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FLORIDA LEGISLATURE - REGULAR SESSION 1997
LEGISLATIVE INFORMATION DIVISION - JLMC

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S 1306 GENERAL BILL/CS/CS/2ND ENG by Ways and Means; Natural Resources; Latvala; Hargrett (Similar CS/CS/H 1067, Compare 1ST ENG/H 0811, H 0955, 2ND ENG/H 1073, H 1297, 3RD ENG/H 1323, CS/CS/S 1074, S 1110, CS/S 1476, S 1934, S 1936)
Brownfields Redevelopment Act; (THIS BILL COMBINES S1306,1934) creates said act; provides duties of local government that designates brownfield for rehabilitation & redevelopment; provides for brownfield contamination cleanup criteria; provides eligibility requirements for participation in brownfield rehabilitation; provides for refunds from Economic Development Incentive Account to certain qualified target industry businesses for jobs created in a brownfield, etc. Amends FS. Effective Date: 07/01/1997.
03/04/97 SENATE Filed
03/12/97 SENATE Introduced, referred to Natural Resources; Community Affairs; Ways and Means -SJ 00153
03/17/97 SENATE On Committee agenda-- Natural Resources, 03/19/97, 2:00 pm, Room-A(LL-37)
03/19/97 SENATE CS combines this bill with 1934; Comm. Action: CS by Natural Resources -SJ 00277; CS read first time on 03/26/97 -SJ 00283
03/20/97 SENATE Withdrawn from- Community Affairs -SJ 00249
03/21/97 SENATE Now in Ways and Means -SJ 00277
03/25/97 SENATE On Committee agenda-- Ways and Means, 03/27/97, 1:00 pm, Room-EL
03/27/97 SENATE Comm. Action:-CS/CS by Ways and Means -SJ 00363; CS read first time on 04/03/97 -SJ 00376
03/31/97 SENATE Placed on Calendar -SJ 00363
04/03/97 SENATE Placed on Special Order Calendar -SJ 00361; Read second time -SJ 00337; Amendment(s) adopted -SJ 00337; Ordered engrossed -SJ 00338
04/07/97 SENATE Read third time -SJ 00388; CS passed as amended; YEAS 40 NAYS 0 -SJ 00388; Immediately certified -SJ 00388
04/07/97 HOUSE In Messages
04/24/97 HOUSE Received -HJ 00875
04/25/97 HOUSE Placed on Economic Impact Council Calendar
04/30/97 HOUSE Fiscal Responsibility Council in Daily Folder; Temporarily postponed, on Second Reading -HJ 01248; Read second time -HJ 01310; Amendment(s) adopted -HJ 01310, -HJ 01326; Was taken up -HJ 01324; Read third time -HJ 01328; CS passed as amended; YEAS 112 NAYS 4 -HJ 01328
04/30/97 SENATE In returning messages
05/02/97 SENATE Was taken up -SJ 01453; Concurred -SJ 01463; CS passed as amended; YEAS 38 NAYS 0 -SJ 01463; Ordered engrossed, then enrolled -SJ 01463
05/15/97 Signed by Officers and presented to Governor

S 1934 GENERAL BILL by Hargrett (Compare H 0955, CS/CS/H 1067, H 1297, CS/CS/2ND ENG/S 1306, S 1936)
Brownfields Redevelopment Act; (THIS BILL COMBINED IN CS/S1306,1934) creates said act; provides legislative intent; defines terms; provides criteria for designation of brownfield areas & brownfield sites; provides for brownfield designation & implementation process; provides for enforcement orders & criminal penalties; reserves authority for seeking relief; directs local governments to coordinate efforts to provide health services.

- S 1934 (CON'T.)
Creates 376.77-.83. Effective Date: 07/01/1997.
03/04/97 SENATE Filed
03/12/97 SENATE Introduced, referred to Natural Resources; Ways and Means -SJ 00191
03/17/97 SENATE On Committee agenda-- Natural Resources, 03/19/97, 2:00 pm, Room-A(LL-37)
03/19/97 SENATE CS combines this bill with 1306; Comm. Action: CS by Natural Resources -SJ 00277; Original bill laid on Table, refer to combined CS/SB 1306
- S 1936
GENERAL BILL by Hargrett (Compare H 0955, CS/CS/H 1067, H 1297, CS/CS/2ND ENG/S 1306, S 1934)
Brownfields Land Recycling TF; creates said trust fund to be administered by DEP; provides for methods of financial assistance; provides for fees; takes effect on effective date of SB 1306 or similar legislation, but shall not take effect unless enacted by 3/5ths vote of membership of each house of Legislature. Creates 376.84. Effective Date: Contingent.
03/04/97 SENATE Filed
03/12/97 SENATE Introduced, referred to Natural Resources; Ways and Means -SJ 00191
05/02/97 SENATE Died in Committee on Natural Resources
- H 0955
GENERAL BILL by Eggelletion (Compare CS/CS/H 1067, H 1297, CS/CS/2ND ENG/S 1306, S 1934, S 1936)
Brownfields Community Revitalization; (THIS BILL COMBINED IN CS/H1067,955) creates "Brownfields Community Revitalization Act" & Brownfields Community Revitalization Interagency Coordinating Council & establishes Brownfields Community Revitalization Program; provides purpose & membership of council, program requirements, & criteria for eligibility; authorizes credit against corporate income tax for developers of brownfield sites, etc. Creates 220.185; amends 220.02. Effective Date: Upon becoming law.
02/28/97 HOUSE Prefiled
03/04/97 HOUSE Introduced -HJ 00101
03/12/97 HOUSE Referred to Business Development & International Trade (EIC); Environmental Protection (GRC); Community Affairs (GRC); Finance & Taxation (FRC); General Government Appropriations -HJ 00241
03/19/97 HOUSE Withdrawn from Business Development & International Trade (EIC); Environmental Protection (GRC); Community Affairs (GRC); Finance & Taxation (FRC); General Government Appropriations; Rereferred to Environmental Protection (GRC); Business Development & International Trade (EIC); Community Affairs (GRC); Finance & Taxation (FRC); General Government Appropriations -HJ 00227
03/31/97 HOUSE On Committee agenda-- Environmental Protection (GRC), 04/04/97, 10:00 am, 214C
04/04/97 HOUSE CS combines this bill with 1067; Comm. Action: CS by Environmental Protection (GRC) -HJ 00560
04/14/97 HOUSE Original bill laid on Table, refer to combined CS/HB 1067 (Carried over to 1998 Session pursuant to House Rule 96, In Governmental Responsibility Council, pending ranking)

- H 1067 GENERAL BILL/CS/CS by General Government Appropriations; Environmental Protection (GRC); Constantine; Eggelletion; Crow; (CO-SPONSORS) Murman; Peaden; Greene; Putnam (Similar H 1297, CS/CS/2ND ENG/S 1306, Compare H 0955, S 1934, S 1936) Brownfields Redevelopment Act; (THIS BILL COMBINES H1067,955) creates said act; provides duties of local government that designates brownfield for rehabilitation & redevelopment; provides for brownfield site rehabilitation agreement & provides requirements; provides requirements for local pollution control programs; revises eligibility criteria re petroleum cleanup participation program, etc. Creates 376.77-.84; amends 288.095, 376.3071, .30711, .3072. Effective Date: 07/01/1997.
- 03/05/97 HOUSE Filed; Introduced -HJ 00120
- 03/19/97 HOUSE Referred to Environmental Protection (GRC); Business Development & International Trade (EIC); General Government Appropriations -HJ 00241
- 03/31/97 HOUSE On Committee agenda-- Environmental Protection (GRC), 04/04/97, 10:00 am, 214C
- 04/04/97 HOUSE CS combines this bill with 955; Combined CS additional reference(s): Community Affairs (GRC); Finance & Taxation (FRC); Comm. Action: CS by Environmental Protection (GRC) -HJ 00560
- 04/11/97 HOUSE Withdrawn from- Business Development & International Trade (EIC); Community Affairs (GRC); Finance & Taxation (FRC) -HJ 00515
- 04/14/97 HOUSE CS read first time on 04/14/97 -HJ 00559; Now in General Government Appropriations -HJ 00560
- 04/16/97 HOUSE On Committee agenda-- General Government Appropriations, 04/18/97, 9:00 am, 214C
- 04/18/97 HOUSE Comm. Action:-Unanimously CS/CS by General Government Appropriations -HJ 00667
- 04/21/97 HOUSE CS read first time on 04/21/97 -HJ 00663
- 04/22/97 HOUSE In Governmental Responsibility Council, pending ranking
- 05/02/97 HOUSE Carried over to 1998 Session pursuant to House Rule 96, In Governmental Responsibility Council, pending ranking
- H 1297 GENERAL BILL by Crow (Similar CS/CS/H 1067, Compare H 0955, CS/CS/2ND ENG/S 1306, S 1934, S 1936) Brownfields Redevelopment Act; creates said act; provides legislative intent; defines terms; provides for brownfield program administration process; provides for brownfield site contamination cleanup criteria; provides for eligibility criteria & liability protection; provides penalties; provides for pilot projects. Creates 376.77-.83. APPROPRIATION: \$5,275,000. Effective Date: 07/01/1997.
- 03/10/97 HOUSE Filed
- 03/11/97 HOUSE Introduced -HJ 00173
- 03/13/97 HOUSE Withdrawn from further consideration -HJ 00179

By Senator Latvala

19-1236-97

A bill to be entitled

2 An act relating to brownfields redevelopment;
3 creating s. 376.77, F.S.; providing a short
4 title; creating s. 376.78, F.S.; providing
5 legislative intent; creating s. 376.79, F.S.;
6 defining terms; creating s. 376.80, F.S.;
7 providing for a brownfield program
8 administration process; creating s. 376.81,
9 F.S.; providing for brownfield site
10 contamination cleanup criteria; creating s.
11 376.82, F.S.; providing for eligibility
12 criteria and liability protection; creating s.
13 376.83, F.S.; providing penalties; providing
14 for pilot projects; providing appropriations;
15 providing an effective date.

16
17 Be It Enacted by the Legislature of the State of Florida:18
19 Section 1. Section 376.77, Florida Statutes, is
20 created to read:21 376.77 Short title.--Sections 376.77-376.83, may be
22 cited as the "Brownfields Redevelopment Act."23 Section 2. Section 376.78, Florida Statutes, is
24 created to read:25 376.78 Legislative Intent.--The Legislature finds and
26 declares the following:27 (1) The reduction of public health and environmental
28 hazards on existing commercial and industrial sites is vital
29 to their use and reuse as sources of employment, housing,
30 recreation, and open-space areas. The reuse of industrial land
31 is an important component of sound land-use policy for

1 productive urban purposes that will help prevent the premature
2 development of farmland, open-space areas, and natural areas,
3 and reduce public costs for installing new water, sewer, and
4 highway infrastructure;

5 (2) The abandonment or underuse of brownfield sites
6 also results in the inefficient use of public facilities and
7 services, as well as land and other natural resources, extends
8 conditions of blight in local communities, and contributes to
9 concerns about environmental equity and the distribution of
10 environmental risks across population groups;

11 (3) Incentives should be put in place to encourage
12 responsible persons to voluntarily develop and implement
13 cleanup plans without the use of taxpayer funds or the need
14 for enforcement actions by state and local governments;

15 (4) Environmental and public health hazards cannot be
16 eliminated without clear, predictable remediation standards
17 that provide for the protection of the environment and public
18 health;

19 (5) Cleanup plans should be based on the actual risk
20 that contamination on a site may pose to the environment and
21 public health, taking into account its current and future use
22 and the degree to which contamination can spread offsite and
23 expose the public or the environment to risk.

24 (6) Cooperation among federal, state, and local
25 agencies, local community development organizations, current
26 owners, and prospective purchasers of brownfield sites is
27 required to accomplish timely cleanup activities and the
28 redevelopment or reuse of brownfield sites.

29 Section 3. Section 376.79, Florida Statutes, is
30 created to read:

376.79 Definitions.--As used in ss. 376.77-376.83, the

2 term:

3 (1) "Brownfield sites" means sites that are generally
4 abandoned, idled, or under-used industrial and commercial
5 properties where expansion or redevelopment is complicated by
6 actual or perceived environmental contamination.

7 (2) "Brownfield area" means a contiguous area of one
8 or more brownfield sites, some of which may not be
9 contaminated, and which has been designated by a local
10 government by resolution. Such areas may include all or
11 portions of Community Redevelopment Areas, Enterprise Zones,
12 Empowerment Zones, other such designated economically-deprived
13 communities and areas, and Environmental Protection
14 Agency-designated Brownfield Pilot Projects.

5 (3) "Department" means the Department of Environmental
16 Protection.

17 (4) "Local pollution control program" means local
18 pollution control programs that have received delegated
19 authority from the Department of Environmental Protection
20 under s. 403.182.

21 Section 4. Section 376.80, Florida Statutes, is
22 created to read:

23 376.80 Brownfield program administration process.--

24 (1) A local government with jurisdiction over the
25 brownfield area must notify the department of its decision to
26 designate a brownfield area for rehabilitation for the
27 purposes of ss. 376.77-376.83. The notification must include a
28 resolution by the local government body to which is attached a
29 map adequate to clearly delineate exactly which parcels are to
30 be included in the brownfield area or alternatively a less
31 detailed map accompanied by a detailed legal description of

1 the brownfield area. If a property owner within the area
2 proposed for designation by the local government requests in
3 writing to have his or her property removed from the proposed
4 designation, the local government shall grant the request. For
5 municipalities, the governing body shall adopt the resolution
6 in accordance with the procedures outlined in s. 166.041,
7 except that the notice for the public hearings on the proposed
8 resolution must be in the form established in s.
9 166.041(3)(c)2. For counties, the governing body shall adopt
10 the resolution in accordance with the procedures outlined in
11 s. 125.66, except that the notice for the public hearings on
12 the proposed resolution shall be in the form established in s.
13 125.66(4)(b)2.

14 (2) If a local government proposes to designate a
15 brownfield area that is outside community redevelopment areas,
16 enterprise zones, empowerment zones, or designated brownfield
17 pilot project areas, the local government must conduct at
18 least one public hearing in the area to be designated to
19 provide an opportunity for public input on the size of the
20 area, the objectives for rehabilitation, job opportunities and
21 economic developments anticipated, neighborhood residents'
22 considerations, and other relevant local concerns. Notice of
23 the public hearing must be made in a newspaper of general
24 circulation in the area and the notice must be at least 6
25 inches square in size, must be in ethnic newspapers or local
26 community bulletins, must be posted in the affected area, and
27 must be announced at a scheduled meeting of the local
28 governing body before the actual public hearing. In
29 determining the areas to be designated, the local government
30 must consider:
31

1 (a) Whether the brownfield area warrants economic
2 development and has a reasonable potential for such
3 activities;

4 (b) Whether the proposed area to be designated
5 represents a reasonably focused approach and is not overly
6 large in geographic coverage; and

7 (c) Whether the area has potential to interest the
8 private sector in participating in rehabilitation.

9
10 The local government shall designate a brownfield area for
11 rehabilitation under the provisions of this act if requested
12 to do so by a person who has agreed to participate in the
13 rehabilitation who demonstrates that the brownfield program
14 will result in increased economic productivity at the site,
15 including the creation of at least ten new jobs, whether
16 permanent or part-time, which are not associated with the
17 implementation of the brownfield site corrective action plan.

18 (3) The local government must at the time of the
19 adoption of the resolution notify the department of the entity
20 that it is designating as the "person responsible for
21 brownfield site rehabilitation." If the agency or person who
22 will be responsible for the coordination changes during the
23 approval process specified in subsections (4), (5), and (6),
24 the department or the affected approved local pollution
25 control program must notify the affected local government when
26 the change occurs.

27 (4) The person responsible for brownfield site
28 rehabilitation must enter into a brownfield site
29 rehabilitation agreement with the department or an approved
30 local environmental program. The brownfield site
31 rehabilitation agreement must include:

1 (a) A brownfield site rehabilitation schedule,
2 including milestones for completion of site rehabilitation
3 tasks and submittal of technical reports and rehabilitation
4 plans as agreed upon by the parties to the agreement;

5 (b) A commitment to conduct site rehabilitation
6 activities under the supervision of professional engineers or
7 geologists who are registered in accordance with the
8 requirements of chapter 471 or chapter 492, and who are
9 familiar with the principles of risk-based corrective action.

10 (c) A commitment to conduct site rehabilitation in
11 accordance with an approved comprehensive quality assurance
12 plan under department rules. In addition to a comprehensive
13 quality assurance plan prepared in accordance with the rules
14 of the department, submittals provided by the eligible party
15 must be signed and sealed by a professional engineer
16 registered under chapter 471, or a professional geologist
17 registered under chapter 492, certifying that the proposed
18 activity is designed in accordance with applicable law and
19 rules of the department and in conformity with proper design
20 principles. In addition, upon completion of the permitted
21 activity the department shall require a professional engineer
22 registered under chapter 471, or a professional geologist
23 registered under 492, to certify that the corrective action
24 was, to the best of his knowledge, completed in substantial
25 conformance with the plans and specifications approved by the
26 department.

27 (d) A commitment to conduct site rehabilitation
28 consistent with state, federal, and local laws and consistent
29 with the brownfield site contamination cleanup criteria in s.
30 376.81, including any applicable requirements for risk-based
31 corrective action; and

2 (e) Timeframes for the department's review of
 3 technical reports and plans submitted in accordance with the
 4 agreement. The department shall make every effort to adhere
 5 to established agency goals for reasonable timeframes for
 6 review of such documents;

7 (f) Other provisions that the person responsible for
 8 brownfield site rehabilitation and the department agree upon
 9 that are consistent with ss. 376.77-376.83 and that will
 10 improve or enhance the brownfield site rehabilitation process.

11 (5) Any contractor performing site rehabilitation
 12 program tasks must demonstrate to the department that:

13 (a) The contractor meets all certification and license
 14 requirements imposed by law.

15 (b) The contractor has obtained approval for the
 16 comprehensive quality assurance plan prepared under department
 17 rules.

18 (6) The contractor shall certify to the department
 19 that the contractor:

20 (a) Complies with applicable OSHA regulations.

21 (b) Maintains workers' compensation insurance for all
 22 employees as required by the Florida Workers' Compensation
 23 Law.

24 (c) Maintains comprehensive general liability and
 25 comprehensive automobile liability insurance with minimum
 26 limits of at least \$1 million per occurrence and \$1 million
 27 annual aggregate, sufficient to protect it from claims for
 28 damage for personal injury, including accidental death, as
 29 well as claims for property damage which may arise from
 30 performance of work under the program, designating the state
 31 as an additional insured party.

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1 (d) Maintains professional liability insurance of at
2 least \$1 million per occurrence and \$1 million annual
3 aggregate.

4 (e) Has the capacity to perform or directly supervise
5 the majority of the work at a site in accordance with s.
6 489.113(9).

7 (7) Any professional engineer or geologist providing
8 professional services relating to site rehabilitation program
9 tasks must carry professional liability insurance with a
10 coverage limit of at least \$1 million.

11 (8) During the cleanup process, if the department or
12 local program fails to complete review of a technical document
13 within the timeframe specified in the brownfield site
14 rehabilitation agreement, the person responsible for
15 brownfield site rehabilitation may proceed to the next site
16 rehabilitation task. However, the person responsible for
17 brownfield site rehabilitation does so at its own risk and may
18 be required by the department or local program to complete
19 additional work on a previous task. Exceptions to this
20 subsection include requests for "No Further Action,"
21 "Monitoring Only Proposals," and feasibility studies, which
22 must be approved prior to implementation.

23 (9) If the person responsible for brownfield site
24 rehabilitation fails to comply with the brownfield site
25 rehabilitation agreement, the department shall allow 90 days
26 for the person responsible for brownfield site rehabilitation
27 to return to compliance with the provision at issue or to
28 negotiate a modification to the brownfield site rehabilitation
29 agreement with the department for good cause shown. If the
30 project is not returned to compliance with the brownfield site
31

1 rehabilitation agreement and a modification cannot be
2 negotiated, the immunity provisions of s. 376.82 are revoked.

3 (10) The department is specifically authorized and
4 encouraged to enter into delegation agreements with local
5 pollution control programs approved under s. 403.182 to
6 administer the brownfield program within their jurisdictions,
7 thereby maximizing the integration of this process with the
8 other local development processes needed to facilitate
9 redevelopment of a brownfield area.

10 (11) Local governments are encouraged to use the full
11 range of economic and tax incentives available to facilitate
12 and promote the rehabilitation of brownfield areas, to help
13 eliminate the public health and environmental hazards, and to
14 promote the creation of jobs and economic development in these
15 previously run-down, blighted, and underutilized areas.

16 Section 5. Section 376.81, Florida Statutes, is
17 created to read:

18 376.81 Brownfield Site and Brownfield Areas
19 Contamination Cleanup Criteria.--

20 (1) It is the intent of the Legislature to protect the
21 health of all people under actual circumstances of exposure.
22 By January 1, 1998, the secretary shall establish criteria by
23 rule for the purpose of determining, on a site-specific basis,
24 the rehabilitation program tasks that comprise a site
25 rehabilitation program and the level at which a rehabilitation
26 program task and a site rehabilitation program may be deemed
27 completed. In establishing the rule, the department shall
28 incorporate, to the maximum extent feasible, risk-based
29 corrective action principles to achieve protection of human
30 health and safety and the environment in a cost-effective
31 manner as provided in this subsection. The criteria for

1 determining what constitutes a rehabilitation program task or
2 completion of a site rehabilitation program task or site
3 rehabilitation program must:

4 (a) Consider the current exposure and potential risk
5 of exposure to humans and the environment, including multiple
6 pathways of exposure.

7 (b) Establish the point of compliance at the source of
8 the contamination. However, the department may temporarily
9 move the point of compliance to the boundary of the property,
10 or to the edge of the plume when the plume is within the
11 property boundary, while cleanup, including cleanup through
12 natural attenuation processes in conjunction with appropriate
13 monitoring, is proceeding. The department also may, criteria
14 provided for in this section, temporarily extend the point of
15 compliance beyond the property boundary with appropriate
16 monitoring, if the extension is needed to facilitate natural
17 attenuation or to address the current conditions of the plume
18 and if human health, public safety, and the environment are
19 adequately protected. Temporary extension of the point of
20 compliance beyond the property boundary, as provided in this
21 paragraph, must include notice to local governments and owners
22 of any property into which the point of compliance is allowed
23 to extend.

24 (c) Ensure that the site-specific cleanup goal is that
25 all contaminated brownfield sites and brownfield areas
26 ultimately achieve the applicable cleanup target levels
27 provided in this section. However, the department may allow
28 concentrations of contaminants to temporarily exceed the
29 applicable cleanup target levels while cleanup, including
30 cleanup through natural attenuation processes in conjunction
31

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1 with appropriate monitoring, is proceeding, if human health,
2 public safety, and the environment are adequately protected.

3 (d) Allow brownfield site and brownfield area
4 rehabilitation programs to include the use of institutional or
5 engineering controls to eliminate the potential exposure to
6 contaminants to humans or the environment. The use of controls
7 must be preapproved by the department. When institutional or
8 engineering controls are implemented to control exposure, the
9 removal of the controls must have prior department approval
10 and must be accompanied by the resumption of active cleanup,
11 or other approved controls, unless cleanup target levels under
12 this section have been achieved.

13 (e) Consider the synergistic, antagonistic, and
14 additive effects of contaminants when the scientific data
15 becomes available.

16 (f) Take into consideration individual site
17 characteristics that include, but are not limited to, the
18 current and projected use of the affected ground water and
19 surface water in the vicinity of the site, current and
20 projected land uses of the area affected by the contamination,
21 the exposed population, the degree and extent of
22 contamination, the rate of contaminant migration, the apparent
23 or potential rate of contaminant degradation through natural
24 attenuation processes, the location of the plume, and the
25 potential for further migration in relation to site property
26 boundaries.

27 (g) Apply water quality standards as follows:

28 1. Cleanup target levels for each contaminant found in
29 ground water must be the applicable state water quality
30 standards. Where the standards do not exist, the cleanup
31 target levels for ground water must be based on the minimum

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1 criteria specified in department rule. The department shall
2 consider the following, as appropriate, in establishing the
3 applicable minimum criteria: calculations using a lifetime
4 cancer risk level of 1.0E-6; a hazard index of 1 or less; the
5 best achievable detection limit; the naturally occurring
6 background concentration; or nuisance, organoleptic, and
7 aesthetic considerations.

8 2. Where surface waters are exposed to contaminated
9 ground water, the cleanup target levels for the contaminants
10 must be based on the surface water standards as established by
11 department rule. The point of measuring compliance with the
12 surface water standards must be in the ground water
13 immediately adjacent to the surface water body.

14 3. The department may set alternative cleanup target
15 levels based upon an applicant's demonstration, using
16 site-specific modeling and risk assessment studies, that human
17 health, public safety, and the environment are adequately
18 protected.

19 (h) Provide for the department to issue a "no further
20 action order" based upon the degree to which the desired
21 cleanup target level is achievable and can be reasonably and
22 cost-effectively implemented within available technologies or
23 engineering and institutional control strategies. Where a
24 state water quality standard is applicable, a deviation may
25 not result in the application of cleanup target levels more
26 stringent than the standard. In determining whether it is
27 appropriate to establish alternate cleanup target levels at a
28 site, the department must consider the effectiveness of source
29 removal that has been completed at the site and the practical
30 likelihood of: the use of low yield or poor quality ground
31 water; the use of ground water near marine surfacewater

1 bodies; the current and projected use of the affected ground
2 water in the vicinity of the site; or the use of ground water
3 in the immediate vicinity of the contaminated area, where it
4 has been demonstrated that the groundwater contamination is
5 not migrating away from such localized source; adequate
6 protection of human health, public safety, and the
7 environment.

8 (i) Establish appropriate cleanup target levels for
9 soils.

10 1. In establishing soil cleanup target levels for
11 human exposure to each contaminant found in soils from the
12 land surface to 2 feet below land surface, the department
13 shall consider the following, as appropriate: calculations
14 using a lifetime cancer risk level of $1.0E-6$; a hazard index
15 of 1 or less; the best achievable detection limit; or the
16 naturally occurring background concentration.

17 2. Leachability-based soil target levels must be based
18 on protection of the groundwater cleanup target levels or the
19 alternate cleanup target levels for ground water established
20 under this paragraph, as appropriate. Source removal and other
21 cost-effective alternatives that are technologically feasible
22 must be considered in achieving the leachability soil target
23 levels established by the department. The leachability goals
24 are not applicable if the department determines, based upon
25 individual site characteristics, that contaminants will not
26 leach into the ground water at levels that pose a threat to
27 human health and safety or the environment.

28 3. The department may set alternative cleanup target
29 levels based upon an applicant's demonstration, using
30 site-specific modeling and risk assessment studies, that human
31

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1 health, public safety, and the environment are adequately
2 protected.

3 (2) The department shall require source removal, if
4 warranted and cost-effective. Once source removal at a site is
5 complete, the department shall reevaluate the site to
6 determine the degree of active cleanup needed to continue.
7 Further, the department shall determine if the reevaluated
8 site qualifies for monitoring only or if no further action is
9 required to rehabilitate the site. If additional site
10 rehabilitation is necessary to reach "no further action"
11 status, the department is encouraged to use natural
12 attenuation and monitoring where site conditions warrant.

13 Section 6. Section 376.82, Florida Statutes, is
14 created to read:

15 376.82 Eligibility criteria and liability protection.

16 (1) Eligibility.--Any person or governmental entity
17 who has not caused or contributed to the contamination of a
18 brownfield site after July 1, 1997, is eligible to participate
19 in the brownfield rehabilitation program established in ss.
20 376.77-376.83, subject to the following:

21 (a) Potential brownfield sites currently subject to
22 ongoing corrective action or enforcement under federal
23 authority under the Solid Waste Disposal Act, 42 U.S.C. s.
24 6901, et seq., as amended; the Comprehensive Environmental
25 Response Compensation and Liability Act ("CERCLA"), 42 U.S.C.
26 9601, et seq., as amended; The Safe Drinking Water Act, 42
27 U.S.C. ss. 300f-300i, as amended; or the Clean Water Act, 33
28 U.S.C. ss. 1251-1387, as amended, are not eligible for
29 participation in a brownfield corrective action.

30 (b) Potential brownfield sites currently subject to
31 ongoing corrective action or enforcement under state authority

established in chapters 376 or 403, including those sites
currently subject to a pending consent order with the state,
3 are eligible for participation in a brownfield corrective
4 action if:

5 1. The proposed brownfield site is currently idle or
6 under-utilized as a result of the contamination, and
7 participation in the brownfield program will immediately,
8 after cleanup or sooner, result in increased economic
9 productivity at the site, including at a minimum the creation
10 of 10 new jobs, whether permanent or part-time, which are not
11 associated with implementation of the brownfield site
12 corrective action plan; and

13 2. The party is complying in good faith with the terms
14 of the existing consent order or corrective action plan, or
15 responding in good faith to an enforcement action, as
16 evidenced by a determination issued by the department or an
17 approved local pollution control program.

18 (2) Liability Protection.--Any person, including his
19 or her successors and assigns, who submits a brownfield site
20 corrective action rehabilitation schedule to the department or
21 an approved local pollution control program which schedule is
22 approved and implemented to successful completion is relieved
23 of further liability for remediation of the site to the state
24 and to third parties and for liability in contribution to any
25 other party who has or may incur cleanup liability for the
26 brownfield site.

27 (a) This section is not to be construed as a
28 limitation on the right of a third party other than the state
29 to pursue an action for damages to property or person;
30 however, such an action cannot compel site rehabilitation in
31 excess of that required in the approved corrective action

1 rehabilitation schedule or otherwise required by the
2 department or approved local pollution control program.

3 (b) This section does not affect the ability or
4 authority to seek contribution from any person who may have
5 liability with respect to the site and who did not receive
6 cleanup liability protection under this chapter.

7 (c) The liability protection provided under this
8 section is effective upon the approval of a brownfield site
9 corrective action rehabilitation schedule and remains
10 effective if the person implements and completes the approved
11 schedule.

12 (d) Completion of the performance of the remedial
13 obligations at the brownfield site must be evidenced by a site
14 rehabilitation completion letter or a "no further action"
15 letter issued by the department or the approved local
16 pollution control program, which letter must include the
17 following paragraph: "Based upon the information provided by
18 ... (Property owner) ... concerning property located at ...
19 (address) ..., it is the opinion of ... (the Florida
20 Department of Environmental Protection or approved local
21 pollution control program) ... that ... (party) ... has
22 successfully and satisfactorily implemented the approved
23 brownfield site corrective action rehabilitation schedule and
24 accordingly no further action is required to assure that any
25 land-use identified in the corrective action schedule is
26 consistent with existing and proposed uses and does not pose
27 an unacceptable risk to human health or the environment."

