

1 A bill to be entitled
2 An act relating to brownfields; amending s. 376.30781,
3 F.S.; revising the conditions under which an applicant
4 that has rehabilitated a contaminated site may submit
5 and claim certain tax credits; specifying a timeframe
6 within which such tax credit applications must be
7 submitted; revising the types of projects that are
8 eligible for a specified tax credit; revising the
9 criteria for determining applicants who are
10 redeveloping brownfield sites who may be eligible for
11 certain tax credits; revising the definition of "solid
12 waste disposal area"; revising the date by which the
13 Department of Environmental Protection must issue
14 annual site rehabilitation tax credit certificate
15 awards; amending s. 376.313, F.S.; specifying defenses
16 to specified causes of action concerning certain
17 discharges or other types of pollution resulting from
18 certain discharges or pollution; amending s. 376.78,
19 F.S.; conforming provisions to changes made by the
20 act; amending s. 376.80, F.S.; revising the entities
21 that may propose brownfield designations using
22 specified criteria; removing the requirement that
23 certain persons be identified prior to negotiating a
24 brownfield site rehabilitation agreement; amending s.
25 376.82, F.S.; exempting certain job creation

26 requirements otherwise needed for eligibility for
 27 specified brownfield site rehabilitation agreements;
 28 providing an effective date.

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

31
 32 Section 1. Paragraphs (c), (d), and (e) of subsection (3)
 33 and subsection (9) of section 376.30781, Florida Statutes, are
 34 amended to read:

35 376.30781 Tax credits for rehabilitation of drycleaning-
 36 solvent-contaminated sites and brownfield sites in designated
 37 brownfield areas; application process; rulemaking authority;
 38 revocation authority.-

39 (3)

40 (c) In order to encourage completion of site
 41 rehabilitation at contaminated sites that are being voluntarily
 42 cleaned up and that are eligible for a tax credit under this
 43 section, the tax credit applicant may claim an additional 25
 44 percent of the total site rehabilitation costs, not to exceed
 45 \$500,000, if the Department of Environmental Protection has
 46 approved the applicant's annual site rehabilitation applications
 47 and has issued in the final year of cleanup as evidenced by the
 48 Department of Environmental Protection issuing a "No Further
 49 Action" order for that site. The tax credit applicant must
 50 submit the claim for the additional 25 percent within 2 years of

51 receipt of the "No Further Action" order for that site.

52 (d) In order to encourage the construction of housing that
53 meets the definition of affordable provided in s. 420.0004, an
54 applicant for the tax credit may claim an additional 25 percent
55 of the total site rehabilitation costs that are eligible for tax
56 credits under this section, not to exceed \$500,000. To receive
57 this additional tax credit, the applicant must provide a
58 certification letter from the Florida Housing Finance
59 Corporation, the local housing authority, or other governmental
60 agency that is a party to the use agreement indicating that the
61 construction on the brownfield site has received a certificate
62 of occupancy and ~~the brownfield site~~ has a properly recorded
63 instrument that limits the use of the property to housing.
64 Notwithstanding that only one application may be submitted each
65 year for each site, an application for the additional credit
66 provided for in this paragraph shall be submitted after all
67 requirements to obtain the additional tax credit have been met.

68 (e) In order to encourage the redevelopment of a
69 brownfield site, as defined in the brownfield site
70 rehabilitation agreement, that is hindered by the presence of
71 solid waste, as defined in s. 403.703, costs related to solid
72 waste removal may also be claimed under this section. A tax
73 credit applicant, or multiple tax credit applicants working
74 jointly to clean up a single brownfield site, may also claim
75 costs to address the solid waste removal as defined in this

