

By the Committee on Environment and Natural Resources; and
Senator Baxley

592-03789-20

20201350c1

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:

592-03789-20

20201350c1

30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58

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

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

(3)

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

(d) In order to encourage the construction of housing that meets the definition of affordable provided in s. 420.0004, an applicant for the tax credit may claim an additional 25 percent of the total site rehabilitation costs that are eligible for tax credits under this section, not to exceed \$500,000. To receive this additional tax credit, the applicant must provide a certification letter from the Florida Housing Finance Corporation, the local housing authority, or other governmental

592-03789-20

20201350c1

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 brownfield
68 site, as defined in the brownfield site rehabilitation
69 agreement, that is hindered by the presence of solid waste, as
70 defined in s. 403.703, costs related to solid waste removal may
71 also be claimed under this section. A tax credit applicant, or
72 multiple tax credit applicants working jointly to clean up a
73 single brownfield site, may also claim costs to address the
74 solid waste removal as defined in this paragraph in accordance
75 with department rules. Multiple tax credit applicants shall be
76 granted tax credits in the same proportion as each applicant's
77 contribution to payment of solid waste removal costs. These
78 costs are eligible for a tax credit provided the applicant meets
79 the eligibility requirements of s. 376.82(1) and ~~submits an~~
80 ~~affidavit stating that, after consultation with appropriate~~
81 ~~local government officials and the department, to the best of~~
82 ~~the applicant's knowledge based upon such consultation and~~
83 ~~available historical records,~~ the brownfield site was never
84 operated as a permitted solid waste disposal area under chapter
85 62-701, Florida Administrative Code, or the predecessor rules ~~or~~
86 ~~was never operated for monetary compensation, and the applicant~~
87 ~~submits all other documentation and certifications required by~~

592-03789-20

20201350c1

88 ~~this section.~~ In this section, where reference is made to "site
89 rehabilitation," the department shall instead consider whether
90 the costs claimed are for solid waste removal. Tax credit
91 applications claiming costs pursuant to this paragraph shall not
92 be subject to the calendar-year limitation and January 31 annual
93 application deadline, and the department shall accept a one-time
94 application filed subsequent to the completion by the tax credit
95 applicant of the applicable requirements listed in this
96 subsection. A tax credit applicant may claim 50 percent of the
97 costs for solid waste removal, not to exceed \$500,000, after the
98 applicant has determined solid waste removal is completed for
99 the brownfield site. A solid waste removal tax credit
100 application may be filed only once per brownfield site. For the
101 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 charged~~
105 ~~or the assessments that were levied for the disposal of solid~~
106 ~~waste at a solid waste disposal area.~~

107 3. "Solid waste removal" means removal of solid waste from
108 the land surface or excavation of solid waste from below the
109 land surface and removal of the solid waste from the brownfield
110 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 solid
116 waste management facility, whether the solid waste is disposed

592-03789-20

20201350c1

117 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

592-03789-20

20201350c1

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

592-03789-20

20201350c1

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,~~ including,
183 but not limited to, individuals, corporations, partnerships,
184 trusts, limited liability companies, community-based
185 organizations, or not-for-profit corporations, the designation
186 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

592-03789-20

20201350c1

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

592-03789-20

20201350c1

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

592-03789-20

20201350c1

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.

592-03789-20

20201350c1

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

592-03789-20

20201350c1

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:

592-03789-20

20201350c1

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, but
354 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

592-03789-20

20201350c1

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.