

By Senator Baxley

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1 A bill to be entitled
2 An act relating to brownfields; amending s. 212.08,
3 F.S.; revising the definition of the terms "housing
4 project" and "mixed-use project" for purposes of
5 specifying the projects eligible for certain tax
6 exemptions; amending s. 376.30781, F.S.; revising the
7 conditions under which an applicant that has
8 rehabilitated a contaminated site may submit and claim
9 certain tax credits; specifying a timeframe within
10 which such tax credit applications must be submitted;
11 revising the types of projects which are eligible for
12 a specified tax credit; revising the criteria for
13 determining applicants who are redeveloping brownfield
14 sites who may be eligible for certain tax credits;
15 revising the definition of "solid waste disposal
16 area"; revising the date by which the Department of
17 Environmental Protection must issue annual site
18 rehabilitation tax credit certificate awards; amending
19 s. 376.313, F.S.; specifying defenses to specified
20 causes of action concerning certain discharges or
21 other types of pollution resulting from certain
22 discharges or pollution; amending s. 376.78, F.S.;
23 conforming provisions to changes made by the act;
24 amending s. 376.80, F.S.; revising the entities that
25 may propose brownfield designations using specified
26 criteria; removing the requirement that certain
27 persons be identified before negotiating a brownfield
28 site rehabilitation agreement; amending s. 376.82,
29 F.S.; exempting certain job creation requirements

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30 otherwise needed for eligibility for specified
31 brownfield site rehabilitation agreements; providing
32 an effective date.
33

34 Be It Enacted by the Legislature of the State of Florida:
35

36 Section 1. Paragraph (o) of subsection (5) of section
37 212.08, Florida Statutes, is amended to read:

38 212.08 Sales, rental, use, consumption, distribution, and
39 storage tax; specified exemptions.—The sale at retail, the
40 rental, the use, the consumption, the distribution, and the
41 storage to be used or consumed in this state of the following
42 are hereby specifically exempt from the tax imposed by this
43 chapter.

44 (5) EXEMPTIONS; ACCOUNT OF USE.—

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

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

47 a. "Building materials" means tangible personal property
48 that becomes a component part of a housing project or a mixed-
49 use project.

50 b. "Housing project" means:

51 (I) The conversion of an existing manufacturing or
52 industrial building to a housing unit which is in an urban high-
53 crime area, an enterprise zone, an empowerment zone, a Front
54 Porch Florida Community, a designated brownfield site for which
55 a rehabilitation agreement with the Department of Environmental
56 Protection or a local government delegated by the Department of
57 Environmental Protection has been executed under s. 376.80 and
58 any abutting real property parcel within a brownfield area, or

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59 an urban infill area; and in which the developer agrees to set
60 aside at least 20 percent of the housing units in the project
61 for low-income and moderate-income persons; or

62 (II) The construction of affordable housing in a designated
63 brownfield area of affordable housing for persons described in
64 s. 420.0004(9), (11), (12), or (17) or in s. 159.603(7), in
65 designated brownfield areas for which a brownfield site
66 rehabilitation agreement with the Department of Environmental
67 Protection or a local government delegated by the Department of
68 Environmental Protection has been executed under s. 376.80, and
69 any real property parcel abutting the brownfield area, if the
70 developer agrees to set aside at least 20 percent of the housing
71 units in any building, project, or development for such persons
72 regardless of whether the affordable housing is part of a larger
73 building, project, or development that includes market-rate
74 housing.

75 c. "Mixed-use project" means:

76 (I) The conversion of an existing manufacturing or
77 industrial building to mixed-use units that include artists'
78 studios, art and entertainment services, or other compatible
79 uses. A mixed-use conversion project must be located in an urban
80 high-crime area, an enterprise zone, an empowerment zone, a
81 Front Porch Florida Community, a designated brownfield site for
82 which a rehabilitation agreement with the Department of
83 Environmental Protection or a local government delegated by the
84 Department of Environmental Protection has been executed under
85 s. 376.80 and any abutting real property parcel within a
86 brownfield area, or an urban infill area; and the developer must
87 agree to set aside at least 20 percent of the square footage of

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88 the project for low-income and moderate-income housing; or
89 (II) The construction of mixed-use units in a designated
90 brownfield site for which a rehabilitation agreement with the
91 Department of Environmental Protection or a local government
92 delegated by the Department of Environmental Protection has been
93 executed under s. 376.80 and any real property parcel abutting
94 the brownfield area, if the developer agrees to set aside at
95 least 20 percent of the square footage of the project for low-
96 income and moderate-income housing.

