

By Senator Constantine

22-03722A-08

20082594__

1 A bill to be entitled

2 An act relating to brownfield areas; amending s. 212.08,
3 F.S.; adding brownfield areas to the list of locations
4 that qualify for a sales tax exemption on residential home
5 construction costs; amending s. 220.1845, F.S., relating
6 to tax credits for the rehabilitation of contaminated
7 sites; conforming provisions to changes made by the act;
8 amending s. 376.30781, F.S.; providing a tax credit for
9 the costs of solid waste removal at brownfield sites;
10 providing definitions relating to solid waste removal;
11 providing an additional tax credit for rehabilitation
12 costs that result in the construction and operation of a
13 health care facility or health care provider on a
14 brownfield site; revising procedures relating to the
15 application for the tax credit; providing additional
16 limitations on the amount of credits claimed; amending s.
17 376.77, F.S.; conforming cross-references; amending s.
18 376.79, F.S.; redefining terms relating to the Brownfields
19 Redevelopment Act; amending s. 376.80, F.S.; revising
20 provisions relating to the administration of the
21 brownfield program at the local level; providing
22 requirements for the certification of a proposed
23 redevelopment of a brownfield site; deleting certification
24 requirements relating to the site contractor; deleting the
25 requirement that professional engineers and geologists
26 providing professional services must maintain liability
27 insurance; providing for evaluating the effects of
28 brownfield site rehabilitation on the community and on
29 individual health; amending ss. 376.82 and 376.83, F.S.;

22-03722A-08

20082594__

30 conforming cross-references; amending s. 376.86, F.S.;

31 revising the Brownfield Areas Loan Guarantee Program;

32 authorizing the program to guarantee 75 percent of a loan

33 for the construction and operation of a new health care

34 facility or health care provider; adding the State Surgeon

35 General of the Department of Health to the Brownfield

36 Areas Loan Guarantee Council; amending s. 163.3221, F.S.;

37 conforming a cross-reference; providing an effective date.

38

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

40

41 Section 1. Paragraph (n) of subsection (5) of section

42 212.08, Florida Statutes, is amended to read:

43 212.08 Sales, rental, use, consumption, distribution, and

44 storage tax; specified exemptions.--The sale at retail, the

45 rental, the use, the consumption, the distribution, and the

46 storage to be used or consumed in this state of the following are

47 hereby specifically exempt from the tax imposed by this chapter.

48 (5) EXEMPTIONS; ACCOUNT OF USE.--

49 (n) Materials for construction of single-family homes in

50 certain areas.--

51 1. As used in this paragraph, the term:

52 a. "Building materials" means tangible personal property

53 that becomes a component part of a qualified home.

54 b. "Qualified home" means a single-family home constructed

55 for occupancy by persons or households which meets the definition

56 of "affordable" as provided in s. 420.0004 and ~~having an~~

57 ~~appraised value of no more than \$160,000~~ which is located in an

58 enterprise zone, empowerment zone, brownfield area designated

22-03722A-08

20082594__

59 pursuant to s. 376.80, or Front Porch Florida Community and which
60 is constructed and occupied by the owner ~~thereof~~ for residential
61 purposes.

62 c. "Substantially completed" has the same meaning as
63 ~~provided~~ in s. 192.042(1).

64 2. Building materials ~~used in the construction of a~~
65 ~~qualified home~~ and the costs of labor associated with the
66 construction of a qualified home are exempt from the tax imposed
67 by this chapter upon an affirmative showing to the satisfaction
68 of the department that the requirements of this paragraph have
69 been met. This exemption inures to the owner through a refund of
70 previously paid taxes. To receive the ~~this~~ refund, the owner must
71 file an application under oath with the department which
72 includes:

73 a. The name and address of the owner.

74 b. The address and assessment roll parcel number of the
75 home for which a refund is sought.

76 c. A copy of the building permit issued for the home.

77 d. A certification by the local building code inspector
78 that the home is substantially completed.

79 e. A sworn statement, under penalty of perjury, from the
80 general contractor licensed in this state with whom the owner
81 contracted to construct the home, which ~~statement~~ lists the
82 building materials used in the construction of the home and the
83 actual cost thereof, the labor costs associated with such
84 construction, and the amount of sales tax paid on these materials
85 and labor costs. If a general contractor was not used, the owner
86 shall provide this information in a sworn statement, under

22-03722A-08

20082594__

87 | penalty of perjury. Copies of invoices evidencing payment of
88 | sales tax must be attached to the sworn statement.

89 | f. A sworn statement, under penalty of perjury, from the
90 | owner affirming that he or she is occupying the home for
91 | residential purposes.

92 | 3. An application for a refund of previously paid taxes
93 | under this paragraph must be submitted to the department within 6
94 | months after the date the home is deemed to be substantially
95 | completed by the local building code inspector. Within 30 working
96 | days after receipt of the application, the department shall
97 | determine if it meets the requirements of this paragraph. A
98 | refund ~~approved pursuant to this paragraph~~ shall be made within
99 | 30 days after formal approval of the application by the
100 | department.

101 | 4. The department shall establish by rule an application
102 | form and criteria for establishing eligibility for exemption
103 | under this paragraph.

104 | 5. The exemption shall apply to purchases of materials on
105 | or after July 1, 2000.

106 | Section 2. Subsection (1) of section 220.1845, Florida
107 | Statutes, is amended to read:

108 | 220.1845 Contaminated site rehabilitation tax credit.--

109 | (1) AUTHORIZATION FOR TAX CREDIT; LIMITATIONS.--

110 | (a) ~~A credit in the amount of 50 percent of the costs of~~
111 | ~~voluntary cleanup activity that is integral to site~~
112 | ~~rehabilitation at the following sites is available~~ against any
113 | tax due for a taxable year under this chapter is available for a
114 | portion of the costs for rehabilitating drycleaning-solvent-

22-03722A-08

20082594__

115 contaminated sites and brownfield sites as provided in s.
116 376.30781.÷

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

119 ~~2. A drycleaning solvent contaminated site at which cleanup~~
120 ~~is undertaken by the real property owner pursuant to s.~~
121 ~~376.3078(11), if the real property owner is not also, and has~~
122 ~~never been, the owner or operator of the drycleaning facility~~
123 ~~where the contamination exists; or~~

124 ~~3. A brownfield site in a designated brownfield area under~~
125 ~~s. 376.80.~~

126 ~~(b) A tax credit applicant, or multiple tax credit~~
127 ~~applicants working jointly to clean up a single site, may not be~~
128 ~~granted more than \$500,000 per year in tax credits for each site~~
129 ~~voluntarily rehabilitated. Multiple tax credit applicants shall~~
130 ~~be granted tax credits in the same proportion as their~~
131 ~~contribution to payment of cleanup costs. Subject to the same~~
132 ~~conditions and limitations as provided in this section, a~~
133 ~~municipality, county, or other tax credit applicant which~~
134 ~~voluntarily rehabilitates a site may receive not more than~~
135 ~~\$500,000 per year in tax credits which it can subsequently~~
136 ~~transfer subject to the provisions in paragraph (g).~~

137 ~~(b)(e)~~ (b) If the credit granted under this section is not
138 fully used in any one year because of insufficient tax liability
139 on the part of the corporation, the unused amount may be carried
140 forward for up to a period not to exceed 5 years. The carryover
141 credit may be used in a subsequent year if ~~when~~ the tax imposed
142 by this chapter for that year exceeds the credit for which the
143 corporation is eligible in that year ~~under this section~~ after

22-03722A-08

20082594__

144 applying the other credits and unused carryovers in the order
145 provided by s. 220.02(8). ~~Five years after the date a credit is~~
146 ~~granted under this section, such credit expires and may not be~~
147 ~~used. However,~~ If during the 5-year period the credit is
148 transferred, in whole or in part, pursuant to paragraph (d) ~~(g)~~,
149 each transferee has up to 5 years after the date of transfer to
150 use its credit.

