

By the Committee on Environmental Preservation and Conservation;
and Senator Constantine

592-03551-10

2010544c1

1 A bill to be entitled
2 An act relating to brownfield development; amending s.
3 212.08, F.S.; expanding the definition of the term
4 "mixed-use project" for purposes of a tax exemption
5 applicable to building materials; amending s.
6 220.1845, F.S.; providing requirements for claiming
7 certain site rehabilitation costs in an application
8 for a contaminated site rehabilitation tax credit;
9 amending s. 288.107, F.S.; redefining the term
10 "eligible business" to revise the criteria under which
11 a business is eligible to receive a bonus refund for a
12 brownfield redevelopment project; amending s.
13 376.30781, F.S.; providing requirements for claiming
14 certain site rehabilitation costs in an application
15 for a contaminated site rehabilitation tax credit;
16 amending s. 376.85, F.S.; specifying additional
17 requirements for the Department of Environmental
18 Protection in its annual report to the Legislature
19 regarding site rehabilitation; amending s. 403.1835,
20 F.S.; specifying criteria for prioritizing certain
21 brownfield site projects that eliminate public health
22 hazards; providing an effective date.

23
24 Be It Enacted by the Legislature of the State of Florida:

25
26 Section 1. Paragraph (o) of subsection (5) of section
27 212.08, Florida Statutes, is amended to read:

28 212.08 Sales, rental, use, consumption, distribution, and
29 storage tax; specified exemptions.—The sale at retail, the

592-03551-10

2010544c1

30 rental, the use, the consumption, the distribution, and the
31 storage to be used or consumed in this state of the following
32 are hereby specifically exempt from the tax imposed by this
33 chapter.

34 (5) EXEMPTIONS; ACCOUNT OF USE.—

35 (o) *Building materials in redevelopment projects.*—

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

37 a. "Building materials" means tangible personal property
38 that becomes a component part of a housing project or a mixed-
39 use project.

40 b. "Housing project" means the conversion of an existing
41 manufacturing or industrial building to housing units in an
42 urban high-crime area, enterprise zone, empowerment zone, Front
43 Porch Community, designated brownfield area, or urban infill
44 area and in which the developer agrees to set aside at least 20
45 percent of the housing units in the project for low-income and
46 moderate-income persons or the construction in a designated
47 brownfield area of affordable housing for persons described in
48 s. 420.0004(8), (10), (11), or (15) or in s. 159.603(7).

49 c. "Mixed-use project" means the conversion of an existing
50 manufacturing or industrial building to mixed-use units that
51 include artists' studios, art and entertainment services, or
52 other compatible uses. A mixed-use project must be located in an
53 urban high-crime area, enterprise zone, empowerment zone, Front
54 Porch Community, designated brownfield area, or urban infill
55 area, and the developer must agree to set aside at least 20
56 percent of the square footage of the project for low-income and
57 moderate-income housing. Notwithstanding this sub-subparagraph,
58 a mixed-use project may also mean the construction in a

592-03551-10

2010544c1

59 designated brownfield area of mixed-use units that include
60 residential, commercial, or other compatible or permitted uses.

61 d. "Substantially completed" has the same meaning as
62 provided in s. 192.042(1).

63 2. Building materials used in the construction of a housing
64 project or mixed-use project are exempt from the tax imposed by
65 this chapter upon an affirmative showing to the satisfaction of
66 the department that the requirements of this paragraph have been
67 met. This exemption inures to the owner through a refund of
68 previously paid taxes. To receive this refund, the owner must
69 file an application under oath with the department which
70 includes:

71 a. The name and address of the owner.

72 b. The address and assessment roll parcel number of the
73 project for which a refund is sought.

74 c. A copy of the building permit issued for the project.

75 d. A certification by the local building code inspector
76 that the project is substantially completed.

77 e. A sworn statement, under penalty of perjury, from the
78 general contractor licensed in this state with whom the owner
79 contracted to construct the project, which statement lists the
80 building materials used in the construction of the project and
81 the actual cost thereof, and the amount of sales tax paid on
82 these materials. If a general contractor was not used, the owner
83 shall provide this information in a sworn statement, under
84 penalty of perjury. Copies of invoices evidencing payment of
85 sales tax must be attached to the sworn statement.

