

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

26 | rehabilitation agreements; providing an effective  
 27 | 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 to real or personal property directly resulting  
142 from a discharge or other condition of pollution covered by ss.  
143 376.30-376.317 and which was not authorized by any government  
144 approval or permit ~~pursuant to chapter 403~~. Nothing in this  
145 chapter shall prohibit or diminish a party's right to  
146 contribution from other parties jointly or severally liable for  
147 a prohibited discharge of pollutants or hazardous substances or  
148 other pollution conditions. Except as otherwise provided in  
149 subsection (4) or subsection (5), in any such suit, it is not  
150 necessary for such person to plead or prove negligence in any

151 form or manner. Such person need only plead and prove the fact  
152 of the prohibited discharge or other pollutive condition and  
153 that it has occurred. The only strict-liability exceptions  
154 ~~defenses~~ to such cause of action shall be those specified in s.  
155 376.308 or s. 376.82.

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

158 376.78 Legislative intent.—The Legislature finds and  
159 declares the following:

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

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

171 376.80 Brownfield program administration process.—

172 (1) The following general procedures apply to brownfield  
173 designations:

174 (a) The local government with jurisdiction over a proposed  
175 brownfield area shall designate such area pursuant to this

176 section.

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

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

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

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

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

199 2. Resolution adoption.—The brownfield area designation  
 200 must be carried out by a resolution adopted by the



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

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

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

224 a. At least one of the required public hearings shall be  
225 conducted as closely as is reasonably practicable to the area to

226 | be designated to provide an opportunity for public input on the  
227 | size of the area, the objectives for rehabilitation, job  
228 | opportunities and economic developments anticipated,  
229 | neighborhood residents' considerations, and other relevant local  
230 | concerns.

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

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

246 |             1. Whether the brownfield area warrants economic  
247 | development and has a reasonable potential for such activities;

248 |             2. Whether the proposed area to be designated represents a  
249 | reasonably focused approach and is not overly large in  
250 | geographic coverage;

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

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

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

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

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

275           2. The rehabilitation and redevelopment of the proposed

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

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

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

298 5. The person proposing the area for designation has  
299 provided reasonable assurance that he or she has sufficient  
300 financial resources to implement and complete the rehabilitation

301 agreement and redevelopment of the brownfield site.

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

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

311 376.82 Eligibility criteria and liability protection.—

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

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

325 1. The proposed brownfield site is currently idle or

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

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

343 (2) LIABILITY PROTECTION.—

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

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

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

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

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

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

373           (d) The liability protection provided under this section  
374 shall become effective upon execution of a brownfield site  
375 rehabilitation agreement and shall remain effective as to any

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

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