151 ~~(c)~~ ~~(d)~~ A taxpayer that files a consolidated return in this
152 state as a member of an affiliated group under s. 220.131(1) may
153 be allowed the credit on a consolidated return basis up to the
154 amount of tax imposed upon the consolidated group.

155 ~~(e)~~ A tax credit applicant that receives state-funded site
156 rehabilitation under s. 376.3078(3) for rehabilitation of a
157 drycleaning solvent-contaminated site is ineligible to receive
158 credit under this section for costs incurred by the tax credit
159 applicant in conjunction with the rehabilitation of that site
160 during the same time period that state-administered site
161 rehabilitation was underway.

162 ~~(f)~~ The total amount of the tax credits which may be
163 granted under this section is \$2 million annually.

164 ~~(d)~~ ~~(g)~~ 1. Tax credits that may be available under this
165 section to an entity eligible under s. 376.30781 may be
166 transferred after a merger or acquisition to the surviving or
167 acquiring entity and used in the same manner and with the same
168 limitations.

169 1.2. The entity or its surviving or acquiring entity ~~as~~
170 ~~described in subparagraph 1.~~ may transfer any unused credit in
171 whole or in units of at least ~~no less than~~ 25 percent of the
172 remaining credit. The entity acquiring such credit may use it in

22-03722A-08

20082594__

173 the same manner and with the same limitation as described in this
174 section. Such transferred credits may not be transferred again
175 although they may succeed to a surviving or acquiring entity
176 subject to the same conditions and limitations as described in
177 this section.

178 2.3. ~~If In the event~~ the credit ~~provided for under this~~
179 ~~section~~ is reduced due to ~~either as a result of~~ a determination
180 by the Department of Environmental Protection or an examination
181 or audit by the Department of Revenue, the ~~such~~ tax deficiency
182 shall be recovered from the first entity~~,~~ or the surviving or
183 acquiring entity that, ~~to have claimed the such~~ credit up to the
184 amount of credit taken. Any subsequent deficiencies shall be
185 assessed against the ~~any~~ entity acquiring and claiming the ~~such~~
186 credit, or in the case of multiple succeeding entities in the
187 order of credit succession.

188 ~~(h) In order to encourage completion of site rehabilitation~~
189 ~~at contaminated sites being voluntarily cleaned up and eligible~~
190 ~~for a tax credit under this section, the tax credit applicant may~~
191 ~~claim an additional 25 percent of the total cleanup costs, not to~~
192 ~~exceed \$500,000, in the final year of cleanup as evidenced by the~~
193 ~~Department of Environmental Protection issuing a "No Further~~
194 ~~Action" order for that site.~~

195 ~~(i) In order to encourage the construction of housing that~~
196 ~~meets the definition of affordable provided in s. 420.0004(3), an~~
197 ~~applicant for the tax credit may claim an additional 25 percent~~
198 ~~of the total site rehabilitation costs that are eligible for tax~~
199 ~~credits under this section, not to exceed \$500,000. In order To~~
200 ~~receive this additional tax credit, the applicant must provide a~~
201 ~~certification letter from the Florida Housing Finance~~

22-03722A-08

20082594__

202 ~~Corporation, the local housing authority, or other governmental~~
203 ~~agency that is a party to the use agreement, indicating that the~~
204 ~~construction on the brownfield site is complete, the brownfield~~
205 ~~site has received a certificate of occupancy, and the brownfield~~
206 ~~site has a properly recorded instrument that limits the use of~~
207 ~~the property to housing that meets the definition of affordable~~
208 ~~provided in s. 420.0004(3).~~

209 Section 3. Section 376.30781, Florida Statutes, is amended
210 to read:

211 376.30781 Partial tax credits for rehabilitation of
212 drycleaning-solvent-contaminated sites and brownfield sites ~~in~~
213 ~~designated brownfield areas; application process; rulemaking~~
214 ~~authority; revocation authority.--~~

215 (1) The Legislature finds that:

216 (a) To facilitate property transactions and economic growth
217 and development, it is in the state's interest ~~of the state~~ to
218 encourage the cleanup, at the earliest possible time, of
219 drycleaning-solvent-contaminated sites and brownfield sites in
220 designated brownfield areas.

221 (b) It is the intent of the Legislature to encourage the
222 voluntary cleanup of drycleaning-solvent-contaminated sites and
223 brownfield sites in designated brownfield areas by providing a
224 partial tax credit for the restoration of such property in
225 specified circumstances.

226 (2) Notwithstanding subsection (5) ~~the requirements of~~
227 ~~paragraph (5)(a)~~, tax credits allowed pursuant to s. 220.1845 are
228 available for ~~any~~ site rehabilitation or solid waste removal
229 conducted during the calendar year in which the applicable
230 voluntary cleanup agreement or brownfield site rehabilitation

22-03722A-08

20082594__

231 agreement is executed, even if the site rehabilitation or solid
232 waste removal is conducted prior to the execution of that
233 agreement or the designation of the brownfield area.

234 (3) (a) A credit in the amount of 50 percent of the costs of
235 voluntary cleanup activity that is integral to site
236 rehabilitation, as determined by rule, at the following sites is
237 allowed pursuant to s. 220.1845:

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

240 2. A drycleaning-solvent-contaminated site at which site
241 rehabilitation ~~cleanup~~ is undertaken by the real property owner
242 pursuant to s. 376.3078(11), if the real property owner is not
243 also, and has never been, the owner or operator of the
244 drycleaning facility where the contamination exists; or

245 3. A brownfield site in a designated brownfield area under
246 s. 376.80.

247 (b) A tax credit applicant, or multiple tax credit
248 applicants working jointly to clean up a single site, may not
249 receive ~~be granted~~ more than \$500,000 per year in tax credits for
250 each site voluntarily rehabilitated. Multiple tax credit
251 applicants shall be granted tax credits in the same proportion as
252 their contribution to payment of site rehabilitation ~~cleanup~~
253 costs. Subject to the same conditions and limitations, a
254 municipality, county, or other tax credit applicant that
255 voluntarily rehabilitates a site may also receive up to \$500,000
256 per year in tax credits. Tax credits are available only for site
257 rehabilitation conducted during the calendar year for which the
258 tax credit application is submitted.

259 (c) In order to encourage completion of site rehabilitation

22-03722A-08

20082594__

260 at contaminated sites that are being voluntarily cleaned up and
261 that are eligible for a tax credit under this section, the tax
262 credit applicant may claim an additional 25 percent of the total
263 site rehabilitation ~~cleanup~~ costs, not to exceed \$500,000, in the
264 final year of cleanup as evidenced by the department ~~of~~
265 ~~Environmental Protection~~ issuing a "No Further Action" order for
266 that site.

267 (d) In order to encourage the construction of housing that
268 meets the definition of affordable provided in s. 420.0004 ~~s.~~
269 ~~420.0004(3)~~, an applicant for the tax credit may claim an
270 additional 25 percent of the total site rehabilitation costs that
271 are eligible for tax credits under this section, not to exceed
272 \$500,000. ~~In order~~ To receive this additional tax credit, the
273 applicant must provide a certification letter from the Florida
274 Housing Finance Corporation, the local housing authority, or
275 other governmental agency that is a party to the use agreement,
276 indicating that the construction on the brownfield site ~~is~~
277 ~~complete,~~ the brownfield site has received a certificate of
278 occupancy, and the brownfield site has a properly recorded
279 instrument that limits the use of the property to affordable
280 housing ~~that meets the definition of affordable provided in s.~~
281 ~~420.0004(3)~~. Notwithstanding ~~the limitation~~ that only one
282 application may ~~shall~~ be submitted each year for each site, an
283 application for the additional credit ~~provided for in this~~
284 ~~paragraph~~ shall be submitted when ~~as soon as~~ all requirements to
285 obtain the ~~this~~ additional tax credit have been met.