76 | paragraph in accordance with department rules. Multiple tax
77 | credit applicants shall be granted tax credits in the same
78 | proportion as each applicant's contribution to payment of solid
79 | waste removal costs. These costs are eligible for a tax credit
80 | provided the applicant meets the eligibility requirements of s.
81 | 376.82(1) and ~~submits an affidavit stating that, after~~
82 | ~~consultation with appropriate local government officials and the~~
83 | ~~department, to the best of the applicant's knowledge based upon~~
84 | ~~such consultation and available historical records,~~ the
85 | brownfield site was never operated as a permitted solid waste
86 | disposal area under chapter 62-701, Florida Administrative Code,
87 | or the predecessor rules ~~or was never operated for monetary~~
88 | ~~compensation, and the applicant submits all other documentation~~
89 | ~~and certifications required by this section.~~ In this section,
90 | where reference is made to "site rehabilitation," the department
91 | shall instead consider whether the costs claimed are for solid
92 | waste removal. Tax credit applications claiming costs pursuant
93 | to this paragraph shall not be subject to the calendar-year
94 | limitation and January 31 annual application deadline, and the
95 | department shall accept a one-time application filed subsequent
96 | to the completion by the tax credit applicant of the applicable
97 | requirements listed in this subsection. A tax credit applicant
98 | may claim 50 percent of the costs for solid waste removal, not
99 | to exceed \$500,000, after the applicant has determined solid
100 | waste removal is completed for the brownfield site. A solid

101 waste removal tax credit application may be filed only once per
102 brownfield site. For the purposes of this section, the term:

103 1. "Solid waste disposal area" means a property, group of
104 properties, portion of property or localized area at, upon, or
105 within which solid waste is or was disposed and for which no
106 federal, state, or local permit for such disposal had been
107 obtained at the time of waste disposal cessation of activities
108 ~~landfill, dump, or other area where solid waste has been~~
109 ~~disposed.~~

110 2. ~~"Monetary compensation" means the fees that were charged~~
111 ~~or the assessments that were levied for the disposal of solid~~
112 ~~waste at a solid waste disposal area.~~

113 ~~2.3.~~ "Solid waste removal" means removal of solid waste
114 from the land surface or excavation of solid waste from below
115 the land surface and removal of the solid waste from the
116 brownfield site. The term also includes:

117 a. Transportation of solid waste to a licensed or exempt
118 solid waste management facility or to a temporary storage area.

119 b. Sorting or screening of solid waste prior to removal
120 from the site.

121 c. Deposition of solid waste at a permitted or exempt solid
122 waste management facility, whether the solid waste is disposed
123 of or recycled.

124 (9) On or before June ~~May~~ 1, the Department of
125 Environmental Protection shall inform each tax credit applicant

126 that is subject to the January 31 annual application deadline of
127 the applicant's eligibility status and the amount of any tax
128 credit due. The department shall provide each eligible tax
129 credit applicant with a tax credit certificate that must be
130 submitted with its tax return to the Department of Revenue to
131 claim the tax credit or be transferred pursuant to s.
132 220.1845(2)(g). The June ~~May~~ 1 deadline for annual site
133 rehabilitation tax credit certificate awards shall not apply to
134 any tax credit application for which the department has issued a
135 notice of deficiency pursuant to subsection (8). The department
136 shall respond within 90 days after receiving a response from the
137 tax credit applicant to such a notice of deficiency. Credits may
138 not result in the payment of refunds if total credits exceed the
139 amount of tax owed.

140 Section 2. Subsection (3) of section 376.313, Florida
141 Statutes, is amended to read:

142 376.313 Nonexclusiveness of remedies and individual cause
143 of action for damages under ss. 376.30-376.317.—

144 (3) Except as provided in s. 376.3078(3) and (11), nothing
145 contained in ss. 376.30-376.317 prohibits any person from
146 bringing a cause of action in a court of competent jurisdiction
147 for all damages resulting from a discharge or other condition of
148 pollution covered by ss. 376.30-376.317 and which was not
149 authorized pursuant to chapter 403. Nothing in this chapter
150 shall prohibit or diminish a party's right to contribution from

151 other parties jointly or severally liable for a prohibited
 152 discharge of pollutants or hazardous substances or other
 153 pollution conditions. Except as otherwise provided in subsection
 154 (4) or subsection (5), in any such suit, it is not necessary for
 155 such person to plead or prove negligence in any form or manner.
 156 Such person need only plead and prove the fact of the prohibited
 157 discharge or other pollutive condition and that it has occurred.
 158 The only defenses to such cause of action shall be those
 159 specified in s. 376.308 or s. 376.82.