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

99 2. Building materials used in the construction of a housing
100 project or mixed-use project are exempt from the tax imposed by
101 this chapter upon an affirmative showing to the satisfaction of
102 the department that the requirements of this paragraph have been
103 met. This exemption inures to the owner through a refund of
104 previously paid taxes. To receive this refund, the owner must
105 file an application under oath with the department which
106 includes:

107 a. The name and address of the owner.

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

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

111 d. A certification by the local building code inspector
112 that the project is substantially completed.

113 e. A sworn statement, under penalty of perjury, from the
114 general contractor licensed in this state with whom the owner
115 contracted to construct the project, which statement lists the
116 building materials used in the construction of the project and

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117 the actual cost thereof, and the amount of sales tax paid on
118 these materials. If a general contractor was not used, the owner
119 shall provide this information in a sworn statement, under
120 penalty of perjury. Copies of invoices evidencing payment of
121 sales tax must be attached to the sworn statement.

122 3. An application for a refund under this paragraph must be
123 submitted to the department within 6 months after the date the
124 project is deemed to be substantially completed by the local
125 building code inspector. Within 30 working days after receipt of
126 the application, the department shall determine if it meets the
127 requirements of this paragraph. A refund approved pursuant to
128 this paragraph shall be made within 30 days after formal
129 approval of the application by the department.

130 4. The department shall establish by rule an application
131 form and criteria for establishing eligibility for exemption
132 under this paragraph.

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

135 Section 2. Paragraphs (c), (d), and (e) of subsection (3)
136 and subsection (9) of section 376.30781, Florida Statutes, are
137 amended to read:

138 376.30781 Tax credits for rehabilitation of drycleaning-
139 solvent-contaminated sites and brownfield sites in designated
140 brownfield areas; application process; rulemaking authority;
141 revocation authority.-

142 (3)

143 (c) In order to encourage completion of site rehabilitation
144 at contaminated sites that are being voluntarily cleaned up and
145 that are eligible for a tax credit under this section, the tax

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146 credit applicant may claim an additional 25 percent of the total
147 site rehabilitation costs, not to exceed \$500,000, if the
148 Department of Environmental Protection has approved the
149 applicant's annual site rehabilitation applications and has
150 issued in the final year of cleanup as evidenced by the
151 Department of Environmental Protection issuing a "No Further
152 Action" order for that site. The tax credit applicant must
153 submit the claim for the additional 25 percent within 2 years of
154 receipt of the "No Further Action" order for that site.

155 (d) In order to encourage the construction of projects that
156 include housing that meets the definition of affordable provided
157 in s. 420.0004, an applicant for the tax credit may claim an
158 additional 25 percent of the total site rehabilitation costs
159 that are eligible for tax credits under this section, not to
160 exceed \$500,000. Projects with mixed uses and projects that
161 include market-rate housing are eligible for the tax credit
162 based on a pro rata share of the square footage of affordable
163 housing compared to the overall square footage of the mixed-use
164 project or the number of affordable housing units compared to
165 market-rate housing units in a project with only residential
166 uses, provided that the developer agrees to set aside at least
167 20 percent of the housing units for persons described in s.
168 420.0004(9), (11), (12), or (17) or s. 159.603(7). To receive
169 this additional tax credit, the applicant must provide a
170 certification letter from the Florida Housing Finance
171 Corporation, the local housing authority, or other governmental
172 agency that is a party to the use agreement indicating that the
173 construction of the affordable housing portion of the project on
174 the brownfield site has received a certificate of occupancy and

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175 ~~the brownfield site~~ has a properly recorded instrument that
176 limits the use of the residential portion of the property to
177 housing and specifies the requisite square footage or number of
178 units set aside for affordable housing. Notwithstanding that
179 only one application may be submitted each year for each site,
180 an application for the additional credit provided for in this
181 paragraph shall be submitted after all requirements to obtain
182 the additional tax credit have been met.