286 (e) In order ~~Notwithstanding the restrictions in this~~
287 ~~section that limit tax credit eligibility to costs that are~~
288 ~~integral to site rehabilitation,~~ to encourage the redevelopment

22-03722A-08

20082594__

289 of a brownfield site, as defined in the brownfield site
290 rehabilitation agreement, which is ~~properties in designated~~
291 ~~brownfield areas that are~~ hindered by the presence of solid
292 waste, as defined in s. 403.703, costs relating to a tax credit
293 ~~applicant may also claim costs to address the solid waste removal~~
294 may also be claimed under this subsection, ~~but only those costs~~
295 ~~to remove, transport, and dispose of solid waste~~ in accordance
296 with department rules. Only one solid waste removal tax credit
297 application may be filed per brownfield site and a tax credit
298 applicant, or multiple tax credit applicants working jointly to
299 clean up a single site, may receive up to \$500,000 in tax credits
300 upon the completion of the solid waste removal. Multiple tax
301 credit applicants shall be granted tax credits in the same
302 proportion as their contribution to payment of solid waste
303 removal costs. Tax credit applications claiming costs pursuant to
304 this paragraph are not subject to the calendar-year limitation
305 and January 31 annual application deadline. To receive the
306 credit, ~~These costs are eligible for a tax credit provided the~~
307 applicant must submit ~~submits~~ an affidavit stating that, ~~after~~
308 ~~consultation with appropriate local government officials and the~~
309 ~~department,~~ to the best of the applicant's knowledge after
310 consultation with appropriate local government officials, the
311 department, and available historical records, the brownfield site
312 was never operated as a permitted solid waste disposal area or
313 landfill or dump site for monetary compensation. The applicant
314 must also submit, ~~and submits~~ all other documentation and
315 certifications required by this section. For the purposes of ~~In~~
316 this section: ~~where reference is made to "site rehabilitation,"~~
317 ~~the department shall instead consider whether the costs claimed~~

22-03722A-08

20082594__

318 ~~are for removal, transportation, and disposal of solid waste. Tax~~
319 ~~credit applications claiming costs pursuant to this paragraph~~
320 ~~shall not be subject to the calendar year limitation and January~~
321 ~~15 annual application deadline, and the department shall accept a~~
322 ~~one-time application filed subsequent to the completion by the~~
323 ~~tax credit applicant of the applicable requirements listed in~~
324 ~~this paragraph.~~

325 1. "Solid waste disposal area" means a landfill, dump, or
326 other area where solid waste has been disposed of.

327 2. "Monetary compensation" means that fees were charged or
328 assessments were levied for the disposal of solid waste at a
329 solid waste disposal area.

330 3. "Solid waste removal" means removal of solid waste from
331 the land surface or excavation of solid waste from below the land
332 surface and removal of the solid waste from the brownfield site.
333 The term also includes:

334 a. Transportation of solid waste to a licensed or exempt
335 solid waste management facility or to a temporary storage area;

336 b. Sorting or screening of solid waste prior to removal
337 from the site; and

338 c. Deposition of solid waste at a permitted or exempt solid
339 waste management facility, regardless of whether the solid waste
340 is disposed of or recycled.

341 (f) In order to encourage the construction and operation of
342 a new health care facility or a health care provider, as those
343 terms are defined in s. 408.032, s. 408.07, or s. 408.7056, on a
344 brownfield site, an applicant for a tax credit may claim an
345 additional 25 percent of the total site rehabilitation costs, not
346 to exceed \$500,000, if the applicant provides documentation

22-03722A-08

20082594__

347 indicating that the health care facility or health care provider
348 has received a certificate of occupancy, or a license or
349 certificate has been issued for the operation of the health care
350 facility or health care provider.

351 (4) The department is ~~of Environmental Protection~~ shall be
352 responsible for allocating the tax credits provided for in s.
353 220.1845, which may not ~~to~~ exceed a total of \$2 million in tax
354 credits annually.

355 (5) To claim the credit for site rehabilitation or solid
356 waste removal ~~conducted during the current calendar year~~, each
357 tax credit applicant must apply to the department ~~of~~
358 ~~Environmental Protection~~ for an allocation of the \$2 million
359 annual credit by filing a tax credit application with the
360 Division of Waste Management ~~January 15 of the following year~~ on
361 a form developed by the department ~~of Environmental Protection~~ in
362 cooperation with the Department of Revenue. The form shall
363 include an affidavit from each tax credit applicant certifying
364 that all information contained in the application, including all
365 records of costs incurred and claimed in the tax credit
366 application, are true and correct. If the application is
367 submitted pursuant to subparagraph (3)(a)2., the form must
368 include an affidavit signed by the real property owner stating
369 that it is not, and has never been, the owner or operator of the
370 drycleaning facility where the contamination exists. Approval of
371 partial tax credits is ~~must be accomplished~~ on a first-come,
372 first-served basis based upon the date and time complete
373 applications are received by the Division of Waste Management. A
374 ~~tax credit applicant shall submit only one complete application~~
375 ~~per site for each calendar year's site rehabilitation costs.~~

22-03722A-08

20082594__

376 ~~Incomplete placeholder applications shall not be accepted and~~
377 ~~will not secure a place in the first-come, first-served~~
378 ~~application line.~~ To be eligible for a tax credit, the tax credit
379 applicant must comply with the following:

380 (a) For site rehabilitation tax credits, the applicant must
381 have entered into a voluntary cleanup agreement with the
382 Department of Environmental Protection for a drycleaning-solvent-
383 contaminated site or a brownfield site rehabilitation agreement,
384 as applicable, and must have paid all deductibles pursuant to s.
385 376.3078(3)(e), as applicable. Site rehabilitation tax credit
386 applicants shall submit only one complete application per site
387 for each calendar year's site rehabilitation costs. Applications
388 must be received by the Division of Waste Management by January
389 31 of the year following the calendar year for which site
390 rehabilitation costs are being claimed in a tax credit
391 application.

392 (b) For solid waste removal tax credits, the applicant must
393 have entered into a brownfield site rehabilitation agreement with
394 the Department of Environmental Protection. Solid waste removal
395 tax credit applicants shall submit only one complete application
396 per brownfield site, as defined in the rehabilitation agreement.
397 Applications must be received by the Division of Waste Management
398 subsequent to the completion of the requirements listed in
399 paragraph (3)(e). ~~Have paid all deductibles pursuant to s.~~
400 ~~376.3078(3)(e) for eligible drycleaning-solvent-cleanup program~~
401 ~~sites.~~

402 (6) To obtain the tax credit certificate, ~~a tax credit~~
403 ~~applicant must annually file an application for certification,~~
404 ~~which must be received by the Division of Waste Management of the~~

22-03722A-08

20082594__

405 ~~Department of Environmental Protection by January 15 of the year~~
406 ~~following the calendar year for which site rehabilitation costs~~
407 ~~are being claimed in a tax credit application.~~ the tax credit
408 applicant must provide all pertinent information requested on the
409 tax credit application form, including, at a minimum, the name
410 and address of the tax credit applicant and the address and
411 tracking identification number of the eligible site. ~~Along with~~
412 ~~the tax credit application form,~~ The tax credit applicant must
413 also submit ~~the following:~~

414 (a) A nonrefundable review fee of \$250 made payable to the
415 Water Quality Assurance Trust Fund to cover the administrative
416 costs associated with the department's review of the tax credit
417 application;

418 (b) Copies of documents that describe the goods or services
419 and associated costs being claimed which were integral to site
420 rehabilitation or were for solid waste removal during the period
421 covered by the application. These documents shall include
422 contract records that describe the scope of work performed and
423 payment requests that describe the goods or services provided.
424 The payment record must be sufficient to demonstrate a link
425 between the contract records, the payment requests, and the
426 payment records for the period covered by the application
427 ~~contracts and documentation of contract negotiations, accounts,~~
428 ~~invoices, sales tickets, or other payment records from purchases,~~
429 ~~sales, leases, or other transactions involving actual costs~~
430 ~~incurred for that tax year related to site rehabilitation, as~~
431 ~~that term is defined in ss. 376.301 and 376.79;~~

432 (c) Proof that the documentation submitted pursuant to
433 paragraph (b) has been reviewed and verified by an independent