86 3. An application for a refund under this paragraph must be
87 submitted to the department within 6 months after the date the

592-03551-10

2010544c1

88 project is deemed to be substantially completed by the local
89 building code inspector. Within 30 working days after receipt of
90 the application, the department shall determine if it meets the
91 requirements of this paragraph. A refund approved pursuant to
92 this paragraph shall be made within 30 days after formal
93 approval of the application by the department.

94 4. The department shall establish by rule an application
95 form and criteria for establishing eligibility for exemption
96 under this paragraph.

97 5. The exemption shall apply to purchases of materials on
98 or after July 1, 2000.

99 Section 2. Paragraph (1) is added to subsection (1) of
100 section 220.1845, Florida Statutes, to read:

101 220.1845 Contaminated site rehabilitation tax credit.-

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

103 (1) A site rehabilitation application must be received by
104 the Division of Waste Management of the Department of
105 Environmental Protection by January 31 of the year after the
106 calendar year for which site rehabilitation costs are being
107 claimed in a tax credit application. All site rehabilitation
108 costs claimed must have been for work conducted between January
109 1 and December 31 of the year for which the application is being
110 submitted. All payment requests must have been received and all
111 costs must have been paid prior to submittal of the tax credit
112 application, but no later than January 31 of the year after the
113 calendar year for which site rehabilitation costs are being
114 claimed.

115 Section 3. Paragraph (e) of subsection (1) and paragraphs
116 (a) and (b) of subsection (3) of section 288.107, Florida

592-03551-10

2010544c1

117 Statutes, are amended to read:

118 288.107 Brownfield redevelopment bonus refunds.—

119 (1) DEFINITIONS.—As used in this section:

120 (e) “Eligible business” means:

121 1. A qualified target industry business as defined in s.
122 288.106(1) (o); or

123 2. A business that can demonstrate a fixed capital
124 investment of at least \$2 million in brownfield areas, including
125 mixed-use business activities, including multiunit housing,
126 commercial, retail, and industrial activities, or a business
127 that demonstrates a fixed capital investment of at least
128 \$500,000 and creates between 5 and 50 jobs in mixed-use
129 business, multiunit housing, commercial, retail, or industrial
130 activities in brownfield areas, or at least \$500,000 in
131 brownfield areas that do not require site cleanup, and that
132 ~~which~~ provides benefits to its employees.

133 (3) CRITERIA.—The minimum criteria for participation in the
134 brownfield redevelopment bonus refund are:

135 (a) The creation of at least 10 new full-time permanent
136 jobs, except as otherwise provide in subparagraph (1) (e)2. and
137 paragraph (b). Such jobs shall not include construction or site
138 rehabilitation jobs associated with the implementation of a
139 brownfield site agreement as described in s. 376.80(5).

140 (b) The completion of a fixed capital investment of at
141 least \$2 million in brownfield areas, including mixed-use
142 business activities, including multiunit housing, commercial,
143 retail, and industrial activities in brownfield areas, or a
144 business that demonstrates a fixed capital investment of at
145 least \$500,000 and creates between 5 and 50 jobs in mixed-use

592-03551-10

2010544c1

146 business, multiunit housing, commercial, retail, or industrial
147 activities in brownfield areas, or at least \$500,000 in
148 brownfield areas that do not require site cleanup, by an
149 eligible business applying for a refund under paragraph (2) (b),
150 and that ~~which~~ provides benefits to its employees.

