Administration
11 concerning the investment of specified funds maintained in
12 the Nonmandatory Land Reclamation Trust Fund; requiring
13 legislative review of provisions of the Brownfield Areas
14 Loan Guarantee Program which pledge portions of the
15 Nonmandatory Land Reclamation Trust Fund as a contingency
16 on loan guarantees made pursuant to the program; providing
17 purpose of the review; prohibiting approval of new loan
18 guarantees until the legislative review has been completed
19 and specified determinations made; extending dates for
20 required legislative review of the Brownfield Areas Loan
21 Guarantee Program and restriction on approval for new loan
22 guarantees; amending s. 376.30781, F.S.; increasing the
23 tax credit for rehabilitation of drycleaning-solvent-
24 contaminated sites and brownfield sites in designated
25 brownfield areas; increasing the maximum amount that a tax
26 credit applicant, or multiple tax credit applicants
27 working jointly to clean up a single site, may be granted
28 per year in tax credits for each site voluntarily
29 rehabilitated; increasing the total annual amount of

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30 contaminated site rehabilitation tax credits allocated by
 31 the Department of Environmental Protection; amending ss.
 32 199.1055 and 220.1845, F.S.; increasing the amount of the
 33 contaminated site rehabilitation tax credit; increasing
 34 the maximum amount that a tax credit applicant, or
 35 multiple tax credit applicants working jointly to clean up
 36 a single site, may be granted per year in tax credits for
 37 each site voluntarily rehabilitated; increasing the total
 38 annual amount a municipality, county, or other tax credit
 39 applicant which voluntarily rehabilitates a site may
 40 receive per year in tax credits which it can subsequently
 41 transfer to specified entities; increasing the total
 42 amount of tax credits which may be granted annually;
 43 amending s. 288.107, F.S.; revising the definition of
 44 "eligible business" with respect to brownfield
 45 redevelopment bonus refunds; authorizing the Office of
 46 Tourism, Trade, and Economic Development to waive the
 47 fixed capital investment requirement for an eligible
 48 business for specified projects; providing conditions and
 49 requirements with respect to such waiver; amending s.
 50 376.79, F.S.; revising the definition of "brownfield
 51 sites"; amending s. 376.80, F.S.; revising a condition
 52 under which a local government is required to designate a
 53 brownfield area; revising a required component of a
 54 brownfield site rehabilitation agreement; revising a
 55 requirement of a contractor performing site rehabilitation
 56 program tasks; revising contractor requirements that must
 57 be certified to the Department of Environmental
 58 Protection; revising and providing additional insurance

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59 requirements; amending s. 376.82, F.S.; revising
 60 terminology with respect to eligibility to participate in
 61 the brownfield rehabilitation program; providing an
 62 effective date.

63
 64 Be It Enacted by the Legislature of the State of Florida:

65
 66 Section 1. Subsections (1), (3), and (8) of section
 67 376.86, Florida Statutes, as amended by section 56 of chapter
 68 2003-399, Laws of Florida, are amended to read:

69 376.86 Brownfield Areas Loan Guarantee Program.--

70 (1) The Brownfield Areas Loan Guarantee Council is created
 71 to review and approve or deny by a majority vote of its
 72 membership, the situations and circumstances for participation
 73 in partnerships by agreements with local governments, financial
 74 institutions, and others associated with the redevelopment of
 75 brownfield areas pursuant to the Brownfields Redevelopment Act
 76 for a limited state guaranty of up to 5 years of loan guarantees
 77 or loan loss reserves issued pursuant to law. The limited state
 78 loan guaranty applies only to 20 ~~10~~ percent of the primary
 79 lenders loans for redevelopment projects in brownfield areas. A
 80 limited state guaranty of private loans or a loan loss reserve
 81 is authorized for lenders licensed to operate in the state upon
 82 a determination by the council that such an arrangement would be
 83 in the public interest and the likelihood of the success of the
 84 loan is great.