28 (e) The Legislature recognizes its limitations in
29 addressing cleanup liability under federal pollution control
30 programs. In an effort to secure federal liability protection
31 for persons willing to undertake remediation responsibility at

19-1236-97

1 a brownfield site, the department shall attempt to negotiate a
2 memorandum of agreement or similar document with the United
3 States Environmental Protection Agency, whereby the United
4 States Environmental Protection Agency agrees to forego
5 enforcement of federal corrective action authority at
6 brownfield sites that have received a site rehabilitation
7 completion or "no further action" determination from the
8 department or which are in the process of implementing a
9 corrective action rehabilitation schedule in accordance with
10 ss. 376.77-376.83.

11 (f) No unit of state or local government may be held
12 liable for implementing corrective actions at a brownfield
13 site as a result of the involuntary ownership of the site
14 through bankruptcy, tax delinquency, abandonment, or other
15 circumstances in which the local government involuntarily
16 acquires title by virtue of its function as a sovereign, or as
17 a result of ownership from donation or gift, unless the local
18 government has otherwise caused or contributed to a release of
19 a contaminant at the brownfield site.

20 (3) Reopeners.--Any person who completes remediation
21 in compliance with ss. 376.77-376.83 is not required to
22 undertake additional remedial actions unless it is
23 demonstrated:

24 (a) That fraud was committed in demonstrating site
25 conditions or completion of the corrective action
26 rehabilitation schedule;

27 (b) That new information confirms the existence of an
28 area of previously unknown contamination which exceeds the
29 site-specific rehabilitation levels established in accordance
30 with s. 376.81, or which otherwise poses the threat of harm to
31 public health, safety, or the environment in violation of the

1 terms of ss. 376.77-376.83. This reopener may not be construed
2 to impose future remedial obligations when newly discovered
3 risks or contaminants at a site are the result of advancements
4 in science and technology such as improved detection limits,
5 comprehension of synergistic effects of contamination, or the
6 listing of a new contaminant;

7 (c) That the remediation efforts failed to achieve the
8 cleanup standards or protection levels established under s.
9 376.81;

10 (d) That the level of risk is increased beyond the
11 acceptable risk established under s. 376.81 due to substantial
12 changes in exposure conditions, such as in a change in land
13 use from nonresidential to residential use. Any person who
14 changes the land use of the brownfield site thus causing the
15 level of risk to increase beyond the acceptable risk level may
16 be required by the department to undertake additional
17 remediation measures to assure that human health, public
18 safety, and the environment are protected to levels consistent
19 with s. 376.81; or

20 (e) That a new release occurs at the brownfield site
21 subsequent to a determination of eligibility for participation
22 in the brownfield program established under s. 376.80.

23 (4) Additional liability protection for financial
24 institutions.

25 (a) The Legislature declares that in order to achieve
26 the economic redevelopment and site rehabilitation of
27 brownfield sites in accordance with ss. 376.77-376.83, it is
28 imperative to encourage financing of real property
29 transactions involving brownfield site corrective action
30 plans. Accordingly lenders, trustees, personal
31 representatives, or any other fiduciaries are entitled to the

1 liability protection established in subsection (2) if they
2 have not caused or contributed to a release of a contaminant
3 at the brownfield site.

4 (b) Lenders who hold indicia of ownership at a
5 brownfield site primarily to protect a security interest or
6 who own a brownfield site as a result of foreclosure of a
7 security interest and who seek to sell, transfer, or otherwise
8 divest the site via sale at the earliest possible time are not
9 liable for the release or discharge of a contaminant from a
10 brownfield site; for the failure of a brownfield site owner to
11 complete the corrective action rehabilitation program; or for
12 future site rehabilitation activities required under a
13 reopener provision established in subsection (3) when the
14 lender has not divested the borrower of, or otherwise engaged
15 in, decision-making control of the site rehabilitation or site
16 operations or undertaken management activities beyond those
17 required to protect its financial interest and when an act or
18 omission of the lender has not otherwise caused or contributed
19 to a release of a contaminant at the brownfield site.

20 Section 7. Section 376.83, Florida Statutes, is
21 created to read:

22 376.83 Violation, penalties.--

23 (1) It is a violation of ss. 376.77-376.82, and it is
24 prohibited for any person:

25 (a) To knowingly make any false statement,
26 representation, or certification in any application, record,
27 report, plan, or other document filed or required to be
28 maintained, or to falsify, tamper with, or knowingly render
29 inaccurate any monitoring device or method required to be
30 maintained under ss. 376.77-376.82, or by any permit, rule, or
31 order issued under this chapter or chapter 403.

1 (2) Any person who willfully commits a violation
2 specified in paragraph (1)(a) is guilty of a misdemeanor of
3 the first degree punishable as provided in s. 775.082 and by a
4 fine of not more than \$10,000 or by 6 months in jail, or by
5 both, for each offense. Each day during any portion of which
6 such violation occurs constitutes a separate offense.

7 Section 8. (1) The Legislature recognizes that the
8 United States Environmental Protection Agency has created
9 several pilot projects for redevelopment of brownfield areas
10 to gather information on the best ways to return old
11 industrial and commercial sites to productive use in
12 situations where redevelopment is complicated by potential
13 environmental contamination. These pilot project areas will
14 perform initial work to seek developers to restore the sites,
15 and will also incorporate the efforts of lenders, regulators,
16 and other groups. The Environmental Protection Agency
17 initiative is flexible, allowing local governments to use a
18 variety of approaches to rehabilitate abandoned or under-used
19 sites, neighborhoods, and small regional areas.

20 (2)(a) The Legislature has determined that it would be
21 beneficial to provide similar incentives in this state for the
22 rehabilitation and redevelopment of brownfield areas. A series
23 of pilot projects in this state could help demonstrate a
24 variety of techniques and approaches to mobilize public and
25 private resources for the purposes of accelerating the
26 rehabilitation and redevelopment of brownfield areas. The
27 pilot projects could also help form partnerships with the
28 federal pilot projects in areas where opportunities are
29 available. Accordingly, the department shall establish five
30 pilot projects for rehabilitation of brownfield areas
31 including the two areas that are already pilot projects

designated by the United State Environmental Protection Agency. The remaining three pilot projects shall be selected based on the following criteria: one of the projects should include multiple brownfield sites, including one or more sites owned by the state or a local government, which contain contamination for which a governmental entity is potentially responsible and which have filed an application for designation to the United States Environmental Protection Agency; one project should be located in a rural area; and one project should be a brownfield site owned by a private party.

(b) The department shall work with local officials in the pilot project area to identify specific sites that should be included in the brownfield area pilot project. The project should demonstrate a commitment of public and private entities and involve the local community. These pilot projects should be undertaken with the objective of a fast-track approach to demonstrate all phases of rehabilitation and what can be accomplished using federal, state, local, and private resources. The department is directed to employ risk-based corrective action considerations specified in section 376.81, Florida Statutes, in overseeing and evaluating the site-rehabilitation plans for pilot project areas.

Section 9. The sum of \$5 million is appropriated from the General Revenue Fund for fiscal year 1997-1998 to the Department of Environmental Protection to carry out the purposes of section 8 of this act relating to specified pilot project areas. Of the \$5 million, \$1 million must be allocated to each specified pilot project area. Of the amounts available to each pilot project area, one-half must be available to employers who participate in the WAGES Program and have business locations in designated brownfield areas. These

amounts must be used for incentive payments to encourage
employers to employ program participants and may offset wage
costs for employees who are employed for longer than 6 months
and with wages greater than \$15,000 annually. Additionally,
the sum of \$275,000 is appropriated from the Water Quality
Assurance Trust Fund and seven positions are authorized for
fiscal year 1997-1998 for the Department of Environmental
Protection to carry out its responsibilities under this act.

Section 10. This act shall take effect July 1, 1997.

SENATE SUMMARY

Provides for brownfield contamination site rehabilitation through a process involving federal, state, and local programs. Appropriates funds to the Department of Environmental Protection to create several pilot projects and to participate in some already designated pilot projects of the United States Environmental Protection Agency.

21-1199-97

1 A bill to be entitled

2 An act relating to brownfields redevelopment;
3 creating s. 376.77; providing a short title;
4 creating s. 376.78, F.S.; providing legislative
5 intent; creating s. 376.79, F.S.; defining
6 terms; creating s. 376.80, F.S.; providing
7 criteria for the designation of brownfield
8 areas and brownfield sites; creating s. 376.81;
9 providing for the brownfield designation and
10 implementation process; creating s. 376.82,
11 F.S.; providing for enforcement orders and
12 criminal penalties; creating s. 376.83, F.S.;
13 reserving authority for seeking relief;
14 directing local governments to coordinate
15 efforts to provide health services; providing
16 an effective date.

17
18 Be It Enacted by the Legislature of the State of Florida:

19
20 Section 1. Section 376.77, Florida Statutes, is
21 created to read:

22 376.77 Short title.--Sections 376.77-376 83 may be
23 cited as the "Brownfields Redevelopment Act."

24 Section 2. Section 376.78, Florida Statutes, is
25 created to read:

26 376.78 Legislative Intent.--The Legislature finds and
27 declares the following:

28 (1) The elimination of public health and environmental
29 hazards on existing commercial and industrial sites is vital
30 to their use and reuse as sources of employment, housing,
31 recreation, and open space areas. The reuse of industrial land

1 is an important component of sound land-use policy that will
2 help prevent the needless development of prime farmland, open
3 space areas, and natural areas, and reduce public costs for
4 installing new water, sewer, and highway infrastructure;

5 (2) Degraded and hazardous physical environments are
6 characteristic of contaminated sites and have contributed to
7 and are inseparable from issues of human disease and illness,
8 crime, community disinvestment, residential segregation,
9 economic disincentive, lack of educational and employment
10 opportunities, infrastructure decay, and overall community
11 disintegration;

12 (3) The abandonment or underuse of brownfield sites
13 results in the inefficient use of public facilities and
14 services as well as land and other natural resources, extends
15 conditions of blight in local communities, and contributes to
16 concerns about environmental equity and the distribution of
17 environmental risks across population groups;

18 (4) Minority and low-income communities are
19 disproportionately impacted by targeted environmental
20 hazardous sites in the state, and the people living in these
21 communities and near these sites lack access to health care
22 information regarding the possible consequences of exposure to
23 pollution;

24 (5) Environmental justice encompasses and provides a
25 framework to address the crisis in urban Florida, and
26 community revitalization that incorporates environmental
27 justice can stem the ecologically untenable, environmentally
28 damaging, socially costly, and racially divisive phenomenon of
29 urban sprawl and greenfields development by providing
30 opportunities for building partnerships between government,
31 developers, and environmentally overburdened communities;

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1 (6) Incentives should be put in place to encourage
2 responsible persons to voluntarily develop and implement
3 cleanup plans without the use of taxpayer funds;

4 (7) Environmental and public health hazards cannot be
5 eliminated without clear, predictable remediation standards
6 that provide for the protection of the environment and public
7 health;

8 (8) Cleanup plans should be based on current federal,
9 state, and local government groundwater or soil standards or
10 cleanup criteria or, when cost-effective, to site-specific,
11 risk-based standards as defined in s. 376.81; and

12 (9) Cooperation among federal, state, and local
13 agencies, local community development organizations, current
14 owners, and prospective purchasers of brownfield sites is
15 required to accomplish timely cleanup activities and the
16 redevelopment or reuse of brownfield sites.

17 Section 3. Section 376.79, Florida Statutes, is
18 created to read:

19 376.79 Definitions.--As used in ss. 376.77-376.83, the
20 term:

21 (1) "Brownfield area" means an area designated in
22 accordance with ss. 376.77-376.80(1).

23 (2) "Brownfield site" means a contaminated parcel of
24 property that is currently undeveloped, abandoned, or
25 underutilized and that is located within the planned urban
26 development area, community redevelopment area, enterprise
27 zones, or a federally designated brownfield pilot project area
28 and meets the criteria set forth in s. 376.80(2).

29 (3) "Department" means the Department of Environmental
30 Protection.

31

1 Section 4. Section 376.80, Florida Statutes, is
2 created to read:

3 376.80 Criteria for designation of brownfield areas
4 and brownfield sites.--

5 (1) Criteria for designation of brownfield areas.--A
6 county may designate an area as a brownfield area if it is
7 wholly contained within a county, the local government meets
8 the public notice and hearing requirements of s. 376.81, and
9 it meets the following criteria:

10 (a) The area is completely within an existing urban
11 service area as defined in s. 163.3164, and at least 80
12 percent of the area would qualify for urban infill as defined
13 in s. 163.3164;

14 (b) At least 30 percent of the area, based on total
15 square footage, has met the criteria of a brownfield site as
16 set forth in section 376.79(2); and

17 (c) No less than 871,200 square feet are designated at
18 any one time, but additions to an existing brownfield area
19 need not meet this square footage requirement as long as
20 subsections (a) and (b) are met.

21 (2) Criteria for designation of brownfield sites.--A
22 county may designate any parcel within a brownfield area as a
23 brownfield site if the site and the person responsible for
24 brownfield site rehabilitation meet the following criteria:

25 (a) The site has existing soil, surfacewater, or
26 groundwater contamination;

27 (b) The person responsible for brownfield site
28 rehabilitation has or will, upon designation, obtain
29 contractual right and obligation over the site for the
30 purposes of completing all requirements set forth in ss.
31 376.77-376.83; and

1 (c) The person responsible for brownfield site
2 rehabilitation enters into a brownfield site rehabilitation
3 agreement with the department or an approved local
4 environmental program. The brownfield site rehabilitation
5 agreement must include:

6 1. Posting of a performance bond sufficient to
7 complete the assessment and cleanup of the site;

8 2. A brownfield site rehabilitation schedule,
9 including milestones for completion of site rehabilitation
10 tasks and submittal of technical reports and rehabilitation
11 plans as agreed to by the parties;

12 3. A commitment to conduct site rehabilitation
13 activities under the supervision of a professional engineer or
14 professional geologist registered in the state who meets all
15 certification and license requirements imposed by law.
16 Certified professionals must carry professional liability
17 insurance with a coverage limit of at least \$500,000 and
18 contractor's pollution liability insurance with a coverage
19 limit of at least \$1 million which must be in effect during
20 the period in which cleanup services are to be provided and
21 for a period of at least 2 years after cleanup services have
22 been completed;

23 4. A commitment to conduct site rehabilitation in
24 accordance with an approved comprehensive quality assurance
25 plan pursuant to department rules;

26 5. A commitment to conduct site rehabilitation
27 consistent with state, federal, and local laws and consistent
28 with the department's risk based corrective action rules and
29 guidelines;

30
31

1 6. Timeframes for the department's or approved local
2 program's review of technical reports and plans submitted in
3 accordance with the agreement; and

4 7. Other provisions that the eligible party and the
5 agency with oversight responsibility agree upon which are
6 consistent with ss. 376.77-376.83 and which will improve or
7 enhance the brownfield site rehabilitation process.

8 (d) The person responsible for brownfield site
9 rehabilitation shall prepare a pollution prevention plan for
10 the brownfield site. The plan will identify pollution
11 prevention measures that must be incorporated into licenses
12 and permits for new and existing facilities on the site. Such
13 measures include improved inventory and production controls;
14 procedures for preventing loss, spills, and leaks of hazardous
15 wastes and materials; and goals for the reduction of releases
16 of toxic materials.

17 (e) The person responsible for brownfield site
18 rehabilitation shall commit to and demonstrate the financial
19 ability to construct a locally approved urban redevelopment or
20 urban infill project on the site as defined in s. 163.3164.

21 (3) A brownfield area may not include any site subject
22 to ongoing corrective action or enforcement pursuant to
23 federal authority under the Solid Waste Disposal Act, 42
24 U.S.C. s. 6901 et seq., as amended; the Comprehensive
25 Environmental Response Compensation and Liability Act
26 (CERCLA), 42 U.S.C. 9601 et seq., as amended; The Safe
27 Drinking Water Act, 42 U.S.C. ss. 300f-300i, as amended; The
28 Resource Conservation Recovery Act, 42 U.S.C. s. 6913 et seq.,
29 as amended; or the Clean Water Act, 33 U.S.C. ss. 1251-1387,
30 as amended.

31

1 (4) Potential brownfield sites currently subject to
2 ongoing corrective action or enforcement pursuant to state
3 authority established in chapter 376 or chapter 403, including
4 those sites currently subject to a pending consent order with
5 the state or local government, are eligible for participation
6 in a brownfield corrective action if the proposed brownfield
7 site is currently idle or underutilized as a result of the
8 contamination, and participation in the brownfield program
9 will immediately, after cleanup or sooner, result in increased
10 economic productivity at the site, including at a minimum the
11 creation of 10 new jobs, whether permanent or part-time, which
12 are not associated with implementation of the brownfield site
13 corrective action plan, and the person responsible for
14 brownfield site rehabilitation is in good-faith compliance
15 with the terms of the existing consent order, corrective
16 action plan, or is responding to an enforcement action as
17 evidenced by a good-faith determination issued by the
18 department or a local government with delegated authority.

19 Section 5. Section 376.81, Florida Statutes, is
20 created to read:

21 376.81 Brownfield area designation and implementation
22 process.--

23 (1) Brownfield area designation process.--Before
24 designating a brownfield area pursuant to the criteria of s.
25 376.80 a local government shall:

26 (a) Adhere to the public participation procedures
27 equivalent to those prescribed in ss. 125.66(4) and
28 166.041(3)(c) and establish an advisory committee for the
29 purpose of delineating the boundary of the brownfield area,
30 addressing remediation, future land use, and other issues
31 related to the brownfield. Interested participants must

1 include businesses operating within the brownfield area, the
2 residents residing within or adjacent to the brownfield area,
3 local financial or insurance entities, the local chamber of
4 commerce, and interested nonprofit community-based
5 organizations operating within the brownfield area;

6 (b) Provide public notice of activities related to
7 remediation, future land use, and proposed agency action
8 through door-stop notice and in media which target the
9 population affected by the proposed agency action, including
10 ethnic newspapers, local community bulletins, and televised
11 public service announcements. The notification must include
12 tenants and landowners within the radius of occupied dwellings
13 affected by the proposed agency action;

14 (c) Cosponsor outreach through public meetings and
15 roundtable discussions with community and neighborhood
16 organizations, community service organizations, educational
17 institutions, religious communities, medical communities, and
18 nongovernmental organizations, which meetings address
19 decisionmaking opportunities and establish community goals;

20 (d) Design the logistics of the public meetings so as
21 to encourage participation of affected community members by
22 addressing accessible time and location and language
23 considerations;

24 (e) Provide adequate funding to enable participation
25 by affected community members, including independent technical
26 assistance, education, and training for participants; and

27 (f) Provide the department and the Department of
28 Community Affairs a notice of intent to designate a brownfield
29 area no less than 60 days before the date of the first public
30 hearing. The notice must include:

31

1 1. A detailed map of the area proposed for designation
2 delineating the exact parcels that are to be included in the
3 brownfield area; or

4 2. A less detailed map accompanied by a detailed legal
5 description of the brownfield area.

6 (2) Brownfield area cleanup implementation process.--

7 (a) The local government shall submit a copy of the
8 resolution designating the brownfield area to the department
9 within 30 days after adoption.

10 (b) Brownfield site contamination cleanup
11 criteria.--The department and the delegated local
12 environmental programs shall use the following factors and
13 criteria when supervising the cleanup and rehabilitation of
14 brownfield sites contaminated with substances regulated by the
15 department:

16 1. The current exposure and potential risk of exposure
17 to humans and the environment, including multiple pathways of
18 exposure. The physical and chemical properties and the
19 biological effects of each contaminant to determine the
20 appropriateness of using risk-based corrective action
21 principles.

22 2. The point of compliance must be at the source of
23 the contamination. However, the department may temporarily
24 move the point of compliance to the boundary of the property
25 or to the edge of the plume when the plume is within the
26 property boundary while cleanup, including cleanup through
27 natural attenuation processes in conjunction with appropriate
28 monitoring, is proceeding. The department may under the
29 criteria provided in this section temporarily extend the point
30 of compliance beyond the boundary of the property with
31 appropriate monitoring if the extension is needed to

1 facilitate natural attenuation or to address the current
2 conditions of the plume if human health, public safety, and
3 the environment are adequately protected. Temporary extension
4 of the point of compliance beyond the property boundary, as
5 provided in this paragraph, must include notice to local
6 governments; actual notice to owners of any property into
7 which the point of compliance is allowed to extend. Before the
8 temporary extension, measures prescribed in paragraph (1)(a)
9 must be followed.

10 3. The site specific cleanup goal must be that all
11 contaminated brownfield sites ultimately achieve the
12 applicable cleanup target levels provided in this section.
13 However, the department is authorized to allow concentrations
14 of contaminants to temporarily exceed the applicable cleanup
15 target levels while cleanup, including cleanup through natural
16 attenuation processes in conjunction with appropriate
17 monitoring, is proceeding if human health, public safety, and
18 the environment are adequately protected. Before the
19 authorization, measures prescribed in paragraph (1)(a) must be
20 followed.

21 4. Site rehabilitation programs may include the use of
22 institutional or engineering controls to eliminate the
23 potential exposure to contaminants to humans or the
24 environment. Use of such controls must be preapproved by the
25 department or the delegated local environmental program.
26 Before the approval, the procedures described in paragraph
27 (1)(a) must be followed. When institutional or engineering
28 controls are implemented to control exposure, the removal of
29 such controls must have prior department or delegated local
30 environmental program approval and must be accompanied by the
31

1 resumption of active cleanup or other approved controls unless
2 cleanup target levels under this section have been achieved.

3 5. The additive effects of contaminants must also be
4 considered. The synergistic effects must also be considered
5 when the scientific data becomes available.

6 6. Individual site characteristics which include, but
7 are not limited to, the current and projected use of the
8 affected ground water and surface water in the vicinity of the
9 site, current and projected land uses of the area affected by
10 the contamination and the surrounding area, the exposed
11 population, the degree and extent of contamination, the rate
12 of contamination migration, the apparent or potential rate of
13 contamination degradation through natural attenuation
14 processes, the location of the plume, and the potential for
15 further migration in relation to site property boundaries.
16 Special attention must be given to ensure that environmental
17 justice goals of the state are addressed.

18 7. Applicable state water quality standards.--

19 a. Cleanup target levels for each contaminant found in
20 the ground water must be the applicable state water quality
21 standards. Where such standards do not exist, the cleanup
22 target levels for ground water must be based on the minimum
23 criteria specified in department rule. The department shall
24 consider the following, as appropriate, in establishing the
25 applicable minimum criteria: calculations using a lifetime
26 cancer risk level of $1.0E-6$; a hazard index of 1 or less; the
27 best achievable detection limit; the naturally occurring
28 background concentration; and nuisance, organoleptic, and
29 aesthetic considerations.

30 b. If surface waters are exposed to contaminated
31 ground water, the cleanup target levels for the contamination

1 discovers, or learns that a party, redeveloper, or other agent
2 of a party to a brownfield agreement has violated the
3 provisions of ss. 376.77-376.83 the department or agency may:

4 (a) Issue an order stating with reasonable specificity
5 the nature of the violation and requiring compliance
6 immediately or within a specified time. An order under this
7 section includes, but is not limited to, orders suspending or
8 revoking licenses, orders requiring a person to take remedial
9 actions, or cease and desist orders; or

10 (b) Request the State Attorney's office of the circuit
11 in which the alleged violation occurred to bring a criminal
12 action as provided in this section.

13 (2) Any person who is issued an order may file a
14 request for reconsideration with the director within 7 days of
15 the receipt of the order. The department or agency shall
16 participate in an informal hearing on the merits of the order
17 within 10 days of the filing of the request for
18 reconsideration. The filing of a request for reconsideration
19 does not stay or suspend the execution of the order.

20 (3) Any licensed remediation specialist who
21 fraudulently misrepresents that work has been completed and
22 such action results in an unjustified and inexcusable
23 disregard for the safety of others, thereby placing another in
24 imminent danger or contributing to ongoing harm to the
25 environment, is guilty of a felony of the third degree,
26 punishable by a fine of not more than \$50,000 or imprisonment
27 for not less than 1 year nor more than 2 years, or both.

28 (4) If any person associated with remediation of a
29 brownfield site engages in fraudulent acts or
30 misrepresentations to the division, he or she is guilty of a
31 felony of the third degree, punishable by a fine of not more

1 than \$50,000 or imprisonment for not less than 1 year nor more
 2 than 2 years, or both.

3 Section 7. Section 376.83, Florida Statutes, is
 4 created to read:

5 376.83 Authority reserved.--Except for the performance
 6 of further remediation of the site, nothing in ss.
 7 376.77-376.83 affect the ability or authority of any person to
 8 seek any relief available against any party who may have
 9 liability with respect to a site. Sections 376.77-376.83 do
 10 not affect the ability or authority to seek contribution from
 11 any person who may have liability with respect to a site and
 12 did not receive cleanup liability protection under ss.
 13 376.77-376.83.

14 Section 8. Local governments shall coordinate efforts
 15 to address the delivery of health services to low-income
 16 individuals living within or adjacent to a brownfield area,
 17 who may suffer adverse health impacts resulting from exposure
 18 to the contaminants at a brownfield site. The person
 19 responsible for brownfield site rehabilitation may be
 20 required, at the discretion of the local government, to
 21 contribute resources to ensure the availability of such health
 22 resources.

23 Section 9. This act shall take effect July 1, 1997.

25 *****

26 SENATE SUMMARY

27 Provides a process for designating and cleaning up
 28 contaminated brownfield sites. Provides penalties.
 29 Directs local governments to coordinate efforts to
 30 provide health services.
 31

By the Committee on Natural Resources and Senators Latvala and Hargrett

312-1684A-97

A bill to be entitled

An act relating to brownfields redevelopment; creating s. 376.77, F.S.; providing a short title; creating s. 376.78, F.S.; providing legislative intent; creating s. 376.79, F.S.; defining terms; creating s. 376.80, F.S.; providing for a brownfield program administration process; creating s. 376.81, F.S.; providing for brownfield site contamination cleanup criteria; creating s. 376.82, F.S.; providing for eligibility criteria and liability protection; creating s. 376.83, F.S.; providing penalties; providing for pilot projects; providing appropriations; requiring the Department of Environmental Protection to report annually to the Legislature; providing an effective date.

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

Section 1. Section 376.77, Florida Statutes, is created to read:

376.77 Short title.--Sections 376.77-376.83 may be cited as the "Brownfields Redevelopment Act."

Section 2. Section 376.78, Florida Statutes, is created to read:

376.78 Legislative intent.--The Legislature finds and declares the following:

(1) The reduction of public health and environmental hazards on existing commercial and industrial sites is vital to their use and reuse as sources of employment, housing,

1 recreation, and open-space areas. The reuse of industrial land
2 is an important component of sound land-use policy for
3 productive urban purposes which will help prevent the
4 premature development of farmland, open-space areas, and
5 natural areas, and reduce public costs for installing new
6 water, sewer, and highway infrastructure.

7 (2) The abandonment or underuse of brownfield sites
8 also results in the inefficient use of public facilities and
9 services, as well as land and other natural resources, extends
10 conditions of blight in local communities, and contributes to
11 concerns about environmental equity and the distribution of
12 environmental risks across population groups.

13 (3) Incentives should be put in place to encourage
14 responsible persons to voluntarily develop and implement
15 cleanup plans without the use of taxpayer funds or the need
16 for enforcement actions by state and local governments.

17 (4) Environmental and public health hazards cannot be
18 eliminated without clear, predictable remediation standards
19 that provide for the protection of the environment and public
20 health.

21 (5) Site rehabilitation should be based on the actual
22 risk that contamination may pose to the environment and public
23 health, taking into account current and future land and water
24 use and the degree to which contamination may spread and place
25 the public or the environment at risk.

26 (6) According to the statistical proximity study
27 contained in the final report of the Environmental Equity and
28 Justice Commission, minority and low-income communities are
29 disproportionately impacted by targeted environmentally
30 hazardous sites. The results indicate the need for the health
31 and risk exposure assessments of minority and poverty

1 populations around environmentally hazardous sites in this
2 state. Redevelopment of hazardous sites should address
3 questions relating to environmental and health consequences.

4 (7) Environmental justice considerations should be
5 inherent in meaningful public participation elements of a
6 brownfields redevelopment program.

7 (8) The existence of brownfields within a community
8 may contribute to, or may be a symptom of, overall community
9 decline, including issues of human disease and illness, crime,
10 educational and employment opportunities, and infrastructure
11 decay. The environment is an important element of quality of
12 life in any community, along with economic opportunity,
13 educational achievement, access to health care, housing
14 quality and availability, provision of governmental services,
15 and other socioeconomic factors. Brownfields redevelopment,
16 properly done, can be a significant element in community
17 revitalization.

18 (9) Cooperation among federal, state, and local
19 agencies, local community development organizations, and
20 current owners and prospective purchasers of brownfield sites
21 is required to accomplish timely cleanup activities and the
22 redevelopment or reuse of brownfield sites.

23 Section 3. Section 376.79, Florida Statutes, is
24 created to read:

25 376.79 Definitions.--As used in ss. 376.77-376.83, the
26 term:

27 (1) "Brownfield sites" means sites that are generally
28 abandoned, idled, or under-used industrial and commercial
29 properties where expansion or redevelopment is complicated by
30 actual or perceived environmental contamination.

1 (2) "Brownfield area" means a contiguous area of one
2 or more brownfield sites, some of which may not be
3 contaminated, and which has been designated by a local
4 government by resolution. Such areas may include all or
5 portions of community redevelopment areas, enterprise zones,
6 empowerment zones, other such designated economically deprived
7 communities and areas, and Environmental Protection
8 Agency-designated brownfield pilot projects.

9 (3) "Environmental justice" means the fair treatment
10 of all people of all races, cultures, and incomes with respect
11 to the development, implementation, and enforcement of
12 environmental laws, regulations, and policies.

13 (4) "Department" means the Department of Environmental
14 Protection.

15 (5) "Local pollution control program" means a local
16 pollution control program that has received delegated
17 authority from the Department of Environmental Protection
18 under s. 403.182.

19 (6) "Person responsible for brownfield site
20 rehabilitation" means the individual or entity that is
21 designated by the local government in its resolution
22 establishing a brownfield area to enter into the brownfield
23 site rehabilitation agreement with the department.

24 (7) "Person" means any individual, partner, joint
25 venture, or corporation; any group of the foregoing, organized
26 or united for a business purpose; or any governmental entity.

