

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 date by which the
12 Department of Environmental Protection must issue
13 annual site rehabilitation tax credit certificate
14 awards; amending s. 376.313, F.S.; specifying defenses
15 to specified causes of action concerning certain
16 discharges or other types of pollution resulting from
17 certain discharges or pollution; amending s. 376.78,
18 F.S.; conforming provisions to changes made by the
19 act; amending s. 376.80, F.S.; revising the entities
20 that may propose brownfield designations using
21 specified criteria; removing the requirement that
22 certain persons be identified prior to negotiating a
23 brownfield site rehabilitation agreement; amending s.
24 376.82, F.S.; exempting certain job creation
25 requirements otherwise needed for eligibility for

26 | specified brownfield site rehabilitation agreements;
 27 | providing an effective date.

28 |

29 | Be It Enacted by the Legislature of the State of Florida:

30 |

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

34 | 376.30781 Tax credits for rehabilitation of drycleaning-
 35 | solvent-contaminated sites and brownfield sites in designated
 36 | brownfield areas; application process; rulemaking authority;
 37 | revocation authority.-

38 | (3)

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

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

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

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

101 brownfield site. For the purposes of this section, the term:

102 1. "Solid waste disposal area" means a landfill, dump, or
 103 other area where solid waste has been disposed.

104 ~~2. "Monetary compensation" means the fees that were~~
 105 ~~charged or the assessments that were levied for the disposal of~~
 106 ~~solid waste at a solid waste disposal area.~~

107 2.3. "Solid waste removal" means removal of solid waste
 108 from the land surface or excavation of solid waste from below
 109 the land surface and removal of the solid waste from the
 110 brownfield site. The term also includes:

111 a. Transportation of solid waste to a licensed or exempt
 112 solid waste management facility or to a temporary storage area.

113 b. Sorting or screening of solid waste prior to removal
 114 from the site.

115 c. Deposition of solid waste at a permitted or exempt
 116 solid waste management facility, whether the solid waste is
 117 disposed of or recycled.

118 (9) On or before June ~~May~~ 1, the Department of
 119 Environmental Protection shall inform each tax credit applicant
 120 that is subject to the January 31 annual application deadline of
 121 the applicant's eligibility status and the amount of any tax
 122 credit due. The department shall provide each eligible tax
 123 credit applicant with a tax credit certificate that must be
 124 submitted with its tax return to the Department of Revenue to
 125 claim the tax credit or be transferred pursuant to s.

126 220.1845(2)(g). The June ~~May~~ 1 deadline for annual site
127 rehabilitation tax credit certificate awards shall not apply to
128 any tax credit application for which the department has issued a
129 notice of deficiency pursuant to subsection (8). The department
130 shall respond within 90 days after receiving a response from the
131 tax credit applicant to such a notice of deficiency. Credits may
132 not result in the payment of refunds if total credits exceed the
133 amount of tax owed.

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

136 376.313 Nonexclusiveness of remedies and individual cause
137 of action for damages under ss. 376.30-376.317.—

138 (3) Except as provided in s. 376.3078(3) and (11), nothing
139 contained in ss. 376.30-376.317 prohibits any person from
140 bringing a cause of action in a court of competent jurisdiction
141 for all damages resulting from a discharge or other condition of
142 pollution covered by ss. 376.30-376.317 and which was not
143 authorized pursuant to chapter 403. Nothing in this chapter
144 shall prohibit or diminish a party's right to contribution from
145 other parties jointly or severally liable for a prohibited
146 discharge of pollutants or hazardous substances or other
147 pollution conditions. Except as otherwise provided in subsection
148 (4) or subsection (5), in any such suit, it is not necessary for
149 such person to plead or prove negligence in any form or manner.
150 Such person need only plead and prove the fact of the prohibited

151 discharge or other pollutive condition and that it has occurred.
152 The only defenses to such cause of action shall be those
153 specified in s. 376.308 or s. 376.82.

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

156 376.78 Legislative intent.—The Legislature finds and
157 declares the following:

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

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

169 376.80 Brownfield program administration process.—

170 (1) The following general procedures apply to brownfield
171 designations:

172 (a) The local government with jurisdiction over a proposed
173 brownfield area shall designate such area pursuant to this
174 section.