85 (3) The council may enter into an investment agreement
 86 with the Department of Environmental Protection and the State
 87 Board of Administration concerning the ~~investment of the~~

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88 ~~earnings accrued and collected upon the~~ investment of the
 89 balance of funds maintained in the Nonmandatory Land Reclamation
 90 Trust Fund. The investment must be limited as follows:

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

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

101 (8) The council shall provide an annual report to the
 102 Legislature by February 1 of each year describing its activities
 103 and agreements approved relating to redevelopment of brownfield
 104 areas. By January 1, 2007, the Legislature shall review the
 105 provisions of this section which pledge portions of the
 106 Nonmandatory Land Reclamation Trust Fund as a contingency on
 107 loan guarantees made pursuant to this section in order to
 108 determine the ability of the trust fund to continue serving as a
 109 contingency fund on loan guarantees. New loan guarantees may
 110 not be approved in calendar year 2007 until the review by the
 111 Legislature has been completed and a determination made as to an
 112 appropriate trust fund to serve as a contingency fund on loan
 113 guarantees. This section shall be reviewed by the Legislature
 114 by January 1, 2007 ~~October 1, 2003~~, and a determination made
 115 related to the need to continue or modify this section. New loan
 116 guarantees may not be approved in calendar year 2007 ~~2003~~ until

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117 the review by the Legislature has been completed and a
 118 determination has been made as to the feasibility of continuing
 119 the use of the Nonmandatory Land Reclamation Trust Fund to
 120 guarantee portions of loans under this section.

121 Section 2. Paragraphs (a) and (b) of subsection (2) and
 122 subsections (3), (4), (7), and (9) of section 376.30781, Florida
 123 Statutes, are amended to read:

124 376.30781 Partial tax credits for rehabilitation of
 125 drycleaning-solvent-contaminated sites and brownfield sites in
 126 designated brownfield areas; application process; rulemaking
 127 authority; revocation authority.--

128 (2)(a) A credit in the amount of 40 ~~35~~ percent of the
 129 costs of voluntary cleanup activity that is integral to site
 130 rehabilitation at the following sites is allowed pursuant to ss.
 131 199.1055 and 220.1845:

132 1. A drycleaning-solvent-contaminated site eligible for
 133 state-funded site rehabilitation under s. 376.3078(3);

134 2. A drycleaning-solvent-contaminated site at which
 135 cleanup is undertaken by the real property owner pursuant to s.
 136 376.3078(11), if the real property owner is not also, and has
 137 never been, the owner or operator of the drycleaning facility
 138 where the contamination exists; or

139 3. A brownfield site in a designated brownfield area under
 140 s. 376.80.

141 (b) A tax credit applicant, or multiple tax credit
 142 applicants working jointly to clean up a single site, may not be
 143 granted more than \$400,000 ~~\$250,000~~ per year in tax credits for
 144 each site voluntarily rehabilitated. Multiple tax credit
 145 applicants shall be granted tax credits in the same proportion

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146 as their contribution to payment of cleanup costs. Tax credits
 147 are available only for site rehabilitation conducted during the
 148 calendar year for which the tax credit application is submitted.

149 (3) The Department of Environmental Protection shall be
 150 responsible for allocating the tax credits provided for in ss.
 151 199.1055 and 220.1845, not to exceed a total of \$5 ~~\$2~~ million in
 152 tax credits annually.