27 Section 4. Section 376.80, Florida Statutes, is
28 created to read:

29 376.80 Brownfield program administration process.--

30 (1) A local government with jurisdiction over the
31 brownfield area must notify the department of its decision to

1 designate a brownfield area for rehabilitation for the
2 purposes of ss. 376.77-376.83. The notification must include a
3 resolution, by the local government body, to which is attached
4 a map adequate to clearly delineate exactly which parcels are
5 to be included in the brownfield area or alternatively a
6 less-detailed map accompanied by a detailed legal description
7 of the brownfield area. If a property owner within the area
8 proposed for designation by the local government requests in
9 writing to have his or her property removed from the proposed
10 designation, the local government shall grant the request. For
11 municipalities, the governing body shall adopt the resolution
12 in accordance with the procedures outlined in s. 166.041,
13 except that the notice for the public hearings on the proposed
14 resolution must be in the form established in s.
15 166.041(3)(c)2. For counties, the governing body shall adopt
16 the resolution in accordance with the procedures outlined in
17 s. 125.66, except that the notice for the public hearings on
18 the proposed resolution shall be in the form established in s.
19 125.66(4)(b)2.

20 (2)(a) If a local government proposes to designate a
21 brownfield area that is outside community redevelopment areas,
22 enterprise zones, empowerment zones, or designated brownfield
23 pilot project areas, the local government must conduct at
24 least one public hearing in the area to be designated to
25 provide an opportunity for public input on the size of the
26 area, the objectives for rehabilitation, job opportunities and
27 economic developments anticipated, neighborhood residents'
28 considerations, and other relevant local concerns. Notice of
29 the public hearing must be made in a newspaper of general
30 circulation in the area and the notice must be at least 6
31 inches square in size, must be in ethnic newspapers or local

1 community bulletins, must be posted in the affected area, and
2 must be announced at a scheduled meeting of the local
3 governing body before the actual public hearing. In
4 determining the areas to be designated, the local government
5 must consider:

6 1. Whether the brownfield area warrants economic
7 development and has a reasonable potential for such
8 activities;

9 2. Whether the proposed area to be designated
10 represents a reasonably focused approach and is not overly
11 large in geographic coverage;

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

14 4. Whether the area contains sites or parts of sites
15 suitable for limited recreational open space, cultural, or
16 historical preservation purposes.

17 (b) The local government shall designate a brownfield
18 area for rehabilitation under the provisions of this act if
19 requested to do so by a person who has agreed to participate
20 in the rehabilitation and who demonstrates that:

21 1. The rehabilitation of the proposed brownfield area
22 will result in economic productivity of the area, along with
23 the creation of at least ten new jobs, full-time or part-time,
24 which are not associated with the implementation of the
25 corrective-action plan.

26 2. Notice of the proposed rehabilitation of the
27 brownfield area has been provided to neighbors and nearby
28 residents of the proposed area to be designated and the person
29 proposing the area for designation has afforded an opportunity
30 for comments and suggestions about rehabilitation from those
31 receiving notice pursuant to this subsection.

1 3. The person proposing the area for designation has
2 provided reasonable assurance that he has sufficient financial
3 resources to complete and implement the corrective-action
4 plan.

5 4. The person proposing the area for designation can
6 provide assurances that implementing the plan will comply with
7 rules of the department to protect against adverse effects on
8 public health or the environment.

9 (3) The local government must at the time of the
10 adoption of the resolution notify the department of the entity
11 that it is designating as the person responsible for
12 brownfield site rehabilitation. If the agency or person who
13 will be responsible for the coordination changes during the
14 approval process specified in subsections (4), (5), and (6),
15 the department or the affected approved local pollution
16 control program must notify the affected local government when
17 the change occurs.

18 (4) Local governments or persons responsible for
19 rehabilitation of brownfield areas must establish an advisory
20 committee for the purpose of improving public participation
21 and receiving public comments on rehabilitation and
22 remediation of the brownfield area, future land use, local
23 employment opportunities, community safety, and environmental
24 justice. Such advisory committee should include residents
25 within or adjacent to the brownfield area, businesses
26 operating within the brownfield area, and others deemed
27 appropriate.

28 (5) The person responsible for brownfield site
29 rehabilitation must enter into a brownfield site
30 rehabilitation agreement with the department or an approved
31

1 local environmental program. The brownfield site
2 rehabilitation agreement must include:

3 (a) A brownfield site rehabilitation schedule,
4 including milestones for completion of site rehabilitation
5 tasks and submittal of technical reports and rehabilitation
6 plans as agreed upon by the parties to the agreement;

7 (b) A commitment to conduct site rehabilitation
8 activities under the observation of professional engineers or
9 geologists who are registered in accordance with the
10 requirements of chapter 471 or chapter 472, respectively.
11 Submittals provided by the person responsible for brownfield
12 site rehabilitation must be signed and sealed by a
13 professional engineer registered under chapter 471, or a
14 professional geologist registered under chapter 492,
15 certifying that the submittal and associated work comply with
16 the law and rules of the department and those governing the
17 profession. In addition, upon completion of the approved
18 remedial action, the department shall require a professional
19 engineer registered under chapter 471 or a professional
20 geologist registered under chapter 492 to certify that the
21 corrective action was, to the best of his or her knowledge,
22 completed in substantial conformance with the plans and
23 specifications approved by the department;

24 (c) A commitment to conduct site rehabilitation in
25 accordance with an approved comprehensive quality assurance
26 plan under department rules;

27 (d) A commitment to conduct site rehabilitation
28 consistent with state, federal, and local laws and consistent
29 with the brownfield site contamination cleanup criteria in s.
30 376.81, including any applicable requirements for risk-based
31 corrective action;

1 (e) Timeframes for the department's review of
2 technical reports and plans submitted in accordance with the
3 agreement. The department shall make every effort to adhere
4 to established agency goals for reasonable timeframes for
5 review of such documents;

6 (f) A commitment to secure site access for the
7 department or approved local environmental program to all
8 brownfield sites within the eligible brownfield area for
9 activities associated with site rehabilitation;

10 (g) Other provisions that the person responsible for
11 brownfield site rehabilitation and the department agree upon,
12 that are consistent with ss. 376.77-376.83, and that will
13 improve or enhance the brownfield site rehabilitation process;
14 and

15 (h) A description of any pollution prevention plan or
16 measures for the brownfield site. The plan shall identify
17 those pollution prevention measures, if any, that will be
18 incorporated into licenses or permits for new or existing
19 facilities on the site. Such measures may include improved
20 inventory and production controls and procedures for
21 preventing a loss, spills and leaks of hazardous wastes and
22 materials, and goals for the reduction of releases of toxic
23 materials.

24 (6) Any contractor performing site rehabilitation
25 program tasks must demonstrate to the department that the
26 contractor;

27 (a) Meets all certification and license requirements
28 imposed by law; and

29 (b) Has obtained approval for the comprehensive
30 quality-assurance plan prepared under department rules.
31

1 (7) The contractor must certify to the department that
2 the contractor:

3 (a) Complies with applicable OSHA regulations.

4 (b) Maintains workers' compensation insurance for all
5 employees as required by the Florida Workers' Compensation
6 Law.

7 (c) Maintains comprehensive general liability and
8 comprehensive automobile liability insurance with minimum
9 limits of at least \$1 million per occurrence and \$1 million
10 annual aggregate, sufficient to protect it from claims for
11 damage for personal injury, including accidental death, as
12 well as claims for property damage which may arise from
13 performance of work under the program, designating the state
14 as an additional insured party.

15 (d) Maintains professional liability insurance of at
16 least \$1 million per occurrence and \$1 million annual
17 aggregate.

18 (e) Has the capacity to perform or directly supervise
19 the majority of the work at a site in accordance with s.
20 489.113(9).

21 (8) Any professional engineer or geologist providing
22 professional services relating to site rehabilitation program
23 tasks must carry professional liability insurance with a
24 coverage limit of at least \$1 million.

25 (9) During the cleanup process, if the department or
26 local program fails to complete review of a technical document
27 within the timeframe specified in the brownfield site
28 rehabilitation agreement, the person responsible for
29 brownfield site rehabilitation may proceed to the next site
30 rehabilitation task. However, the person responsible for
31 brownfield site rehabilitation does so at its own risk and may

1 be required by the department or local program to complete
2 additional work on a previous task. Exceptions to this
3 subsection include requests for "no further action,"
4 "monitoring only proposals," and feasibility studies, which
5 must be approved prior to implementation.

6 (10) If the person responsible for brownfield site
7 rehabilitation fails to comply with the brownfield site
8 rehabilitation agreement, the department shall allow 90 days
9 for the person responsible for brownfield site rehabilitation
10 to return to compliance with the provision at issue or to
11 negotiate a modification to the brownfield site rehabilitation
12 agreement with the department for good cause shown. If an
13 imminent hazard exists, the 90-day grace period shall not
14 apply. If the project is not returned to compliance with the
15 brownfield site rehabilitation agreement and a modification
16 cannot be negotiated, the immunity provisions of s. 376.82 are
17 revoked.

18 (11) The department is specifically authorized and
19 encouraged to enter into delegation agreements with local
20 pollution control programs approved under s. 403.182 to
21 administer the brownfield program within their jurisdictions,
22 thereby maximizing the integration of this process with the
23 other local development processes needed to facilitate
24 redevelopment of a brownfield area.

25 (12) Local governments are encouraged to use the full
26 range of economic and tax incentives available to facilitate
27 and promote the rehabilitation of brownfield areas, to help
28 eliminate the public health and environmental hazards, and to
29 promote the creation of jobs and economic development in these
30 previously run-down, blighted, and underutilized areas.

1 Section 5. Section 376.81, Florida Statutes, is
2 created to read:

3 376.81 Brownfield site and brownfield areas
4 contamination cleanup criteria.--

5 (1) It is the intent of the Legislature to protect the
6 health of all people under actual circumstances of exposure.
7 By January 1, 1998, the secretary shall establish criteria by
8 rule for the purpose of determining, on a site-specific basis,
9 the rehabilitation program tasks that comprise a site
10 rehabilitation program and the level at which a rehabilitation
11 program task and a site rehabilitation program may be deemed
12 completed. In establishing the rule, the department shall
13 incorporate, to the maximum extent feasible, risk-based
14 corrective-action principles to achieve protection of human
15 health and safety and the environment in a cost-effective
16 manner as provided in this subsection. The criteria for
17 determining what constitutes a rehabilitation program task or
18 completion of a site rehabilitation program task or site
19 rehabilitation program must:

20 (a) Consider the current exposure and potential risk
21 of exposure to humans and the environment, including multiple
22 pathways of exposure. The physical, chemical, and biological
23 characteristics of each contaminant must be considered in
24 order to determine the feasibility of risk-based
25 corrective-action assessment.

26 (b) Establish the point of compliance at the source of
27 the contamination. In the circumstances provided below, and
28 after constructive notice and opportunity to comment within 30
29 days from receipt of the notice to local government, owners of
30 any property into which the point of compliance is allowed to
31 extend, and residents on any property into which the point of

1 compliance is allowed to extend, the department may
2 temporarily move the point of compliance to the boundary of
3 the property, or to the edge of the plume when the plume is
4 within the property boundary, while cleanup, including cleanup
5 through natural attenuation processes in conjunction with
6 appropriate monitoring, is proceeding. The department also
7 may, under criteria provided for in this section, temporarily
8 extend the point of compliance beyond the property boundary
9 with appropriate monitoring, if the extension is needed to
10 facilitate natural attenuation or to address the current
11 conditions of the plume and if human health, public safety,
12 and the environment are adequately protected. Temporary
13 extension of the point of compliance beyond the property
14 boundary, as provided in this paragraph, must include notice
15 to local governments and owners of any property into which the
16 point of compliance is allowed to extend.

17 (c) Ensure that the site-specific cleanup goal is that
18 all contaminated brownfield sites and brownfield areas
19 ultimately achieve the applicable cleanup target levels
20 provided in this section. In the circumstances provided below,
21 and after constructive notice and opportunity to comment
22 within 30 days from receipt of the notice to local government,
23 to owners of any property into which the point of compliance
24 is allowed to extend, and to residents on any property into
25 which the point of compliance is allowed to extend, the
26 department may allow concentrations of contaminants to
27 temporarily exceed the applicable cleanup target levels while
28 cleanup, including cleanup through natural attenuation
29 processes in conjunction with appropriate monitoring, is
30 proceeding, if human health, public safety, and the
31 environment are adequately protected.

1 (d) Allow brownfield site and brownfield area
2 rehabilitation programs to include the use of institutional or
3 engineering controls, where appropriate, to eliminate or
4 control the potential exposure to contaminants of humans or
5 the environment. The use of controls must be preapproved by
6 the department and only after constructive notice and
7 opportunity to comment within 30 days from receipt of notice
8 is provided to local governments, to owners of any property
9 into which the point of compliance is allowed to extend, and
10 to residents on any property into which the point of
11 compliance is allowed to extend. When institutional or
12 engineering controls are implemented to control exposure, the
13 removal of the controls must have prior department approval
14 and must be accompanied by the resumption of active cleanup,
15 or other approved controls, unless cleanup target levels under
16 this section have been achieved.

17 (e) Consider the additive effects of contaminants.
18 The synergistic and antagonistic effects shall also be
19 considered when the scientific data become available.

20 (f) Take into consideration individual site
21 characteristics that include, but are not limited to, the
22 current and projected use of the affected ground water and
23 surface water in the vicinity of the site, current and
24 projected land uses of the area affected by the contamination,
25 the exposed population, the degree and extent of
26 contamination, the rate of contaminant migration, the apparent
27 or potential rate of contaminant degradation through natural
28 attenuation processes, the location of the plume, and the
29 potential for further migration in relation to site property
30 boundaries.

31 (g) Apply water quality standards as follows:

1 1. Cleanup target levels for each contaminant found in
2 ground water must be the applicable state water quality
3 standards. Where the standards do not exist, the cleanup
4 target levels for ground water must be based on the minimum
5 criteria specified in department rule. The department shall
6 consider the following, as appropriate, in establishing the
7 applicable minimum criteria: calculations using a lifetime
8 cancer risk level of 1.0E-6; a hazard index of 1 or less; the
9 best achievable detection limit; the naturally occurring
10 background concentration; or nuisance, organoleptic, and
11 aesthetic considerations.

12 2. Where surface waters are exposed to contaminated
13 ground water, the cleanup target levels for the contaminants
14 must be based on the surfacewater standards as established by
15 department rule. The point of measuring compliance with the
16 surfacewater standards must be in the ground water immediately
17 adjacent to the surfacewater body.

18 3. The department may set alternative cleanup target
19 levels based upon an applicant's demonstration, using
20 site-specific modeling and risk assessment studies, that human
21 health, public safety, and the environment are adequately
22 protected to the same degree as provided by subparagraphs 1.
23 and 2. Where a state water quality standard is applicable, a
24 deviation may not result in the application of cleanup target
25 levels more stringent than the standard. In determining
26 whether it is appropriate to establish alternative cleanup
27 target levels at a site, the department must consider the
28 effectiveness of source removal that has been completed at the
29 site and the practical likelihood of the use of low-yield or
30 poor quality ground water, the use of ground water near marine
31 surfacewater bodies, the current and projected use of the

1 affected ground water in the vicinity of the site, or the use
2 of ground water in the immediate vicinity of the contaminated
3 area, where it has been demonstrated that the groundwater
4 contamination is not migrating away from such localized
5 source, provided human health, public safety, and the
6 environment are adequately protected.

7 (h) Provide for the department to issue a "no further
8 action order" when alternative cleanup target levels
9 established pursuant to subparagraph (g)3. have been achieved
10 or issue a "no further action order" based upon the degree to
11 which the desired cleanup target level is achievable and can
12 be reasonably and cost-effectively implemented within
13 available technologies or engineering and institutional
14 control strategies.

15 (i) Establish appropriate cleanup target levels for
16 soils.

17 1. In establishing soil cleanup target levels for
18 human exposure to each contaminant found in soils from the
19 land surface to 2 feet below land surface, the department
20 shall consider the following, as appropriate: calculations
21 using a lifetime cancer risk level of $1.0E-6$; a hazard index
22 of 1 or less; the best achievable detection limit; or the
23 naturally occurring background concentration. Institutional
24 controls or other methods shall be used to prevent human
25 exposure to contaminated soils more than 2 feet below the land
26 surface. Any removal of such institutional controls shall
27 require such contaminated soils to be remediated.

28 2. Leachability-based soil target levels must be based
29 on protection of the groundwater cleanup target levels or the
30 alternative cleanup target levels for ground water established
31 under this paragraph, as appropriate. Source removal and other

1 cost-effective alternatives that are technologically feasible
2 must be considered in achieving the leachability soil target
3 levels established by the department. The leachability goals
4 are not applicable if the department determines, based upon
5 individual site characteristics, that contaminants will not
6 leach into the ground water at levels that pose a threat to
7 human health and safety or to the environment.

8 3. The department may set alternative cleanup target
9 levels based upon an applicant's demonstration, using
10 site-specific modeling and risk assessment studies, that human
11 health, public safety, and the environment are adequately
12 protected.

13 (2) The department shall require source removal, if
14 warranted and cost-effective. Once source removal at a site is
15 complete, the department shall reevaluate the site to
16 determine the degree of active cleanup needed to continue.
17 Further, the department shall determine if the reevaluated
18 site qualifies for monitoring only or if no further action is
19 required to rehabilitate the site. If additional site
20 rehabilitation is necessary to reach "no further action"
21 status, the department is encouraged to use natural
22 attenuation and monitoring where site conditions warrant.

23 Section 6. Section 376.82, Florida Statutes, is
24 created to read:

25 376.82 Eligibility criteria and liability
26 protection.--

27 (1) ELIGIBILITY.--Any person who has not caused or
28 contributed to the contamination of a brownfield site after
29 July 1, 1997, is eligible to participate in the brownfield
30 rehabilitation program established in ss. 376.77-376.83,
31 subject to the following:

1 (a) Potential brownfield sites that are subject to an
2 ongoing formal judicial or administrative enforcement action
3 or corrective action pursuant to federal authority, including,
4 but not limited to, the Comprehensive Environmental Response
5 Compensation and Liability Act, 42 U.S.C. ss. 9601, et seq.,
6 as amended; the Safe Drinking Water Act, 42 U.S.C. ss.
7 300f-300i, as amended; the Clean Water Act, 33 U.S.C. ss.
8 1251-1387, as amended, or under an order from the United
9 States Environmental Protection Agency pursuant to s. 3008(h)
10 of the Resource Conservation and Recovery Act, as amended (42
11 U.S.C.A. s. 6928(h)), or that have obtained or are required to
12 obtain a permit for the operation of a hazardous waste
13 treatment, storage, or disposal facility, a postclosure
14 permit, or a permit pursuant to the federal Hazardous and
15 Solid Waste Amendments of 1984, are not eligible for
16 participation unless specific exemptions are secured by a
17 memorandum of agreement with the United States Environmental
18 Protection Agency pursuant to paragraph (2)(e). A brownfield
19 site within an eligible brownfield area that subsequently
20 becomes subject to formal judicial or administrative
21 enforcement action or corrective action under such federal
22 authority shall have its eligibility revoked unless specific
23 exemptions are secured by a memorandum of agreement with the
24 EPA pursuant to paragraph (2)(e).

25 (b) Persons who have not caused or contributed to the
26 contamination of a brownfield site after July 1, 1997, and
27 who, prior to the department's approval of a brownfield site
28 rehabilitation agreement, are subject to ongoing corrective
29 action or enforcement under state authority established in
30 chapter 376 or chapter 403, including those persons subject to
31

1 a pending consent order with the state, are eligible for
2 participation in a brownfield corrective action if:

3 1. The proposed brownfield site is currently idle or
4 underutilized as a result of the contamination, and
5 participation in the brownfield program will immediately,
6 after cleanup or sooner, result in increased economic
7 productivity at the site, including at a minimum the creation
8 of ten new jobs, whether permanent or part-time, which are not
9 associated with implementation of the brownfield site
10 corrective-action plan; and

11 2. The person is complying in good faith with the
12 terms of an existing consent order or department-approved
13 corrective-action plan, or responding in good faith to an
14 enforcement action, as evidenced by a determination issued by
15 the department or an approved local pollution control program.

16 (c) Potential brownfield sites owned by the state or a
17 local government which contain contamination for which a
18 governmental entity is potentially responsible and which are
19 already designated as federal brownfield pilot projects or
20 have filed an application for designation to the United States
21 Environmental Protection Agency are eligible for participation
22 in a brownfield corrective action.

23 (2) LIABILITY PROTECTION.--Any person, including his
24 or her successors and assigns, who executes and implements to
25 successful completion a brownfield site rehabilitation
26 agreement is relieved of further liability for remediation of
27 the site to the state and to third parties and of liability in
28 contribution to any other party who has or may incur cleanup
29 liability for the brownfield site.

30 (a) This section is not to be construed as a
31 limitation on the right of a third party other than the state

1 to pursue an action for damages to property or person;
2 however, such an action may not compel site rehabilitation in
3 excess of that required in the approved corrective-action
4 rehabilitation schedule or otherwise required by the
5 department or approved local pollution control program.

6 (b) This section does not affect the ability or
7 authority to seek contribution from any person who may have
8 liability with respect to the site and who did not receive
9 cleanup liability protection under this chapter.

10 (c) The liability protection provided under this
11 section shall become effective upon execution of a brownfield
12 site rehabilitation agreement and shall remain effective,
13 provided that the person responsible for brownfield site
14 rehabilitation complies with the terms of the agreement. Any
15 statute of limitations that would bar the department from
16 pursuing relief in accordance with its existing authority is
17 tolled from the time the agreement is executed until site
18 rehabilitation is completed or immunity is revoked pursuant to
19 s. 376.80(9).

20 (d) Completion of the performance of the remediation
21 obligations at the brownfield site must be evidenced by a site
22 rehabilitation completion letter or a "no further action"
23 letter issued by the department or the approved local
24 pollution control program, which letter must include the
25 following statement: "Based upon the information provided by
26 ... (property owner) ... concerning property located at ...
27 (address) ..., it is the opinion of ... (the Florida
28 Department of Environmental Protection or approved local
29 pollution control program) ... that ... (party) ... has
30 successfully and satisfactorily implemented the approved
31 brownfield site corrective-action rehabilitation schedule and

1 accordingly no further action is required to assure that any
2 land use identified in the corrective-action schedule is
3 consistent with existing and proposed uses and does not pose
4 an unacceptable risk to human health or the environment."

5 (e) The Legislature recognizes its limitations in
6 addressing cleanup liability under federal pollution control
7 programs. In an effort to secure federal liability protection
8 for persons willing to undertake remediation responsibility at
9 a brownfield site, the department shall attempt to negotiate a
10 memorandum of agreement or similar document with the United
11 States Environmental Protection Agency, whereby the United
12 States Environmental Protection Agency agrees to forego
13 enforcement of federal corrective-action authority at
14 brownfield sites that have received a site rehabilitation
15 completion or "no further action" determination from the
16 department or that are in the process of implementing a
17 corrective-action rehabilitation schedule in accordance with
18 ss. 376.77-376.83.

19 (f) No unit of state or local government may be held
20 liable for implementing corrective actions at a brownfield
21 site within an eligible brownfield area as a result of the
22 involuntary ownership of the site through bankruptcy, tax
23 delinquency, abandonment, or other circumstances in which the
24 state or local government involuntarily acquires title by
25 virtue of its function as a sovereign, or as a result of
26 ownership from donation or gift, unless the state or local
27 government has otherwise caused or contributed to a release of
28 a contaminant at the brownfield site.

29 (3) REOPENERS.--Upon completion of site rehabilitation
30 in compliance with ss. 376.77-376.83, no additional site
31 rehabilitation shall be required unless it is demonstrated:

1 (a) That fraud was committed in demonstrating site
2 conditions or completion of site rehabilitation;

3 (b) That new information confirms the existence of an
4 area of previously unknown contamination which exceeds the
5 site-specific rehabilitation levels established in accordance
6 with s. 376.81, or which otherwise poses the threat of real
7 and substantial harm to public health, safety, or the
8 environment in violation of the terms of ss. 376.77-376.83;

9 (c) That the remediation efforts failed to achieve the
10 site rehabilitation criteria established under s. 376.81;

11 (d) That the level of risk is increased beyond the
12 acceptable risk established under s. 376.81 due to substantial
13 changes in exposure conditions, such as in a change in land
14 use from nonresidential to residential use. Any person who
15 changes the land use of the brownfield site thus causing the
16 level of risk to increase beyond the acceptable risk level may
17 be required by the department to undertake additional
18 remediation measures to assure that human health, public
19 safety, and the environment are protected to levels consistent
20 with s. 376.81; or

21 (e) That a new release occurs at the brownfield site
22 subsequent to a determination of eligibility for participation
23 in the brownfield program established under s. 376.80.

24 (4) ADDITIONAL LIABILITY PROTECTION FOR LENDERS.--

25 (a) The Legislature declares that in order to achieve
26 the economic redevelopment and site rehabilitation of
27 brownfield sites in accordance with ss. 376.77-376.83, it is
28 imperative to encourage financing of real property
29 transactions involving brownfield site corrective-action
30 plans. Accordingly, lenders, including those serving as a
31 trustee, personal representative, or in any other fiduciary

1 capacity, are entitled to the liability protection established
2 in subsection (2) if they have not caused or contributed to a
3 release of a contaminant at the brownfield site.

4 (b) Lenders who hold indicia of ownership at a
5 brownfield site within an eligible brownfield area primarily
6 to protect a security interest or own a brownfield site within
7 an eligible brownfield area as a result of foreclosure of a
8 security interest and who seek to sell, transfer, or otherwise
9 divest the site via sale at the earliest possible time are not
10 liable for the release or discharge of a contaminant from a
11 brownfield site within an eligible brownfield area; for the
12 failure of the person responsible for brownfield site
13 rehabilitation to comply with the brownfield site
14 rehabilitation agreement; or for future site rehabilitation
15 activities required under a reopener provision established in
16 subsection (3) when the lender has not divested the borrower
17 of, or otherwise engaged in, decision-making control of the
18 site rehabilitation or site operations or undertaken
19 management activities beyond those required to protect its
20 financial interest and when an act or omission of the lender
21 has not otherwise caused or contributed to a release of a
22 contaminant at the brownfield site within an eligible
23 brownfield area.

24 Section 7. Section 376.83, Florida Statutes, is
25 created to read:

26 376.83 Violation; penalties.--

27 (1) It is a violation of ss. 376.77-376.82, and it is
28 prohibited for any person, to knowingly make any false
29 statement, representation, or certification in any
30 application, record, report, plan, or other document filed or
31 required to be maintained, or to falsify, tamper with, or

1 knowingly render inaccurate any monitoring device or method
2 required to be maintained under ss. 376.77-376.82, or by any
3 permit, rule, or order issued under this chapter or chapter
4 403.

5 (2) Any person who willfully commits a violation
6 specified in subsection (1) is guilty of a misdemeanor of the
7 first degree, punishable by a fine of not more than \$10,000 or
8 by 6 months in jail, or by both, for each offense. Each day
9 during any portion of which such violation occurs constitutes
10 a separate offense.

11 Section 8. (1) The Legislature recognizes that the
12 United States Environmental Protection Agency has created
13 several pilot projects for redevelopment of brownfield areas
14 to gather information on the best ways to return old
15 industrial and commercial sites to productive use in
16 situations where redevelopment is complicated by potential
17 environmental contamination. These pilot project areas will
18 perform initial work to seek developers to restore the sites,
19 and will also incorporate the efforts of lenders, regulators,
20 and other groups. The Environmental Protection Agency
21 initiative is flexible, allowing local governments to use a
22 variety of approaches to rehabilitate abandoned or
23 underutilized sites, neighborhoods, and small regional areas.

24 (2)(a) The Legislature has determined that it would be
25 beneficial to provide similar incentives in this state for the
26 rehabilitation and redevelopment of brownfield areas. A series
27 of pilot projects in this state could help demonstrate a
28 variety of techniques and approaches to mobilize public and
29 private resources for the purposes of accelerating the
30 rehabilitation and redevelopment of brownfield areas. The
31 pilot projects could also help form partnerships with the

1 federal pilot projects in areas where opportunities are
2 available. Accordingly, the department shall establish five
3 pilot projects for rehabilitation of brownfield areas,
4 including the two areas that are already pilot projects
5 designated by the United States Environmental Protection
6 Agency. The remaining three pilot projects shall be selected
7 based on the following criteria: one of the projects should
8 include multiple brownfield sites, including one or more sites
9 owned by the state or a local government, which contain
10 contamination for which a governmental entity is potentially
11 responsible and which have filed an application for
12 designation to the United States Environmental Protection
13 Agency; one project should be located in a rural area; and one
14 project should be a brownfield site owned by a private party.

5 **(b)** The department shall work with local officials in
16 the pilot project area to identify specific sites that should
17 be included in the brownfield area pilot project. The project
18 should demonstrate a commitment of public and private entities
19 and involve the local community. These pilot projects should
20 be undertaken with the objective of a fast-track approach to
21 demonstrate all phases of rehabilitation and what can be
22 accomplished using federal, state, local, and private
23 resources. The department is directed to employ risk-based
24 corrective-action considerations specified in section 376.81,
25 Florida Statutes, in overseeing and evaluating the site
26 rehabilitation plans for pilot project areas.

27 Section 9. The Department of Environmental Protection
28 shall prepare an annual report to the Legislature, beginning
29 in December 1998, which shall include, but not be limited to:

30 **(1)** The number of sites that have been remediated
31 under the provisions of this act;

1 (2) The number of sites that are undergoing
2 remediation;

3 (3) The number and size of brownfield sites or areas
4 that have been designated;

5 (4) The number of sites that have utilized
6 site-specific rehabilitation criteria, including those based
7 on risk-based corrective-action principles;

8 (5) The relationship of the state's program to the
9 United States Environmental Protection Agency brownfields
10 program; and

11 (6) Local government incentives that have been offered
12 for brownfields and the locales where offered.

13
14 The report shall be available for public comment 60 days prior
15 to submittal to the Legislature, and comments received shall
16 be submitted with the report to the Legislature.

17 Section 10. (1) The sum of \$5 million is appropriated
18 from the General Revenue Fund for fiscal year 1997-1998 to the
19 Department of Environmental Protection to carry out the
20 purposes of section 8 of this act relating to specified pilot
21 project areas. Of the \$5 million, \$1 million must be allocated
22 to each specified pilot project area. Of the amounts available
23 to each pilot area, one-half must be made available for
24 activities related to rehabilitation of brownfield sites in
25 the pilot project area and one-half must be made available to
26 employers who have registered as participating employers with
27 the WAGES Program and have business locations in designated
28 brownfield areas which create at least ten new jobs that are
29 not associated with the implementation of the corrective
30 action plan. These amounts must be used for one or more of the
31 following;

1 (a) As incentive payments to encourage employers to
2 employ WAGES Program participants.