160 Section 3. Subsection (1) of section 376.78, Florida
 161 Statutes, is amended to read:

162 376.78 Legislative intent.—The Legislature finds and
 163 declares the following:

164 (1) The reduction of public health and environmental
 165 hazards on existing ~~commercial and industrial~~ sites is vital to
 166 their use and reuse as sources of employment, housing,
 167 recreation, and open space areas. The reuse of industrial land
 168 is an important component of sound land use policy for
 169 productive urban purposes which will help prevent the premature
 170 development of farmland, open space areas, and natural areas,
 171 and reduce public costs for installing new water, sewer, and
 172 highway infrastructure.

173 Section 4. Subsections (1) and (2) of section 376.80,
 174 Florida Statutes, are amended to read:

175 376.80 Brownfield program administration process.—

176 (1) The following general procedures apply to brownfield
 177 designations:

178 (a) The local government with jurisdiction over a proposed
 179 brownfield area shall designate such area pursuant to this
 180 section.

181 (b) For a brownfield area designation proposed by:

182 1. The jurisdictional local government, the designation
 183 criteria under paragraph (2)(a) apply, except if the local
 184 government proposes to designate as a brownfield area a
 185 specified redevelopment area as provided in paragraph (2)(b).

186 2. Any person, ~~other than a governmental entity,~~
 187 including, but not limited to, individuals, corporations,
 188 partnerships, trusts, limited liability companies, community-
 189 based organizations, or not-for-profit corporations, the
 190 designation criteria under paragraph (2)(c) apply.

191 (c) Except as otherwise provided, the following provisions
 192 apply to all proposed brownfield area designations:

193 1. Notification to department following adoption.—A local
 194 government with jurisdiction over the brownfield area must
 195 notify the department, and, if applicable, the local pollution
 196 control program under s. 403.182, of its decision to designate a
 197 brownfield area for rehabilitation for the purposes of ss.
 198 376.77-376.86. The notification must include a resolution
 199 adopted by the local government body. The local government shall
 200 notify the department, and, if applicable, the local pollution

201 control program under s. 403.182, of the designation within 30
202 days after adoption of the resolution.

203 2. Resolution adoption.—The brownfield area designation
204 must be carried out by a resolution adopted by the
205 jurisdictional local government, which includes a map adequate
206 to clearly delineate exactly which parcels are to be included in
207 the brownfield area or alternatively a less-detailed map
208 accompanied by a detailed legal description of the brownfield
209 area. For municipalities, the governing body shall adopt the
210 resolution in accordance with the procedures outlined in s.
211 166.041, except that the notices ~~procedures~~ for the public
212 hearings on the proposed resolution must be in the form
213 established in s. 166.041(3)(c) 2. For counties, the governing
214 body shall adopt the resolution in accordance with the
215 procedures outlined in s. 125.66, except that the notices
216 ~~procedures~~ for the public hearings on the proposed resolution
217 shall be in the form established in s. 125.66(4)(b).

218 3. Right to be removed from proposed brownfield area.—If a
219 property owner within the area proposed for designation by the
220 local government requests in writing to have his or her property
221 removed from the proposed designation, the local government
222 shall grant the request.

223 4. Notice and public hearing requirements for designation
224 of a proposed brownfield area outside a redevelopment area or by
225 a nongovernmental entity. Compliance with the following

226 provisions is required before designation of a proposed
227 brownfield area under paragraph (2) (a) or paragraph (2) (c):

228 a. At least one of the required public hearings shall be
229 conducted as closely as is reasonably practicable to the area to
230 be designated to provide an opportunity for public input on the
231 size of the area, the objectives for rehabilitation, job
232 opportunities and economic developments anticipated,
233 neighborhood residents' considerations, and other relevant local
234 concerns.