153 (4) To claim the credit for site rehabilitation conducted
 154 during the current calendar year, each tax credit applicant must
 155 apply to the Department of Environmental Protection for an
 156 allocation of the \$5 ~~\$2~~ million annual credit by January 15 of
 157 the following year on a form developed by the Department of
 158 Environmental Protection in cooperation with the Department of
 159 Revenue. The form shall include an affidavit from each tax
 160 credit applicant certifying that all information contained in
 161 the application, including all records of costs incurred and
 162 claimed in the tax credit application, are true and correct. If
 163 the application is submitted pursuant to subparagraph (2)(a)2.,
 164 the form must include an affidavit signed by the real property
 165 owner stating that it is not, and has never been, the owner or
 166 operator of the drycleaning facility where the contamination
 167 exists. Approval of partial tax credits must be accomplished on
 168 a first-come, first-served basis based upon the date complete
 169 applications are received by the Division of Waste Management. A
 170 tax credit applicant shall submit only one complete application
 171 per site for each calendar year's site rehabilitation costs.
 172 Incomplete placeholder applications shall not be accepted and
 173 will not secure a place in the first-come, first-served

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174 application line. To be eligible for a tax credit, the tax
 175 credit applicant must:

176 (a) Have entered into a voluntary cleanup agreement with
 177 the Department of Environmental Protection for a drycleaning-
 178 solvent-contaminated site or a Brownfield Site Rehabilitation
 179 Agreement, as applicable; and

180 (b) Have paid all deductibles pursuant to s.
 181 376.3078(3)(e) for eligible drycleaning-solvent-cleanup program
 182 sites.

183 (7) The Department of Environmental Protection shall
 184 review the tax credit application and any supplemental
 185 documentation that the tax credit applicant may submit prior to
 186 the annual application deadline in order to have the application
 187 considered complete, for the purpose of verifying that the tax
 188 credit applicant has met the qualifying criteria in subsections
 189 (2) and (4) and has submitted all required documentation listed
 190 in subsection (5). Upon verification that the tax credit
 191 applicant has met these requirements, the department shall issue
 192 a written decision granting eligibility for partial tax credits
 193 (a tax credit certificate) in the amount of 40 ~~35~~ percent of the
 194 total costs claimed, subject to the \$400,000 ~~\$250,000~~
 195 limitation, for the calendar year for which the tax credit
 196 application is submitted based on the report of the certified
 197 public accountant and the certifications from the appropriate
 198 registered technical professionals.

199 (9) If a tax credit applicant does not receive a tax
 200 credit allocation due to an exhaustion of the \$5 ~~\$2~~ million
 201 annual tax credit authorization, such application will then be
 202 included in the same first-come, first-served order in the next

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203 year's annual tax credit allocation, if any, based on the prior
 204 year application.

205 Section 3. Paragraphs (a), (b), and (f) of subsection (1)
 206 of section 199.1055, Florida Statutes, are amended to read:

207 199.1055 Contaminated site rehabilitation tax credit.--

208 (1) AUTHORIZATION FOR TAX CREDIT; LIMITATIONS.--

209 (a) A credit in the amount of 40 ~~35~~ percent of the costs
 210 of voluntary cleanup activity that is integral to site
 211 rehabilitation at the following sites is available against any
 212 tax due for a taxable year under s. 199.032, less any credit
 213 allowed by former s. 220.68 for that year:

214 1. A drycleaning-solvent-contaminated site eligible for
 215 state-funded site rehabilitation under s. 376.3078(3);

216 2. A drycleaning-solvent-contaminated site at which
 217 cleanup is undertaken by the real property owner pursuant to s.
 218 376.3078(11), if the real property owner is not also, and has
 219 never been, the owner or operator of the drycleaning facility
 220 where the contamination exists; or

221 3. A brownfield site in a designated brownfield area under
 222 s. 376.80.

223 (b) A tax credit applicant, or multiple tax credit
 224 applicants working jointly to clean up a single site, may not be
 225 granted more than \$400,000 ~~\$250,000~~ per year in tax credits for
 226 each site voluntarily rehabilitated. Multiple tax credit
 227 applicants shall be granted tax credits in the same proportion
 228 as their contribution to payment of cleanup costs. Subject to
 229 the same conditions and limitations as provided in this section,
 230 a municipality, county, or other tax credit applicant which
 231 voluntarily rehabilitates a site may receive not more than

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232 \$400,000 ~~\$250,000~~ per year in tax credits which it can
 233 subsequently transfer subject to the provisions in paragraph
 234 (g).