3 (b) To offset wage costs, wholly or in part, for
4 employees who are employed for longer than 6 months and whose
5 wages exceed \$15,000 annually.

6 (c) To encourage employers to assist employees, both
7 WAGES Program participants and other employees, to acquire
8 additional education or training for enhancement of job skills
9 or basic literacy.

10
11 Of the \$5 million appropriated to the Department of
12 Environmental Protection, \$2.5 million shall be transferred to
13 the Department of Labor and Employment Security for
14 implementation of the provisions in this section relating to
15 the WAGES Program.

16 (2) Additionally, the sum of \$425,000 is appropriated
17 from the Water Quality Assurance Trust Fund and seven
18 positions are authorized for fiscal year 1997-1998 for the
19 Department of Environmental Protection to carry out its
20 responsibilities under this act.

21 Section 11. This act shall take effect July 1, 1997.
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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 Senate Bills 1306 and 1934

4 The committee substitute is basically SB 1306 and incorporates
5 several provisions from SB 1936, as well as other amendments.

6 Amends the legislative intent section to provide that site
7 rehabilitation should be based on the actual risk that
8 contamination may pose to the environment and public health.
9 Also provides intent and findings regarding environmental
10 justice considerations and recognition that the environment is
11 an important element of the quality of life in any community.

12 Defines "environmental justice"; "person responsible for
13 brownfield site rehabilitation"; and "person."

14 Revises the factors a local government must consider when
15 designating a brownfield area to include whether the area
16 contains sites or parts of sites suitable for limited
17 recreational open space, cultural, or historic preservation
18 purposes.

19 Provides that the local government must designate a brownfield
20 area, if requested, if certain conditions are met.

21 Requires local governments or persons responsible for
22 rehabilitation of brownfield areas to establish an advisory
23 committee to improve public participation and receive public
24 comments regarding the proposed brownfield area.

25 Provides that the brownfield site rehabilitation agreement
26 must include a commitment to conduct site rehabilitation
27 activities under the observation of a professional engineer or
28 a professional geologist. Requires the professional engineer
29 or professional geologist to certify that the corrective
30 action was, to the best of his knowledge, completed in
31 substantial conformance with the plans and specifications
approved by the department.

Provides that the brownfield site rehabilitation agreement
must include a commitment to secure site access for the
department or approved local environmental program to all
brownfield sites within the eligible brownfield area.

Provides that the brownfield site rehabilitation agreement
must include a pollution prevention plan.

Provides that if the person responsible for brownfield site
rehabilitation fails to comply with the site rehabilitation
agreement, the department shall allow 90 days to return to
compliance unless an imminent hazard exists, in which case the
90-day grace period does not apply.

Requires that notice be given to certain residents and
property owners when the point of compliance is temporarily
moved, or when the concentrations of contaminants are
temporarily allowed to exceed the applicable cleanup target
levels.

- 1 Requires the department to consider certain criteria when
establishing alternate cleanup target levels at a site.
- 2
3 Provides for the department to issue a "no further action
order" under certain circumstances.
- 4 Revises and clarifies the eligibility criteria and liability
protection provisions.
- 5
6 Clarifies that the additional liability protection applies to
lenders and not just financial institutions.
- 7 Requires the DEP to submit an annual report to the Legislature
beginning December 1998. Provides for public comment on the
8 report.
- 9 Revises the appropriation section to provide that of the \$5
million appropriated to the Department of Environmental
10 Protection, \$2.5 million shall be transferred to the
Department of Labor and Employment Security for implementation
11 of the provisions in this section relating to the WAGES
Program. Also, the appropriation from the Water Quality
12 Assurance Trust Fund to the Department of Environmental
Protection is increased from \$275,000 to \$425,000.
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SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below)

Date: March 20, 1997 Revised. _____

Subject: Brownfields redevelopment

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	Branning <i>AB</i>	Voigt <i>WV</i>	NR	Favorable/CS
2.			CA	Withdrawn
3.			WM	
4.				
5.				

I. Summary:

This bill creates the Brownfields Redevelopment Act. Provides legislative intent and definitions Provides for a brownfield program administration process. Provides that a brownfield area must be designated by a local government by resolution. Provides the criteria to be considered when designating a brownfield. Provides notice requirements for a brownfields designation. Requires the person responsible for brownfield site rehabilitation to enter into a brownfield site rehabilitation agreement with the Department of Environmental Protection (DEP) or an approved local environmental program. Specifies what the agreement must include. Provides that contractors must meet certain qualifications. Provides that any professional engineer or geologist providing professional services relating to site rehabilitation must carry professional liability insurance with a specified coverage amount. Provides that certain immunity provisions may be revoked under certain circumstances. Provides for cleanup criteria. Provides eligibility criteria and liability protection under certain circumstances. Directs the DEP to attempt to negotiate certain agreements with the U.S. Environmental Protection Agency. Provides penalties for violations of this act. Directs the DEP to establish five pilot brownfield projects. Requires the Department of Environmental Protection to prepare an annual report to the Legislature. Appropriates \$5 million from the General Revenue Fund to the DEP for the pilot projects. Allocates \$1 million to each pilot project. Provides limits for the use of such funds. Transfers \$2.5 million of the \$5 million to the Department of Labor and Employment Security. Appropriates \$425,000 from the Water Quality Assurance Trust Fund and authorizes seven positions for the DEP to carry out its responsibilities under this act.

This bill creates ss. 376.77, 376.78, 376.79, 376.80, 376.81, 376.82, and 376.83, F.S.

II. Present Situation:

In Florida, there are approximately 1,562 hazardous waste sites (not including sites which may contain contamination from petroleum products and drycleaning solvents) that are currently being managed under the Department of Environmental Protection's enforcement program. Also, there are 893 additional sites in Florida that are listed in the EPA's Environmental Response Compensation and Liability Information System (CERCLIS). The CERCLIS list is used by EPA to track the potentially contaminated sites evaluated under the federal Superfund program.

Broadly defined, "brownfields" are abandoned, idled, or underused industrial and commercial properties where expansion or redevelopment is complicated by real or perceived environmental contamination. Nationally, brownfields represent an enormous waste of resources. It has been estimated that there may be from 100,000 to 450,000 brownfield sites nationwide. Federal, state, and local environmental laws have unwittingly contributed to the creation and expansion of brownfields. Because of the cost of cleaning up a contaminated site and the potentially serious liability issues, it has been easier and more cost-effective for developers to ignore these abandoned, generally urban sites in favor of developing open greenspace areas, even though many of the sites in a brownfield area may actually contain little or no actual environmental contamination. Concern over the rapid development of greenspace nationwide has prompted a great deal of interest in the redevelopment of brownfields.

The U.S. Environmental Protection Agency (EPA) launched the Brownfields Initiative to empower states, communities, and other stakeholders in economic redevelopment to work together in a timely manner to prevent, assess, safely clean up, and sustainably reuse brownfields. The stated anticipated benefits of the Brownfields Initiative in the affected communities will be a cleaner environment, new jobs, and enhanced tax base, and a sense of optimism about the future. EPA activities to help the states implement and realize the benefits of the Brownfields Initiative include clarification of liability issues, partnership and outreach, brownfields pilot projects, and job development and training. To date, Florida has two pilot projects receiving Brownfield Initiative funds from the EPA -- Clearwater and Miami.

Florida has strict liability laws, patterned after federal laws that compel persons responsible for causing contamination from hazardous substances to be financially responsible for cleaning up the contaminated site. Generally, these laws operate to hold everyone in the chain of title for a contaminated property jointly and severally responsible for the costs of cleanup and rehabilitation. These proceedings can be costly and drawn out over long periods of time.

Florida uses the Water Quality Assurance Trust Fund to respond to sites which pose immediate environmental and public health threats while legal proceedings are underway to recover costs from responsible parties. This trust fund, however, serves a variety of needs and at the current rate of expenditures on brownfield sites, it will take decades to respond to the current list of potential brownfield sites.

Often, private sources would be willing to commit the financial resources to redevelop brownfield areas if certain impediments could be removed, such as strict liability provisions which entangle everyone in the chain of title for brownfield sites and unrealistic cleanup standards for brownfield sites which historically have been inflexible and drive up the costs to rehabilitate and clean up these sites.

It is clear that for Florida to accelerate the rate of cleanup activities at the large number of brownfield sites, the private sector must be encouraged through incentives to involve its vast financial resources to help redevelop and reuse brownfield sites. Such involvement can provide clear benefits to the environment and public health. Finally, such activities will also help with other state policies such as economic development, job creation, reduction of urban sprawl, and promotion of urban infill just to name a few.

III. **Effect of Proposed Changes:**

This bill creates the Brownfields Redevelopment Act.

Section 1: Section 376.77, F.S., is created to provide that the act may be cited as the "Brownfields Redevelopment Act."

Section 2: Section 376.78, F.S., is created to provide legislative intent with regard to brownfields. The reduction of public health and environmental hazards on existing commercial and industrial sites is vital to their use and reuse as sources of employment, housing, recreation, and open-space areas. The reuse of industrial land is an important component of sound land-use policy for productive urban purposes that will help prevent the premature development of farmland, open-space areas, and natural areas, and reduce public costs for installing new water, sewer, and highway infrastructure. Further, the abandonment or underuse of brownfield sites results in the inefficient use of public facilities and services, as well as land and other natural resources, extends conditions of blight in local communities, and contributes to concerns about environmental equity and the distribution of environmental risks across population groups.

Incentives should be put in place to encourage responsible persons to voluntarily develop and implement cleanup plans without the use of taxpayer funds or the need for enforcement actions by state and local governments. Site rehabilitation should be based on the actual risk that contamination on a site may pose to the environment and public health, taking into account its current and future use and the degree to which contamination may spread and place the public or the environment to risk.

This section further provides intent and finding regarding environmental justice considerations and recognition that the environment is an important element of the quality of life in any community. Environmental justice considerations should be inherent in meaningful public participation elements of a brownfields redevelopment program.

Cooperation among federal, state, and local agencies, local community development organizations, current owners, and prospective purchasers of brownfield sites is required to accomplish timely cleanup activities and the redevelopment or reuse of brownfield sites.

Section 3: Section 376.79, F.S., is created to define the following terms: “brownfield sites,” “brownfield area,” “environmental justice,” “department,” “local pollution control program,” “person responsible for brownfield site rehabilitation,” and “person”.

Section 4: Section 376.80, F.S., is created to provide for a brownfield program administration process. A local government with jurisdiction over the brownfield area must notify the DEP of its decision to designate a brownfield area for rehabilitation. The notification must include a resolution by the local government body to which is attached a map adequate to clearly designate exactly which parcels are to be included in the brownfield area or a less detailed map which is accompanied by a legal description of the brownfield area. Any property owner within a proposed brownfield area may request in writing to have his property removed from the proposed designation and the local government is required to grant the request. The local government shall provide for public hearings and notice of the proposed designation.

If a local government proposes to designate a brownfield area that is outside community redevelopment areas, enterprise zones, empowerment zones, or designated brownfield pilot project areas, the local government must conduct at least one public hearing in the area to be designated to provide an opportunity for public input on the size of the area, the objectives for rehabilitation, job opportunities and economic developments anticipated, neighborhood residents’ considerations, and other relevant local concerns. The notice of public hearing must be made in a newspaper of general circulation in the area and the notice must be at least 6 inches square in size. The notice must also appear in ethnic newspapers or local community bulletins, must be posted in the affected area, and must be announced at a scheduled meeting of the local governing body before the actual public hearing.

The local government must consider the following in determining the area to be designated as a brownfield area:

- Whether the brownfield area warrants economic development and has a reasonable potential for such activities;
- Whether the proposed area to be designated represents a reasonable focused approach and is not overly large in geographic coverage;
- Whether the area has potential to interest the private sector in participating in rehabilitation; and
- Whether the area contains sites or parts of sites suitable for limited recreational open space, cultural, or historical preservation purposes.

The local government shall designate a brownfield area if requested by a person if certain conditions are met. That person must demonstrate that the brownfield program will result in increased economic productivity at the site, including the creation of at least 10 new jobs which are not associated with the implementation of the brownfield site corrective action plan; and that person must provide notice to neighbors and nearby residents of the proposed area and afforded the opportunity for comments and suggestions about rehabilitation from those receiving notice. Further, the person requesting the designation must provide reasonable assurance that he had sufficient financial resources to complete and implement the corrective action plan and provide assurances that implementing the plan will comply with rules of the department to protect against adverse effects on public health or the environment.

At the time of the adoption of the resolution, the local government must notify the DEP of the entity that it is designating as the "person responsible for brownfield site rehabilitation." If the agency or person who will be responsible for the coordination changes during the brownfield site rehabilitation approval process, the DEP or the affected local pollution control program must notify the affected local government when the change occurs.

Local governments or persons responsible for rehabilitation of brownfield areas must establish an advisory committee for the purpose of improving public participation and receiving public comments on rehabilitation and remediation of the brownfield area, future land use, local employment opportunities, community safety, and environmental justice.

The person responsible for brownfield site rehabilitation must enter into a brownfield site rehabilitation agreement with the DEP or an approved local environmental program. The agreement must include:

- A brownfield site rehabilitation schedule.
- A commitment to conduct site rehabilitation activities under the observation of professional engineers or geologists. Upon completion of the approved remedial action, the department shall require the professional engineer or professional geologist to certify that the corrective action was, to the best of his knowledge, completed in substantial conformance with the plans and specifications approved by the department.
- A commitment to conduct site rehabilitation in accordance with an approved comprehensive quality assurance plan under DEP rules.
- A commitment to conduct site rehabilitation consistent with state, federal, and local laws and consistent with the brownfield site contamination cleanup criteria specified in this bill.
- Timeframes for the DEP's review of technical reports and plans submitted in accordance with the agreement. The DEP is required to make every effort to adhere to established agency goals for reasonable timeframes for review of such documents.

- A commitment to secure site access for the department or approved local environmental program to all brownfield sites within the eligible brownfield area for activities associated with site rehabilitation.
- Other provisions that the person responsible for brownfield site rehabilitation and the DEP agree upon that will improve or enhance the brownfield site rehabilitation process.
- A description of any pollution prevention plan or measures for the brownfield site.

Contractors must meet certain qualifications.

Any professional engineer or geologist providing professional services relating to site rehabilitation program tasks must carry professional liability insurance with a coverage limit of at least \$1 million.

During the cleanup process, if the DEP or local program fails to complete the review of a technical document within the timeframe specified in the brownfield site rehabilitation agreement, the person responsible for brownfield site rehabilitation may proceed to the next site rehabilitation task at his own risk. Exceptions include requests for “No Further Action,” “Monitoring Only Proposals,” and feasibility studies which must be approved prior to implementation.

If the person responsible for brownfield site rehabilitation fails to comply with the brownfield site rehabilitation agreement, the DEP shall allow 90 days for that person to return to compliance with the provision at issue or to renegotiate a modification to the agreement with the DEP for good cause shown. If an imminent hazard exists, the 90-day grace period shall not apply. If the project is not returned to compliance with the agreement and a modification cannot be negotiated, the immunity provisions of s. 376.82, F.S., will be revoked.

The DEP is authorized and encouraged to enter into delegation agreements with local pollution control programs.

Local governments are encouraged to utilize the full range of economic and tax incentive available to promote the rehabilitation of brownfield areas.

Section 5: Section 376.81, F.S., is created to provide for contamination cleanup criteria. The secretary of DEP shall establish criteria by rule for the purpose of determining, on a site-specific basis, the rehabilitation program tasks that comprise a site rehabilitation program and the level at which a rehabilitation program task and a site rehabilitation may be deemed completed. In establishing the rule, the DEP shall incorporate, to the maximum extent feasible, risk-based corrective action principles to achieve protection of human health and safety and the environment in a cost-effective manner. The criteria for determining what constitutes a rehabilitation program task or completion of a site rehabilitation program task or site rehabilitation program must:

- Consider the current exposure and potential risk to humans and the environment.
- Establish the point of compliance at the source of the contamination. However, the department may temporarily move the point of compliance to the boundary of the property, or to the edge of the plume when the plume is within the property boundary under certain conditions.
- Ensure that the site-specific cleanup goal is that all contaminated brownfield sites and brownfield areas ultimately achieve the applicable cleanup target levels provided for in this section. The department may allow the concentrations of contaminants to temporarily exceed the applicable cleanup target levels under certain conditions.
- Allow brownfield site and brownfield area rehabilitation programs to include the use of institutional or engineering controls to eliminate or control the potential exposure to contaminants to humans or the environment. The use of controls must be preapproved by the department.
- Consider the synergistic, antagonistic, and additive effects of contaminants when the scientific data becomes available.
- Take into consideration certain individual site characteristics.
- Apply water quality standards as specified in the bill.
- Provide for the department to issue a “no further action order” under certain circumstances.
- Establish appropriate cleanup target levels for soils.

The department shall require source removal under certain circumstances.

Section 6: Section 376.82, F.S., is created to provide the eligibility criteria and liability protection. Any person or governmental entity who has not caused or contributed to the contamination of a brownfield site after July 1, 1997, is eligible to participate in the brownfield rehabilitation program subject to the following:

- Potential brownfield sites currently subject to ongoing formal or administrative enforcement action or corrective action pursuant to federal authority including, but not limited to, the Comprehensive Environmental Response Compensation and Liability Act (CERCLA or Superfund), the Safe Drinking Water Act, the Clean Water Act, or under an order from the United States Environmental Protection Agency (EPA) pursuant to the Resource Conservation and Recovery Act, or that have obtained or are required to obtain a permit for the operation of a hazardous waste treatment, storage, or disposal facility, a post closure permit, or a permit pursuant to the federal Hazardous and Solid Waste Amendments of 1984 are not eligible for participation in a brownfield corrective action unless specific exemptions

are secured by Memorandum of Agreement with the EPA. A brownfield site within an eligible brownfield area that subsequently becomes subject to formal judicial or administrative enforcement action or corrective action under such federal authority shall have its eligibility revoked unless specific exemptions are secured by a Memorandum of Agreement.

- Potential brownfield sites currently subject to ongoing corrective action or enforcement under state authority, including those sites currently subject to a pending consent order with the state, are eligible for participation in a brownfield corrective under certain conditions.

Any person who executes and implements to successful completion a brownfield site rehabilitation agreement is relieved from further liability for remediation of the site to the state and to third parties and for liability in contribution to any other party who has or may incur cleanup liability for the brownfield site. This limitation does not affect the right of a third party other than the state to pursue an action for damages to property or person; however, a third party cannot compel site rehabilitation in excess of that required in the approved corrective action rehabilitation schedule or otherwise required by the DEP or approved local pollution control program. This section does not affect the ability or authority to seek contribution from any person who may have liability with respect to the site and who did not receive cleanup liability protection under ch. 376, F.S.

The liability protection is effective upon execution of a brownfield site rehabilitation agreement and shall remain effective provided the person responsible for brownfield site rehabilitation complies with the terms of the agreement. Any statute of limitation which would bar the department from pursuing relief in accordance with its existing authority is tolled from the time the agreement is executed until site rehabilitation is completed or immunity is revoked pursuant to s. 376.80(9), F.S. Completion of the performance of the remedial obligations at the brownfield site must be evidenced by a site rehabilitation completion letter or a "no further action" letter issued by the department or the approved local pollution control program.

The legislature, in recognition of its limitations in addressing cleanup liability under federal pollution control programs, directs the DEP to attempt to negotiate a memorandum of agreement or similar document with the U.S. Environmental Protection Agency (EPA), whereby the EPA agrees to forego enforcement of federal corrective action authority at brownfield sites that have received a site rehabilitation completion or "no further action" determination from the department or which are in the process of implementing an approved corrective action rehabilitation schedule.

No unit of state or local government may be held liable for implementing corrective action at a brownfield site within an eligible brownfield area as a result of the involuntary ownership of the site through bankruptcy, tax delinquency, abandonment, or other circumstances in which the local government involuntarily acquires title by virtue of its function as a sovereign, or as a result of ownership from donation or gift, unless the local government has otherwise caused or contributed to a release of a contaminant at the brownfield site.

Upon completion of site rehabilitation, no additional site rehabilitation is required unless:

- Fraud was committed regarding site conditions or the corrective action rehabilitation schedule;
- New information confirms the existence of an area of previously unknown contamination which exceed the site-specific rehabilitation levels or otherwise poses the threat of real and substantial harm to the public health, safety, or the environment;
- The remediation efforts failed to achieve the cleanup standards or protection levels established under s. 376.81, F.S.;
- The level of risk is increased beyond the acceptable risk established under s. 376.81, F.S., due to substantial changes in exposure conditions. Any person who changes the land use of the brownfield site this causing the level of risk to increase beyond the acceptable risk level may be required by the department to undertake additional remediation measures; or
- A new release occurs at the brownfield site subsequent to a determination of eligibility for participation in the brownfield program.

Additional liability protection is provided for lenders under certain conditions.

Section 7: Section 376.83, F.S., is created to provide penalties for violations of this act.

Section 8: The DEP is directed to establish five pilot projects for rehabilitation of brownfield areas including the two areas that are already pilot projects designated by the U.S. EPA. Specifies how the remaining three pilot projects will be selected. The project should demonstrate a commitment of public and private entities and involve the local community. These pilot projects should be undertake with the objective of a fast-track approach to demonstrate all phases of rehabilitation and what can be accomplished using federal, state, local, and private resources. The department is directed to employ risk-based corrective action considerations in overseeing and evaluating the site-rehabilitations plans for pilot project areas.

Section 9: The Department of Environmental Protection is required to prepare an annual report to the Legislature beginning in December 1998 on the status of the brownfields program. The report shall be available for public comment 60 days prior to submittal to the Legislature and comments received shall be submitted with the report to the Legislature.

Section 10: The bill appropriates \$5 million from the General Revenue Fund for FY 1997-1998 to the DEP for the pilot projects. Of the \$5 million, \$1 million shall be allocated to each specified pilot project area. Of the amounts available to each pilot project area, one-half shall be available for activities related to rehabilitation of brownfield sites in the pilot project area and one-half must be made available to employers who have registered as participating employers with the WAGES Program and have business locations in designated brownfield areas which create at

least 10 new jobs which are not associated with the implementation of the corrective action plan. These amounts must be used for one or more of the following:

- Incentive payment to encourage employers to employ WAGES Program participants.
- Offset wage costs for employees who are employed for longer than 6 months and with wages greater than \$15,000 annually.
- Encourage employers to assist employees, both WAGES Program participants and other employees, to acquire additional education or training for enhancement of job skills or basic literacy.

Of the \$5 million appropriated to the Department of Environmental Protection, \$2.5 million shall be transferred to the Department of Labor and Employment Security for implementation of the provisions relating the WAGES Program.

Additionally, \$425,000 is appropriated from the Water Quality Assurance Trust Fund and seven positions are authorized for FY 1997-98 for the DEP to carry out its responsibilities pursuant to this act.

Section 11: This act takes effect on July 1, 1997.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill would require a local government to designate a brownfield area under this act if requested by a person who has agreed to participate in the rehabilitation program and who demonstrates that the increased productivity at the site will result in the creation of at least 10 new jobs not associated with the rehabilitation efforts. Pursuant to the designation process, the local government would be required to hold public hearings and comply with the notice requirements in the act. These costs are not expected to be significant.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions

None.

V. Economic Impact and Fiscal Note:

A Tax/Fee Issues

None.

B. Private Sector Impact:

This bill could greatly facilitate the rehabilitation of abandoned and blighted areas. The rehabilitation costs for a contaminated site in a designated brownfield area could be less under this bill since the site owner would be able to take advantage of risk-based corrective action principles. Since no state funds other than pilot project funds will be used for cleanup, this is an incentive for the private sector to use its own financial resources. Further, the liability protection provided in the bill allow a degree of certainty regarding the rehabilitation process.

The redevelopment of these abandoned and underutilized, typically urban areas will help to revitalize these communities and stimulate competition in the business community, economic development, and may lead to increased productive employment. In addition, the overall quality of life could be improve by providing a cleaner environment in which to work and live.

Those benefiting most from the provisions of this bill in the near future will be the communities and businesses located in the designated brownfield areas and the five pilot projects. Each pilot project will receive \$1 million, half of which must be available to employers who participate in the WAGES program and have business locations in designated brownfield areas.

C. Government Sector Impact:

This bill appropriates \$5 million from the General Revenue Fund to be used to fund the five pilot projects provided for in this bill. Of the \$5 million appropriated to the DEP, \$2.5 million must be transferred to the Department of Labor and Employment Security for implementation of the provisions relating to the WAGES Program. In addition, the bill appropriates \$425,000 from the Water Quality Assurance Trust Fund (WQATF) and seven positions to the Department of Environmental Protection to carry out the provisions of this bill.

The DEP has indicated that in order to take into consideration the innovative approaches under the risk-based corrective action principles provided for in the bill, the seven positions authorized in the bill would have to be six professional engineers or professional geologists and an environmental manager position. To obtain the expertise necessary to be able to work constructively with the brownfield developer's consultant, these professional positions would have to be either PE II's or PG II's. The estimated staff costs for these positions

would be \$480,290. If the DEP employed professionals at the PE I or PG I level, the estimated staff costs would be \$437,881. These estimates do not take into account the estimated \$5,000-\$8,000 for the OSHA safety training and medical monitoring that may be needed for DEP employees. Further, the staff cost estimates do not include clerical costs that would be needed. These estimated costs exceed the amount that is appropriated in the bill for the DEP to administer the program.

In addition, there will be an indeterminate amount of non-recurring costs associated with the rulemaking for the cleanup criteria.

Local governments may incur some costs associated with the designation of brownfield areas. However, the local governments stand to benefit greatly through the revitalization of their urban area and return abandoned properties back to productive use and subject once again to property taxes. The cleanup of environmental contamination provides a safer, healthier community for its residents.

The Department of Labor and Employment Security will experience some costs associated with the implementation of the provisions relating to the WAGES Program. The amount of these costs cannot be determined at this time. The Department of Labor and Employment Security will receive \$2.5 million from the \$5 million appropriation for the WAGES Program.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

By the Committees on Ways and Means, Natural Resources and
Senators Latvala and Hargrett

301-1751-97

1 A bill to be entitled

2 An act relating to brownfields redevelopment;
3 creating s. 376.77, F.S.; providing a short
4 title; creating s. 376.78, F.S.; providing
5 legislative intent; creating s. 376.79, F.S.;
6 defining terms; creating s. 376.80, F.S.;
7 providing for a brownfield program
8 administration process; creating s. 376.81,
9 F.S.; providing for brownfield site
10 contamination cleanup criteria; creating s.
11 376.82, F.S.; providing for eligibility
12 criteria and liability protection; creating s.
13 376.83, F.S.; providing penalties; providing
14 for pilot projects; providing appropriations;
15 requiring the Department of Environmental
16 Protection to report annually to the
17 Legislature; providing an effective date.

18
19 Be It Enacted by the Legislature of the State of Florida:

20
21 Section 1. Section 376.77, Florida Statutes, is
22 created to read:

23 376.77 Short title.--Sections 376.77-376.83 may be
24 cited as the "Brownfields Redevelopment Act."

25 Section 2. Section 376.78, Florida Statutes, is
26 created to read:

27 376.78 Legislative intent.--The Legislature finds and
28 declares the following:

29 (1) The reduction of public health and environmental
30 hazards on existing commercial and industrial sites is vital
31 to their use and reuse as sources of employment, housing,

1 recreation, and open-space areas. The reuse of industrial land
2 is an important component of sound land-use policy for
3 productive urban purposes which will help prevent the
4 premature development of farmland, open-space areas, and
5 natural areas, and reduce public costs for installing new
6 water, sewer, and highway infrastructure.

7 (2) The abandonment or underuse of brownfield sites
8 also results in the inefficient use of public facilities and
9 services, as well as land and other natural resources, extends
10 conditions of blight in local communities, and contributes to
11 concerns about environmental equity and the distribution of
12 environmental risks across population groups.

13 (3) Incentives should be put in place to encourage
14 responsible persons to voluntarily develop and implement
15 cleanup plans without the use of taxpayer funds or the need
16 for enforcement actions by state and local governments.

17 (4) Environmental and public health hazards cannot be
18 eliminated without clear, predictable remediation standards
19 that provide for the protection of the environment and public
20 health.

21 (5) Site rehabilitation should be based on the actual
22 risk that contamination may pose to the environment and public
23 health, taking into account current and future land and water
24 use and the degree to which contamination may spread and place
25 the public or the environment at risk.

26 (6) According to the statistical proximity study
27 contained in the final report of the Environmental Equity and
28 Justice Commission, minority and low-income communities are
29 disproportionately impacted by targeted environmentally
30 hazardous sites. The results indicate the need for the health
31 and risk exposure assessments of minority and poverty

1 populations around environmentally hazardous sites in this
2 state. Redevelopment of hazardous sites should address
3 questions relating to environmental and health consequences.

4 (7) Environmental justice considerations should be
5 inherent in meaningful public participation elements of a
6 brownfields redevelopment program.

7 (8) The existence of brownfields within a community
8 may contribute to, or may be a symptom of, overall community
9 decline, including issues of human disease and illness, crime,
10 educational and employment opportunities, and infrastructure
11 decay. The environment is an important element of quality of
12 life in any community, along with economic opportunity,
13 educational achievement, access to health care, housing
14 quality and availability, provision of governmental services,
15 and other socioeconomic factors. Brownfields redevelopment,
16 properly done, can be a significant element in community
17 revitalization.

18 (9) Cooperation among federal, state, and local
19 agencies, local community development organizations, and
20 current owners and prospective purchasers of brownfield sites
21 is required to accomplish timely cleanup activities and the
22 redevelopment or reuse of brownfield sites.

23 Section 3. Section 376.79, Florida Statutes, is
24 created to read:

25 376.79 Definitions.--As used in ss. 376.77-376.83, the
26 term:

27 (1) "Brownfield sites" means sites that are generally
28 abandoned, idled, or under-used industrial and commercial
29 properties where expansion or redevelopment is complicated by
30 actual or perceived environmental contamination.

1 (2) "Brownfield area" means a contiguous area of one
2 or more brownfield sites, some of which may not be
3 contaminated, and which has been designated by a local
4 government by resolution. Such areas may include all or
5 portions of community redevelopment areas, enterprise zones,
6 empowerment zones, other such designated economically deprived
7 communities and areas, and Environmental Protection
8 Agency-designated brownfield pilot projects.

9 (3) "Environmental justice" means the fair treatment
10 of all people of all races, cultures, and incomes with respect
11 to the development, implementation, and enforcement of
12 environmental laws, regulations, and policies.