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

176 1. The jurisdictional local government, the designation
 177 criteria under paragraph (2)(a) apply, except if the local
 178 government proposes to designate as a brownfield area a
 179 specified redevelopment area as provided in paragraph (2)(b).

180 2. Any person, ~~other than a governmental entity,~~
 181 including, but not limited to, individuals, corporations,
 182 partnerships, trusts, limited liability companies, community-
 183 based organizations, or not-for-profit corporations, the
 184 designation criteria under paragraph (2)(c) apply.

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

187 1. Notification to department following adoption.—A local
 188 government with jurisdiction over the brownfield area must
 189 notify the department, and, if applicable, the local pollution
 190 control program under s. 403.182, of its decision to designate a
 191 brownfield area for rehabilitation for the purposes of ss.
 192 376.77–376.86. The notification must include a resolution
 193 adopted by the local government body. The local government shall
 194 notify the department, and, if applicable, the local pollution
 195 control program under s. 403.182, of the designation within 30
 196 days after adoption of the resolution.

197 2. Resolution adoption.—The brownfield area designation
 198 must be carried out by a resolution adopted by the
 199 jurisdictional local government, which includes a map adequate
 200 to clearly delineate exactly which parcels are to be included in

201 the brownfield area or alternatively a less-detailed map
202 accompanied by a detailed legal description of the brownfield
203 area. For municipalities, the governing body shall adopt the
204 resolution in accordance with the procedures outlined in s.
205 166.041, except that the notices ~~procedures~~ for the public
206 hearings on the proposed resolution must be in the form
207 established in s. 166.041(3)(c) 2. For counties, the governing
208 body shall adopt the resolution in accordance with the
209 procedures outlined in s. 125.66, except that the notices
210 ~~procedures~~ for the public hearings on the proposed resolution
211 shall be in the form established in s. 125.66(4)(b).

212 3. Right to be removed from proposed brownfield area.—If a
213 property owner within the area proposed for designation by the
214 local government requests in writing to have his or her property
215 removed from the proposed designation, the local government
216 shall grant the request.

217 4. Notice and public hearing requirements for designation
218 of a proposed brownfield area outside a redevelopment area or by
219 a nongovernmental entity. Compliance with the following
220 provisions is required before designation of a proposed
221 brownfield area under paragraph (2)(a) or paragraph (2)(c):

222 a. At least one of the required public hearings shall be
223 conducted as closely as is reasonably practicable to the area to
224 be designated to provide an opportunity for public input on the
225 size of the area, the objectives for rehabilitation, job

226 | opportunities and economic developments anticipated,
 227 | neighborhood residents' considerations, and other relevant local
 228 | concerns.

229 | b. Notice of a public hearing must be made in a newspaper
 230 | of general circulation in the area, must be made in ethnic
 231 | newspapers or local community bulletins, must be posted in the
 232 | affected area, and must be announced at a scheduled meeting of
 233 | the local governing body before the actual public hearing.

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

- 244 | 1. Whether the brownfield area warrants economic
- 245 | development and has a reasonable potential for such activities;
- 246 | 2. Whether the proposed area to be designated represents a
- 247 | reasonably focused approach and is not overly large in
- 248 | geographic coverage;
- 249 | 3. Whether the area has potential to interest the private
- 250 | sector in participating in rehabilitation; and

251 4. Whether the area contains sites or parts of sites
252 suitable for limited recreational open space, cultural, or
253 historical preservation purposes.

254 (b) Local government-proposed brownfield area designation
255 within specified redevelopment areas.—Paragraph (a) does not
256 apply to a proposed brownfield area if the local government
257 proposes to designate the brownfield area inside a community
258 redevelopment area, enterprise zone, empowerment zone, closed
259 military base, or designated brownfield pilot project area and
260 the local government complies with paragraph (1)(c).

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

270 1. A person who owns or controls a potential brownfield
271 site is requesting the designation and has agreed to
272 rehabilitate and redevelop the brownfield site.