22-03722A-08

20082594__

434 certified public accountant in accordance with standards
435 established by the American Institute of Certified Public
436 Accountants. Specifically, a certified public accountant's report
437 must be submitted and the certified public accountant must attest
438 to the accuracy and validity of the costs incurred and paid
439 during the period covered in the application by conducting an
440 independent review of the data presented by the tax credit
441 applicant. Accuracy and validity of costs incurred and paid shall
442 ~~would~~ be determined once the level of effort is ~~was~~ certified by
443 an appropriate professional registered in this state in each
444 contributing technical discipline. The certified public
445 accountant's report must ~~would~~ also attest that the costs
446 included in the application form are not duplicated within the
447 application. A copy of the accountant's report shall be submitted
448 to the department in addition to the accountant's certification
449 form in ~~of Environmental Protection with~~ the tax credit
450 application; and

451 (d) A certification form stating that ~~site rehabilitation~~
452 activities associated with the documentation submitted pursuant
453 to paragraph (b) have been conducted under the observation of,
454 and related technical documents have been signed and sealed by,
455 an appropriate professional registered in this state in each
456 contributing technical discipline. The certification form shall
457 be signed and sealed by the appropriate registered professionals
458 stating that the costs incurred were integral, necessary, and
459 required for site rehabilitation, ~~as that term is defined in ss.~~
460 376.301 and 376.79. If the scope of solid waste removal
461 activities do not require oversight by a registered technical
462 professional, the certification form is not required as part of

22-03722A-08

20082594__

463 the tax credit application.

464 (7) The certified public accountant and appropriate
465 registered professionals submitting forms as part of a tax credit
466 application must verify such forms by completing and signing the
467 appropriate certifications included in the application form.
468 Verification shall ~~must~~ be accomplished as provided in s.
469 92.525(1)(b) and subject to ~~the provisions of~~ s. 92.525(3).

470 (8) The department ~~of Environmental Protection~~ shall review
471 the tax credit application and any supplemental documentation
472 that the tax credit applicant may submit prior to the annual
473 application deadline, if applicable, for completeness and
474 eligibility. ~~in order to have the application~~

475 (a) To be considered complete, the review must verify for
476 ~~the purpose of verifying~~ that the tax credit applicant has met
477 the appropriate qualifying criteria in subsections (3) and (5),
478 ~~and~~ has submitted the application form, and has addressed each of
479 the categories of submittals all required documentation listed in
480 subsection (6). Upon verification that the tax credit applicant
481 has met these completeness requirements, the tax credit
482 application shall secure a place on a first-come, first-served
483 basis. If the department determines that an application is
484 incomplete, the applicant shall be notified in writing and shall
485 have 30 days to correct any deficiencies. Upon timely correction
486 of the deficiency, the tax credit application shall secure a
487 place on a first-come, first-served basis. Tax credit
488 applications may not be altered to claim additional costs during
489 this time.

490 (b) For costs to be eligible, the review must verify that
491 the work claimed was integral to site rehabilitation or was for

22-03722A-08

20082594__

492 solid waste removal, that the work claimed was performed in the
493 applicable timeframe, and that the costs claimed were properly
494 documented. Upon verification, the department shall issue a
495 written decision granting eligibility for partial tax credits or
496 (a tax credit certificate). Complete tax credit applications
497 shall be reviewed for eligible costs, in conjunction with in the
498 amount of 50 percent of the total costs claimed, subject to the
499 \$500,000 limitation, for the calendar year for which the tax
500 credit application is submitted based on the report of the
501 certified public accountant, and the certifications from the
502 appropriate registered technical professionals, as applicable.

503 (9) On or before April 16 ~~March 31~~, the department ~~of~~
504 ~~Environmental Protection~~ shall inform each eligible tax credit
505 applicant, subject to the January 31 annual application deadline,
506 of the amount of its partial tax credit and provide each eligible
507 tax credit applicant with a tax credit certificate that must be
508 submitted with its tax return to the Department of Revenue to
509 claim the tax credit or to have the credit be transferred
510 pursuant to s. 220.1845(1)(d) s. 220.1845(1)(h). The April 16
511 deadline for annual site rehabilitation tax credit certificate
512 awards does not apply to any tax credit application for which the
513 department delivered a notice of deficiency pursuant to
514 subsection (8). The department shall respond within 60 days after
515 receipt of a response from the tax credit applicant to the notice
516 of deficiency. Credits will not result in the payment of refunds
517 if total credits exceed the amount of tax owed.

518 (10) For applications for solid waste removal, a new health
519 care facility or health care provider, or affordable housing tax
520 credit, the department shall inform the applicant of the

22-03722A-08

20082594__

521 department's determination within 75 days after the application
522 has been deemed complete. Each eligible tax credit applicant
523 shall be informed of the amount of its partial tax credit and
524 provided with a tax credit certificate that must be submitted
525 with its tax return to the Department of Revenue to claim the tax
526 credit or to have the tax credit transferred pursuant to s.
527 220.1845(1)(d). Tax refunds may not be paid on credits that
528 exceed the amount of tax owed.

529 (11)-(10) If a tax credit applicant does not receive a tax
530 credit allocation due to an exhaustion of the \$2 million annual
531 tax credit authorization, such application will then be included
532 in the same first-come, first-served order in the next year's
533 annual tax credit allocation, if any, based on the prior year
534 application.

535 (12)-(11) The department ~~of Environmental Protection~~ may
536 adopt rules to prescribe the necessary forms for claiming
537 ~~required to claim~~ tax credits under this section and to provide
538 the administrative guidelines and procedures ~~required~~ to
539 administer this section.

540 (13)-(12) The department ~~of Environmental Protection~~ may
541 revoke or modify any written decision granting eligibility for
542 partial tax credits under this section if it is discovered that
543 the tax credit applicant submitted any false statement,
544 representation, or certification in any application, record,
545 report, plan, or other document filed in an attempt to receive
546 partial tax credits ~~under this section~~. The department ~~of~~
547 ~~Environmental Protection~~ shall immediately notify the Department
548 of Revenue of any revoked or modified orders affecting previously
549 granted partial tax credits. Additionally, the tax credit

22-03722A-08

20082594__

550 applicant must notify the Department of Revenue of any change in
551 its tax credit claimed.

552 (14)-(13) Tax credits are subject to the following
553 limitations:

554 (a) A tax credit applicant who receives state-funded site
555 rehabilitation under s. 376.3078(3) for rehabilitation of a
556 drycleaning-solvent-contaminated site is ineligible to receive a
557 tax credit under s. 220.1845 for costs incurred by the tax credit
558 applicant in conjunction with the rehabilitation of that site
559 during the same time period that state-administered site
560 rehabilitation ~~is was~~ underway.

561 (b) Tax credits for site rehabilitation awarded pursuant to
562 paragraphs (3)(b), (c), (d), and (f) are additive; however, the
563 total tax credit award may not exceed 100 percent of the costs
564 incurred and paid by the applicant.

565 (c) A single brownfield site may receive tax credits for
566 eligible site rehabilitation and eligible solid waste removal
567 costs if the costs are claimed only once per site.

568 (d) For purposes of this section, costs incurred that are
569 not considered integral to site rehabilitation include, but are
570 not limited to, brownfield area designation costs and tax credit
571 application preparation and submittal costs.

572 Section 4. Section 376.77, Florida Statutes, is amended to
573 read:

574 376.77 Short title.--Sections 376.77-376.86 ~~376.77-376.85~~
575 may be cited as the "Brownfields Redevelopment Act."

576 Section 5. Section 376.79, Florida Statutes, is amended to
577 read:

22-03722A-08

20082594__

578 376.79 Definitions ~~relating to Brownfields Redevelopment~~
579 ~~Act.~~--As used in ss. 376.77-376.86 ~~376.77-376.85~~, the term:

580 (1) "Additive effects" means a scientific principle that
581 the toxicity that occurs as a result of exposure is the sum of
582 the toxicities of the individual chemicals to which the
583 individual is exposed.

584 (2) "Antagonistic effects" means a scientific principle
585 that the toxicity that occurs as a result of exposure is less
586 than the sum of the toxicities of the individual chemicals to
587 which the individual is exposed.