151 Section 4. Subsections (5) and (6) of section 376.30781,
152 Florida Statutes, are amended to read:

153 376.30781 Tax credits for rehabilitation of drycleaning-
154 solvent-contaminated sites and brownfield sites in designated
155 brownfield areas; application process; rulemaking authority;
156 revocation authority.—

157 (5) To claim the credit for site rehabilitation or solid
158 waste removal, each tax credit applicant must apply to the
159 Department of Environmental Protection for an allocation of the
160 \$2 million annual credit by filing a tax credit application with
161 the Division of Waste Management on a form developed by the
162 Department of Environmental Protection in cooperation with the
163 Department of Revenue. The form shall include an affidavit from
164 each tax credit applicant certifying that all information
165 contained in the application, including all records of costs
166 incurred and claimed in the tax credit application, are true and
167 correct. If the application is submitted pursuant to
168 subparagraph (3) (a)2., the form must include an affidavit signed
169 by the real property owner stating that it is not, and has never
170 been, the owner or operator of the drycleaning facility where
171 the contamination exists. Approval of tax credits must be
172 accomplished on a first-come, first-served basis based upon the
173 date and time complete applications are received by the Division
174 of Waste Management, subject to the limitations of subsection

592-03551-10

2010544c1

175 (14). To be eligible for a tax credit, the tax credit applicant
176 must:

177 (a) For site rehabilitation tax credits, have entered into
178 a voluntary cleanup agreement with the Department of
179 Environmental Protection for a drycleaning-solvent-contaminated
180 site or a Brownfield Site Rehabilitation Agreement, as
181 applicable, and have paid all deductibles pursuant to s.
182 376.3078(3)(e) for eligible drycleaning-solvent-cleanup program
183 sites, as applicable. A site rehabilitation tax credit applicant
184 must submit only a single completed application per site for
185 each calendar year's site rehabilitation costs. A site
186 rehabilitation application must be received by the Division of
187 Waste Management of the Department of Environmental Protection
188 by January 31 of the year after the calendar year for which site
189 rehabilitation costs are being claimed in a tax credit
190 application. All site rehabilitation costs claimed must have
191 been for work conducted between January 1 and December 31 of the
192 year for which the application is being submitted. All payment
193 requests must have been received and all costs must have been
194 paid prior to submittal of the tax credit application, but no
195 later than January 31 of the year after the calendar year for
196 which site rehabilitation costs are being claimed.

197 (b) For solid waste removal tax credits, have entered into
198 a brownfield site rehabilitation agreement with the Department
199 of Environmental Protection. A solid waste removal tax credit
200 applicant must submit only a single complete application per
201 brownfield site, as defined in the brownfield site
202 rehabilitation agreement, for solid waste removal costs. A solid
203 waste removal tax credit application must be received by the

592-03551-10

2010544c1

204 Division of Waste Management of the Department of Environmental
205 Protection subsequent to the completion of the requirements
206 listed in paragraph (3)(e).

207 (6) To obtain the tax credit certificate, the tax credit
208 applicant must provide all pertinent information requested on
209 the tax credit application form, including, at a minimum, the
210 name and address of the tax credit applicant and the address and
211 tracking identification number of the eligible site. Along with
212 the tax credit application form, the tax credit applicant must
213 submit the following:

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

218 (b) Copies of documents that describe the goods or services
219 and associated costs being claimed that were integral to site
220 rehabilitation as defined in s. 376.301 or s. 376.79 or were for
221 solid waste removal as defined in this section during the time
222 period covered by the application. Such documents must include
223 contractual records that describe the scope of work performed,
224 payment requests that describe the goods or services provided,
225 and payment records involving actual costs incurred and paid.
226 Such documentation must be sufficient to demonstrate a link
227 between the contractual records, the payment requests, and the
228 payment records for the time period covered by the application;

229 (c) Proof that the documentation submitted pursuant to
230 paragraph (b) has been reviewed and verified by an independent
231 certified public accountant in accordance with standards
232 established by the American Institute of Certified Public

592-03551-10

2010544c1

233 Accountants. Specifically, a certified public accountant's
234 report must be submitted and the certified public accountant
235 must attest to the accuracy and validity of the costs claimed in
236 the application incurred and paid during the time period covered
237 in the application by conducting an independent review of the
238 data presented by the tax credit applicant. Accuracy and
239 validity of costs incurred and paid shall be determined after
240 the level of effort is certified by an appropriate professional
241 registered in this state in each contributing technical
242 discipline. The certified public accountant's report must also
243 attest that the costs included in the application form are not
244 duplicated within the application, all payment requests were
245 received and all costs were paid prior to submittal of the tax
246 credit application and that, for site rehabilitation tax
247 credits, costs claimed are for work conducted between January 1
248 and December 31 of the year for which the application is being
249 submitted. A copy of the accountant's report shall be submitted
250 to the Department of Environmental Protection in addition to the
251 accountant's certification form in the tax credit application;
252 and