13 (4) "Department" means the Department of Environmental
14 Protection.

15 (5) "Local pollution control program" means a local
16 pollution control program that has received delegated
17 authority from the Department of Environmental Protection
18 under s. 403.182.

19 (6) "Person responsible for brownfield site
20 rehabilitation" means the individual or entity that is
21 designated by the local government in its resolution
22 establishing a brownfield area to enter into the brownfield
23 site rehabilitation agreement with the department.

24 (7) "Person" means any individual, partner, joint
25 venture, or corporation; any group of the foregoing, organized
26 or united for a business purpose; or any governmental entity.

27 Section 4. Section 376.80, Florida Statutes, is
28 created to read:

29 376.80 Brownfield program administration process.--

30 (1) A local government with jurisdiction over the
31 brownfield area must notify the department of its decision to

1 designate a brownfield area for rehabilitation for the
2 purposes of ss. 376.77-376.83. The notification must include a
3 resolution, by the local government body, to which is attached
4 a map adequate to clearly delineate exactly which parcels are
5 to be included in the brownfield area or alternatively a
6 less-detailed map accompanied by a detailed legal description
7 of the brownfield area. If a property owner within the area
8 proposed for designation by the local government requests in
9 writing to have his or her property removed from the proposed
10 designation, the local government shall grant the request. For
11 municipalities, the governing body shall adopt the resolution
12 in accordance with the procedures outlined in s. 166.041,
13 except that the notice for the public hearings on the proposed
14 resolution must be in the form established in s.
15 166.041(3)(c)2. For counties, the governing body shall adopt
16 the resolution in accordance with the procedures outlined in
17 s. 125.66, except that the notice for the public hearings on
18 the proposed resolution shall be in the form established in s.
19 125.66(4)(b)2.

20 (2)(a) If a local government proposes to designate a
21 brownfield area that is outside community redevelopment areas,
22 enterprise zones, empowerment zones, or designated brownfield
23 pilot project areas, the local government must conduct at
24 least one public hearing in the area to be designated to
25 provide an opportunity for public input on the size of the
26 area, the objectives for rehabilitation, job opportunities and
27 economic developments anticipated, neighborhood residents'
28 considerations, and other relevant local concerns. Notice of
29 the public hearing must be made in a newspaper of general
30 circulation in the area and the notice must be at least 6
31 inches square in size, must be in ethnic newspapers or local

1 community bulletins, must be posted in the affected area, and
2 must be announced at a scheduled meeting of the local
3 governing body before the actual public hearing, In
4 determining the areas to be designated, the local government
5 must consider:

6 1. Whether the brownfield area warrants economic
7 development and has a reasonable potential for such
8 activities;

9 2. Whether the proposed area to be designated
10 represents a reasonably focused approach and is not overly
11 large in geographic coverage;

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

14 4. Whether the area contains sites or parts of sites
15 suitable for limited recreational open space, cultural, or
16 historical preservation purposes.

17 (b) A local government shall designate a brownfield
18 area under the provisions of this act provided that:

19 1. A person who owns or controls a potential
20 brownfield site is requesting the designation and has agreed
21 to rehabilitate and redevelop the brownfield site;

22 2. The rehabilitation and redevelopment of the
23 proposed brownfield site will result in economic productivity
24 of the area, along with the creation of at least ten new jobs,
25 full-time or part-time, which are not associated with the
26 implementation of the rehabilitation agreement;

27 3. The redevelopment of the proposed brownfield site
28 is consistent with the local comprehensive plan and is a
29 permissible use under the applicable local land development
30 regulations;

31

1 4. Notice of the proposed rehabilitation of the
2 brownfield area has been provided to neighbors and nearby
3 residents of the proposed area to be designated and the person
4 proposing the area for designation has afforded to those
5 receiving notice the opportunity for comments and suggestions
6 about rehabilitation. Notice pursuant to this subsection must
7 be made in a newspaper of general circulation in the area, at
8 least 6 inches square in size, and the notice must be posted
9 in the affected area; and

10 5. The person proposing the area for designation has
11 provided reasonable assurance that he or she has sufficient
12 financial resources to implement and complete the
13 rehabilitation agreement and redevelopment plan.

14 (c) The designation of a brownfield area and the
15 identification of a person responsible for brownfield site
16 rehabilitation simply entitles the identified person to
17 negotiate a brownfield rehabilitation agreement with the
18 department or approved local government.

19 (3) The local government must at the time of the
20 adoption of the resolution notify the department of the entity
21 that it is designating as the person responsible for
22 brownfield site rehabilitation. If the agency or person who
23 will be responsible for the coordination changes during the
24 approval process specified in subsections (4), (5), and (6),
25 the department or the affected approved local pollution
26 control program must notify the affected local government when
27 the change occurs.

28 (4) Local governments or persons responsible for
29 rehabilitation of brownfield areas must establish an advisory
30 committee for the purpose of improving public participation
31 and receiving public comments on rehabilitation and

1 remediation of the brownfield area, future land use, local
2 employment opportunities, community safety, and environmental
3 justice. Such advisory committee should include residents
4 within or adjacent to the brownfield area, businesses
5 operating within the brownfield area, and others deemed
6 appropriate.

7 (5) The person responsible for brownfield site
8 rehabilitation must enter into a brownfield site
9 rehabilitation agreement with the department or an approved
10 local environmental program. The brownfield site
11 rehabilitation agreement must include:

12 (a) A brownfield site rehabilitation schedule,
13 including milestones for completion of site rehabilitation
14 tasks and submittal of technical reports and rehabilitation
15 plans as agreed upon by the parties to the agreement;

16 (b) A commitment to conduct site rehabilitation
17 activities under the observation of professional engineers or
18 geologists who are registered in accordance with the
19 requirements of chapter 471 or chapter 492, respectively.
20 Submittals provided by the person responsible for brownfield
21 site rehabilitation must be signed and sealed by a
22 professional engineer registered under chapter 471, or a
23 professional geologist registered under chapter 492,
24 certifying that the submittal and associated work comply with
25 the law and rules of the department and those governing the
26 profession. In addition, upon completion of the approved
27 remedial action, the department shall require a professional
28 engineer registered under chapter 471 or a professional
29 geologist registered under chapter 492 to certify that the
30 corrective action was, to the best of his or her knowledge,

31

1 completed in substantial conformance with the plans and
2 specifications approved by the department;

3 (c) A commitment to conduct site rehabilitation in
4 accordance with an approved comprehensive quality assurance
5 plan under department rules;

6 (d) A commitment to conduct site rehabilitation
7 consistent with state, federal, and local laws and consistent
8 with the brownfield site contamination cleanup criteria in s.
9 376.81, including any applicable requirements for risk-based
10 corrective action;

11 (e) Timeframes for the department's review of
12 technical reports and plans submitted in accordance with the
13 agreement. The department shall make every effort to adhere
14 to established agency goals for reasonable timeframes for
15 review of such documents;

16 (f) A commitment to secure site access for the
17 department or approved local environmental program to all
18 brownfield sites within the eligible brownfield area for
19 activities associated with site rehabilitation;

20 (g) Other provisions that the person responsible for
21 brownfield site rehabilitation and the department agree upon,
22 that are consistent with ss. 376.77-376.83, and that will
23 improve or enhance the brownfield site rehabilitation process;
24 and

25 (h) A commitment to consider appropriate pollution
26 prevention measures and to implement those that the person
27 determines are reasonable and cost-effective, taking into
28 account the ultimate use or uses of the brownfield site. Such
29 measures may include improved inventory or production controls
30 and procedures for preventing a loss, spills, and leaks of
31

- 1 hazardous waste and materials, and include goals for the
2 reduction of releases of toxic materials.
- 3 (6) Any contractor performing site rehabilitation
4 program tasks must demonstrate to the department that the
5 contractor:
- 6 (a) Meets all certification and license requirements
7 imposed by law; and
- 8 (b) Has obtained approval for the comprehensive
9 quality-assurance plan prepared under department rules.
- 10 (7) The contractor must certify to the department that
11 the contractor:
- 12 (a) Complies with applicable OSHA regulations.
- 13 (b) Maintains workers' compensation insurance for all
14 employees as required by the Florida Workers' Compensation
15 Law.
- 16 (c) Maintains comprehensive general liability and
17 comprehensive automobile liability insurance with minimum
18 limits of at least \$1 million per occurrence and \$1 million
19 annual aggregate, sufficient to protect it from claims for
20 damage for personal injury, including accidental death, as
21 well as claims for property damage which may arise from
22 performance of work under the program, designating the state
23 as an additional insured party.
- 24 (d) Maintains professional liability insurance of at
25 least \$1 million per occurrence and \$1 million annual
26 aggregate.
- 27 (e) Has the capacity to perform or directly supervise
28 the majority of the work at a site in accordance with s.
29 499.113(9).
- 30 (8) Any professional engineer or geologist providing
31 professional services relating to site rehabilitation program

1 tasks must carry professional liability insurance with a
2 coverage limit of at least \$1 million.

3 (9) During the cleanup process, if the department or
4 local program fails to complete review of a technical document
5 within the timeframe specified in the brownfield site
6 rehabilitation agreement, the person responsible for
7 brownfield site rehabilitation may proceed to the next site
8 rehabilitation task. However, the person responsible for
9 brownfield site rehabilitation does so at its own risk and may
10 be required by the department or local program to complete
11 additional work on a previous task. Exceptions to this
12 subsection include requests for "no further action,"
13 "monitoring only proposals," and feasibility studies, which
14 must be approved prior to implementation.

15 (10) If the person responsible for brownfield site
16 rehabilitation fails to comply with the brownfield site
17 rehabilitation agreement, the department shall allow 90 days
18 for the person responsible for brownfield site rehabilitation
19 to return to compliance with the provision at issue or to
20 negotiate a modification to the brownfield site rehabilitation
21 agreement with the department for good cause shown. If an
22 imminent hazard exists, the 90-day grace period shall not
23 apply. If the project is not returned to compliance with the
24 brownfield site rehabilitation agreement and a modification
25 cannot be negotiated, the immunity provisions of s. 375.82 are
26 revoked.

27 (11) The department is specifically authorized and
28 encouraged to enter into delegation agreements with local
29 pollution control programs approved under s. 403.182 to
30 administer the brownfield program within their jurisdictions,
31 thereby maximizing the integration of this process with the

1 other local development processes needed to facilitate
2 redevelopment of a brownfield area.

3 (12) Local governments are encouraged to use the full
4 range of economic and tax incentives available to facilitate
5 and promote the rehabilitation of brownfield areas, to help
6 eliminate the public health and environmental hazards, and to
7 promote the creation of jobs and economic development in these
8 previously run-down, blighted, and underutilized areas.

9 Section 5. Section 376.81, Florida Statutes, is
10 created to read:

11 376.81 Brownfield site and brownfield areas
12 contamination cleanup criteria.--

13 (1) It is the intent of the Legislature to protect the
14 health of all people under actual circumstances of exposure.
15 By January 1, 1998, the secretary shall establish criteria by
16 rule for the purpose of determining, on a site-specific basis,
17 the rehabilitation program tasks that comprise a site
18 rehabilitation program and the level at which a rehabilitation
19 program task and a site rehabilitation program may be deemed
20 completed. In establishing the rule, the department shall
21 incorporate, to the maximum extent feasible, risk-based
22 corrective-action principles to achieve protection of human
23 health and safety and the environment in a cost-effective
24 manner as provided in this subsection. The criteria for
25 determining what constitutes a rehabilitation program task or
26 completion of a site rehabilitation program task or site
27 rehabilitation program must:

28 (a) Consider the current exposure and potential risk
29 of exposure to humans and the environment, including multiple
30 pathways of exposure. The physical, chemical, and biological
31 characteristics of each contaminant must be considered in

1 order to determine the feasibility of risk-based
2 corrective-action assessment.

3 (b) Establish the point of compliance at the source of
4 the contamination. In the circumstances provided below, and
5 after constructive notice and opportunity to comment within 30
6 days from receipt of the notice to local government, owners of
7 any property into which the point of compliance is allowed to
8 extend, and residents on any property into which the point of
9 compliance is allowed to extend, the department may
10 temporarily move the point of compliance to the boundary of
11 the property, or to the edge of the plume when the plume is
12 within the property boundary, while cleanup, including cleanup
13 through natural attenuation processes in conjunction with
14 appropriate monitoring, is proceeding. The department also
15 may, under criteria provided for in this section, temporarily
16 extend the point of compliance beyond the property boundary
17 with appropriate monitoring, if the extension is needed to
18 facilitate natural attenuation or to address the current
19 conditions of the plume and if human health, public safety,
20 and the environment are adequately protected. Temporary
21 extension of the point of compliance beyond the property
22 boundary, as provided in this paragraph, must include notice
23 to local governments and owners of any property into which the
24 point of compliance is allowed to extend.

25 (c) Ensure that the site-specific cleanup goal is that
26 all contaminated brownfield sites and brownfield areas
27 ultimately achieve the applicable cleanup target levels
28 provided in this section. In the circumstances provided below,
29 and after constructive notice and opportunity to comment
30 within 30 days from receipt of the notice to local government,
31 to owners of any property into which the point of compliance

1 is allowed to extend, and to residents on any property into
2 which the point of compliance is allowed to extend, the
3 department may allow concentrations of contaminants to
4 temporarily exceed the applicable cleanup target levels while
5 cleanup, including cleanup through natural attenuation
6 processes in conjunction with appropriate monitoring, is
7 proceeding, if human health, public safety, and the
8 environment are adequately protected.

9 (d) Allow brownfield site and brownfield area
10 rehabilitation programs to include the use of institutional or
11 engineering controls, where appropriate, to eliminate or
12 control the potential exposure to contaminants of humans or
13 the environment. The use of controls must be preapproved by
14 the department and only after constructive notice and
15 opportunity to comment within 30 days from receipt of notice
16 is provided to local governments, to owners of any property
17 into which the point of compliance is allowed to extend, and
18 to residents on any property into which the point of
19 compliance is allowed to extend. When institutional or
20 engineering controls are implemented to control exposure, the
21 removal of the controls must have prior department approval
22 and must be accompanied by the resumption of active cleanup,
23 or other approved controls, unless cleanup target levels under
24 this section have been achieved.

25 (e) Consider the additive effects of contaminants.
26 The synergistic and antagonistic effects shall also be
27 considered when the scientific data become available.

28 (f) Take into consideration individual site
29 characteristics that include, but are not limited to, the
30 current and projected use of the affected ground water and
31 surface water in the vicinity of the site, current and

1 projected land uses of the area affected by the contamination,
2 the exposed population, the degree and extent of
3 contamination, the rate of contaminant migration, the apparent
4 or potential rate of contaminant degradation through natural
5 attenuation processes, the location of the plume, and the
6 potential for further migration in relation to site property
7 boundaries.

8 (g) Apply water quality standards as follows:

9 1. Cleanup target levels for each contaminant found in
10 ground water must be the applicable state water quality
11 standards. Where the standards do not exist, the cleanup
12 target levels for ground water must be based on the minimum
13 criteria specified in department rule. The department shall
14 consider the following, as appropriate, in establishing the
15 applicable minimum criteria: calculations using a lifetime
16 cancer risk level of 1.0E-6; a hazard index of 1 or less; the
17 best achievable detection limit; the naturally occurring
18 background concentration; or nuisance, organoleptic, and
19 aesthetic considerations.

20 2. Where surface waters are exposed to contaminated
21 ground water, the cleanup target levels for the contaminants
22 must be based on the surfacewater standards as established by
23 department rule. The point of measuring compliance with the
24 surfacewater standards must be in the ground water immediately
25 adjacent to the surfacewater body.

26 3. The department may set alternative cleanup target
27 levels based upon an applicant's demonstration, using
28 site-specific modeling and risk assessment studies, that human
29 health, public safety, and the environment are adequately
30 protected to the same degree as provided by subparagraphs 1.
31 and 2. Where a state water quality standard is applicable, a

1 deviation may not result in the application of cleanup target
2 levels more stringent than the standard. In determining
3 whether it is appropriate to establish alternative cleanup
4 target levels at a site, the department must consider the
5 effectiveness of source removal that has been completed at the
6 site and the practical likelihood of the use of low-yield or
7 poor quality ground water, the use of ground water near marine
8 surfacewater bodies, the current and projected use of the
9 affected ground water in the vicinity of the site, or the use
10 of ground water in the immediate vicinity of the contaminated
11 area, where it has been demonstrated that the groundwater
12 contamination is not migrating away from such localized
13 source, provided human health, public safety, and the
14 environment are adequately protected.

15 (h) Provide for the department to issue a "no further
16 action order" when alternative cleanup target levels
17 established pursuant to subparagraph (g)3. have been achieved
18 or issue a "no further action order" based upon the degree to
19 which the desired cleanup target level is achievable and can
20 be reasonably and cost-effectively implemented within
21 available technologies or engineering and institutional
22 control strategies.

23 (i) Establish appropriate cleanup target levels for
24 soils.

25 1. In establishing soil cleanup target levels for
26 human exposure to each contaminant found in soils from the
27 land surface to 2 feet below land surface, the department
28 shall consider the following, as appropriate: calculations
29 using a lifetime cancer risk level of 1.0E-6; a hazard index
30 of 1 or less; the best achievable detection limit; or the
31 naturally occurring background concentration. Institutional

1 controls or other methods shall be used to prevent human
2 exposure to contaminated soils more than 2 feet below the land
3 surface. Any removal of such institutional controls shall
4 require such contaminated soils to be remediated.

5 2. Leachability-based soil target levels must be based
6 on protection of the groundwater cleanup target levels or the
7 alternative cleanup target levels for ground water established
8 under this paragraph, as appropriate. Source removal and other
9 cost-effective alternatives that are technologically feasible
10 must be considered in achieving the leachability soil target
11 levels established by the department. The leachability goals
12 are not applicable if the department determines, based upon
13 individual site characteristics, that contaminants will not
14 leach into the ground water at levels that pose a threat to
15 human health and safety or to the environment.

16 3. The department may set alternative cleanup target
17 levels based upon an applicant's demonstration, using
18 site-specific modeling and risk assessment studies, that human
19 health, public safety, and the environment are adequately
20 protected.

21 (2) The department shall require source removal, if
22 warranted and cost-effective. Once source removal at a site is
23 complete, the department shall reevaluate the site to
24 determine the degree of active cleanup needed to continue.
25 Further, the department shall determine if the reevaluated
26 site qualifies for monitoring only or if no further action is
27 required to rehabilitate the site. If additional site
28 rehabilitation is necessary to reach "no further action"
29 status, the department is encouraged to use natural
30 attenuation and monitoring where site conditions warrant.

1 Section 6. Section 376.82, Florida Statutes, is
2 created to read:

3 376.82 Eligibility criteria and liability
4 protection.--

5 (1) ELIGIBILITY.--Any person who has not caused or
6 contributed to the contamination of a brownfield site after
7 July 1, 1997, is eligible to participate in the brownfield
8 rehabilitation program established in ss. 376.77-376.83,
9 subject to the following:

10 (a) Potential brownfield sites that are subject to an
11 ongoing formal judicial or administrative enforcement action
12 or corrective action pursuant to federal authority, including,
13 but not limited to, the Comprehensive Environmental Response
14 Compensation and Liability Act, 42 U.S.C. ss. 9601, et seq.,
15 as amended; the Safe Drinking Water Act, 42 U.S.C. ss.
16 300f-300i, as amended; the Clean Water Act, 33 U.S.C. ss.
17 1251-1387, as amended, or under an order from the United
18 States Environmental Protection Agency pursuant to s. 3008(h)
19 of the Resource Conservation and Recovery Act, as amended (42
20 U.S.C.A. s. 6928(h)), or that have obtained or are required to
21 obtain a permit for the operation of a hazardous waste
22 treatment, storage, or disposal facility, a postclosure
23 permit, or a permit pursuant to the federal Hazardous and
24 Solid Waste Amendments of 1984, are not eligible for
25 participation unless specific exemptions are secured by a
26 memorandum of agreement with the United States Environmental
27 Protection Agency pursuant to paragraph (2)(e). A brownfield
28 site within an eligible brownfield area that subsequently
29 becomes subject to formal judicial or administrative
30 enforcement action or corrective action under such federal
31 authority shall have its eligibility revoked unless specific

1 exemptions are secured by a memorandum of agreement with the
2 EPA pursuant to paragraph (2)(e).

3 (b) Persons who have not caused or contributed to the
4 contamination of a brownfield site after July 1, 1997, and
5 who, prior to the department's approval of a brownfield site
6 rehabilitation agreement, are subject to ongoing corrective
7 action or enforcement under state authority established in
8 chapter 376 or chapter 403, including those persons subject to
9 a pending consent order with the state, are eligible for
10 participation in a brownfield corrective action if:

11 1. The proposed brownfield site is currently idle or
12 underutilized as a result of the contamination, and
13 participation in the brownfield program will immediately,
14 after cleanup or sooner, result in increased economic
15 productivity at the site, including at a minimum the creation
16 of ten new jobs, whether permanent or part-time, which are not
17 associated with implementation of the brownfield site
18 corrective-action plan; and

19 2. The person is complying in good faith with the
20 terms of an existing consent order or department-approved
21 corrective-action plan, or responding in good faith to an
22 enforcement action, as evidenced by a determination issued by
23 the department or an approved local pollution control program.

24 (c) Potential brownfield sites owned by the state or a
25 local government which contain contamination for which a
26 governmental entity is potentially responsible and which are
27 already designated as federal brownfield pilot projects or
28 have filed an application for designation to the United States
29 Environmental Protection Agency are eligible for participation
30 in a brownfield corrective action.

31

1 (2) LIABILITY PROTECTION.--Any person, including his
2 or her successors and assigns, who executes and implements to
3 successful completion a brownfield site rehabilitation
4 agreement is relieved of further liability for remediation of
5 the site to the state and to third parties and of liability in
6 contribution to any other party who has or may incur cleanup
7 liability for the brownfield site.

8 (a) This section is not to be construed as a
9 limitation on the right of a third party other than the state
10 to pursue an action for damages to property or person;
11 however, such an action may not compel site rehabilitation in
12 excess of that required in the approved corrective-action
13 rehabilitation schedule or otherwise required by the
14 department or approved local pollution control program.

15 (b) This section does not affect the ability or
16 authority to seek contribution from any person who may have
17 liability with respect to the site and who did not receive
18 cleanup liability protection under this chapter.

19 (c) The liability protection provided under this
20 section shall become effective upon execution of a brownfield
21 site rehabilitation agreement and shall remain effective,
22 provided that the person responsible for brownfield site
23 rehabilitation complies with the terms of the agreement. Any
24 statute of limitations that would bar the department from
25 pursuing relief in accordance with its existing authority is
26 tolled from the time the agreement is executed until site
27 rehabilitation is completed or immunity is revoked pursuant to
28 s. 376.80(9).

29 (d) Completion of the performance of the remediation
30 obligations at the brownfield site must be evidenced by a site
31 rehabilitation completion letter or a "no further action"

1 letter issued by the department or the approved local
2 pollution control program, which letter must include the
3 following statement: "Based upon the information provided by
4 ... (property owner) ... concerning property located at ...
5 (address) ..., it is the opinion of ... (the Florida
6 Department of Environmental Protection or approved local
7 pollution control program) ... that ... (party) ... has
8 successfully and satisfactorily implemented the approved
9 brownfield site corrective-action rehabilitation schedule and
10 accordingly no further action is required to assure that any
11 land use identified in the corrective-action schedule is
12 consistent with existing and proposed uses and does not pose
13 an unacceptable risk to human health or the environment."

14 (e) The Legislature recognizes its limitations in
15 addressing cleanup liability under federal pollution control
16 programs. In an effort to secure federal liability protection
17 for persons willing to undertake remediation responsibility at
18 a brownfield site, the department shall attempt to negotiate a
19 memorandum of agreement or similar document with the United
20 States Environmental Protection Agency, whereby the United
21 States Environmental Protection Agency agrees to forego
22 enforcement of federal corrective-action authority at
23 brownfield sites that have received a site rehabilitation
24 completion or "no further action" determination from the
25 department or that are in the process of implementing a
26 corrective-action rehabilitation schedule in accordance with
27 ss. 376.77-376.83.

28 (f) No unit of state or local government may be held
29 liable for implementing corrective actions at a brownfield
30 site within an eligible brownfield area as a result of the
31 involuntary ownership of the site through bankruptcy, tax

1 delinquency, abandonment, or other circumstances in which the
2 state or local government involuntarily acquires title by
3 virtue of its function as a sovereign, or as a result of
4 ownership from donation or gift, unless the state or local
5 government has otherwise caused or contributed to a release of
6 a contaminant at the brownfield site.

7 (3) REOPENERS.--Upon completion of site rehabilitation
8 in compliance with ss. 376.77-376.83, no additional site
9 rehabilitation shall be required unless it is demonstrated:

10 (a) That fraud was committed in demonstrating site
11 conditions or completion of site rehabilitation;

12 (b) That new information confirms the existence of an
13 area of previously unknown contamination which exceeds the
14 site-specific rehabilitation levels established in accordance
15 with s. 376.81, or which otherwise poses the threat of real
16 and substantial harm to public health, safety, or the
17 environment in violation of the terms of ss. 376.77-376.83;

18 (c) That the remediation efforts failed to achieve the
19 site rehabilitation criteria established under s. 376.81;

20 (d) That the level of risk is increased beyond the
21 acceptable risk established under s. 376.81 due to substantial
22 changes in exposure conditions, such as in a change in land
23 use from nonresidential to residential use. Any person who
24 changes the land use of the brownfield site thus causing the
25 level of risk to increase beyond the acceptable risk level may
26 be required by the department to undertake additional
27 remediation measures to assure that human health, public
28 safety, and the environment are protected to levels consistent
29 with s. 376.81; or

1 (e) That a new release occurs at the brownfield site
2 subsequent to a determination of eligibility for participation
3 in the brownfield program established under s. 376.80.

4 (4) ADDITIONAL LIABILITY PROTECTION FOR LENDERS.--

5 (a) The Legislature declares that in order to achieve
6 the economic redevelopment and site rehabilitation of
7 brownfield sites in accordance with ss. 376.77-376.83, it is
8 imperative to encourage financing of real property
9 transactions involving brownfield site corrective-action
10 plans. Accordingly, lenders, including those serving as a
11 trustee, personal representative, or in any other fiduciary
12 capacity, are entitled to the liability protection established
13 in subsection (2) if they have not caused or contributed to a
14 release of a contaminant at the brownfield site.

15 (b) Lenders who hold indicia of ownership at a
16 brownfield site within an eligible brownfield area primarily
17 to protect a security interest or own a brownfield site within
18 an eligible brownfield area as a result of foreclosure or a
19 deed in lieu of foreclosure of a security interest and who
20 seek to sell, transfer, or otherwise divest the site via sale
21 at the earliest practicable time are not liable for the
22 release or discharge of a contaminant from a brownfield site
23 within an eligible brownfield area; for the failure of the
24 person responsible for brownfield site rehabilitation to
25 comply with the brownfield site rehabilitation agreement; or
26 for future site rehabilitation activities required under a
27 reopener provision established in subsection (3) when the
28 lender has not divested the borrower of, or otherwise engaged
29 in, decision-making control of the site rehabilitation or site
30 operations or undertaken management activities beyond those
31 required to protect its financial interest and when an act or

1 omission of the lender has not otherwise caused or contributed
2 to a release of a contaminant at the brownfield site within an
3 eligible brownfield area.

4 Section 7. Section 376.83, Florida Statutes, is
5 created to read:

6 376.83 Violation; penalties.--

7 (1) It is a violation of ss. 376.77-376.82, and it is
8 prohibited for any person, to knowingly make any false
9 statement, representation, or certification in any
10 application, record, report, plan, or other document filed or
11 required to be maintained, or to falsify, tamper with, or
12 knowingly render inaccurate any monitoring device or method
13 required to be maintained under ss. 376.77-376.82, or by any
14 permit, rule, or order issued under this chapter or chapter
15 403.

16 (2) Any person who willfully commits a violation
17 specified in subsection (1) is guilty of a misdemeanor of the
18 first degree, punishable by a fine of not more than \$10,000 or
19 by 6 months in jail, or by both, for each offense. Each day
20 during any portion of which such violation occurs constitutes
21 a separate offense.

22 Section 8. (1) The Legislature recognizes that the
23 United States Environmental Protection Agency has created
24 several pilot projects for redevelopment of brownfield areas
25 to gather information on the best ways to return old
26 industrial and commercial sites to productive use in
27 situations where redevelopment is complicated by potential
28 environmental contamination. These pilot project areas will
29 perform initial work to seek developers to restore the sites,
30 and will also incorporate the efforts of lenders, regulators,
31 and other groups. The Environmental Protection Agency

1 initiative is flexible, allowing local governments to use a
2 variety of approaches to rehabilitate abandoned or
3 underutilized sites, neighborhoods, and small regional areas.
4 (2)(a) The Legislature has determined that it would be
5 beneficial to provide similar incentives in this state for the
6 rehabilitation and redevelopment of brownfield areas. A series
7 of pilot projects in this state could help demonstrate a
8 variety of techniques and approaches to mobilize public and
9 private resources for the purposes of accelerating the
10 rehabilitation and redevelopment of brownfield areas. The
11 pilot projects could also help form partnerships with the
12 federal pilot projects in areas where opportunities are
13 available. Accordingly, the department shall, contingent upon
14 funds being available in the General Appropriations Act for
15 fiscal year 1997-1998, establish seven pilot projects for
16 rehabilitation of brownfield areas, including the areas that
17 are already pilot projects designated by the United States
18 Environmental Protection Agency as of the effective date of
19 this act. Then, give priority to those brownfield areas which
20 have applied to the United States Environmental Protection
21 Agency for designation as a national or a regional pilot
22 project. Of the amount available to each pilot project area in
23 the General Appropriations Act for fiscal year 1997-1998,
24 one-half must be made available for activities related to
25 rehabilitation of brownfield sites in the pilot project area
26 and one-half must be made available to employers who have
27 registered as participating employers with the WAGES Program
28 and have business locations in designated brownfield areas
29 which create at least ten new jobs that are not associated
30 with the implementation of the corrective-action plan. These
31 amounts must be used for one or more of the following:

1 1. As incentive payments to encourage employers to
2 employ WAGES Program participants.

3 2. To offset wage costs, wholly or in part, for WAGES
4 Program participants who are employed for longer than 6 months
5 and whose wages exceed \$15,000 annually.

6 3. To encourage employers to assist employees, both
7 WAGES Program participants and other employees, to acquire
8 additional education or training for enhancement of job skills
9 or basic literacy.