588 (3) "Brownfield sites" means real property, the expansion,
589 redevelopment, or reuse of which may be complicated by actual or
590 perceived environmental contamination.

591 (4) "Brownfield area" means a contiguous area of one or
592 more brownfield sites, some of which may not be contaminated, and
593 which has been designated by a local government by resolution.
594 Such areas may include all or portions of community redevelopment
595 areas, enterprise zones, empowerment zones, other such designated
596 economically deprived communities and areas, and Environmental
597 Protection Agency-designated brownfield pilot projects.

598 (5) "Contaminant" means any physical, chemical, biological,
599 or radiological substance present in any medium which may result
600 in adverse effects to human health or the environment or which
601 creates an adverse nuisance, organoleptic, or aesthetic condition
602 in groundwater.

603 (6) "Contaminated site" means any contiguous land sediment,
604 surface water, or groundwater areas that contain contaminants
605 that may be harmful to human health or the environment.

22-03722A-08

20082594__

606 (7) "Department" means the Department of Environmental
607 Protection.

608 (8) "Engineering controls" means modifications to a site to
609 reduce or eliminate the potential for exposure to petroleum
610 products' chemicals of concern, drycleaning solvents, or other
611 contaminants. Such modifications may include, but are not limited
612 to, physical or hydraulic control measures, capping, point of use
613 treatments, or slurry walls.

614 (9) "Environmental justice" means the fair treatment of all
615 people of all races, cultures, and incomes with respect to the
616 development, implementation, and enforcement of environmental
617 laws, regulations, and policies.

618 (10) "Institutional controls" means the restriction on use
619 of or access to a site to eliminate or minimize exposure to
620 petroleum products' chemicals of concern, drycleaning solvents,
621 or other contaminants. Such restrictions may include, but are not
622 limited to, deed restrictions, restrictive covenants, or
623 conservation easements.

624 (11) "Local pollution control program" means a local
625 pollution control program that has received delegated authority
626 from the department of ~~Environmental Protection~~ under ss.
627 376.80(9) ~~376.80(11)~~ and 403.182.

628 (12) "Natural attenuation" means a verifiable approach to
629 site rehabilitation which allows natural processes to contain the
630 spread of contamination and reduce the concentrations of
631 contaminants in contaminated groundwater and soil. Natural
632 attenuation processes may include sorption, biodegradation,
633 chemical reactions with subsurface materials, diffusion,
634 dispersion, and volatilization.

22-03722A-08

20082594__

635 (13) "Person responsible for brownfield site
636 rehabilitation" means the individual or entity that is designated
637 by the local government to enter into the brownfield site
638 rehabilitation agreement with the department or an approved local
639 pollution control program and enters into an agreement with the
640 local government for redevelopment of the site.

641 (14) "Person" means any individual, partner, joint venture,
642 or corporation; any group of the foregoing, organized or united
643 for a business purpose; or any governmental entity.

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

648 ~~(16) "Secretary" means the secretary of the Department of~~
649 ~~Environmental Protection.~~

650 (16)~~(17)~~ "Site rehabilitation" means the assessment of site
651 contamination and the remediation activities that reduce the
652 levels of contaminants at a site through accepted treatment
653 methods to meet the cleanup target levels established for that
654 site. For purposes of sites subject to the Resource Conservation
655 and Recovery Act, the term includes removal, decontamination, and
656 corrective action of releases of hazardous substances.

657 (17)~~(18)~~ "Source removal" means the removal of free
658 product, or the removal of contaminants from soil or sediment
659 that has been contaminated to the extent that leaching to
660 groundwater or surface water has occurred or is occurring.

661 ~~(19) "Synergistic effects" means a scientific principle~~
662 ~~that the toxicity that occurs as a result of exposure is more~~

22-03722A-08

20082594__

663 ~~than the sum of the toxicities of the individual chemicals to~~
664 ~~which the individual is exposed.~~

665 Section 6. Section 376.80, Florida Statutes, is amended to
666 read:

667 376.80 Brownfield program administration ~~process~~--

668 (1) A local government that has ~~with~~ jurisdiction over the
669 brownfield area must notify the department of its decision to
670 designate a brownfield area for site rehabilitation purposes ~~for~~
671 ~~the purposes of ss. 376.77-376.85~~. The notification must include
672 a resolution, by the local government body, to which is attached
673 a map adequate to clearly delineate exactly which parcels are to
674 be included in the brownfield area or alternatively a less-
675 detailed map accompanied by a detailed legal description of the
676 brownfield area. If a property owner within the proposed area
677 ~~proposed for designation by the local government~~ requests in
678 writing to have his or her property removed from the proposed
679 designation, the local government shall grant the request.

680 (a) For municipalities, the governing body shall adopt the
681 resolution in accordance with the procedures outlined in s.
682 166.041, except that the notice for the public hearings on the
683 proposed resolution must be in the form established in s.
684 166.041(3)(c)2.

685 (b) For counties, the governing body shall adopt the
686 resolution in accordance with the procedures outlined in s.
687 125.66, except that the notice for the public hearings on the
688 proposed resolution shall be in the form established in s.
689 125.66(4)(b)2.

690 (2) ~~(a)~~ If a local government proposes to designate a
691 brownfield area that is outside community redevelopment areas,

22-03722A-08

20082594__

692 enterprise zones, empowerment zones, closed military bases, or
693 designated brownfield pilot project areas, the local government
694 must adopt the resolution and conduct the public hearings in
695 accordance with the requirements of subsection (1) except that
696 ~~conduct~~ at least one of the required public hearings must be
697 conducted as close as reasonably practicable to hearing in the
698 area to be designated to provide an opportunity for public input
699 on the size of the area, the objectives for rehabilitation, job
700 opportunities and economic developments anticipated, neighborhood
701 residents' considerations, and other relevant local concerns.
702 Notice of the public hearing must be made in a newspaper of
703 general circulation in the area, ~~and the notice~~ must be at least
704 16 square inches in size, must be in ethnic newspapers or local
705 community bulletins, must be posted in the affected area, and
706 must be announced at a scheduled meeting of the local governing
707 body before the actual public hearing.

708 (a) In determining the areas to be designated, the local
709 government shall ~~must~~ consider:

- 710 1. Whether the brownfield area warrants economic
711 development and has a reasonable potential for such activities;
- 712 2. Whether the proposed area to be designated represents a
713 reasonably focused approach and is not overly large in geographic
714 coverage;
- 715 3. Whether the area has potential to interest the private
716 sector in participating in rehabilitation; and
- 717 4. Whether the area contains sites or parts of sites
718 suitable for limited recreational open space, cultural, or
719 historical preservation purposes.

720 (b) A local government shall designate a brownfield area if

22-03722A-08

20082594__

721 | ~~under the provisions of this act provided that:~~

722 | 1. A person who owns or controls a potential brownfield
723 | site is requesting the designation and has agreed to rehabilitate
724 | and redevelop the brownfield site;

725 | 2. The rehabilitation and redevelopment of the proposed
726 | brownfield site will result in economic productivity in ~~of~~ the
727 | area, along with the creation of at least 5 new permanent jobs at
728 | the brownfield site which are full-time equivalent positions not
729 | associated with the implementation of the brownfield site
730 | rehabilitation agreement and which are not associated with
731 | redevelopment project demolition or construction activities
732 | pursuant to the redevelopment of the proposed brownfield area
733 | ~~agreement required under paragraph (5)(i). However,~~ The job
734 | creation requirement is ~~shall~~ not applicable ~~apply~~ to the
735 | rehabilitation and redevelopment of a brownfield site that will
736 | provide ~~affordable~~ housing that meets the definition of
737 | affordable provided in s. 420.0004 as defined in s. 420.0004(3)
738 | or the creation of recreational areas, conservation areas, or
739 | parks;

740 | 3. The redevelopment of the proposed brownfield site is
741 | consistent with the local comprehensive plan and is a permissible
742 | use under the applicable local land development regulations;

743 | 4. Notice of the proposed rehabilitation of the brownfield
744 | area has been provided to neighbors and nearby residents of the
745 | proposed area to be designated, and the person proposing the area
746 | for designation has afforded ~~to~~ those receiving notice the
747 | opportunity for comments and suggestions about rehabilitation.
748 | Notice ~~pursuant to this subsection~~ must be made in a newspaper of
749 | general circulation in the area, be at least 16 square inches in

22-03722A-08

20082594__

750 size, and ~~the notice~~ must be posted in the affected area; and

751 5. The person proposing the area for designation has
752 provided reasonable assurance that he or she has sufficient
753 financial resources to implement and complete the rehabilitation
754 agreement and redevelopment of the brownfield site ~~plan~~.