183 (e) In order to encourage the redevelopment of a brownfield
184 site, as defined in the brownfield site rehabilitation
185 agreement, that is hindered by the presence of solid waste, as
186 defined in s. 403.703, costs related to solid waste removal may
187 also be claimed under this section. A tax credit applicant, or
188 multiple tax credit applicants working jointly to clean up a
189 single brownfield site, may also claim costs to address the
190 solid waste removal as defined in this paragraph in accordance
191 with department rules. Multiple tax credit applicants shall be
192 granted tax credits in the same proportion as each applicant's
193 contribution to payment of solid waste removal costs. These
194 costs are eligible for a tax credit provided the applicant meets
195 the eligibility requirements of s. 376.82(1) and ~~submits an~~
196 ~~affidavit stating that, after consultation with appropriate~~
197 ~~local government officials and the department, to the best of~~
198 ~~the applicant's knowledge based upon such consultation and~~
199 ~~available historical records,~~ the brownfield site was never
200 operated as a permitted solid waste disposal area under chapter
201 62-701, Florida Administrative Code, or the predecessor rules ~~or~~
202 ~~was never operated for monetary compensation, and the applicant~~
203 ~~submits all other documentation and certifications required by~~

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204 ~~this section.~~ In this section, where reference is made to "site
205 rehabilitation," the department shall instead consider whether
206 the costs claimed are for solid waste removal. Tax credit
207 applications claiming costs pursuant to this paragraph shall not
208 be subject to the calendar-year limitation and January 31 annual
209 application deadline, and the department shall accept a one-time
210 application filed subsequent to the completion by the tax credit
211 applicant of the applicable requirements listed in this
212 subsection. A tax credit applicant may claim 50 percent of the
213 costs for solid waste removal, not to exceed \$500,000, after the
214 applicant has determined solid waste removal is completed for
215 the brownfield site. A solid waste removal tax credit
216 application may be filed only once per brownfield site. For the
217 purposes of this section, the term:

218 1. "Solid waste disposal area" means a property, group of
219 properties, portion of property, or localized area at, upon, or
220 within which solid waste is or was disposed and for which no
221 federal, state, or local permit for such disposal had been
222 obtained at the time of waste disposal cessation of activities
223 ~~landfill, dump, or other area where solid waste has been~~
224 ~~disposed.~~

225 2. ~~"Monetary compensation" means the fees that were charged~~
226 ~~or the assessments that were levied for the disposal of solid~~
227 ~~waste at a solid waste disposal area.~~

228 2.3. "Solid waste removal" means removal of solid waste
229 from the land surface or excavation of solid waste from below
230 the land surface and removal of the solid waste from the
231 brownfield site. The term also includes:

232 a. Transportation of solid waste to a licensed or exempt

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233 solid waste management facility or to a temporary storage area.

234 b. Sorting or screening of solid waste prior to removal
235 from the site.

236 c. Deposition of solid waste at a permitted or exempt solid
237 waste management facility, whether the solid waste is disposed
238 of or recycled.

239 (9) On or before June ~~May~~ 1, the Department of
240 Environmental Protection shall inform each tax credit applicant
241 that is subject to the January 31 annual application deadline of
242 the applicant's eligibility status and the amount of any tax
243 credit due. The department shall provide each eligible tax
244 credit applicant with a tax credit certificate that must be
245 submitted with its tax return to the Department of Revenue to
246 claim the tax credit or be transferred pursuant to s.
247 220.1845(2)(g). The June ~~May~~ 1 deadline for annual site
248 rehabilitation tax credit certificate awards shall not apply to
249 any tax credit application for which the department has issued a
250 notice of deficiency pursuant to subsection (8). The department
251 shall respond within 90 days after receiving a response from the
252 tax credit applicant to such a notice of deficiency. Credits may
253 not result in the payment of refunds if total credits exceed the
254 amount of tax owed.