235 (f) The total amount of the tax credits which may be
 236 granted under this section and s. 220.1845 is \$5 ~~\$2~~ million
 237 annually.

238 Section 4. Paragraphs (a), (b), and (g) of subsection (1)
 239 of section 220.1845, Florida Statutes, are amended to read:

240 220.1845 Contaminated site rehabilitation tax credit.--

241 (1) AUTHORIZATION FOR TAX CREDIT; LIMITATIONS.--

242 (a) A credit in the amount of 40 ~~35~~ percent of the costs
 243 of voluntary cleanup activity that is integral to site
 244 rehabilitation at the following sites is available against any
 245 tax due for a taxable year under this chapter:

246 1. A drycleaning-solvent-contaminated site eligible for
 247 state-funded site rehabilitation under s. 376.3078(3);

248 2. A drycleaning-solvent-contaminated site at which
 249 cleanup is undertaken by the real property owner pursuant to s.
 250 376.3078(11), if the real property owner is not also, and has
 251 never been, the owner or operator of the drycleaning facility
 252 where the contamination exists; or

253 3. A brownfield site in a designated brownfield area under
 254 s. 376.80.

255 (b) A tax credit applicant, or multiple tax credit
 256 applicants working jointly to clean up a single site, may not be
 257 granted more than \$400,000 ~~\$250,000~~ per year in tax credits for
 258 each site voluntarily rehabilitated. Multiple tax credit
 259 applicants shall be granted tax credits in the same proportion
 260 as their contribution to payment of cleanup costs. Subject to

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261 the same conditions and limitations as provided in this section,
 262 a municipality, county, or other tax credit applicant which
 263 voluntarily rehabilitates a site may receive not more than
 264 \$400,000 ~~\$250,000~~ per year in tax credits which it can
 265 subsequently transfer subject to the provisions in paragraph
 266 (h).

267 (g) The total amount of the tax credits which may be
 268 granted under this section and s. 199.1055 is \$5 ~~\$2~~ million
 269 annually.

270 Section 5. Paragraph (e) of subsection (1) and paragraph
 271 (b) of subsection (3) of section 288.107, Florida Statutes, are
 272 amended to read:

273 288.107 Brownfield redevelopment bonus refunds.--

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

275 (e) "Eligible business" means:

276 1. A qualified target industry business as defined in s.
 277 288.106(1)(o); or

278 2. A business that can demonstrate a fixed capital
 279 investment of at least \$2 million in mixed-use business
 280 activities, including multiunit housing, commercial, retail, and
 281 industrial in brownfield areas and which provides benefits to
 282 its employees, unless the fixed capital investment requirement
 283 is waived pursuant to paragraph (3)(b).

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

286 (b) The completion of a fixed capital investment of at
 287 least \$2 million in mixed-use business activities, including
 288 multiunit housing, commercial, retail, and industrial in

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289 brownfield areas, by an eligible business applying for a refund
 290 under paragraph (2)(b) which provides benefits to its employees.
 291 The office may waive the fixed capital investment requirement at
 292 the request of the local governing body recommending the project
 293 and Enterprise Florida, Inc. The fixed capital investment
 294 requirement may only be waived for a project located in a rural
 295 city or county, community redevelopment area, enterprise zone,
 296 or empowerment zone, and only when the merits of the individual
 297 project or the specific circumstances in the community in
 298 relationship to the project warrant such action. If the local
 299 governing body and Enterprise Florida, Inc., make such a
 300 recommendation, it must be transmitted in writing and the
 301 specific justification for the waiver recommendation must be
 302 explained. If the director elects to waive the fixed capital
 303 investment requirement, the waiver must be stated in writing and
 304 the reasons for granting the waiver must be explained.