755 (c) The designation of a brownfield area and the
756 identification of a person responsible for brownfield site
757 rehabilitation ~~simply~~ entitles the identified person to negotiate
758 a brownfield site rehabilitation agreement with the department or
759 approved local pollution control program.

760 (3) If ~~When~~ there is a person responsible for brownfield
761 site rehabilitation, the local government must notify the
762 department of the identity of that person. If the agency or
763 person ~~who will be~~ responsible for the coordination changes
764 during the approval process specified in subsections (4), (5),
765 and (6), the department or the affected approved local pollution
766 control program must notify the affected local government when
767 the change occurs.

768 (4) Local governments or persons responsible for
769 rehabilitation and redevelopment of brownfield areas must
770 establish an advisory committee or use an existing advisory
771 committee that has formally expressed its intent to address
772 redevelopment of the specific brownfield area for the purpose of
773 improving public participation and receiving public comments on
774 rehabilitation and redevelopment of the ~~brownfield~~ area, future
775 land use, local employment opportunities, community safety, and
776 environmental justice. The ~~Such~~ advisory committee should include
777 residents within or adjacent to the brownfield area, businesses
778 operating within the ~~brownfield~~ area, and others deemed

22-03722A-08

20082594__

779 appropriate. The person responsible for brownfield site
780 rehabilitation must notify the advisory committee of the intent
781 to rehabilitate and redevelop the site before executing the
782 brownfield site rehabilitation agreement, and provide the
783 committee with a copy of the draft plan for site rehabilitation
784 which addresses elements required by subsection (5). This
785 includes disclosing potential reuse of the property as well as
786 site rehabilitation activities, if any, to be performed. The
787 advisory committee shall review any ~~the~~ proposed redevelopment
788 agreements prepared ~~agreement required~~ pursuant to paragraph
789 (5) (i) and provide comments, if appropriate, to the board of the
790 local government that has ~~with~~ jurisdiction over the brownfield
791 area. The advisory committee must receive a copy of the executed
792 brownfield site rehabilitation agreement. When the person
793 responsible for brownfield site rehabilitation submits a site
794 assessment report or the technical document containing the
795 proposed course of action following site assessment to the
796 department or the local pollution control program for review, the
797 person responsible for brownfield site rehabilitation must hold a
798 meeting or attend a regularly scheduled meeting to inform the
799 advisory committee of the findings and recommendations in the
800 site assessment report or the technical document ~~containing the~~
801 ~~proposed course of action following site assessment.~~

802 (5) The person responsible for brownfield site
803 rehabilitation must enter into a brownfield site rehabilitation
804 agreement with the department or an approved local pollution
805 control program if actual contamination exists at the brownfield
806 site. The ~~brownfield site~~ rehabilitation agreement must include:

807 (a) A brownfield site rehabilitation schedule, including

22-03722A-08

20082594__

808 | milestones for completion of site rehabilitation tasks and
809 | submittal of technical reports and rehabilitation plans as agreed
810 | upon by the parties to the agreement.†

811 | (b) A commitment to conduct site rehabilitation activities
812 | under the observation of professional engineers or geologists who
813 | are registered in accordance with the requirements of chapter 471
814 | or chapter 492, respectively. Submittals provided by the person
815 | responsible for brownfield site rehabilitation must be signed and
816 | sealed by a professional engineer registered under chapter 471,
817 | or a professional geologist registered under chapter 492,
818 | certifying that the submittal and associated work comply with the
819 | law and rules of the department and those governing the
820 | profession. ~~In addition,~~ Upon completion of the approved remedial
821 | action, ~~the department shall require~~ a professional engineer
822 | registered under chapter 471 or a professional geologist
823 | registered under chapter 492 must ~~to~~ certify that the corrective
824 | action was, to the best of his or her knowledge, completed in
825 | substantial conformance with the plans and specifications
826 | approved by the department.†

827 | (c) A commitment to conduct site rehabilitation in
828 | accordance with department quality assurance rules.†

829 | (d) A commitment to conduct site rehabilitation consistent
830 | with state, federal, and local laws and ~~consistent~~ with the
831 | brownfield site contamination cleanup criteria in s. 376.81,
832 | including any applicable requirements for risk-based corrective
833 | action.†

834 | (e) Timeframes for the department's review of technical
835 | reports and plans submitted in accordance with the agreement. The
836 | department shall make every effort to adhere to established

22-03722A-08

20082594__

837 agency goals for reasonable timeframes for review of such
838 documents.~~†~~

839 (f) A commitment to secure ~~site~~ access for the department
840 or approved local pollution control program to all brownfield
841 sites within the eligible brownfield area for activities
842 associated with site rehabilitation.~~†~~

843 (g) Other provisions that the person responsible for
844 brownfield site rehabilitation and the department agree upon,
845 that are consistent with ss. 376.77-376.86 ~~376.77-376.85~~, and
846 that will improve or enhance the brownfield site rehabilitation
847 process.~~†~~

848 (h) A commitment to consider appropriate pollution
849 prevention measures and to implement those that the person
850 responsible for brownfield site rehabilitation determines are
851 reasonable and cost-effective, taking into account the ultimate
852 use ~~or uses~~ of the brownfield site. Such measures may include
853 improved inventory or production controls and procedures for
854 preventing loss, spills, and leaks of hazardous waste and
855 materials, and include goals for the reduction of releases of
856 toxic materials.~~†~~ ~~and~~

857 (i) Certification that the person responsible for
858 brownfield site rehabilitation has consulted with an agreement
859 ~~exists between the person responsible for brownfield site~~
860 ~~rehabilitation and the local government having with jurisdiction~~
861 over the brownfield area about the proposed redevelopment for the
862 brownfield site, that the local government is in agreement with
863 or approves the proposed redevelopment, and that the proposed
864 redevelopment complies with all applicable laws and requirements
865 for such redevelopment. Certification includes:

22-03722A-08

20082594__

866 1. Referencing or providing a legally recorded or
867 officially approved land use or site map or plan, a development
868 order or approval, a building permit, or a similar official
869 document issued by the local government which reflects the local
870 government's approval of the proposed redevelopment of the
871 brownfield site;

872 2. Providing a copy of the local government resolution
873 designating the brownfield area that contains the proposed
874 redevelopment of the brownfield site; or

875 3. Providing a letter from the local government that
876 describes the proposed redevelopment of the brownfield site and
877 expresses the local government's agreement with or approval of
878 the proposed redevelopment. ~~Such agreement shall contain terms~~
879 ~~for the redevelopment of the brownfield area.~~

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

882 (a) Meets all certification and license requirements
883 imposed by law; and

884 (b) Intends to conduct ~~Has obtained the necessary approvals~~
885 ~~for conducting~~ sample collection and analyses pursuant to
886 department rules.