10 (b) The department shall work with local officials in
11 the pilot project area to identify specific sites that should
12 be included in the brownfield area pilot project. The project
13 should demonstrate a commitment of public and private entities
14 and involve the local community. These pilot projects should
15 be undertaken with the objective of a fast-track approach to
16 demonstrate all phases of rehabilitation and what can be
17 accomplished using federal, state, local, and private
18 resources. The department is directed to employ risk-based
19 corrective-action considerations specified in section 376.81,
20 Florida Statutes, in overseeing and evaluating the site
21 rehabilitation plans for pilot project areas.

22 Section 9. The Department of Environmental Protection
23 shall prepare an annual report to the Legislature, beginning
24 in December 1998, which shall include, but not be limited to
25 the number of sites that have been remediated under the
26 provisions of this act.

27 Section 10. This act shall take effect July 1, 1997.
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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 CS/SB's 1306 and 1934

4 Deletes all appropriations to the Department of Environmental
5 Protection for cleanup and to the Department of Labor and
6 Employment Security for the WAGES Program. Provides,
7 contingent upon funds being available in the 1997-98 General
8 Appropriations Act, the establishment of seven pilot project
9 (in lieu of five) for rehabilitation of brownfield areas.
10 Provides that any funds included in the General Appropriation
11 Act must be divided equally between rehabilitation activities
12 and the WAGES Program.
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SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below)

Date: March 26, 1997 Revised: 03/27/97

Subject: Brownfields redevelopment

Table with 4 columns: Analyst, Staff Director, Reference, Action. Rows include Branning, Akins, Voigt, Smith, NR, CA, WM, Favorable/CS, Withdrawn, Favorable/CS.

I. Summary:

This bill creates the Brownfields Redevelopment Act. Provides legislative intent and definitions. Provides for a brownfield program administration process. Provides that a brownfield area must be designated by a local government by resolution. Provides the criteria to be considered when designating a brownfield. Provides notice requirements for a brownfields designation. Requires the person responsible for brownfield site rehabilitation to enter into a brownfield site rehabilitation agreement with the Department of Environmental Protection (DEP) or an approved local environmental program. Specifies what the agreement must include. Provides that contractors must meet certain qualifications. Provides that any professional engineer or geologist providing professional services relating to site rehabilitation must carry professional liability insurance with a specified coverage amount. Provides that certain immunity provisions may be revoked under certain circumstances. Provides for cleanup criteria. Provides eligibility criteria and liability protection under certain circumstances. Directs the DEP to attempt to negotiate certain agreements with the U.S. Environmental Protection Agency. Provides penalties for violations of this act. Directs the DEP to establish five pilot brownfield projects. Requires the Department of Environmental Protection to prepare an annual report to the Legislature.

This bill creates ss. 376.77, 376.78, 376.79, 376.80, 376.81, 376.82, and 376.83, F.S.

II. Present Situation:

In Florida, there are approximately 1,562 hazardous waste sites (not including sites which may contain contamination from petroleum products and drycleaning solvents) that are currently being managed under the Department of Environmental Protection's enforcement program. Also, there are 893 additional sites in Florida that are listed in the EPA's Environmental Response

Compensation and Liability Information System (CERCLIS). The CERCLIS list is used by EPA to track the potentially contaminated sites evaluated under the federal Superfund program.

Broadly defined, "brownfields" are abandoned, idled, or underused industrial and commercial properties where expansion or redevelopment is complicated by real or perceived environmental contamination. Nationally, brownfields represent an enormous waste of resources. It has been estimated that there may be from 100,000 to 450,000 brownfield sites nationwide. Federal, state, and local environmental laws have unwittingly contributed to the creation and expansion of brownfields. Because of the cost of cleaning up a contaminated site and the potentially serious liability issues, it has been easier and more cost-effective for developers to ignore these abandoned, generally urban sites in favor of developing open greenspace areas, even though many of the sites in a brownfield area may actually contain little or no actual environmental contamination. Concern over the rapid development of greenspace nationwide has prompted a great deal of interest in the redevelopment of brownfields.

The U.S. Environmental Protection Agency (EPA) launched the Brownfields Initiative to empower states, communities, and other stakeholders in economic redevelopment to work together in a timely manner to prevent, assess, safely clean up, and sustainably reuse brownfields. The stated anticipated benefits of the Brownfields Initiative in the affected communities will be a cleaner environment, new jobs, and enhanced tax base, and a sense of optimism about the future. EPA activities to help the states implement and realize the benefits of the Brownfields Initiative include clarification of liability issues, partnership and outreach, brownfields pilot projects, and job development and training. To date, Florida has two pilot projects receiving Brownfield Initiative funds from the EPA -- Clearwater and Miami.

Florida has strict liability laws, patterned after federal laws that compel persons responsible for causing contamination from hazardous substances to be financially responsible for cleaning up the contaminated site. Generally, these laws operate to hold everyone in the chain of title for a contaminated property jointly and severally responsible for the costs of cleanup and rehabilitation. These proceedings can be costly and drawn out over long periods of time.

Florida uses the Water Quality Assurance Trust Fund to respond to sites which pose immediate environmental and public health threats while legal proceedings are underway to recover costs from responsible parties. This trust fund, however, serves a variety of needs and at the current rate of expenditures on brownfield sites, it will take decades to respond to the current list of potential brownfield sites.

Often, private sources would be willing to commit the financial resources to redevelop brownfield areas if certain impediments could be removed, such as strict liability provisions which entangle everyone in the chain of title for brownfield sites and unrealistic cleanup standards for brownfield sites which historically have been inflexible and drive up the costs to rehabilitate and clean up these sites.

It is clear that for Florida to accelerate the rate of cleanup activities at the large number of brownfield sites, the private sector must be encouraged through incentives to involve its vast financial resources to help redevelop and reuse brownfield sites. Such involvement can provide clear benefits to the environment and public health. Finally, such activities will also help with other state policies such as economic development, job creation, reduction of urban sprawl, and promotion of urban infill just to name a few.

III. Effect of Proposed Changes:

This bill creates the Brownfields Redevelopment Act.

Section 1: Section 376.77, F.S., is created to provide that the act may be cited as the "Brownfields Redevelopment Act."

Section 2: Section 376.78, F.S., is created to provide legislative intent with regard to brownfields. The reduction of public health and environmental hazards on existing commercial and industrial sites is vital to their use and reuse as sources of employment, housing, recreation, and open-space areas. The reuse of industrial land is an important component of sound land-use policy for productive urban purposes that will help prevent the premature development of farmland, open-space areas, and natural areas, and reduce public costs for installing new water, sewer, and highway infrastructure. Further, the abandonment or underuse of brownfield sites results in the inefficient use of public facilities and services, as well as land and other natural resources, extends conditions of blight in local communities, and contributes to concerns about environmental equity and the distribution of environmental risks across population groups.

Incentives should be put in place to encourage responsible persons to voluntarily develop and implement cleanup plans without the use of taxpayer funds or the need for enforcement actions by state and local governments. Site rehabilitation should be based on the actual risk that contamination on a site may pose to the environment and public health, taking into account its current and future use and the degree to which contamination may spread and place the public or the environment to risk.

This section further provides intent and finding regarding environmental justice considerations and recognition that the environment is an important element of the quality of life in any community. Environmental justice considerations should be inherent in meaningful public participation elements of a brownfields redevelopment program.

Cooperation among federal, state, and local agencies, local community development organizations, current owners, and prospective purchasers of brownfield sites is required to accomplish timely cleanup activities and the redevelopment or reuse of brownfield sites.

Section 3: Section 376.79, F.S., is created to define the following terms: "brownfield sites," "brownfield area," "environmental justice," "department," "local pollution control program," "person responsible for brownfield site rehabilitation," and "person".

Section 4: Section 376 80, F.S., is created to provide for a brownfield program administration process. A local government with jurisdiction over the brownfield area must notify the DEP of its decision to designate a brownfield area for rehabilitation. The notification must include a resolution by the local government body to which is attached a map adequate to clearly designate exactly which parcels are to be included in the brownfield area or a less detailed map which is accompanied by a legal description of the brownfield area. Any property owner within a proposed brownfield area may request in writing to have his property removed from the proposed designation and the local government is required to grant the request. The local government shall provide for public hearings and notice of the proposed designation.

If a local government proposes to designate a brownfield area that is outside community redevelopment areas, enterprise zones, empowerment zones, or designated brownfield pilot project areas, the local government must conduct at least one public hearing in the area to be designated to provide an opportunity for public input on the size of the area, the objectives for rehabilitation, job opportunities and economic developments anticipated, neighborhood residents' considerations, and other relevant local concerns. The notice of public hearing must be made in a newspaper of general circulation in the area and the notice must be at least 6 inches square in size. The notice must also appear in ethnic newspapers or local community bulletins, must be posted in the affected area, and must be announced at a scheduled meeting of the local governing body before the actual public hearing.

The local government must consider the following in determining the area to be designated as a brownfield area.

- Whether the brownfield area warrants economic development and has a reasonable potential for such activities;
- Whether the proposed area to be designated represents a reasonable focused approach and is not overly large in geographic coverage;
- Whether the area has potential to interest the private sector in participating in rehabilitation; and
- Whether the area contains sites or parts of sites suitable for limited recreational open space, cultural, or historical preservation purposes.

The local government shall designate a brownfield area if requested by a person if certain conditions are met. That person must demonstrate that the brownfield program will result in increased economic productivity at the site, including the creation of at least 10 new jobs which are not associated with the implementation of the brownfield site corrective action plan; and that person must provide notice to neighbors and nearby residents of the proposed area and afforded the opportunity for comments and suggestions about rehabilitation from those receiving notice. Further, the person requesting the designation must provide reasonable assurance that he had sufficient financial resources to complete and implement the corrective action plan and provide

assurances that implementing the plan will comply with rules of the department to protect against adverse effects on public health or the environment.

At the time of the adoption of the resolution, the local government must notify the DEP of the entity that it is designating as the “person responsible for brownfield site rehabilitation.” If the agency or person who will be responsible for the coordination changes during the brownfield site rehabilitation approval process, the DEP or the affected local pollution control program must notify the affected local government when the change occurs.

Local governments or persons responsible for rehabilitation of brownfield areas must establish an advisory committee for the purpose of improving public participation and receiving public comments on rehabilitation and remediation of the brownfield area, future land use, local employment opportunities, community safety, and environmental justice.

The person responsible for brownfield site rehabilitation must enter into a brownfield site rehabilitation agreement with the DEP or an approved local environmental program. The agreement must include:

- A brownfield site rehabilitation schedule.
- A commitment to conduct site rehabilitation activities under the observation of professional engineers or geologists. Upon completion of the approved remedial action, the department shall require the professional engineer or professional geologist to certify that the corrective action was, to the best of his knowledge, completed in substantial conformance with the plans and specifications approved by the department.
- A commitment to conduct site rehabilitation in accordance with an approved comprehensive quality assurance plan under DEP rules.
- A commitment to conduct site rehabilitation consistent with state, federal, and local laws and consistent with the brownfield site contamination cleanup criteria specified in this bill.
- Timeframes for the DEP’s review of technical reports and plans submitted in accordance with the agreement. The DEP is required to make every effort to adhere to established agency goals for reasonable timeframes for review of such documents.
- A commitment to secure site access for the department or approved local environmental program to all brownfield sites within the eligible brownfield area for activities associated with site rehabilitation.
- Other provisions that the person responsible for brownfield site rehabilitation and the DEP agree upon that will improve or enhance the brownfield site rehabilitation process.
- A description of any pollution prevention plan or measures for the brownfield site.

Contractors must meet certain qualifications.

Any professional engineer or geologist providing professional services relating to site rehabilitation program tasks must carry professional liability insurance with a coverage limit of at least \$1 million.

During the cleanup process, if the DEP or local program fails to complete the review of a technical document within the timeframe specified in the brownfield site rehabilitation agreement, the person responsible for brownfield site rehabilitation may proceed to the next site rehabilitation task at his own risk. Exceptions include requests for "No Further Action," "Monitoring Only Proposals," and feasibility studies which must be approved prior to implementation.

If the person responsible for brownfield site rehabilitation fails to comply with the brownfield site rehabilitation agreement, the DEP shall allow 90 days for that person to return to compliance with the provision at issue or to renegotiate a modification to the agreement with the DEP for good cause shown. If an imminent hazard exists, the 90-day grace period shall not apply. If the project is not returned to compliance with the agreement and a modification cannot be negotiated, the immunity provisions of s. 376.82, F.S., will be revoked.

The DEP is authorized and encouraged to enter into delegation agreements with local pollution control programs.

Local governments are encouraged to utilize the full range of economic and tax incentive available to promote the rehabilitation of brownfield areas.

Section 5: Section 376.81, F.S., is created to provide for contamination cleanup criteria. The secretary of DEP shall establish criteria by rule for the purpose of determining, on a site-specific basis, the rehabilitation program tasks that comprise a site rehabilitation program and the level at which a rehabilitation program task and a site rehabilitation may be deemed completed. In establishing the rule, the DEP shall incorporate, to the maximum extent feasible, risk-based corrective action principles to achieve protection of human health and safety and the environment in a cost-effective manner. The criteria for determining what constitutes a rehabilitation program task or completion of a site rehabilitation program task or site rehabilitation program must:

- Consider the current exposure and potential risk to humans and the environment.
- Establish the point of compliance at the source of the contamination. However, the department may temporarily move the point of compliance to the boundary of the property, or to the edge of the plume when the plume is within the property boundary under certain conditions.

- Ensure that the site-specific cleanup goal is that all contaminated brownfield sites and brownfield areas ultimately achieve the applicable cleanup target levels provided for in this section. The department may allow the concentrations of contaminants to temporarily exceed the applicable cleanup target levels under certain conditions.
- Allow brownfield site and brownfield area rehabilitation programs to include the use of institutional or engineering controls to eliminate or control the potential exposure to contaminants to humans or the environment. The use of controls must be preapproved by the department.
- Consider the synergistic, antagonistic, and additive effects of contaminants when the scientific data becomes available.
- Take into consideration certain individual site characteristics.
- Apply water quality standards as specified in the bill.
- Provide for the department to issue a “no further action order” under certain circumstances.
- Establish appropriate cleanup target levels for soils.

The department shall require source removal under certain circumstances.

Section 6: Section 376.82, F.S., is created to provide the eligibility criteria and liability protection. Any person or governmental entity who has not caused or contributed to the contamination of a brownfield site after July 1, 1997, is eligible to participate in the brownfield rehabilitation program subject to the following:

- Potential brownfield sites currently subject to ongoing formal or administrative enforcement action or corrective action pursuant to federal authority including, but not limited to, the Comprehensive Environmental Response Compensation and Liability Act (CERCLA or Superfund), the Safe Drinking Water Act, the Clean Water Act, or under an order from the United States Environmental Protection Agency (EPA) pursuant to the Resource Conservation and Recovery Act, or that have obtained or are required to obtain a permit for the operation of a hazardous waste treatment, storage, or disposal facility, a post closure permit, or a permit pursuant to the federal Hazardous and Solid Waste Amendments of 1984 are not eligible for participation in a brownfield corrective action unless specific exemptions are secured by Memorandum of Agreement with the EPA. A brownfield site within an eligible brownfield area that subsequently becomes subject to formal judicial or administrative enforcement action or corrective action under such federal authority shall have its eligibility revoked unless specific exemptions are secured by a Memorandum of Agreement.

- Potential brownfield sites currently subject to ongoing corrective action or enforcement under state authority, including those sites currently subject to a pending consent order with the state, are eligible for participation in a brownfield corrective under certain conditions.

Any person who executes and implements to successful completion a brownfield site rehabilitation agreement is relieved from further liability for remediation of the site to the state and to third parties and for liability in contribution to any other party who has or may incur cleanup liability for the brownfield site. This limitation does not affect the right of a third party other than the state to pursue an action for damages to property or person; however, a third party cannot compel site rehabilitation in excess of that required in the approved corrective action rehabilitation schedule or otherwise required by the DEP or approved local pollution control program. This section does not affect the ability or authority to seek contribution from any person who may have liability with respect to the site and who did not receive cleanup liability protection under ch. 376, F.S.

The liability protection is effective upon execution of a brownfield site rehabilitation agreement and shall remain effective provided the person responsible for brownfield site rehabilitation complies with the terms of the agreement. Any statute of limitation which would bar the department from pursuing relief in accordance with its existing authority is tolled from the time the agreement is executed until site rehabilitation is completed or immunity is revoked pursuant to s. 376.80(9), F.S. Completion of the performance of the remedial obligations at the brownfield site must be evidenced by a site rehabilitation completion letter or a "no further action" letter issued by the department or the approved local pollution control program.

The legislature, in recognition of its limitations in addressing cleanup liability under federal pollution control programs, directs the DEP to attempt to negotiate a memorandum of agreement or similar document with the U.S. Environmental Protection Agency (EPA), whereby the EPA agrees to forego enforcement of federal corrective action authority at brownfield sites that have received a site rehabilitation completion or "no further action" determination from the department or which are in the process of implementing an approved corrective action rehabilitation schedule.

No unit of state or local government may be held liable for implementing corrective action at a brownfield site within an eligible brownfield area as a result of the involuntary ownership of the site through bankruptcy, tax delinquency, abandonment, or other circumstances in which the local government involuntarily acquires title by virtue of its function as a sovereign, or as a result of ownership from donation or gift, unless the local government has otherwise caused or contributed to a release of a contaminant at the brownfield site.

Upon completion of site rehabilitation, no additional site rehabilitation is required unless:

- Fraud was committed regarding site conditions or the corrective action rehabilitation schedule;

- New information confirms the existence of an area of previously unknown contamination which exceed the site-specific rehabilitation levels or otherwise poses the threat of real and substantial harm to the public health, safety, or the environment;
- The remediation efforts failed to achieve the cleanup standards or protection levels established under s. 376.81, F.S.;
- The level of risk is increased beyond the acceptable risk established under s. 376.81, F.S. , due to substantial changes in exposure conditions. Any person who changes the land use of the brownfield site this causing the level of risk to increase beyond the acceptable risk level may be required by the department to undertake additional remediation measures; or
- A new release occurs at the brownfield site subsequent to a determination of eligibility for participation in the brownfield program.

Additional liability protection is provided for lenders under certain conditions.

Section 7: Section 376 83, F.S., is created to provide penalties for violations of this act.

Section 8: The DEP is directed to establish seven pilot projects for rehabilitation of brownfield areas including the two areas that are already pilot projects designated by the U.S. EP and giving priority to those sites that have applied to EPA for national or regional designation. The project should demonstrate a commitment of public and private entities and involve the local community. These pilot projects should be undertaken with the objective of a fast-track approach to demonstrate all phases of rehabilitation and what can be accomplished using federal, state, local, and private resources. The department is directed to employ risk-based corrective action considerations in overseeing and evaluating the site-rehabilitations plans for pilot project areas. Provides any fund included in the General Appropriations Act be divided equally between rehabilitation of brownfield sites and the WAGES Program.

Section 9: The Department of Environmental Protection is required to prepare an annual report to the Legislature beginning in December 1998 on the status of the brownfields program. The report shall be available for public comment 60 days prior to submittal to the Legislature and comments received shall be submitted with the report to the Legislature.

Section 10: This act takes effect on July 1, 1997.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill would require a local government to designate a brownfield area under this act if requested by a person who has agree to participate in the rehabilitation program and who demonstrates that the increased productivity at the site will result in the creation of at least 10 new jobs not association with the rehabilitation efforts. Pursuant to the designation process, the local government would be required to hold public hearings and comply with the notice requirements in the act. These costs are not expected to be significant.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill could greatly facilitate the rehabilitation of abandoned and blighted areas. The rehabilitation costs for a contaminated site in a designated brownfield area could be less under this bill since the site owner would be able to take advantage of risk-based corrective action principles. Since no state funds other than pilot project funds will be used for cleanup, this is an incentive for the private sector to use its own financial resources. Further, the liability protection provided in the bill allow a degree of certainty regarding the rehabilitation process.

The redevelopment of these abandoned and underutilized, typically urban areas will help to revitalize these communities and stimulate competition in the business community, economic development, and may lead to increased productive employment. In addition, the overall quality of life could be improved by providing a cleaner environment in which to work and live.

Those benefiting most from the provisions of this bill in the near future will be the communities and businesses located in the designated brownfield areas and the seven pilot projects.

C. Government Sector Impact:

Although this bill makes no appropriations, full implementation will require additional resources. Depending on the number of pilot projects, the Department of Environmental Protection and the Department of Labor and Employment Security will both require appropriations in the General Appropriations Act.

The DEP has indicated that in order to take into consideration the innovative approaches under the risk-based corrective action principles provided for in the bill, seven new positions would be required. To obtain the expertise necessary to be able to work constructively with the brownfield developer's consultant, these professional positions would have to be either PE II's or PG II's. The estimated staff costs for these positions would be \$480,290. If the DEP employed professionals at the PE I or PG I level, the estimated staff costs would be \$437,881. These estimates do not take into account the estimated \$5,000-\$8,000 for the OSHA safety training and medical monitoring that may be needed for DEP employees. Further, the staff cost estimates do not include clerical costs that would be needed.

In addition, there will be an indeterminate amount of non-recurring costs associated with the rulemaking for the cleanup criteria.

Local governments may incur some costs associated with the designation of brownfield areas. However, the local governments stand to benefit greatly through the revitalization of their urban area and return abandoned properties back to productive use and subject once again to property taxes. The cleanup of environmental contamination provides a safer, healthier community for its residents.

The Department of Labor and Employment Security will experience some operational costs associated with the implementation of the provisions relating to the WAGES Program. The amount of these costs cannot be determined at this time.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.



Journal of the Senate

Number 10—Regular Session

Thursday, April 3, 1997

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[See end of Journal for Bill Action Summary]

CALL TO ORDER

The Senate was called to order by the President at 9 00 a m A quorum present—38

Madam President	Dantzler	Jenne	Ostalkiewicz
Bankhead	Diaz-Balart	Jones	Rossin
Bronson	Dudley	Kirkpatrick	Scott
Brown-Waite	Dyer	Klein	Silver
Campbell	Forman	Kurth	Sullivan
Casas	Grant	Latvala	Thomas
Childers	Hargrett	Lee	Turner
Clary	Harris	McKay	Williams
Cowan	Holzendorf	Meadows	
Crist	Horne	Myers	

Excused Senator Burt until 2 25 p m

PRAYER

The following prayer was offered by former Senate President, Phil Lewis

Let's lift our hearts and minds to God and ask for his blessing

Our Heavenly Father, who has made the heaven and earth, we ask you today to bless this Senate and its leadership We also, particularly, want to ask you to bless all of the older members who are visiting here today and remember those who can't be with us today who have passed on We ask you to give the seated Senate the courage to do what is right for your people Amen

PLEDGE

Senate Pages, Kristy Calhoun of Crawfordville and Alisha Michele Koerner of Jupiter, led the Senate in the pledge of allegiance to the flag of the United States of America

MOTIONS RELATING TO COMMITTEE REFERENCE

On motion by Senator Bankhead, by two-thirds vote CS for SB 250 and CS for SB 1288 were withdrawn from the Committee on Rules and Calendar, CS for SB 272 was withdrawn from the Committee on Children, Families and Seniors, CS for SB 630 was withdrawn from the Committee on Education, SB 776 was withdrawn from the Committee on Regulated Industries, CS for SB 1228 was withdrawn from the Committee on Criminal Justice, SB 806 was withdrawn from the Committees on Governmental Reform and Oversight, and Ways and Means, and referred to the Committees on Governmental Reform and Oversight, Transportation, and Ways and Means, and CS for SB 2044 was withdrawn from the Committee on Ways and Means and referred to the Committees on Community Affairs, and Ways and Means

On motion by Senator Campbell, by two-thirds vote SB 638, SB 640, SB 1902 and SB 1200 were withdrawn from the committees of reference and further consideration

On motion by Senator Childers, by two-thirds vote SB 2320 was withdrawn from the committee of reference and further consideration

On motion by Senator Sullivan, by two-thirds vote CS for SB 130, SB 152, CS for SB 270, SB 334, SB 684, CS for SB 1160, CS for SB's 1286 and 1446, SB 1344 and CS for SB 1992 were withdrawn from the Committee on Ways and Means

On motion by Senator Sullivan, by two-thirds vote SB 52, CS for SB's 530 and 848, CS for SB 718, SB 1042, CS for SB 1084, CS for SB 1376, SB 1872, SB 2400 and SB 2402 were withdrawn from the Committee on Ways and Means

On motion by Senator Bankhead, by two-thirds vote SB 766 was removed from the calendar and referred to the Committee on Judiciary, and SB 2330 was withdrawn from the Committees on Commerce and Economic Opportunities, Governmental Reform and Oversight; and Ways and Means; and referred to the Committees on Commerce and Economic Opportunities, Health Care, and Ways and Means

On motion by Senator Williams, by two-thirds vote SB 2262 and SB 2160 were withdrawn from the committees of reference and further consideration

MOTIONS

On motion by Senator Bankhead, a deadline of 5 00 p m Friday, April 4, was set for filing amendments to Bills on Third Reading to be considered Monday, April 7

On motion by Senator Bankhead, by two-thirds vote all bills remaining on the Special Order Calendar this day were established as the Special Order Calendar for Monday, April 7

SPECIAL ORDER CALENDAR

On motion by Senator Hargrett—

CS for SB 1002—A bill to be entitled An act relating to the Department of Highway Safety and Motor Vehicles, amending s 316 066, F S, deleting a penalty for failure to provide proof of insurance to a law enforcement officer under certain circumstances, amending s 316 2065, providing that a violation is a pedestrian violation, amending s 316 2397, F S, authorizing motor fuel tankers to display amber lights, amending s 316 645, F S, including reference to chapter 320, F S, with respect to the arrest authority of an officer at the scene of a traffic

On motion by Senator Holzendorf—

CS for SB's 780, 520 and 692—A bill to be entitled An act relating to economic development, creating ss 212 097, 212 098, F S , creating the Rural Job Tax Credit Program and the Urban High-Crime Area Job Tax Credit Program, amending ss 220 02, 220 13, F S , conforming provisions, creating s 220 189, F S , allowing credit for the Rural Job Tax Credit Program and the Urban High-Crime Area Job Tax Credit Program, providing an effective date

—was read the second time by title

The Committee on Ways and Means recommended the following amendment which was moved by Senator Holzendorf

Amendment 1—On page 2, line 27, following the period () insert. *The term also includes an employee leased from an employee leasing company licensed under chapter 468*

Senator McKay moved the following amendment to **Amendment 1** which was adopted

Amendment 1A—On page 1, delete line 18 and insert *employee leasing company licensed under chapter 468, if such employee has been continuously leased to the employer for an average of at least 36 hours per week for more than 6 months*

Amendment 1 as amended was adopted

The Committee on Ways and Means recommended the following amendment which was moved by Senator Holzendorf and adopted

Amendment 2—On page 3, line 9, delete "(6)" and insert (8)

Senator Hargrett moved the following amendments which were adopted

Amendment 3—On page 3, lines 6-22, delete those lines and insert

(e) *"Qualified high-crime area" means an area selected by the Office of Tourism, Trade, and Economic Development in the following manner every third year, the office shall rank and tier those areas nominated under subsection (8), according to the following prioritized criteria*

1 *Highest arrest rates within the geographic area for violent crime and for such other crimes as drug sale, drug possession, prostitution, vandalism, and civil disturbances,*

2 *Highest reported crime volume and rate of specific property crimes such as business and residential burglary, motor vehicle theft, and vandalism,*

3 *Highest percentage of reported index crimes that are violent in nature,*

4 *Highest overall index crime volume for the area, and*

5 *Highest overall index crime rate for the geographic area*

Amendment 4—On page 8, delete line 7 and insert *during any calendar year is \$5 million, of which \$1 million shall be exclusively reserved for Tier-one areas The Department of*

Amendment 5 (with title amendment)—On page 18, line 9, after the period () insert *The Office of Tourism, Trade, and Economic Development shall conduct a review of the Urban High-Crime Area Job Tax Credit and the Rural Job Tax Credit Program and submit its report to the Governor, President of the Senate, and the Speaker of the House of Representatives by February 1, 2000*

And the title is amended as follows

On page 1, line 10, after the semicolon (,) insert *providing for a review of the programs,*

Amendment 6—On page 6 delete line 30 and insert *125 011(1) may nominate no more than three high crime areas*

Pursuant to Rule 4 19 **CS for SB's 780, 520 and 692** as amended was ordered engrossed and then placed on the calendar of Bills on Third Reading

On motion by Senator Williams, by two-thirds vote—

CS for CS for SB 1154—A bill to be entitled An act relating to growth management, amending s 380 06, F S , revising statewide guidelines and standards and substantial deviations for developments of regional impact, amending s 403 973, F S , providing for an expedited permitting process for economic development projects and comprehensive plan amendments, providing an effective date

—was read the second time by title

Senator Hargrett moved the following amendment

Amendment 1—On page 11, line 15, after the period () insert *The agreement must also specify whether the significant traffic impacts on the interstate system will be mitigated through the implementation of a project or payment of funds to the Department of Transportation Where funds are paid, the Department of Transportation must include in the 5-year work program transportation projects or project phases, in an amount equal to the funds received, to mitigate the traffic impacts associated with the proposed project*

Senator Hargrett moved the following substitute amendment which was adopted

Amendment 2—On page 11, line 27, after the period () insert *The agreement must also specify whether the significant traffic impacts on the interstate system will be mitigated through the implementation of a project or payment of funds to the Department of Transportation Where funds are paid, the Department of Transportation must include in the 5-year work program transportation projects or project phases, in an amount equal to the funds received, to mitigate the traffic impacts associated with the proposed project*

Senator Williams moved the following amendment which was adopted

Amendment 3 (with title amendment)—On page 14, delete line 11 and insert

Section 3 This act shall take effect upon becoming a law, except that subsections (5), (6), and (7) of section 403 973, Florida Statutes, shall take effect October 1, 1997

And the title is amended as follows

On page 1, delete line 9 and insert *providing effective dates*

Pursuant to Rule 4 19, **CS for CS for SB 1154** as amended was ordered engrossed and then placed on the calendar of Bills on Third Reading

On motion by Senator Latvala, by two-thirds vote—

CS for CS for SB's 1306 and 1934—A bill to be entitled An act relating to brownfields redevelopment, creating s 376 77, F S , providing a short title, creating s 376 78, F S , providing legislative intent, creating s 376 79, F S , defining terms, creating s 376 80, F S , providing for a brownfield program administration process, creating s 376 81, F S , providing for brownfield site contamination cleanup criteria, creating s 376 82, F S , providing for eligibility criteria and liability protection, creating s 376 83, F S , providing penalties, providing for pilot projects, providing appropriations, requiring the Department of Environmental Protection to report annually to the Legislature, providing an effective date

—was read the second time by title

Senator Latvala moved the following amendment which was adopted

Amendment 1—On page 20, line 28, delete s 376 80(9) and insert s 376 80(10)

Senators Dantzler and Latvala offered the following amendment which was moved by Senator Latvala

Amendment 2 (with title amendment)—On page 27, between lines 20 and 21, insert

Section 11 *Notwithstanding the December 31, 1996 deadline to file applications pursuant to subsection (12) of section 376.3071, Florida Statutes, the Department of Environmental Protection shall accept any applications for reimbursement of claims that were not received by the December 31, 1996 deadline solely because the U.S. Post Office or small package carrier service was unable to timely deliver the application on that date due to adverse weather conditions which prevented air travel. Reimbursement applications which the department returned because they were received beyond the deadline must be resubmitted and received by the department by September 1, 1997, with an affidavit explaining the facts surrounding the late delivery that has been sworn to or affirmed pursuant to chapter 117, Florida Statutes, from the small package carrier who delivered the late application. Such claims shall be eligible for payment in the same priority as if they had been received by 5:00 p.m., December 31, 1996.*

(Renumber subsequent section)

And the title is amended as follows:

On page 1, line 17, after "Legislature", insert providing an exception to deadline for receipt of reimbursement applications received pursuant to s. 376.3071, F.S.,

Senators Dantzer and Latvala offered the following amendments to **Amendment 2** which were moved by Senator Latvala and adopted:

Amendment 2A—On page 1, lines 14-17, delete those lines and insert: On page 26, between lines 26 and 27 insert:

Section 10 *Notwithstanding the December 31, 1996,*

Amendment 2B—On page 1, line 28, after "affidavit" insert *and other supporting documents, shipping reports, or other appropriate documentation.*

Amendment 2 as amended was adopted.