235 b. Notice of a public hearing must be made in a newspaper
236 of general circulation in the area, must be made in ethnic
237 newspapers or local community bulletins, must be posted in the
238 affected area, and must be announced at a scheduled meeting of
239 the local governing body before the actual public hearing.

240 (2) (a) Local government-proposed brownfield area
241 designation outside specified redevelopment areas.—If a local
242 government proposes to designate a brownfield area that is
243 outside a community redevelopment area, enterprise zone,
244 empowerment zone, closed military base, or designated brownfield
245 pilot project area, the local government shall provide notice,
246 adopt the resolution, and conduct public hearings pursuant to
247 paragraph (1) (c). At a public hearing to designate the proposed
248 area as a brownfield area, as defined in s. 376.79, the local
249 government must consider:

250 1. Whether the brownfield area warrants economic

251 development and has a reasonable potential for such activities;

252 2. Whether the proposed area to be designated represents a
253 reasonably focused approach and is not overly large in
254 geographic coverage;

255 3. Whether the area has potential to interest the private
256 sector in participating in rehabilitation; and

257 4. Whether the area contains sites or parts of sites
258 suitable for limited recreational open space, cultural, or
259 historical preservation purposes.

260 (b) Local government-proposed brownfield area designation
261 within specified redevelopment areas.—Paragraph (a) does not
262 apply to a proposed brownfield area if the local government
263 proposes to designate the brownfield area inside a community
264 redevelopment area, enterprise zone, empowerment zone, closed
265 military base, or designated brownfield pilot project area and
266 the local government complies with paragraph (1)(c).

267 (c) Brownfield area designation proposed by specified
268 persons ~~other than a governmental entity~~.—For designation of a
269 brownfield area that is proposed by a person under this
270 subsection ~~other than the local government~~, the local government
271 with jurisdiction over the proposed brownfield area shall
272 provide notice and adopt a resolution to designate the
273 brownfield area pursuant to paragraph (1)(c) if, at the public
274 hearing to adopt the resolution, the person establishes all of
275 the following with respect to the proposed brownfield area:

276 1. A person who owns or controls a potential brownfield
277 site is requesting the designation and has agreed to
278 rehabilitate and redevelop the brownfield site.

279 2. The rehabilitation and redevelopment of the proposed
280 brownfield site will result in economic productivity of the
281 area, along with the creation of at least 5 new permanent jobs
282 at the brownfield site that are full-time equivalent positions
283 not associated with the implementation of the brownfield site
284 rehabilitation agreement and that are not associated with
285 redevelopment project demolition or construction activities
286 pursuant to the redevelopment of the proposed brownfield site or
287 area. However, the job creation requirement does not apply to
288 the rehabilitation and redevelopment of a brownfield site that
289 will provide affordable housing as defined in s. 420.0004 or the
290 creation of recreational areas, conservation areas, or parks.

291 3. The redevelopment of the proposed brownfield site is
292 consistent with the local comprehensive plan and is a
293 permissible use under the applicable local land development
294 regulations.

295 4. Notice of the proposed rehabilitation of the brownfield
296 area has been provided to neighbors and nearby residents of the
297 proposed area to be designated pursuant to paragraph (1)(c), and
298 the person proposing the area for designation has afforded to
299 those receiving notice the opportunity for comments and
300 suggestions about rehabilitation. Notice pursuant to this

301 subparagraph must be posted in the affected area.

302 5. The person proposing the area for designation has
303 provided reasonable assurance that he or she has sufficient
304 financial resources to implement and complete the rehabilitation
305 agreement and redevelopment of the brownfield site.

306 (d) Negotiation of brownfield site rehabilitation
307 agreement.—The designation of a brownfield area ~~and the~~
308 ~~identification of a person responsible for brownfield site~~
309 ~~rehabilitation~~ simply entitles a ~~the identified~~ person to
310 negotiate a brownfield site rehabilitation agreement with the
311 department or approved local pollution control program.