887 ~~(7) The contractor who is performing the majority of the~~
888 ~~site rehabilitation program tasks pursuant to a brownfield site~~
889 ~~rehabilitation agreement or supervising the performance of such~~
890 ~~tasks by licensed subcontractors in accordance with the~~
891 ~~provisions of s. 489.113(9) must certify to the department that~~
892 ~~the contractor:~~

893 ~~(a) Complies with applicable OSHA regulations.~~

894 ~~(b) Maintains workers' compensation insurance for all~~

22-03722A-08

20082594__

895 ~~employees as required by the Florida Workers' Compensation Law.~~

896 ~~(c) Maintains comprehensive general liability coverage with~~
897 ~~limits of not less than \$1 million per occurrence and \$2 million~~
898 ~~general aggregate for bodily injury and property damage and~~
899 ~~comprehensive automobile liability coverage with limits of not~~
900 ~~less than \$1 million combined single limit. The contractor shall~~
901 ~~also maintain pollution liability coverage with limits of not~~
902 ~~less than \$3 million aggregate for personal injury or death, \$1~~
903 ~~million per occurrence for personal injury or death, and \$1~~
904 ~~million per occurrence for property damage. The contractor's~~
905 ~~certificate of insurance shall name the state as an additional~~
906 ~~insured party.~~

907 ~~(d) Maintains professional liability insurance of at least~~
908 ~~\$1 million per claim and \$1 million annual aggregate.~~

909 ~~(8) Any professional engineer or geologist providing~~
910 ~~professional services relating to site rehabilitation program~~
911 ~~tasks must carry professional liability insurance with a coverage~~
912 ~~limit of at least \$1 million.~~

913 (7)~~(9)~~ During the cleanup process, if the department or
914 local program fails to complete review of a technical document
915 within the timeframe specified in the brownfield site
916 rehabilitation agreement, the person responsible for brownfield
917 site rehabilitation may proceed to the next site rehabilitation
918 task. However, the person responsible for brownfield site
919 rehabilitation does so at its own risk and may be required by the
920 department or local program to complete additional work on a
921 previous task. Exceptions to this subsection include requests for
922 "no further action," "monitoring only proposals," and feasibility
923 studies, which must be approved before ~~prior to~~ implementation.

22-03722A-08

20082594__

924 (8)~~(10)~~ If the person responsible for brownfield site
925 rehabilitation fails to comply with the brownfield site
926 rehabilitation agreement, the department shall allow ~~90 days for~~
927 the person responsible for brownfield site rehabilitation up to
928 90 days to return to compliance with the provision at issue or to
929 negotiate a modification to the brownfield site rehabilitation
930 agreement with the department for good cause shown. If an
931 imminent hazard exists, the 90-day grace period does ~~shall~~ not
932 apply. If the project is not returned to compliance with the
933 brownfield site rehabilitation agreement and a modification
934 cannot be negotiated, the immunity provisions of s. 376.82 are
935 revoked.

936 (9)~~(11)~~ The department is specifically authorized and
937 encouraged to enter into delegation agreements with local
938 pollution control programs approved under s. 403.182 to
939 administer the brownfield program within their jurisdictions,
940 thereby maximizing the integration of this process with the other
941 local development processes needed to facilitate redevelopment of
942 a brownfield area. When determining whether a delegation ~~pursuant~~
943 ~~to this subsection~~ of all or part of the brownfield program to a
944 local pollution control program is appropriate, the department
945 shall consider the following. The local pollution control program
946 must:

947 (a) Have and maintain the administrative organization,
948 staff, and financial and other resources to effectively and
949 efficiently implement and enforce the statutory requirements of
950 the delegated brownfield program; and

951 (b) Provide for the enforcement of the requirements of the
952 delegated brownfield program, and for notice and a right to

22-03722A-08

20082594__

953 challenge governmental action, by appropriate administrative and
954 judicial process, which shall be specified in the delegation.

955

956 A ~~The~~ local pollution control program may ~~shall~~ not be delegated
957 authority to take action on or to make decisions regarding any
958 brownfield site on land owned by the local government. A ~~Any~~
959 delegation agreement entered into pursuant to this subsection
960 must ~~shall~~ contain ~~such~~ terms and conditions necessary to ensure
961 the effective and efficient administration and enforcement of the
962 statutory requirements of the brownfield program ~~as established~~
963 ~~by the act~~ and the relevant rules and other criteria of the
964 department.

965 (10) ~~(12)~~ Local governments are encouraged to use the full
966 range of economic and tax incentives available to facilitate and
967 promote the rehabilitation of brownfield areas, to help eliminate
968 the public health and environmental hazards, and to promote the
969 creation of jobs and economic development in these previously
970 run-down, blighted, and underutilized areas.

971 (11) (a) The Legislature finds and declares the following:

972 1. Brownfield site rehabilitation and redevelopment can
973 improve the health of a community and improve the quality of life
974 for communities, including the individuals living in such
975 communities;

976 2. The benefits of brownfield site rehabilitation and
977 redevelopment on community health should be better measured in
978 order to achieve the legislative intent expressed in s. 376.78;

979 3. There is a need in the state to define and better
980 measure the community health benefits of brownfield site
981 rehabilitation and redevelopment; and

22-03722A-08

20082594__

982 4. Funding sources should be established to support efforts
983 by the state and local governments, in collaboration with local
984 health departments, community health providers, and nonprofit
985 organizations, to evaluate the benefits of brownfield site
986 rehabilitation and redevelopment on community health.

987 (b) Local governments are authorized and encouraged to
988 evaluate the community health benefits and effects of brownfield
989 site rehabilitation and redevelopment in connection with
990 brownfield areas within their jurisdiction. Measures that may be
991 evaluated and monitored before and after brownfield site
992 rehabilitation and redevelopment, include, but are not limited
993 to:

994 1. Health status, disease distribution, and quality of life
995 measures for populations living in or around brownfield sites
996 that have been rehabilitated and redeveloped;

997 2. Access to primary and other health care or health
998 services for persons living in or around brownfield sites that
999 have been rehabilitated and redeveloped;

1000 3. New or increased access to open, green, park, or other
1001 spaces that provide recreational opportunities for individuals
1002 living in or around brownfield sites that have been rehabilitated
1003 and redeveloped; and

1004 4. Other factors described in rules adopted by the
1005 department and the Department of Health, as applicable.

1006 (c) The Department of Health is authorized and encouraged,
1007 in collaboration with local health departments, community health
1008 providers, and nonprofit organizations, to assist local
1009 governments in their evaluation of the health benefits of
1010 brownfield site rehabilitation and redevelopment.

22-03722A-08

20082594__

1011 Section 7. Subsection (1), paragraph (d) of subsection (2),
1012 and subsection (3) of section 376.82, Florida Statutes, are
1013 amended to read:

1014 376.82 Eligibility criteria and liability protection.--

1015 (1) ELIGIBILITY.--Any person who has not caused or
1016 contributed to the contamination of a brownfield site on or after
1017 July 1, 1997, is eligible to participate in the brownfield
1018 program established in ss. 376.77-376.86 ~~376.77-376.85~~, subject
1019 to the following:

1020 (a) Potential brownfield sites that are subject to an
1021 ongoing formal judicial or administrative enforcement action or
1022 corrective action pursuant to federal authority, including, but
1023 not limited to, the Comprehensive Environmental Response
1024 Compensation and Liability Act, 42 U.S.C. ss. 9601 et seq., as
1025 amended; the Safe Drinking Water Act, 42 U.S.C. ss. 300f-300i, as
1026 amended; the Clean Water Act, 33 U.S.C. ss. 1251-1387, as
1027 amended; or under an order from the United States Environmental
1028 Protection Agency pursuant to 42 U.S.C. s. 6928(h) ~~s. 3008(h)~~ of
1029 the Resource Conservation and Recovery Act, as amended ~~(42~~
1030 ~~U.S.C.A. s. 6928(h))~~; or that have obtained or are required to
1031 obtain a permit for the operation of a hazardous waste treatment,
1032 storage, or disposal facility; a postclosure permit; or a permit
1033 pursuant to the federal Hazardous and Solid Waste Amendments of
1034 1984, are not eligible for participation unless specific
1035 exemptions are secured by a memorandum of agreement with the
1036 United States Environmental Protection Agency pursuant to
1037 paragraph (2)(g). A brownfield site within an eligible brownfield
1038 area that subsequently becomes subject to formal judicial or
1039 administrative enforcement action or corrective action under such

22-03722A-08

20082594__

1040 federal authority shall have its eligibility revoked unless
1041 specific exemptions are secured by a memorandum of agreement with
1042 the United States Environmental Protection Agency pursuant to
1043 paragraph (2)(g).