Pursuant to Rule 4.19, CS for CS for SB's 1306 and 1934 as amended was ordered engrossed and then placed on the calendar of Bills on Third Reading.

On motion by Senator Williams—

SB 702—A bill to be entitled An act relating to the repeal of advisory bodies and other governmental entities, amending s. 27.36, F.S., to conform to the abolition of the Council on Organized Crime; amending s. 228.0875, F.S., terminating the Governor's Summer Colleges Council, amending s. 230.71, F.S., terminating the Intergenerational School Volunteer Advisory Board, amending s. 239.505, F.S., terminating the Advisory Board on Constructive Youth Programs, repealing ss. 288.971, 288.972, 288.973, 288.974, 288.975, 288.976, 288.977, 288.980, F.S., to terminate the Florida Defense Conversion and Transition Commission and its related duties, amending s. 408.033, F.S., relating to local and state health planning, terminating the Statewide Health Council, amending ss. 186.022, 186.508, 240.5121, 395.604, 408.038, 408.039, 408.0455, F.S., and repealing ss. 186.003(9), 186.503(9), relating to definitions of the council, to conform, repealing chapter 30280, Laws of Florida, 1955, as amended, to terminate the Clay County Hospital District and the Clay County Hospital Authority, repealing chapter 57-700, Laws of Florida, as amended, to terminate the Suwannee River Authority, repealing chapter 59-1939, Laws of Florida, as amended, to terminate the Union County Development Authority, repealing chapter 67-2027, Laws of Florida, to terminate the Santa Rosa County Airport and Industrial Authority, repealing chapter 71-926, Laws of Florida, to terminate the Sumter County Hospital Authority, repealing s. 79, ch. 90-201, Laws of Florida, to terminate the International Language Institute Advisory Council, repealing s. 1, ch. 90-232, Laws of Florida, to terminate the Task Force on County Contributions to Medicaid, repealing proviso language in s. 1, ch. 91-193, Laws of Florida, to terminate the Commission on Long-Term Care, repealing s. 63, ch. 93-164, Laws of Florida, to terminate the Commission to Study the Safety and Security of Railroad-Highway Grade Crossings, repealing ss. 23, 24, ch. 94-292, Laws of Florida, to terminate the Florida Education Facilities Study Committee, repealing proviso language in s. 1A, ch. 94-357, Laws of Florida, to terminate the Task Force on Productivity Enhancement, providing effective dates.

—was read the second time by title.

The Committee on Governmental Reform and Oversight recommended the following amendment which was moved by Senator Williams and adopted:

Amendment 1 (with title amendment)—On page 2, line 24, insert:

Section 1 Subsection (5) of section 20.13, Florida Statutes, is amended to read:

20.13 Department of Insurance —There is created a Department of Insurance:

(5) A Bureau of Financial and Support Services ~~and a Bureau of Information Systems~~ is created within the Division of Administration.

(Renumber subsequent sections)

And the title is amended as follows:

On page 1, line 3, after the semicolon (;) insert amending s. 20.13, F.S., deleting a reference to a Bureau of Insurance Systems in the Department of Insurance,

Senator Rossin moved the following amendment:

Amendment 2 (with title amendment)—On page 2, line 24, insert:

Section 1 Section 14.30, Florida Statutes, is transferred renumbered as section 286.30, Florida Statutes, and amended to read:

~~286.30~~ ~~14.30~~ Commission on Government Accountability to the People —

(1) There is created the Commission on Government Accountability to the People:

(2) The commission shall consist of 15 members appointed by the Governor, subject to confirmation by the Senate, with 9 members from the private sector and 6 members from the public sector. The members shall serve 4-year terms. Of the initial appointees, terms shall be staggered as follows: three members shall hold 1-year terms, four members shall hold 2-year terms, four members shall hold 3-year terms, and four members shall hold 4-year terms. The Governor shall fill all vacancies. Upon the request of the chair of the commission or upon his or her own initiative, the Governor may replace members who are absent from two commission meetings within any calendar year.

(3) The Governor shall appoint the initial chair. Subsequent chairs shall be elected by a majority vote of the commission, shall serve 1-year terms, and shall be eligible for reelection. The commission shall elect the vice chair from its membership.

(4) The commission shall hold a minimum of four regular meetings during the calendar year. Additional meetings may be called by the chair, or upon written request of a majority of the members of the commission. All meetings of the commission are public in accordance with the provisions of s. 286.011.

(5) The commission may establish such committees as it deems necessary to execute its powers and duties.

(6) Members of the commission shall not receive compensation for their service, however, they shall be entitled to per diem and travel expenses pursuant to s. 112.061. Public sector members shall perform their commission duties in addition to fulfilling their regular public duties.

(7) The commission shall be assigned to the *Department of Management Services* ~~Executive Office of the Governor~~ for administrative and fiscal accountability purposes, and the *Department of Management Services* ~~Executive Office of the Governor~~ shall provide administrative support and services to the commission; otherwise, the commission shall function independently of the control and direction of the Governor.

(8) The commission shall, by majority vote, employ and set the compensation of an executive director, who shall serve at the pleasure of the commission.

A bill to be entitled

An act relating to brownfields redevelopment; creating s. 376.77, F.S.; providing a short title; creating s. 376.78, F.S.; providing legislative intent; creating s. 376.79, F.S.; defining terms; creating s. 376.80, F.S.; providing for a brownfield program administration process; creating s. 376.81, F.S.; providing for brownfield site contamination cleanup criteria; creating s. 376.82, F.S.; providing for eligibility criteria and liability protection; creating s. 376.83, F.S.; providing penalties; providing for pilot projects; providing appropriations; requiring the Department of Environmental Protection to report annually to the Legislature; providing an exception to deadline for receipt of reimbursement applications received pursuant to s. 376.3071, F.S.; providing an effective date.

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

Section 1. Section 376.77, Florida Statutes, is created to read:

376.77 Short title.--Sections 376.77-376.83 may be cited as the "Brownfields Redevelopment Act."

Section 2. Section 376.78, Florida Statutes, is created to read:

376.78 Legislative intent.--The Legislature finds and declares the following:

1

CODING: Words stricken are deletions; words underlined are additions.

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

(2) The abandonment or underuse of brownfield sites also results in the inefficient use of public facilities and services, as well as land and other natural resources, extends conditions of blight in local communities, and contributes to concerns about environmental equity and the distribution of environmental risks across population groups.

(3) Incentives should be put in place to encourage responsible persons to voluntarily develop and implement cleanup plans without the use of taxpayer funds or the need for enforcement actions by state and local governments.

(4) Environmental and public health hazards cannot be eliminated without clear, predictable remediation standards that provide for the protection of the environment and public health.

(5) Site rehabilitation should be based on the actual risk that contamination may pose to the environment and public health, taking into account current and future land and water use and the degree to which contamination may spread and place the public or the environment at risk.

(6) According to the statistical proximity study contained in the final report of the Environmental Equity and Justice Commission, minority and low-income communities are

2

CODING: Words stricken are deletions; words underlined are additions.

1 disproportionately impacted by targeted environmentally
 2 hazardous sites. The results indicate the need for the health
 3 and risk exposure assessments of minority and poverty
 4 populations around environmentally hazardous sites in this
 5 state. Redevelopment of hazardous sites should address
 6 questions relating to environmental and health consequences.

7 (7) Environmental justice considerations should be
 8 inherent in meaningful public participation elements of a
 9 brownfields redevelopment program.

10 (8) The existence of brownfields within a community
 11 may contribute to, or may be a symptom of, overall community
 12 decline, including issues of human disease and illness, crime,
 13 educational and employment opportunities, and infrastructure
 14 decay. The environment is an important element of quality of
 15 life in any community, along with economic opportunity,
 16 educational achievement, access to health care, housing
 17 quality and availability, provision of governmental services,
 18 and other socioeconomic factors. Brownfields redevelopment,
 19 properly done, can be a significant element in community
 20 revitalization.

21 (9) Cooperation among federal, state, and local
 22 agencies, local community development organizations, and
 23 current owners and prospective purchasers of brownfield sites
 24 is required to accomplish timely cleanup activities and the
 25 redevelopment or reuse of brownfield sites.

26 Section 3. Section 376.79, Florida Statutes, is
 27 created to read:

28 376.79 Definitions.--As used in ss. 376.77-376.83, the
 29 term:

30 (1) "Brownfield sites" means sites that are generally
 31 abandoned, idled, or under-used industrial and commercial

1 properties where expansion or redevelopment is complicated by
 2 actual or perceived environmental contamination.

3 (2) "Brownfield area" means a contiguous area of one
 4 or more brownfield sites, some of which may not be
 5 contaminated, and which has been designated by a local
 6 government by resolution. Such areas may include all or
 7 portions of community redevelopment areas, enterprise zones,
 8 empowerment zones, other such designated economically deprived
 9 communities and areas, and Environmental Protection
 10 Agency-designated brownfield pilot projects.

11 (3) "Environmental justice" means the fair treatment
 12 of all people of all races, cultures, and incomes with respect
 13 to the development, implementation, and enforcement of
 14 environmental laws, regulations, and policies.

15 (4) "Department" means the Department of Environmental
 16 Protection.

17 (5) "Local pollution control program" means a local
 18 pollution control program that has received delegated
 19 authority from the Department of Environmental Protection
 20 under s. 403.182.

21 (6) "Person responsible for brownfield site
 22 rehabilitation" means the individual or entity that is
 23 designated by the local government in its resolution
 24 establishing a brownfield area to enter into the brownfield
 25 site rehabilitation agreement with the department.

26 (7) "Person" means any individual, partner, joint
 27 venture, or corporation; any group of the foregoing, organized
 28 or united for a business purpose; or any governmental entity.

29 Section 4. Section 376.80, Florida Statutes, is
 30 created to read:

31 376.80 Brownfield program administration process.--

1 (1) A local government with jurisdiction over the
 2 brownfield area must notify the department of its decision to
 3 designate a brownfield area for rehabilitation for the
 4 purposes of ss. 376.77-376.83. The notification must include a
 5 resolution, by the local government body, to which is attached
 6 a map adequate to clearly delineate exactly which parcels are
 7 to be included in the brownfield area or alternatively a
 8 less-detailed map accompanied by a detailed legal description
 9 of the brownfield area. If a property owner within the area
 10 proposed for designation by the local government requests in
 11 writing to have his or her property removed from the proposed
 12 designation, the local government shall grant the request. For
 13 municipalities, the governing body shall adopt the resolution
 14 in accordance with the procedures outlined in s. 166.041,
 15 except that the notice for the public hearings on the proposed
 16 resolution must be in the form established in s.
 17 166.041(3)(c)2. For counties, the governing body shall adopt
 18 the resolution in accordance with the procedures outlined in
 19 s. 125.66, except that the notice for the public hearings on
 20 the proposed resolution shall be in the form established in s.
 21 125.66(4)(b)2.

22 (2)(a) If a local government proposes to designate a
 23 brownfield area that is outside community redevelopment areas,
 24 enterprise zones, empowerment zones, or designated brownfield
 25 pilot project areas, the local government must conduct at
 26 least one public hearing in the area to be designated to
 27 provide an opportunity for public input on the size of the
 28 area, the objectives for rehabilitation, job opportunities and
 29 economic developments anticipated, neighborhood residents'
 30 considerations, and other relevant local concerns. Notice of
 31 the public hearing must be made in a newspaper of general

1 circulation in the area and the notice must be at least 6
 2 inches square in size, must be in ethnic newspapers or local
 3 community bulletins, must be posted in the affected area, and
 4 must be announced at a scheduled meeting of the local
 5 governing body before the actual public hearing. In
 6 determining the areas to be designated, the local government
 7 must consider:

8 1. Whether the brownfield area warrants economic
 9 development and has a reasonable potential for such
 10 activities;

11 2. Whether the proposed area to be designated
 12 represents a reasonably focused approach and is not overly
 13 large in geographic coverage;

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

16 4. Whether the area contains sites or parts of sites
 17 suitable for limited recreational open space, cultural, or
 18 historical preservation purposes.

19 (b) A local government shall designate a brownfield
 20 area under the provisions of this act provided that:

21 1. A person who owns or controls a potential
 22 brownfield site is requesting the designation and has agreed
 23 to rehabilitate and redevelop the brownfield site;

24 2. The rehabilitation and redevelopment of the
 25 proposed brownfield site will result in economic productivity
 26 of the area, along with the creation of at least ten new jobs,
 27 full-time or part-time, which are not associated with the
 28 implementation of the rehabilitation agreement;

29 3. The redevelopment of the proposed brownfield site
 30 is consistent with the local comprehensive plan and is a
 31

1 permissible use under the applicable local land development
 2 regulations;
 3 4. Notice of the proposed rehabilitation of the
 4 brownfield area has been provided to neighbors and nearby
 5 residents of the proposed area to be designated and the person
 6 proposing the area for designation has afforded to those
 7 receiving notice the opportunity for comments and suggestions
 8 about rehabilitation. Notice pursuant to this subsection must
 9 be made in a newspaper of general circulation in the area, at
 10 least 6 inches square in size, and the notice must be posted
 11 in the affected area; and
 12 5. The person proposing the area for designation has
 13 provided reasonable assurance that he or she has sufficient
 14 financial resources to implement and complete the
 15 rehabilitation agreement and redevelopment plan.
 16 (c) The designation of a brownfield area and the
 17 identification of a person responsible for brownfield site
 18 rehabilitation simply entitles the identified person to
 19 negotiate a brownfield rehabilitation agreement with the
 20 department or approved local government.
 21 (3) The local government must at the time of the
 22 adoption of the resolution notify the department of the entity
 23 that it is designating as the person responsible for
 24 brownfield site rehabilitation. If the agency or person who
 25 will be responsible for the coordination changes during the
 26 approval process specified in subsections (4), (5), and (6),
 27 the department or the affected approved local pollution
 28 control program must notify the affected local government when
 29 the change occurs.
 30 (4) Local governments or persons responsible for
 31 rehabilitation of brownfield areas must establish an advisory

1 committee for the purpose of improving public participation
 2 and receiving public comments on rehabilitation and
 3 remediation of the brownfield area, future land use, local
 4 employment opportunities, community safety, and environmental
 5 justice. Such advisory committee should include residents
 6 within or adjacent to the brownfield area, businesses
 7 operating within the brownfield area, and others deemed
 8 appropriate.
 9 (5) The person responsible for brownfield site
 10 rehabilitation must enter into a brownfield site
 11 rehabilitation agreement with the department or an approved
 12 local environmental program. The brownfield site
 13 rehabilitation agreement must include:
 14 (a) A brownfield site rehabilitation schedule,
 15 including milestones for completion of site rehabilitation
 16 tasks and submittal of technical reports and rehabilitation
 17 plans as agreed upon by the parties to the agreement;
 18 (b) A commitment to conduct site rehabilitation
 19 activities under the observation of professional engineers or
 20 geologists who are registered in accordance with the
 21 requirements of chapter 471 or chapter 492, respectively.
 22 Submittals provided by the person responsible for brownfield
 23 site rehabilitation must be signed and sealed by a
 24 professional engineer registered under chapter 471, or a
 25 professional geologist registered under chapter 492,
 26 certifying that the submittal and associated work comply with
 27 the law and rules of the department and those governing the
 28 profession. In addition, upon completion of the approved
 29 remedial action, the department shall require a professional
 30 engineer registered under chapter 471 or a professional
 31 geologist registered under chapter 492 to certify that the

1 corrective action was, to the best of his or her knowledge,
 2 completed in substantial conformance with the plans and
 3 specifications approved by the department;

4 (c) A commitment to conduct site rehabilitation in
 5 accordance with an approved comprehensive quality assurance
 6 plan under department rules;

7 (d) A commitment to conduct site rehabilitation
 8 consistent with state, federal, and local laws and consistent
 9 with the brownfield site contamination cleanup criteria in s.
 10 376.81, including any applicable requirements for risk-based
 11 corrective action;

12 (e) Timeframes for the department's review of
 13 technical reports and plans submitted in accordance with the
 14 agreement. The department shall make every effort to adhere
 15 to established agency goals for reasonable timeframes for
 16 review of such documents;

17 (f) A commitment to secure site access for the
 18 department or approved local environmental program to all
 19 brownfield sites within the eligible brownfield area for
 20 activities associated with site rehabilitation;

21 (g) Other provisions that the person responsible for
 22 brownfield site rehabilitation and the department agree upon,
 23 that are consistent with ss. 376.77-376.83, and that will
 24 improve or enhance the brownfield site rehabilitation process,
 25 and

26 (h) A commitment to consider appropriate pollution
 27 prevention measures and to implement those that the person
 28 determines are reasonable and cost-effective, taking into
 29 account the ultimate use or uses of the brownfield site. Such
 30 measures may include improved inventory or production controls
 31 and procedures for preventing a loss, spills, and leaks of

1 hazardous waste and materials, and include goals for the
 2 reduction of releases of toxic materials.

3 (6) Any contractor performing site rehabilitation
 4 program tasks must demonstrate to the department that the
 5 contractor:

6 (a) Meets all certification and license requirements
 7 imposed by law; and

8 (b) Has obtained approval for the comprehensive
 9 quality-assurance plan prepared under department rules.

10 (7) The contractor must certify to the department that
 11 the contractor:

12 (a) Complies with applicable OSHA regulations.

13 (b) Maintains workers' compensation insurance for all
 14 employees as required by the Florida Workers' Compensation
 15 Law.

16 (c) Maintains comprehensive general liability and
 17 comprehensive automobile liability insurance with minimum
 18 limits of at least \$1 million per occurrence and \$1 million
 19 annual aggregate, sufficient to protect it from claims for
 20 damage for personal injury, including accidental death, as
 21 well as claims for property damage which may arise from
 22 performance of work under the program, designating the state
 23 as an additional insured party.

24 (d) Maintains professional liability insurance of at
 25 least \$1 million per occurrence and \$1 million annual
 26 aggregate.

27 (e) Has the capacity to perform or directly supervise
 28 the majority of the work at a site in accordance with s.
 29 489.113(9).

30 (8) Any professional engineer or geologist providing
 31 professional services relating to site rehabilitation program

1 tasks must carry professional liability insurance with a
 2 coverage limit of at least \$1 million.
 3 (9) During the cleanup process, if the department or
 4 local program fails to complete review of a technical document
 5 within the timeframe specified in the brownfield site
 6 rehabilitation agreement, the person responsible for
 7 brownfield site rehabilitation may proceed to the next site
 8 rehabilitation task. However, the person responsible for
 9 brownfield site rehabilitation does so at its own risk and may
 10 be required by the department or local program to complete
 11 additional work on a previous task. Exceptions to this
 12 subsection include requests for "no further action,"
 13 "monitoring only proposals," and feasibility studies, which
 14 must be approved prior to implementation.
 15 (10) If the person responsible for brownfield site
 16 rehabilitation fails to comply with the brownfield site
 17 rehabilitation agreement, the department shall allow 90 days
 18 for the person responsible for brownfield site rehabilitation
 19 to return to compliance with the provision at issue or to
 20 negotiate a modification to the brownfield site rehabilitation
 21 agreement with the department for good cause shown. If an
 22 imminent hazard exists, the 90-day grace period shall not
 23 apply. If the project is not returned to compliance with the
 24 brownfield site rehabilitation agreement and a modification
 25 cannot be negotiated, the immunity provisions of s. 376.02 are
 26 revoked.
 27 (11) The department is specifically authorized and
 28 encouraged to enter into delegation agreements with local
 29 pollution control programs approved under s. 403.102 to
 30 administer the brownfield program within their jurisdictions,
 31 thereby maximizing the integration of this process with the

1 other local development processes needed to facilitate
 2 redevelopment of a brownfield area.
 3 (12) Local governments are encouraged to use the full
 4 range of economic and tax incentives available to facilitate
 5 and promote the rehabilitation of brownfield areas, to help
 6 eliminate the public health and environmental hazards, and to
 7 promote the creation of jobs and economic development in these
 8 previously run-down, blighted, and underutilized areas.
 9 Section 5. Section 376.01, Florida Statutes, is
 10 created to read:
 11 376.01 Brownfield site and brownfield areas
 12 contamination cleanup criteria.--
 13 (1) It is the intent of the Legislature to protect the
 14 health of all people under actual circumstances of exposure.
 15 By January 1, 1998, the secretary shall establish criteria by
 16 rule for the purpose of determining, on a site-specific basis,
 17 the rehabilitation program tasks that comprise a site
 18 rehabilitation program and the level at which a rehabilitation
 19 program task and a site rehabilitation program may be deemed
 20 completed. In establishing the rule, the department shall
 21 incorporate, to the maximum extent feasible, risk-based
 22 corrective-action principles to achieve protection of human
 23 health and safety and the environment in a cost-effective
 24 manner as provided in this subsection. The criteria for
 25 determining what constitutes a rehabilitation program task or
 26 completion of a site rehabilitation program task or site
 27 rehabilitation program must:
 28 (a) Consider the current exposure and potential risk
 29 of exposure to humans and the environment, including multiple
 30 pathways of exposure. The physical, chemical, and biological
 31 characteristics of each contaminant must be considered in

1 order to determine the feasibility of risk-based
 2 corrective-action assessment.
 3 (b) Establish the point of compliance at the source of
 4 the contamination. In the circumstances provided below, and
 5 after constructive notice and opportunity to comment within 30
 6 days from receipt of the notice to local government, owners of
 7 any property into which the point of compliance is allowed to
 8 extend, and residents on any property into which the point of
 9 compliance is allowed to extend, the department may
 10 temporarily move the point of compliance to the boundary of
 11 the property, or to the edge of the plume when the plume is
 12 within the property boundary, while cleanup, including cleanup
 13 through natural attenuation processes in conjunction with
 14 appropriate monitoring, is proceeding. The department also
 15 may, under criteria provided for in this section, temporarily
 16 extend the point of compliance beyond the property boundary
 17 with appropriate monitoring, if the extension is needed to
 18 facilitate natural attenuation or to address the current
 19 conditions of the plume and if human health, public safety,
 20 and the environment are adequately protected. Temporary
 21 extension of the point of compliance beyond the property
 22 boundary, as provided in this paragraph, must include notice
 23 to local governments and owners of any property into which the
 24 point of compliance is allowed to extend.
 25 (c) Ensure that the site-specific cleanup goal is that
 26 all contaminated brownfield sites and brownfield areas
 27 ultimately achieve the applicable cleanup target levels
 28 provided in this section. In the circumstances provided below,
 29 and after constructive notice and opportunity to comment
 30 within 30 days from receipt of the notice to local government,
 31 to owners of any property into which the point of compliance

1 is allowed to extend, and to residents on any property into
 2 which the point of compliance is allowed to extend, the
 3 department may allow concentrations of contaminants to
 4 temporarily exceed the applicable cleanup target levels while
 5 cleanup, including cleanup through natural attenuation
 6 processes in conjunction with appropriate monitoring, is
 7 proceeding, if human health, public safety, and the
 8 environment are adequately protected.
 9 (d) Allow brownfield site and brownfield area
 10 rehabilitation programs to include the use of institutional or
 11 engineering controls, where appropriate, to eliminate or
 12 control the potential exposure to contaminants of humans or
 13 the environment. The use of controls must be preapproved by
 14 the department and only after constructive notice and
 15 opportunity to comment within 30 days from receipt of notice
 16 is provided to local governments, to owners of any property
 17 into which the point of compliance is allowed to extend, and
 18 to residents on any property into which the point of
 19 compliance is allowed to extend. When institutional or
 20 engineering controls are implemented to control exposure, the
 21 removal of the controls must have prior department approval
 22 and must be accompanied by the resumption of active cleanup,
 23 or other approved controls, unless cleanup target levels under
 24 this section have been achieved.
 25 (e) Consider the additive effects of contaminants.
 26 The synergistic and antagonistic effects shall also be
 27 considered when the scientific data become available.
 28 (f) Take into consideration individual site
 29 characteristics that include, but are not limited to, the
 30 current and projected use of the affected ground water and
 31 surface water in the vicinity of the site, current and

1 projected land uses of the area affected by the contamination,
 2 the exposed population, the degree and extent of
 3 contamination, the rate of contaminant migration, the apparent
 4 or potential rate of contaminant degradation through natural
 5 attenuation processes, the location of the plume, and the
 6 potential for further migration in relation to site property
 7 boundaries.

8 (g) Apply water quality standards as follows:

9 1. Cleanup target levels for each contaminant found in
 10 ground water must be the applicable state water quality
 11 standards. Where the standards do not exist, the cleanup
 12 target levels for ground water must be based on the minimum
 13 criteria specified in department rule. The department shall
 14 consider the following, as appropriate, in establishing the
 15 applicable minimum criteria: calculations using a lifetime
 16 cancer risk level of 1.0E-6; a hazard index of 1 or less; the
 17 best achievable detection limit; the naturally occurring
 18 background concentration; or nuisance, organoleptic, and
 19 aesthetic considerations.

20 2. Where surface waters are exposed to contaminated
 21 ground water, the cleanup target levels for the contaminants
 22 must be based on the surfacewater standards as established by
 23 department rule. The point of measuring compliance with the
 24 surfacewater standards must be in the ground water immediately
 25 adjacent to the surfacewater body.

26 3. The department may set alternative cleanup target
 27 levels based upon an applicant's demonstration, using
 28 site-specific modeling and risk assessment studies, that human
 29 health, public safety, and the environment are adequately
 30 protected to the same degree as provided by subparagraphs 1.
 31 and 2. Where a state water quality standard is applicable, a

1 deviation may not result in the application of cleanup target
 2 levels more stringent than the standard. In determining
 3 whether it is appropriate to establish alternative cleanup
 4 target levels at a site, the department must consider the
 5 effectiveness of source removal that has been completed at the
 6 site and the practical likelihood of the use of low-yield or
 7 poor quality ground water, the use of ground water near marine
 8 surfacewater bodies, the current and projected use of the
 9 affected ground water in the vicinity of the site, or the use
 10 of ground water in the immediate vicinity of the contaminated
 11 area, where it has been demonstrated that the groundwater
 12 contamination is not migrating away from such localized
 13 source, provided human health, public safety, and the
 14 environment are adequately protected.

15 (h) Provide for the department to issue a "no further
 16 action order" when alternative cleanup target levels
 17 established pursuant to subparagraph (g)3. have been achieved
 18 or issue a "no further action order" based upon the degree to
 19 which the desired cleanup target level is achievable and can
 20 be reasonably and cost-effectively implemented within
 21 available technologies or engineering and institutional
 22 control strategies.

23 (i) Establish appropriate cleanup target levels for
 24 soils.

25 1. In establishing soil cleanup target levels for
 26 human exposure to each contaminant found in soils from the
 27 land surface to 2 feet below land surface, the department
 28 shall consider the following, as appropriate: calculations
 29 using a lifetime cancer risk level of 1.0E-6; a hazard index
 30 of 1 or less; the best achievable detection limit; or the
 31 naturally occurring background concentration. Institutional

1 controls or other methods shall be used to prevent human
 2 exposure to contaminated soils more than 2 feet below the land
 3 surface. Any removal of such institutional controls shall
 4 require such contaminated soils to be remediated.

5 2. Leachability-based soil target levels must be based
 6 on protection of the groundwater cleanup target levels or the
 7 alternative cleanup target levels for ground water established
 8 under this paragraph, as appropriate. Source removal and other
 9 cost-effective alternatives that are technologically feasible
 10 must be considered in achieving the leachability soil target
 11 levels established by the department. The leachability goals
 12 are not applicable if the department determines, based upon
 13 individual site characteristics, that contaminants will not
 14 leach into the ground water at levels that pose a threat to
 15 human health and safety or to the environment.

16 3. The department may set alternative cleanup target
 17 levels based upon an applicant's demonstration, using
 18 site-specific modeling and risk assessment studies, that human
 19 health, public safety, and the environment are adequately
 20 protected.