253 (d) A certification form stating that activities associated
254 with the documentation submitted pursuant to paragraph (b) have
255 been conducted under the observation of, and related technical
256 documents have been signed and sealed by, an appropriate
257 professional registered in this state in each contributing
258 technical discipline. The certification form shall be signed and
259 sealed by the appropriate registered professionals stating that
260 the costs incurred were integral, necessary, and required for
261 site rehabilitation, as that term is defined in ss. 376.301 and

592-03551-10

2010544c1

262 376.79. If the scope of solid waste removal activities does not
263 require oversight by a registered technical professional in this
264 state, such certification form is not required as part of the
265 tax credit application.

266 Section 5. Section 376.85, Florida Statutes, is amended to
267 read:

268 376.85 Annual report.—The Department of Environmental
269 Protection shall prepare and submit ~~an annual report~~ to the
270 President of the Senate and the Speaker of the House of
271 Representatives by August 1 of each year a report that
272 ~~Legislature, beginning in December 1998, which~~ shall include,
273 but is not ~~be~~ limited to, the number, size, and locations of
274 brownfield sites ~~÷~~ that have been remediated under the provisions
275 of this act, ÷ that are currently under rehabilitation pursuant
276 to a negotiated site rehabilitation agreement with the
277 department or a delegated local program, ÷ where alternative
278 cleanup target levels have been established pursuant to s.
279 376.81(1)(g)3. ÷ and ~~÷~~ where engineering and institutional
280 control strategies are being employed as conditions of a “no
281 further action order” to maintain the protections provided in s.
282 376.81(1)(g)1. and 2. Based upon such information, the report
283 shall also include recommendations or items for potential
284 improvements to the brownfield program established under ss.
285 376.77-376.86 in order to achieve the legislative intent and
286 goals and objectives set forth in s. 376.78.

287 Section 6. Subsection (7) of section 403.1835, Florida
288 Statutes, is amended to read:

289 403.1835 Water pollution control financial assistance.—

290 (7) Eligible projects must be given priority according to

592-03551-10

2010544c1

291 the extent each project is intended to remove, mitigate, or
292 prevent adverse effects on surface or ground water quality and
293 public health. The relative costs of achieving environmental and
294 public health benefits must be taken into consideration during
295 the department's assignment of project priorities. The
296 department shall adopt a priority system by rule. In developing
297 the priority system, the department shall give priority to
298 projects that:

299 (a) Eliminate public health hazards;

300 (b) Enable compliance with laws requiring the elimination
301 of discharges to specific water bodies, including the
302 requirements of s. 403.086(9) regarding domestic wastewater
303 ocean outfalls;

304 (c) Assist in the implementation of total maximum daily
305 loads adopted under s. 403.067;

306 (d) Enable compliance with other pollution control
307 requirements, including, but not limited to, toxics control,
308 wastewater residuals management, and reduction of nutrients and
309 bacteria;

310 (e) Assist in the implementation of surface water
311 improvement and management plans and pollutant load reduction
312 goals developed under state water policy;

313 (f) Promote reclaimed water reuse;

314 (g) Eliminate failing onsite sewage treatment and disposal
315 systems or those that are causing environmental damage; or

316 (h) Reduce pollutants to and otherwise promote the
317 restoration of Florida's surface and ground waters.

318

319 Eligible projects located within a brownfield site addressed by

592-03551-10

2010544c1

320 a brownfield site rehabilitation agreement under s. 376.80 which
321 remove, mitigate, or prevent adverse effects on surface or
322 groundwater quality and public health shall be prioritized
323 according to paragraphs (a)-(h).

324 Section 7. This act shall take effect July 1, 2010.