312 Section 5. Paragraph (b) of subsection (1) and paragraphs
313 (a), (c), and (d) of subsection (2) of section 376.82, Florida
314 Statutes, are amended to read:

315 376.82 Eligibility criteria and liability protection.—

316 (1) Eligibility.—Any person who has not caused or
317 contributed to the contamination of a brownfield site on or
318 after July 1, 1997, is eligible to participate in the brownfield
319 program established in ss. 376.77-376.85, subject to the
320 following:

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

326 chapter or chapter 403, including those persons subject to a
327 pending consent order with the state, are eligible for
328 participation in a brownfield site rehabilitation agreement if:

329 1. The proposed brownfield site is currently idle or
330 underutilized as a result of the contamination, and
331 participation in the brownfield program will immediately, after
332 cleanup or sooner, result in increased economic productivity at
333 the site, including at a minimum the creation of 10 new
334 permanent jobs, whether full-time or part-time, which are not
335 associated with implementation of the brownfield site
336 rehabilitation agreement. However, the job creation requirement
337 does not apply to the rehabilitation and redevelopment of a
338 brownfield site that will provide affordable housing as defined
339 in s. 420.0004 or create recreational areas, conservation areas,
340 or parks, or be maintained for cultural or historical
341 preservation purposes; and

342 2. The person is complying in good faith with the terms of
343 an existing consent order or department-approved corrective
344 action plan, or responding in good faith to an enforcement
345 action, as evidenced by a determination issued by the department
346 or an approved local pollution control program.

347 (2) Liability protection.—

348 (a) Any person, ~~including his or her successors and~~
349 ~~assigns,~~ who executes and implements to successful completion a
350 brownfield site rehabilitation agreement, his or her successors

351 and assigns, and any subsequent property owner of the brownfield
352 site, is relieved of:

353 1. Further liability for remediation of the contaminated
354 site or sites to the state and to third parties.

355 2. Liability in contribution to any other party who has or
356 may incur cleanup liability for the contaminated site or sites.

357 3. Liability for claims of property damages, including,
358 but not limited to, diminished value of real property or
359 improvements; lost or delayed rent, sale, or use of real
360 property or improvements; or stigma to real property or
361 improvements caused by contamination addressed by a brownfield
362 site rehabilitation agreement. Notwithstanding any other
363 provision of this chapter, this subparagraph applies to causes
364 of action accruing on or after July 1, 2014. This subparagraph
365 does not apply to a person who discharges contaminants on
366 property subject to a brownfield site rehabilitation agreement,
367 who commits fraud in demonstrating site conditions or completing
368 site rehabilitation of a property subject to a brownfield site
369 rehabilitation agreement, or who exacerbates contamination of a
370 property subject to a brownfield site rehabilitation agreement
371 in violation of applicable laws which causes property damages.

372 4. Statutory causes of action arising under s. 376.313(3).

373 (c) This section does not ~~shall not~~ affect the ability or
374 authority to seek contribution from any person who may have
375 liability with respect to the contaminated site and who did not

376 receive cleanup liability protection under this act.

377 (d) The liability protection provided under this section
378 shall become effective upon execution of a brownfield site
379 rehabilitation agreement and shall remain effective as to any
380 person responsible for brownfield site rehabilitation, provided
381 each ~~the~~ person responsible for brownfield site rehabilitation
382 complies with the terms of the site rehabilitation agreement,
383 and as to any subsequent property owner of the brownfield site,
384 such owner maintains compliance, as applicable, with any
385 institutional controls or engineering controls required for site
386 rehabilitation. Any statute of limitations that would bar the
387 department from pursuing relief in accordance with its existing
388 authority is tolled from the time the agreement is executed
389 until site rehabilitation is completed or immunity is revoked
390 pursuant to s. 376.80(8).

391 Section 6. This act shall take effect July 1, 2020.