1044 (b) Persons who have not caused or contributed to the
1045 contamination of a brownfield site on or after July 1, 1997, and
1046 who, prior to the department's approval of a brownfield site
1047 rehabilitation agreement, are subject to ongoing corrective
1048 action or enforcement under state authority established in this
1049 chapter or chapter 403, including those persons subject to a
1050 pending consent order with the state, are eligible for
1051 participation in a brownfield site rehabilitation agreement if:

1052 1. The proposed brownfield site is currently idle or
1053 underutilized as a result of the contamination, and participation
1054 in the brownfield program shall ~~will~~ immediately, after cleanup
1055 or sooner, result in increased economic productivity at the site,
1056 including at a minimum the creation of 10 new permanent jobs,
1057 whether full-time or part-time, which are not associated with
1058 implementation of the brownfield site rehabilitation agreement;
1059 and

1060 2. The person is complying in good faith with the terms of
1061 an existing consent order or department-approved corrective
1062 action plan, or responding in good faith to an enforcement
1063 action, as evidenced by a determination issued by the department
1064 or an approved local pollution control program.

1065 (c) Potential brownfield sites owned by the state or a
1066 local government which contain contamination for which a
1067 governmental entity is potentially responsible and which are
1068 already designated as federal brownfield pilot projects or have

22-03722A-08

20082594__

1069 filed an application for designation to the United States
1070 Environmental Protection Agency are eligible for participation in
1071 a brownfield site rehabilitation agreement.

1072 (d) After July 1, 1997, petroleum and drycleaning
1073 contamination sites may ~~shall~~ not receive both restoration
1074 funding assistance available for the discharge under this chapter
1075 and any state assistance available under s. 288.107. Sections
1076 376.77-376.86 do not ~~Nothing in this act shall~~ affect the cleanup
1077 criteria, priority ranking, and other rights and obligations
1078 inherent in petroleum contamination and drycleaning contamination
1079 site rehabilitation under ss. 376.30-376.317, or the availability
1080 of economic incentives otherwise provided for by law.

1081 (2) LIABILITY PROTECTION.--

1082 (d) The liability protection provided under this section is
1083 ~~shall become~~ effective upon execution of a brownfield site
1084 rehabilitation agreement and shall remain effective if, ~~provided~~
1085 the person responsible for brownfield site rehabilitation
1086 complies with the terms of the site rehabilitation agreement. Any
1087 statute of limitations that bars ~~would bar~~ the department from
1088 pursuing relief in accordance with its existing authority is
1089 tolled from the time the agreement is executed until site
1090 rehabilitation is completed or immunity is revoked pursuant to s.
1091 376.80(8) ~~376.80(10)~~.

1092 (3) REOPENERS.--Upon completion of site rehabilitation in
1093 compliance with ss. 376.77-376.86 ~~376.77-376.85~~, no additional
1094 site rehabilitation is ~~shall be~~ required unless it is
1095 demonstrated:

1096 (a) That fraud was committed in demonstrating site
1097 conditions or completion of site rehabilitation;

22-03722A-08

20082594__

1098 (b) That new information confirms the existence of an area
1099 of previously unknown contamination which exceeds the site-
1100 specific rehabilitation levels established in accordance with s.
1101 376.81, or which otherwise poses the threat of real and
1102 substantial harm to public health, safety, or the environment in
1103 violation of the terms of ss. 376.77-376.86 ~~376.77-376.85~~;

1104 (c) That the remediation efforts failed to achieve the site
1105 rehabilitation criteria established under s. 376.81;

1106 (d) That the level of risk is increased beyond the
1107 acceptable risk established under s. 376.81 due to substantial
1108 changes in exposure conditions, such as a change in land use from
1109 nonresidential to residential use. Any person who changes the
1110 land use of the brownfield site thus causing the level of risk to
1111 increase beyond the acceptable risk level may be required by the
1112 department to undertake additional remediation measures to assure
1113 that human health, public safety, and the environment are
1114 protected to levels consistent with s. 376.81; or

1115 (e) That a new release occurs at the brownfield site
1116 subsequent to a determination of eligibility for participation in
1117 the brownfield program established under s. 376.80.

1118 Section 8. Subsection (1) of section 376.83, Florida
1119 Statutes, is amended to read:

1120 376.83 Violation; penalties.--

1121 (1) It is a violation of ss. 376.77-376.86 ~~376.77-376.85~~,
1122 and it is prohibited for any person, to knowingly make any false
1123 statement, representation, or certification in any application,
1124 record, report, plan, or other document filed or required to be
1125 maintained, or to falsify, tamper with, or knowingly render
1126 inaccurate any monitoring device or method required to be

22-03722A-08

20082594__

1127 maintained under ss. 376.77-376.86 ~~376.77-376.85~~, or by any
1128 permit, rule, or order issued under this chapter or chapter 403.

1129 Section 9. Present subsections (3) through (8) of section
1130 376.86, Florida Statutes, are renumbered as subsection (5)
1131 through (11), respectively, and subsections (1) and (2) of that
1132 section are amended, to read:

1133 376.86 Brownfield Areas Loan Guarantee Program.--

1134 (1) The Brownfield Areas Loan Guarantee Council is created
1135 to review and approve or deny by a majority vote of its
1136 membership, the situations and circumstances for participating
1137 ~~participation~~ in partnerships by agreements with local
1138 governments, financial institutions, and others associated with
1139 the redevelopment of brownfield areas pursuant to the Brownfields
1140 Redevelopment Act for a limited state guaranty of up to 5 years
1141 of loan guarantees or loan loss reserves issued pursuant to law.

1142 (2) The limited state loan guaranty applies only to 50
1143 percent of the primary lenders loans for redevelopment projects
1144 in brownfield areas.

1145 (a) If the redevelopment project is for affordable housing,
1146 as defined in s. 420.0004(3), in a brownfield area, the limited
1147 state loan guaranty applies to 75 percent of the primary lender's
1148 loan.

1149 (b) If the redevelopment project includes the construction
1150 and operation of a new health care facility or a health care
1151 provider, as those terms are defined in s. 408.032, s. 408.07, or
1152 s. 408.7056, on a brownfield site and the applicant has obtained
1153 documentation of occupancy or the issuance of a license or
1154 certificate in accordance with s. 376.30781, the limited state
1155 loan guaranty applies to 75 percent of the primary lender's loan.

22-03722A-08

20082594__

1156 (3) A limited state guaranty of private loans or a loan
1157 loss reserve is authorized for lenders licensed to operate in the
1158 state upon a determination by the council that such an
1159 arrangement would be in the public interest and the likelihood of
1160 the success of the loan is great.

1161 (4)~~(2)~~ The council shall consist of the secretary of the
1162 department ~~of Environmental Protection~~ or the secretary's
1163 designee, the secretary of the Department of Community Affairs or
1164 the secretary's designee, the State Surgeon General of the
1165 Department of Health or the State Surgeon General's designee, the
1166 Executive Director of the State Board of Administration or the
1167 executive director's designee, the Executive Director of the
1168 Florida Housing Finance Corporation or the executive director's
1169 designee, and the Director of the Governor's Office of Tourism,
1170 Trade, and Economic Development or the director's designee. The
1171 chairperson of the council shall be the Director of the
1172 Governor's Office of Tourism, Trade, and Economic Development.
1173 Staff services for activities of the council shall be provided as
1174 needed by the member agencies.

1175 Section 10. Subsection (1) of section 163.3221, Florida
1176 Statutes, is amended to read:

1177 163.3221 Florida Local Government Development Agreement
1178 Act; definitions.--As used in ss. 163.3220-163.3243:

1179 (1) "Brownfield designation" means a resolution adopted by
1180 a local government pursuant to s. 376.80 ~~the Brownfields~~
1181 ~~Redevelopment Act, ss. 376.77-376.85.~~

1182 Section 11. This act shall take effect July 1, 2008.