255 Section 3. Subsection (3) of section 376.313, Florida
256 Statutes, is amended to read:

257 376.313 Nonexclusiveness of remedies and individual cause
258 of action for damages under ss. 376.30-376.317.—

259 (3) Except as provided in s. 376.3078(3) and (11), nothing
260 contained in ss. 376.30-376.317 prohibits any person from
261 bringing a cause of action in a court of competent jurisdiction

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262 for all damages resulting from a discharge or other condition of
263 pollution covered by ss. 376.30-376.317 and which was not
264 authorized pursuant to chapter 403. Nothing in this chapter
265 shall prohibit or diminish a party's right to contribution from
266 other parties jointly or severally liable for a prohibited
267 discharge of pollutants or hazardous substances or other
268 pollution conditions. Except as otherwise provided in subsection
269 (4) or subsection (5), in any such suit, it is not necessary for
270 such person to plead or prove negligence in any form or manner.
271 Such person need only plead and prove the fact of the prohibited
272 discharge or other pollutive condition and that it has occurred.
273 The only defenses to such cause of action shall be those
274 specified in s. 376.308 or s. 376.82.

275 Section 4. Subsection (1) of section 376.78, Florida
276 Statutes, is amended to read:

277 376.78 Legislative intent.—The Legislature finds and
278 declares the following:

279 (1) The reduction of public health and environmental
280 hazards on existing ~~commercial and industrial~~ sites is vital to
281 their use and reuse as sources of employment, housing,
282 recreation, and open space areas. The reuse of industrial land
283 is an important component of sound land use policy for
284 productive urban purposes which will help prevent the premature
285 development of farmland, open space areas, and natural areas,
286 and reduce public costs for installing new water, sewer, and
287 highway infrastructure.

288 Section 5. Subsections (1) and (2) of section 376.80,
289 Florida Statutes, are amended to read:

290 376.80 Brownfield program administration process.—

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291 (1) The following general procedures apply to brownfield
292 designations:

293 (a) The local government with jurisdiction over a proposed
294 brownfield area shall designate such area pursuant to this
295 section.

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

297 1. The jurisdictional local government, the designation
298 criteria under paragraph (2)(a) apply, except if the local
299 government proposes to designate as a brownfield area a
300 specified redevelopment area as provided in paragraph (2)(b).

301 2. Any person, ~~other than a governmental entity,~~ including,
302 but not limited to, individuals, corporations, partnerships,
303 trusts, limited liability companies, community-based
304 organizations, or not-for-profit corporations, the designation
305 criteria under paragraph (2)(c) apply.

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

308 1. Notification to department following adoption.—A local
309 government with jurisdiction over the brownfield area must
310 notify the department, and, if applicable, the local pollution
311 control program under s. 403.182, of its decision to designate a
312 brownfield area for rehabilitation for the purposes of ss.
313 376.77-376.86. The notification must include a resolution
314 adopted by the local government body. The local government shall
315 notify the department, and, if applicable, the local pollution
316 control program under s. 403.182, of the designation within 30
317 days after adoption of the resolution.

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

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320 jurisdictional local government, which includes a map adequate
321 to clearly delineate exactly which parcels are to be included in
322 the brownfield area or alternatively a less-detailed map
323 accompanied by a detailed legal description of the brownfield
324 area. For municipalities, the governing body shall adopt the
325 resolution in accordance with the procedures outlined in s.
326 166.041, except that the notices ~~procedures~~ for the public
327 hearings on the proposed resolution must be in the form
328 established in s. 166.041(3)(c)2. For counties, the governing
329 body shall adopt the resolution in accordance with the
330 procedures outlined in s. 125.66, except that the notices
331 ~~procedures~~ for the public hearings on the proposed resolution
332 shall be in the form established in s. 125.66(4)(b).

333 3. Right to be removed from proposed brownfield area.—If a
334 property owner within the area proposed for designation by the
335 local government requests in writing to have his or her property
336 removed from the proposed designation, the local government
337 shall grant the request.