305 Section 6. Subsection (3) of section 376.79, Florida
 306 Statutes, is amended to read:

307 376.79 Definitions relating to Brownfields Redevelopment
 308 Act.--As used in ss. 376.77-376.85, the term:

309 (3) "Brownfield sites" means real property, the expansion,
 310 redevelopment, or reuse of which may be ~~sites that are generally~~
 311 ~~abandoned, idled, or underused industrial and commercial~~
 312 ~~properties where expansion or redevelopment is complicated by~~
 313 actual or perceived environmental contamination.

314 Section 7. Paragraph (b) of subsection (2), paragraph (c)
 315 of subsection (5), paragraph (b) of subsection (6), and
 316 subsection (7) of section 376.80, Florida Statutes, are amended
 317 to read:

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318 376.80 Brownfield program administration process.--

319 (2)

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

322 1. A person who owns or controls a potential brownfield
323 site is requesting the designation and has agreed to
324 rehabilitate and redevelop the brownfield site;

325 2. The rehabilitation and redevelopment of the proposed
326 brownfield site will result in economic productivity of the
327 area, along with the creation of at least 10 new permanent jobs
328 at the brownfield site, whether full-time or part-time, which
329 are not associated with the implementation of the brownfield
330 site rehabilitation agreement and are not associated with
331 redevelopment project demolition or construction activities
332 pursuant to the redevelopment agreement required under paragraph
333 (5)(i) or an agreement, between the person responsible for site
334 rehabilitation and the local government with jurisdiction, which
335 contains terms for the redevelopment of the brownfield site or
336 brownfield area;

337 3. The redevelopment of the proposed brownfield site is
338 consistent with the local comprehensive plan and is a
339 permittable use under the applicable local land development
340 regulations;

341 4. Notice of the proposed rehabilitation of the brownfield
342 area has been provided to neighbors and nearby residents of the
343 proposed area to be designated, and the person proposing the
344 area for designation has afforded to those receiving notice the
345 opportunity for comments and suggestions about rehabilitation.
346 Notice pursuant to this subsection must be made in a newspaper

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347 of general circulation in the area, at least 16 square inches in
 348 size, and the notice must be posted in the affected area; and

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

353 (5) The person responsible for brownfield site
 354 rehabilitation must enter into a brownfield site rehabilitation
 355 agreement with the department or an approved local pollution
 356 control program if actual contamination exists at the brownfield
 357 site. The brownfield site rehabilitation agreement must include:

358 (c) A commitment to conduct site rehabilitation in
 359 accordance with department quality assurance rules ~~an approved~~
 360 ~~comprehensive quality assurance plan under department rules;~~

361 (6) Any contractor performing site rehabilitation program
 362 tasks must demonstrate to the department that the contractor:

363 (b) Has obtained the necessary approvals for conducting
 364 sample collection and analyses pursuant to approval for the
 365 ~~comprehensive quality assurance plan prepared under~~ department
 366 rules.

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

373 (a) Complies with applicable OSHA regulations.

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

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376 (c) Maintains comprehensive general liability coverage
 377 with limits of not less than \$1 million per occurrence and \$2
 378 million general aggregate for bodily injury and property damage
 379 and comprehensive automobile liability coverage ~~insurance~~ with
 380 ~~minimum~~ limits of not less than ~~at least~~ \$2 ~~\$1~~ million combined
 381 single limit. The contractor shall also maintain pollution
 382 liability coverage with limits of not less than \$3 million
 383 aggregate for personal injury or death, \$1 million per
 384 occurrence for personal injury or death, and \$1 million per
 385 occurrence for property damage. The contractor's certificate of
 386 insurance shall name ~~per claim and \$1 million annual aggregate,~~
 387 ~~sufficient to protect it from claims for damage for personal~~
 388 ~~injury, including accidental death, as well as claims for~~
 389 ~~property damage which may arise from performance of work under~~
 390 ~~the program, designating~~ the state as an additional insured
 391 party.