273 2. The rehabilitation and redevelopment of the proposed
274 brownfield site will result in economic productivity of the
275 area, along with the creation of at least 5 new permanent jobs

276 at the brownfield site that are full-time equivalent positions
277 not associated with the implementation of the brownfield site
278 rehabilitation agreement and that are not associated with
279 redevelopment project demolition or construction activities
280 pursuant to the redevelopment of the proposed brownfield site or
281 area. However, the job creation requirement does not apply to
282 the rehabilitation and redevelopment of a brownfield site that
283 will provide affordable housing as defined in s. 420.0004 or the
284 creation of recreational areas, conservation areas, or parks.

285 3. The redevelopment of the proposed brownfield site is
286 consistent with the local comprehensive plan and is a
287 permittable use under the applicable local land development
288 regulations.

289 4. Notice of the proposed rehabilitation of the brownfield
290 area has been provided to neighbors and nearby residents of the
291 proposed area to be designated pursuant to paragraph (1)(c), and
292 the person proposing the area for designation has afforded to
293 those receiving notice the opportunity for comments and
294 suggestions about rehabilitation. Notice pursuant to this
295 subparagraph must be posted in the affected area.

296 5. The person proposing the area for designation has
297 provided reasonable assurance that he or she has sufficient
298 financial resources to implement and complete the rehabilitation
299 agreement and redevelopment of the brownfield site.

300 (d) Negotiation of brownfield site rehabilitation

301 agreement.—The designation of a brownfield area ~~and the~~
302 ~~identification of a person responsible for brownfield site~~
303 ~~rehabilitation~~ simply entitles a ~~the identified~~ person to
304 negotiate a brownfield site rehabilitation agreement with the
305 department or approved local pollution control program.

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

309 376.82 Eligibility criteria and liability protection.—

310 (1) Eligibility.—Any person who has not caused or
311 contributed to the contamination of a brownfield site on or
312 after July 1, 1997, is eligible to participate in the brownfield
313 program established in ss. 376.77-376.85, subject to the
314 following:

315 (b) Persons who have not caused or contributed to the
316 contamination of a brownfield site on or after July 1, 1997, and
317 who, prior to the department's approval of a brownfield site
318 rehabilitation agreement, are subject to ongoing corrective
319 action or enforcement under state authority established in this
320 chapter or chapter 403, including those persons subject to a
321 pending consent order with the state, are eligible for
322 participation in a brownfield site rehabilitation agreement if:

323 1. The proposed brownfield site is currently idle or
324 underutilized as a result of the contamination, and
325 participation in the brownfield program will immediately, after

326 cleanup or sooner, result in increased economic productivity at
327 the site, including at a minimum the creation of 10 new
328 permanent jobs, whether full-time or part-time, which are not
329 associated with implementation of the brownfield site
330 rehabilitation agreement. However, the job creation requirement
331 does not apply to the rehabilitation and redevelopment of a
332 brownfield site that will provide affordable housing as defined
333 in s. 420.0004 or create recreational areas, conservation areas,
334 or parks, or be maintained for cultural or historical
335 preservation purposes; and

336 2. The person is complying in good faith with the terms of
337 an existing consent order or department-approved corrective
338 action plan, or responding in good faith to an enforcement
339 action, as evidenced by a determination issued by the department
340 or an approved local pollution control program.

341 (2) Liability protection.—

342 (a) Any person, ~~including his or her successors and~~
343 ~~assigns,~~ who executes and implements to successful completion a
344 brownfield site rehabilitation agreement, his or her successors
345 and assigns, and any subsequent property owner of the brownfield
346 site, is relieved of:

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

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

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

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

367 (c) This section does not ~~shall not~~ affect the ability or
368 authority to seek contribution from any person who may have
369 liability with respect to the contaminated site and who did not
370 receive cleanup liability protection under this act.

371 (d) The liability protection provided under this section
372 shall become effective upon execution of a brownfield site
373 rehabilitation agreement and shall remain effective as to any
374 person responsible for brownfield site rehabilitation, provided
375 each ~~the~~ person responsible for brownfield site rehabilitation

376 | complies with the terms of the site rehabilitation agreement,
377 | and as to any subsequent property owner of the brownfield site,
378 | such owner maintains compliance, as applicable, with any
379 | institutional controls or engineering controls required for site
380 | rehabilitation. Any statute of limitations that would bar the
381 | department from pursuing relief in accordance with its existing
382 | authority is tolled from the time the agreement is executed
383 | until site rehabilitation is completed or immunity is revoked
384 | pursuant to s. 376.80(8).

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