338 4. Notice and public hearing requirements for designation
339 of a proposed brownfield area outside a redevelopment area or by
340 a nongovernmental entity. Compliance with the following
341 provisions is required before designation of a proposed
342 brownfield area under paragraph (2)(a) or paragraph (2)(c):

343 a. At least one of the required public hearings shall be
344 conducted as closely as is reasonably practicable to the area to
345 be designated to provide an opportunity for public input on the
346 size of the area, the objectives for rehabilitation, job
347 opportunities and economic developments anticipated,
348 neighborhood residents' considerations, and other relevant local

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349 concerns.

350 b. Notice of a public hearing must be made in a newspaper
351 of general circulation in the area, must be made in ethnic
352 newspapers or local community bulletins, must be posted in the
353 affected area, and must be announced at a scheduled meeting of
354 the local governing body before the actual public hearing.

355 (2) (a) *Local government-proposed brownfield area*
356 *designation outside specified redevelopment areas.*—If a local
357 government proposes to designate a brownfield area that is
358 outside a community redevelopment area, enterprise zone,
359 empowerment zone, closed military base, or designated brownfield
360 pilot project area, the local government shall provide notice,
361 adopt the resolution, and conduct public hearings pursuant to
362 paragraph (1) (c). At a public hearing to designate the proposed
363 area as a brownfield area, as defined in s. 376.79, the local
364 government must consider:

365 1. Whether the brownfield area warrants economic
366 development and has a reasonable potential for such activities;

367 2. Whether the proposed area to be designated represents a
368 reasonably focused approach and is not overly large in
369 geographic coverage;

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

372 4. Whether the area contains sites or parts of sites
373 suitable for limited recreational open space, cultural, or
374 historical preservation purposes.

375 (b) *Local government-proposed brownfield area designation*
376 *within specified redevelopment areas.*—Paragraph (a) does not
377 apply to a proposed brownfield area if the local government

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378 proposes to designate the brownfield area inside a community
379 redevelopment area, enterprise zone, empowerment zone, closed
380 military base, or designated brownfield pilot project area and
381 the local government complies with paragraph (1)(c).

382 (c) *Brownfield area designation proposed by specified*
383 *persons ~~other than a governmental entity~~.*—For designation of a
384 brownfield area that is proposed by a person under this
385 subsection ~~other than the local government~~, the local government
386 with jurisdiction over the proposed brownfield area shall
387 provide notice and adopt a resolution to designate the
388 brownfield area pursuant to paragraph (1)(c) if, at the public
389 hearing to adopt the resolution, the person establishes all of
390 the following with respect to the proposed brownfield area:

391 1. A person who owns or controls a potential brownfield
392 site is requesting the designation and has agreed to
393 rehabilitate and redevelop the brownfield site.

394 2. The rehabilitation and redevelopment of the proposed
395 brownfield site will result in economic productivity of the
396 area, along with the creation of at least 5 new permanent jobs
397 at the brownfield site that are full-time equivalent positions
398 not associated with the implementation of the brownfield site
399 rehabilitation agreement and that are not associated with
400 redevelopment project demolition or construction activities
401 pursuant to the redevelopment of the proposed brownfield site or
402 area. However, the job creation requirement does not apply to
403 the rehabilitation and redevelopment of a brownfield site that
404 will provide affordable housing as defined in s. 420.0004 or the
405 creation of recreational areas, conservation areas, or parks.

406 3. The redevelopment of the proposed brownfield site is

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407 consistent with the local comprehensive plan and is a
408 permittable use under the applicable local land development
409 regulations.

410 4. Notice of the proposed rehabilitation of the brownfield
411 area has been provided to neighbors and nearby residents of the
412 proposed area to be designated pursuant to paragraph (1)(c), and
413 the person proposing the area for designation has afforded to
414 those receiving notice the opportunity for comments and
415 suggestions about rehabilitation. Notice pursuant to this
416 subparagraph must be posted in the affected area.

417 5. The person proposing the area for designation has
418 provided reasonable assurance that he or she has sufficient
419 financial resources to implement and complete the rehabilitation
420 agreement and redevelopment of the brownfield site.