392 (d) Maintains professional liability insurance of at least
 393 \$1 million per claim ~~occurrence~~ and \$1 million annual aggregate.

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

396 Section 8. Subsection (1) of section 376.82, Florida
 397 Statutes, is amended to read:

398 376.82 Eligibility criteria and liability protection.--

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

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404 (a) Potential brownfield sites that are subject to an
 405 ongoing formal judicial or administrative enforcement action or
 406 corrective action pursuant to federal authority, including, but
 407 not limited to, the Comprehensive Environmental Response
 408 Compensation and Liability Act, 42 U.S.C. ss. 9601 et seq., as
 409 amended; the Safe Drinking Water Act, 42 U.S.C. ss. 300f-300i,
 410 as amended; the Clean Water Act, 33 U.S.C. ss. 1251-1387, as
 411 amended; or under an order from the United States Environmental
 412 Protection Agency pursuant to s. 3008(h) of the Resource
 413 Conservation and Recovery Act, as amended (42 U.S.C.A. s.
 414 6928(h)); or that have obtained or are required to obtain a
 415 permit for the operation of a hazardous waste treatment,
 416 storage, or disposal facility; a postclosure permit; or a permit
 417 pursuant to the federal Hazardous and Solid Waste Amendments of
 418 1984, are not eligible for participation unless specific
 419 exemptions are secured by a memorandum of agreement with the
 420 United States Environmental Protection Agency pursuant to
 421 paragraph (2)(g). A brownfield site within an eligible
 422 brownfield area that subsequently becomes subject to formal
 423 judicial or administrative enforcement action or corrective
 424 action under such federal authority shall have its eligibility
 425 revoked unless specific exemptions are secured by a memorandum
 426 of agreement with the United States Environmental Protection
 427 Agency pursuant to paragraph (2)(g).

428 (b) Persons who have not caused or contributed to the
 429 contamination of a brownfield site on or after July 1, 1997, and
 430 who, prior to the department's approval of a brownfield site
 431 rehabilitation agreement, are subject to ongoing corrective
 432 action or enforcement under state authority established in this

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433 chapter or chapter 403, including those persons subject to a
 434 pending consent order with the state, are eligible for
 435 participation in a brownfield site rehabilitation agreement
 436 ~~corrective action~~ if:

437 1. The proposed brownfield site is currently idle or
 438 underutilized as a result of the contamination, and
 439 participation in the brownfield program will immediately, after
 440 cleanup or sooner, result in increased economic productivity at
 441 the site, including at a minimum the creation of 10 new
 442 permanent jobs, whether full-time or part-time, which are not
 443 associated with implementation of the brownfield site
 444 rehabilitation agreement ~~corrective action plan~~; and

445 2. The person is complying in good faith with the terms of
 446 an existing consent order or department-approved corrective
 447 action plan, or responding in good faith to an enforcement
 448 action, as evidenced by a determination issued by the department
 449 or an approved local pollution control program.

450 (c) Potential brownfield sites owned by the state or a
 451 local government which contain contamination for which a
 452 governmental entity is potentially responsible and which are
 453 already designated as federal brownfield pilot projects or have
 454 filed an application for designation to the United States
 455 Environmental Protection Agency are eligible for participation
 456 in a brownfield site rehabilitation agreement ~~corrective action~~.

457 (d) After July 1, 1997, petroleum and drycleaning
 458 contamination sites shall not receive both restoration funding
 459 assistance available for the discharge under this chapter and
 460 any state assistance available under s. 288.107. Nothing in this
 461 act shall affect the cleanup criteria, priority ranking, and

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462 other rights and obligations inherent in petroleum contamination
463 and drycleaning contamination site rehabilitation under ss.
464 376.30-376.319, or the availability of economic incentives
465 otherwise provided for by law.

466 Section 9. This act shall take effect July 1, 2004.