421 (d) *Negotiation of brownfield site rehabilitation*
422 *agreement.*—The designation of a brownfield area ~~and the~~
423 ~~identification of a person responsible for brownfield site~~
424 ~~rehabilitation~~ simply entitles a ~~the identified~~ person to
425 negotiate a brownfield site rehabilitation agreement with the
426 department or approved local pollution control program.

427 Section 6. Paragraph (b) of subsection (1) and paragraphs
428 (a), (c), and (d) of subsection (2) of section 376.82, Florida
429 Statutes, are amended to read:

430 376.82 Eligibility criteria and liability protection.—

431 (1) ELIGIBILITY.—Any person who has not caused or
432 contributed to the contamination of a brownfield site on or
433 after July 1, 1997, is eligible to participate in the brownfield
434 program established in ss. 376.77-376.85, subject to the
435 following:

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436 (b) Persons who have not caused or contributed to the
437 contamination of a brownfield site on or after July 1, 1997, and
438 who, prior to the department's approval of a brownfield site
439 rehabilitation agreement, are subject to ongoing corrective
440 action or enforcement under state authority established in this
441 chapter or chapter 403, including those persons subject to a
442 pending consent order with the state, are eligible for
443 participation in a brownfield site rehabilitation agreement if:

444 1. The proposed brownfield site is currently idle or
445 underutilized as a result of the contamination, and
446 participation in the brownfield program will immediately, after
447 cleanup or sooner, result in increased economic productivity at
448 the site, including at a minimum the creation of 10 new
449 permanent jobs, whether full-time or part-time, which are not
450 associated with implementation of the brownfield site
451 rehabilitation agreement. However, the job creation requirement
452 does not apply to the rehabilitation and redevelopment of a
453 brownfield site that will provide affordable housing as defined
454 in s. 420.0004 or create recreational areas, conservation areas,
455 or parks, or be maintained for cultural or historical
456 preservation purposes; and

457 2. The person is complying in good faith with the terms of
458 an existing consent order or department-approved corrective
459 action plan, or responding in good faith to an enforcement
460 action, as evidenced by a determination issued by the department
461 or an approved local pollution control program.

462 (2) LIABILITY PROTECTION.—

463 (a) Any person, ~~including his or her successors and~~
464 ~~assigns,~~ who executes and implements to successful completion a

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465 brownfield site rehabilitation agreement, his or her successors
466 and assigns, and any subsequent property owner of the brownfield
467 site, is relieved of:

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

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

472 3. Liability for claims of property damages, including, but
473 not limited to, diminished value of real property or
474 improvements; lost or delayed rent, sale, or use of real
475 property or improvements; or stigma to real property or
476 improvements caused by contamination addressed by a brownfield
477 site rehabilitation agreement. Notwithstanding any other
478 provision of this chapter, this subparagraph applies to causes
479 of action accruing on or after July 1, 2014. This subparagraph
480 does not apply to a person who discharges contaminants on
481 property subject to a brownfield site rehabilitation agreement,
482 who commits fraud in demonstrating site conditions or completing
483 site rehabilitation of a property subject to a brownfield site
484 rehabilitation agreement, or who exacerbates contamination of a
485 property subject to a brownfield site rehabilitation agreement
486 in violation of applicable laws which causes property damages.

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

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

492 (d) The liability protection provided under this section
493 shall become effective upon execution of a brownfield site

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494 rehabilitation agreement and shall remain effective as to any
495 person responsible for brownfield site rehabilitation, provided
496 each ~~the~~ person responsible for brownfield site rehabilitation
497 complies with the terms of the site rehabilitation agreement,
498 and as to any subsequent property owner of the brownfield site,
499 such owner maintains compliance, as applicable, with any
500 institutional controls or engineering controls required for site
501 rehabilitation. Any statute of limitations that would bar the
502 department from pursuing relief in accordance with its existing
503 authority is tolled from the time the agreement is executed
504 until site rehabilitation is completed or immunity is revoked
505 pursuant to s. 376.80(8).

506 Section 7. This act shall take effect July 1, 2020.