21 (2) The department shall require source removal, if
 22 warranted and cost-effective. Once source removal at a site is
 23 complete, the department shall reevaluate the site to
 24 determine the degree of active cleanup needed to continue.
 25 Further, the department shall determine if the reevaluated
 26 site qualifies for monitoring only or if no further action is
 27 required to rehabilitate the site. If additional site
 28 rehabilitation is necessary to reach "no further action"
 29 status, the department is encouraged to use natural
 30 attenuation and monitoring where site conditions warrant.
 31

1 Section 6. Section 376.82, Florida Statutes, is
 2 created to read:

3 376.82 Eligibility criteria and liability
 4 protection.--

5 (1) ELIGIBILITY.--Any person who has not caused or
 6 contributed to the contamination of a brownfield site after
 7 July 1, 1997, is eligible to participate in the brownfield
 8 rehabilitation program established in ss. 376.77-376.83,
 9 subject to the following:

10 (a) Potential brownfield sites that are subject to an
 11 ongoing formal judicial or administrative enforcement action
 12 or corrective action pursuant to federal authority, including,
 13 but not limited to, the Comprehensive Environmental Response
 14 Compensation and Liability Act, 42 U.S.C. ss. 9601, et seq.,
 15 as amended; the Safe Drinking Water Act, 42 U.S.C. ss.
 16 300f-300i, as amended; the Clean Water Act, 33 U.S.C. ss.
 17 1251-1387, as amended, or under an order from the United
 18 States Environmental Protection Agency pursuant to s. 3008(h)
 19 of the Resource Conservation and Recovery Act, as amended (42
 20 U.S.C.A. s. 6928(h)), or that have obtained or are required to
 21 obtain a permit for the operation of a hazardous waste
 22 treatment, storage, or disposal facility, a postclosure
 23 permit, or a permit pursuant to the federal Hazardous and
 24 Solid Waste Amendments of 1984, are not eligible for
 25 participation unless specific exemptions are secured by a
 26 memorandum of agreement with the United States Environmental
 27 Protection Agency pursuant to paragraph (2)(e). A brownfield
 28 site within an eligible brownfield area that subsequently
 29 becomes subject to formal judicial or administrative
 30 enforcement action or corrective action under such federal
 31 authority shall have its eligibility revoked unless specific

1 exemptions are secured by a memorandum of agreement with the
 2 EPA pursuant to paragraph (2)(e).

3 (b) Persons who have not caused or contributed to the
 4 contamination of a brownfield site after July 1, 1997, and
 5 who, prior to the department's approval of a brownfield site
 6 rehabilitation agreement, are subject to ongoing corrective
 7 action or enforcement under state authority established in
 8 chapter 376 or chapter 403, including those persons subject to
 9 a pending consent order with the state, are eligible for
 10 participation in a brownfield corrective action if:

11 1. The proposed brownfield site is currently idle or
 12 underutilized as a result of the contamination, and
 13 participation in the brownfield program will immediately,
 14 after cleanup or sooner, result in increased economic
 15 productivity at the site, including at a minimum the creation
 16 of ten new jobs, whether permanent or part-time, which are not
 17 associated with implementation of the brownfield site
 18 corrective-action plan; and

19 2. The person is complying in good faith with the
 20 terms of an existing consent order or department-approved
 21 corrective-action plan, or responding in good faith to an
 22 enforcement action, as evidenced by a determination issued by
 23 the department or an approved local pollution control program.

24 (c) Potential brownfield sites owned by the state or a
 25 local government which contain contamination for which a
 26 governmental entity is potentially responsible and which are
 27 already designated as federal brownfield pilot projects or
 28 have filed an application for designation to the United States
 29 Environmental Protection Agency are eligible for participation
 30 in a brownfield corrective action.

1 (2) LIABILITY PROTECTION.--Any person, including his
 2 or her successors and assigns, who executes and implements to
 3 successful completion a brownfield site rehabilitation
 4 agreement is relieved of further liability for remediation of
 5 the site to the state and to third parties and of liability in
 6 contribution to any other party who has or may incur cleanup
 7 liability for the brownfield site.

8 (a) This section is not to be construed as a
 9 limitation on the right of a third party other than the state
 10 to pursue an action for damages to property or person;
 11 however, such an action may not compel site rehabilitation in
 12 excess of that required in the approved corrective-action
 13 rehabilitation schedule or otherwise required by the
 14 department or approved local pollution control program.

15 (b) This section does not affect the ability or
 16 authority to seek contribution from any person who may have
 17 liability with respect to the site and who did not receive
 18 cleanup liability protection under this chapter.

19 (c) The liability protection provided under this
 20 section shall become effective upon execution of a brownfield
 21 site rehabilitation agreement and shall remain effective,
 22 provided that the person responsible for brownfield site
 23 rehabilitation complies with the terms of the agreement. Any
 24 statute of limitations that would bar the department from
 25 pursuing relief in accordance with its existing authority is
 26 tolled from the time the agreement is executed until site
 27 rehabilitation is completed or immunity is revoked pursuant to
 28 s. 376.80(10).

29 (d) Completion of the performance of the remediation
 30 obligations at the brownfield site must be evidenced by a site
 31 rehabilitation completion letter or a "no further action"

1 letter issued by the department or the approved local
 2 pollution control program, which letter must include the
 3 following statement: "Based upon the information provided by
 4 ... (property owner) ... concerning property located at ...
 5 (address) ..., it is the opinion of ... (the Florida
 6 Department of Environmental Protection or approved local
 7 pollution control program) ... that ... (party) ... has
 8 successfully and satisfactorily implemented the approved
 9 brownfield site corrective-action rehabilitation schedule and
 10 accordingly no further action is required to assure that any
 11 land use identified in the corrective-action schedule is
 12 consistent with existing and proposed uses and does not pose
 13 an unacceptable risk to human health or the environment."

14 (e) The Legislature recognizes its limitations in
 15 addressing cleanup liability under federal pollution control
 16 programs. In an effort to secure federal liability protection
 17 for persons willing to undertake remediation responsibility at
 18 a brownfield site, the department shall attempt to negotiate a
 19 memorandum of agreement or similar document with the United
 20 States Environmental Protection Agency, whereby the United
 21 States Environmental Protection Agency agrees to forego
 22 enforcement of federal corrective-action authority at
 23 brownfield sites that have received a site rehabilitation
 24 completion or "no further action" determination from the
 25 department or that are in the process of implementing a
 26 corrective-action rehabilitation schedule in accordance with
 27 ss. 376.77-376.83.

28 (f) No unit of state or local government may be held
 29 liable for implementing corrective actions at a brownfield
 30 site within an eligible brownfield area as a result of the
 31 involuntary ownership of the site through bankruptcy, tax

1 delinquency, abandonment, or other circumstances in which the
 2 state or local government involuntarily acquires title by
 3 virtue of its function as a sovereign, or as a result of
 4 ownership from donation or gift, unless the state or local
 5 government has otherwise caused or contributed to a release of
 6 a contaminant at the brownfield site.

7 (3) REOPENERS.--Upon completion of site rehabilitation
 8 in compliance with ss. 376.77-376.83, no additional site
 9 rehabilitation shall be required unless it is demonstrated:

10 (a) That fraud was committed in demonstrating site
 11 conditions or completion of site rehabilitation;

12 (b) That new information confirms the existence of an
 13 area of previously unknown contamination which exceeds the
 14 site-specific rehabilitation levels established in accordance
 15 with s. 376.81, or which otherwise poses the threat of real
 16 and substantial harm to public health, safety, or the
 17 environment in violation of the terms of ss. 376.77-376.83;

18 (c) That the remediation efforts failed to achieve the
 19 site rehabilitation criteria established under s. 376.81;

20 (d) That the level of risk is increased beyond the
 21 acceptable risk established under s. 376.81 due to substantial
 22 changes in exposure conditions, such as in a change in land
 23 use from nonresidential to residential use. Any person who
 24 changes the land use of the brownfield site thus causing the
 25 level of risk to increase beyond the acceptable risk level may
 26 be required by the department to undertake additional
 27 remediation measures to assure that human health, public
 28 safety, and the environment are protected to levels consistent
 29 with s. 376.81; or

1 (e) That a new release occurs at the brownfield site
 2 subsequent to a determination of eligibility for participation
 3 in the brownfield program established under s. 376.00.

4 (4) ADDITIONAL LIABILITY PROTECTION FOR LENDERS.--

5 (a) The Legislature declares that in order to achieve
 6 the economic redevelopment and site rehabilitation of
 7 brownfield sites in accordance with ss. 376.77-376.03, it is
 8 imperative to encourage financing of real property
 9 transactions involving brownfield site corrective-action
 10 plans. Accordingly, lenders, including those serving as a
 11 trustee, personal representative, or in any other fiduciary
 12 capacity, are entitled to the liability protection established
 13 in subsection (2) if they have not caused or contributed to a
 14 release of a contaminant at the brownfield site.

15 (b) Lenders who hold indicia of ownership at a
 16 brownfield site within an eligible brownfield area primarily
 17 to protect a security interest or own a brownfield site within
 18 an eligible brownfield area as a result of foreclosure or a
 19 deed in lieu of foreclosure of a security interest and who
 20 seek to sell, transfer, or otherwise divest the site via sale
 21 at the earliest practicable time are not liable for the
 22 release or discharge of a contaminant from a brownfield site
 23 within an eligible brownfield area; for the failure of the
 24 person responsible for brownfield site rehabilitation to
 25 comply with the brownfield site rehabilitation agreement; or
 26 for future site rehabilitation activities required under a
 27 reopener provision established in subsection (3) when the
 28 lender has not divested the borrower of, or otherwise engaged
 29 in, decision-making control of the site rehabilitation or site
 30 operations or undertaken management activities beyond those
 31 required to protect its financial interest and when an act or

1 omission of the lender has not otherwise caused or contributed
 2 to a release of a contaminant at the brownfield site within an
 3 eligible brownfield area.

4 Section 7. Section 376.03, Florida Statutes, is
 5 created to read:

6 376.03 Violation; penalties.--

7 (1) It is a violation of ss. 376.77-376.02, and it is
 8 prohibited for any person, to knowingly make any false
 9 statement, representation, or certification in any
 10 application, record, report, plan, or other document filed or
 11 required to be maintained, or to falsify, tamper with, or
 12 knowingly render inaccurate any monitoring device or method
 13 required to be maintained under ss. 376.77-376.02, or by any
 14 permit, rule, or order issued under this chapter or chapter
 15 403.

16 (2) Any person who willfully commits a violation
 17 specified in subsection (1) is guilty of a misdemeanor of the
 18 first degree, punishable by a fine of not more than \$10,000 or
 19 by 6 months in jail, or by both, for each offense. Each day
 20 during any portion of which such violation occurs constitutes
 21 a separate offense.

22 Section 8. (1) The Legislature recognizes that the
 23 United States Environmental Protection Agency has created
 24 several pilot projects for redevelopment of brownfield areas
 25 to gather information on the best ways to return old
 26 industrial and commercial sites to productive use in
 27 situations where redevelopment is complicated by potential
 28 environmental contamination. These pilot project areas will
 29 perform initial work to seek developers to restore the sites,
 30 and will also incorporate the efforts of lenders, regulators,
 31 and other groups. The Environmental Protection Agency

1 initiative is flexible, allowing local governments to use a
 2 variety of approaches to rehabilitate abandoned or
 3 underutilized sites, neighborhoods, and small regional areas.
 4 ~~(2)(a)~~ The Legislature has determined that it would be
 5 beneficial to provide similar incentives in this state for the
 6 rehabilitation and redevelopment of brownfield areas. A series
 7 of pilot projects in this state could help demonstrate a
 8 variety of techniques and approaches to mobilize public and
 9 private resources for the purposes of accelerating the
 10 rehabilitation and redevelopment of brownfield areas. The
 11 pilot projects could also help form partnerships with the
 12 federal pilot projects in areas where opportunities are
 13 available. Accordingly, the department shall, contingent upon
 14 funds being available in the General Appropriations Act for
 15 fiscal year 1997-1998, establish seven pilot projects for
 16 rehabilitation of brownfield areas, including the areas that
 17 are already pilot projects designated by the United States
 18 Environmental Protection Agency as of the effective date of
 19 this act. Then, give priority to those brownfield areas which
 20 have applied to the United States Environmental Protection
 21 Agency for designation as a national or a regional pilot
 22 project. Of the amount available to each pilot project area in
 23 the General Appropriations Act for fiscal year 1997-1998,
 24 one-half must be made available for activities related to
 25 rehabilitation of brownfield sites in the pilot project area
 26 and one-half must be made available to employers who have
 27 registered as participating employers with the WAGES Program
 28 and have business locations in designated brownfield areas
 29 which create at least ten new jobs that are not associated
 30 with the implementation of the corrective-action plan. These
 31 amounts must be used for one or more of the following:

1 1. As incentive payments to encourage employers to
 2 employ WAGES Program participants.
 3 2. To offset wage costs, wholly or in part, for WAGES
 4 Program participants who are employed for longer than 6 months
 5 and whose wages exceed \$15,000 annually.
 6 3. To encourage employers to assist employees, both
 7 WAGES Program participants and other employees, to acquire
 8 additional education or training for enhancement of job skills
 9 or basic literacy.
 10 (b) The department shall work with local officials in
 11 the pilot project area to identify specific sites that should
 12 be included in the brownfield area pilot project. The project
 13 should demonstrate a commitment of public and private entities
 14 and involve the local community. These pilot projects should
 15 be undertaken with the objective of a fast-track approach to
 16 demonstrate all phases of rehabilitation and what can be
 17 accomplished using federal, state, local, and private
 18 resources. The department is directed to employ risk-based
 19 corrective-action considerations specified in section 376.81,
 20 Florida Statutes, in overseeing and evaluating the site
 21 rehabilitation plans for pilot project areas.
 22 Section 9. The Department of Environmental Protection
 23 shall prepare an annual report to the Legislature, beginning
 24 in December 1998, which shall include, but not be limited to
 25 the number of sites that have been remediated under the
 26 provisions of this act.
 27 Section 10. Notwithstanding the December 31, 1996,
 28 deadline to file applications pursuant to subsection (12) of
 29 section 376.3071, Florida Statutes, the Department of
 30 Environmental Protection shall accept any applications for
 31 reimbursement of claims that were not received by the December

1 31, 1996 deadline solely because the U.S. Post Office or small
2 package carrier service was unable to timely deliver the
3 application on that date due to adverse weather conditions
4 which prevented air travel. Reimbursement applications which
5 the department returned because they were received beyond the
6 deadline must be resubmitted and received by the department by
7 September 1, 1997, with an affidavit and other supporting
8 documents, shipping reports, or other appropriate
9 documentation explaining the facts surrounding the late
10 delivery that has been sworn to or affirmed pursuant to
11 chapter 117, Florida Statutes, from the small package carrier
12 who delivered the late application. Such claims shall be
13 eligible for payment in the same priority as if they had been
14 received by 5:00 p.m., December 31, 1996.

15 Section 11. This act shall take effect July 1, 1997.
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The Journal OF THE House of Representatives

Number 25

Wednesday, April 30, 1997

The House was called to order by the Speaker at 8:30 a.m.

Prayer

The following prayer was offered by the Honorable Carl Littlefield

Our Father, we thank you today for a wonderful privilege—that privilege to say, "Our Father," to address you as ours. We acknowledge your strength and we acknowledge our frailty, we acknowledge the strength of your name, Jehovah, El Shadai, the Almighty.

We thank you that you are the one who keeps us from falling. And throughout this day we ask that you will surround us with your omnipotence. Be here as the omniscient one, and we would pray today again in your lovely name, the name of Wonderful, Counselor, the Prince of Peace, the Mighty God, the Everlasting Father, the Lily of the Valley, the Bright and the Morning Star.

We acknowledge your greatness. Amen.

The following Members were recorded present

The Chair	Crady	Jacobs	Posey
Albright	Crut	Jones	Prewitt, D.
Andrews	Crow	Kelly	Fruitt, K.
Argenziano	Culp	King	Putnam
Arnall	Dawson-White	Koamas	Rayson
Arnold	Dennis	Lacasa	Reddick
Bainter	Dockery	Laurent	Ritche
Ball	Edwards	Lawson	Ritter
Barreiro	Effman	Lippman	Roberts-Burke
Betancourt	Eggelston	Littlefield	Rodriguez-Chomat
Bitner	Fasano	Livingston	Rojas
Bloom	Feeney	Logan	Saffley
Boyd	Fischer	Lynn	Sanderson
Bradley	Flanagan	Mackenzie	Saunders
Brennan	Frankel	Mackey	Sembler
Bronson	Fuller	Martinez	Silver
Brooks	Futch	Maygarden	Sindler
Brown	Gay	Meek	Smith
Bullard	Geller	Melvin	Spratt
Burroughs	Goode	Merchant	Stabins
Buah	Greene	Miller	Stafford
Byrd	Hafner	Minton	Starks
Carlton	Harrington	Morrison	Thrasher
Casey	Healey	Morse	Tobin
Chestnut	Heyman	Murman	Trovillion
Clemons	Hill	Ogles	Turnbull
Constantine	Horan	Peaden	Valdes

Wallace Wasserman Schultz Wiles Ziebarth
Warner Westbrook Wise

(A list of excused Members appears at the end of the Journal.)

A quorum was present.

Pledge

The Members, led by Anna Avery, Elizabeth Blair Campbell, Tomi Marie Evangelista, Glenwood M. Barbee II, Danielle Lynnette Jones, and Jordan Webster, pledged allegiance to the Flag. Anna Avery of Miami served at the invitation of Rep. Lacasa. Elizabeth Blair Campbell of Summerville served at the invitation of Rep. Arnall. Tomi Marie Evangelista of Pinellas Park served at the invitation of Rep. Goode. Glenwood M. Barbee II of Lakeland served at the invitation of Rep. Putnam. Danielle Lynnette Jones of Miami served at the invitation of Rep. Bush. Jordan Webster of Orlando served at the invitation of his father, Speaker Webster.

House Physician

The Speaker introduced the Honorable Durell Peaden, Jr., M.D., who served as Doctor of the Day.

Correction of the Journal

The Journal of April 23 was further corrected as follows: On page 679, column 1, between lines 3 and 4 from the bottom, after Amendment 3 to CS/HB 1205, insert the following amendment.

Representative(s) Brooks offered the following

Amendment 4—On page 3, line(s) 3, remove from the bill "as defined in this section"

and insert in lieu thereof: ~~as defined in this section~~

Rep. Brooks moved the adoption of the amendment, which was adopted.

Also on page 679, renumber Amendments 4, 5, and 6 as Amendments 5, 6, and 7, respectively.

The Journal of April 28 was further corrected as follows: On page 1086, column 2, lines 4 and 11 from the bottom, renumber Amendments 7 and 8 to CS/HB 1205 as Amendments 8 and 9, respectively.

The Journal of April 29 was corrected and approved as follows: On page 1169, column 1, between lines 23 and 24 from the top, following the Statement of Legislative Intent on CS/HBs 845 & 1255, insert the following:

In addition to his remarks, Rep. Tobin submitted the following written statement of legislative intent:



retroactive effect, amending s. 199.103, F.S., including middle tier stock holding companies in provisions which provide for valuation of stocks or shares of certain savings associations for intangible personal property tax purposes, correcting a reference, providing effective dates

—was read the second time by title On motion by Rep. Starks, the rules were suspended and the bill was read the third time by title On passage, the vote was.

Yeas—114

The Chair	Culp	Laurent	Rodriguez-Chomat
Albright	Dennis	Lawson	Rojas
Andrews	Diaz de la Portilla	Lippman	Safley
Argenziano	Dockery	Littlefield	Sanderson
Arnall	Edwards	Lvingston	Saunders
Arnold	Effman	Logan	Sembler
Baunter	Fasano	Lynn	Silver
Ball	Feeny	Mackenzie	Sindler
Barreiro	Fischer	Mackey	Smith
Betancourt	Flanagan	Martinez	Spratt
Bloom	Frankel	Maygarden	Stabins
Boyd	Fuller	Melvin	Stafford
Bradley	Futch	Merchant	Starks
Brennan	Garcia	Miller	Sublette
Bronson	Gay	Minton	Thraasher
Brooks	Goode	Morrom	Tobin
Brown	Greene	Morse	Trovilion
Bullard	Hafner	Murman	Turnbull
Bush	Harrington	Ogles	Valdes
Byrd	Healey	Peaden	Villalobos
Carlton	Heyman	Poasey	Wallace
Casey	Hill	Prewitt, D	Warner
Chestnut	Horan	Pruitt, K	Wasserman Schultz
Clemons	Jacobs	Putnam	Westbrook
Constantine	Jones	Rayson	Wiles
Cosgrove	Kelly	Reddick	Wise
Crady	King	Ritche	Ziebarth
Crist	Kosmas	Rutter	
Crow	Lacasa	Roberts-Burke	

Nays—1

Bitner

Votes after roll call

Yeas—Burroughs

So the bill passed and was immediately certified to the Senate

CS for CS for SB's 1306 & 1934—A bill to be entitled An act relating to brownfields redevelopment, creating s. 376.77, F.S., providing a short title, creating s. 376.78, F.S., providing legislative intent, creating s. 376.79, F.S., defining terms; creating s. 376.80, F.S., providing for a brownfield program administration process; creating s. 376.81, F.S., providing for brownfield site contamination cleanup criteria, creating s. 376.82, F.S., providing for eligibility criteria and liability protection, creating s. 376.83, F.S.; providing penalties, providing for pilot projects; providing appropriations; requiring the Department of Environmental Protection to report annually to the Legislature; providing an exception to deadline for receipt of reimbursement applications received pursuant to s. 376.3071, F.S., providing an effective date

—was read the second time by title

Representative(s) Constantine and Eggleston offered the following:

Amendment 1—On page 3, line(s) 28, through page 4, line 28, remove from the bill: all of said lines

and insert in lieu thereof.

376.79 *Definitions.*—As used in ss 376.77-376.85, the term:

(1) *"Additive effects"* means a scientific principle that the toxicity that occurs as a result of exposure is the sum of the toxicities of the individual chemicals to which the individual is exposed

(2) *"Antagonistic effects"* means a scientific principle that the toxicity that occurs as a result of exposure is less than the sum of the toxicities of the individual chemicals to which the individual is exposed.

(3) *"Brownfield sites"* means sites that are generally abandoned, idled, or under-used industrial and commercial properties where expansion or redevelopment is complicated by actual or perceived environmental contamination.

(4) *"Brownfield area"* means a contiguous area of one or more brownfield sites, some of which may not be contaminated, and which has been designated by a local government by resolution. Such areas may include all or portions of community redevelopment areas, enterprise zones, empowerment zones, other such designated economically deprived communities and areas, and Environmental Protection Agency-designated brownfield pilot projects.

(5) *"Contaminated site"* means any contiguous land, surface water, or groundwater areas that contain contaminants that may be harmful to human health or the environment.

(6) *"Department"* means the Department of Environmental Protection.

(7) *"Engineering controls"* means modifications to a site to reduce or eliminate the potential for exposure to contaminants. Such modifications may include, but are not limited to, physical or hydraulic control measures, capping, point of use treatments, or slurry walls.

(8) *"Environmental justice"* means the fair treatment of all people of all races, cultures, and incomes with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.

(9) *"Institutional controls"* means the restriction on use of or access to a site to eliminate or minimize exposure to contaminants. Such restrictions may include, but are not limited to, deed restrictions, use restrictions, or restrictive zoning.

(10) *"Local pollution control program"* means a local pollution control program that has received delegated authority from the Department of Environmental Protection under s 403.182.

(11) *"Natural attenuation"* means the verifiable reduction of contaminants through natural processes, which may include diffusion, dispersion, absorption, and biodegradation.

(12) *"Person responsible for brownfield site rehabilitation"* means the individual or entity that is designated by the local government in its resolution establishing a brownfield area to enter into the brownfield site rehabilitation agreement with the department and enters into an agreement with the local government for redevelopment of the site.

(13) *"Person"* means any individual, partner, joint venture, or corporation; any group of the foregoing, organized or united for a business purpose, or any governmental entity.

(14) *"Site rehabilitation"* means the assessment of site contamination and the remediation activities that reduce the levels of contaminants at a site through accepted treatment methods to meet the cleanup target levels established for that site.

(15) *"Source removal"* means the removal of free product or contaminants from soil that has been contaminated to the extent that leaching to groundwater has or is occurring.

(16) *"Synergistic effects"* means a scientific principle that the toxicity that occurs as a result of exposure is more than the sum of the toxicities of the individual chemicals to which the individual is exposed.

Rep Constantine moved the adoption of the amendment, which was adopted.

Representative(s) Constantine and Eggleston offered the following:

Amendment 2—On page 5, line(s) 4, through page 12, line 2, remove from the bill: all of said lines

and insert in lieu thereof

purposes of ss 376.77-376.84. The notification must include a resolution, by the local government body, to which is attached a map adequate to clearly delineate exactly which parcels are to be included in the brownfield area or alternatively a less-detailed map accompanied by a detailed legal description of the brownfield area. If a property owner within the area proposed for designation by the local government requests in writing to have his or her property removed from the proposed designation, the local government shall grant the request. For municipalities, the governing body shall adopt the resolution in accordance with the procedures outlined in s 166.041, except that the notice for the public hearings on the proposed resolution must be in the form established in s 166.041(3)(c)2. For counties, the governing body shall adopt the resolution in accordance with the procedures outlined in s 125.66, except that the notice for the public hearings on the proposed resolution shall be in the form established in s 125.66(4)(b)2.

(2)(a) If a local government proposes to designate a brownfield area that is outside community redevelopment areas, enterprise zones, empowerment zones, or designated brownfield pilot project areas, the local government must conduct at least one public hearing in the area to be designated to provide an opportunity for public input on the size of the area, the objectives for rehabilitation, job opportunities and economic developments anticipated, neighborhood residents' considerations, and other relevant local concerns. Notice of the public hearing must be made in a newspaper of general circulation in the area and the notice must be at least 16 square inches in size, must be in ethnic newspapers or local community bulletins, must be posted in the affected area, and must be announced at a scheduled meeting of the local governing body before the actual public hearing. In determining the areas to be designated, the local government must consider

1 Whether the brownfield area warrants economic development and has a reasonable potential for such activities,

2 Whether the proposed area to be designated represents a reasonably focused approach and is not overly large in geographic coverage,

3 Whether the area has potential to interest the private sector in participating in rehabilitation, and

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

(b) A local government shall designate a brownfield area under the provisions of this act provided that

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

2 The rehabilitation and redevelopment of the proposed brownfield site will result in economic productivity of the area, along with the creation of at least ten new jobs, full-time or part-time, which are not associated with the implementation of the rehabilitation agreement or an agreement, between the person responsible for site rehabilitation and the local government with jurisdiction, which contains terms for the redevelopment of the brownfield site or brownfield area,

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

4 Notice of the proposed rehabilitation of the brownfield area has been provided to neighbors and nearby residents of the proposed area to be designated and the person proposing the area for designation has afforded to those receiving notice the opportunity for comments and suggestions about rehabilitation. Notice pursuant to this subsection must be made in a newspaper of general circulation in the area, at least 16 square inches in size, and the notice must be posted in the affected area, and

5 The person proposing the area for designation has provided reasonable assurance that he or she has sufficient financial resources to

implement and complete the rehabilitation agreement and redevelopment plan.

(c) The designation of a brownfield area and the identification of a person responsible for brownfield site rehabilitation simply entitles the identified person to negotiate a brownfield rehabilitation agreement with the department or approved local government

(3) The local government must at the time of the adoption of the resolution notify the department of the entity that it is designating as the person responsible for brownfield site rehabilitation. If the agency or person who will be responsible for the coordination changes during the approval process specified in subsections (4), (5), and (6), the department or the affected approved local pollution control program must notify the affected local government when the change occurs

(4) Local governments or persons responsible for rehabilitation and redevelopment of brownfield areas must establish an advisory committee for the purpose of improving public participation and receiving public comments on rehabilitation and redevelopment of the brownfield area, future land use, local employment opportunities, community safety, and environmental justice. Such advisory committee should include residents within or adjacent to the brownfield area, businesses operating within the brownfield area, and others deemed appropriate. The advisory committee must review and provide recommendations to the board of the local government with jurisdiction on the proposed site rehabilitation agreement provided in s 376.80(5)

(5) The person responsible for brownfield site rehabilitation must enter into a brownfield site rehabilitation agreement with the department or an approved local environmental program. The brownfield site rehabilitation agreement must include

(a) A brownfield site rehabilitation schedule, including milestones for completion of site rehabilitation tasks and submittal of technical reports and rehabilitation plans as agreed upon by the parties to the agreement,

(b) A commitment to conduct site rehabilitation activities under the observation of professional engineers or geologists who are registered in accordance with the requirements of chapter 471 or chapter 492, respectively. Submittals provided by the person responsible for brownfield site rehabilitation must be signed and sealed by a professional engineer registered under chapter 471, or a professional geologist registered under chapter 492, certifying that the submittal and associated work comply with the law and rules of the department and those governing the profession. In addition, upon completion of the approved remedial action, the department shall require a professional engineer registered under chapter 471 or a professional geologist registered under chapter 492 to certify that the corrective action was, to the best of his or her knowledge, completed in substantial conformance with the plans and specifications approved by the department,

(c) A commitment to conduct site rehabilitation in accordance with an approved comprehensive quality assurance plan under department rules,

(d) A commitment to conduct site rehabilitation consistent with state, federal, and local laws and consistent with the brownfield site contamination cleanup criteria in s 376.81, including any applicable requirements for risk-based corrective action,

(e) Timeframes for the department's review of technical reports and plans submitted in accordance with the agreement. The department shall make every effort to adhere to established agency goals for reasonable timeframes for review of such documents;

(f) A commitment to secure site access for the department or approved local environmental program to all brownfield sites within the eligible brownfield area for activities associated with site rehabilitation;

(g) Other provisions that the person responsible for brownfield site rehabilitation and the department agree upon, that are consistent with ss. 376.77-376.84, and that will improve or enhance the brownfield site rehabilitation process, and

(h) A commitment to consider appropriate pollution prevention measures and to implement those that the person determines are reasonable and cost-effective, taking into account the ultimate use or uses of the brownfield site. Such measures may include improved inventory or production controls and procedures for preventing a loss, spills, and leaks of hazardous waste and materials, and include goals for the reduction of releases of toxic materials.

(i) An agreement between the person responsible for site rehabilitation and the local government with jurisdiction over the brownfield. Such agreement shall contain terms for the redevelopment of the brownfield.

(6) Any contractor performing site rehabilitation program tasks must demonstrate to the department that the contractor

(a) Meets all certification and license requirements imposed by law, and

(b) Has obtained approval for the comprehensive quality-assurance plan prepared under department rules

(7) The contractor must certify to the department that the contractor

(a) Complies with applicable OSHA regulations

(b) Maintains workers' compensation insurance for all employees as required by the Florida Workers' Compensation Law

(c) Maintains comprehensive general liability and comprehensive automobile liability insurance with minimum limits of at least \$1 million per occurrence and \$1 million annual aggregate, sufficient to protect it from claims for damage for personal injury, including accidental death, as well as claims for property damage which may arise from performance of work under the program, designating the state as an additional insured party.

(d) Maintains professional liability insurance of at least \$1 million per occurrence and \$1 million annual aggregate

(e) Has the capacity to perform or directly supervise the majority of the work at a site in accordance with s 489 113(9)

(8) Any professional engineer or geologist providing professional services relating to site rehabilitation program tasks must carry professional liability insurance with a coverage limit of at least \$1 million.

(9) During the cleanup process, if the department or local program fails to complete review of a technical document within the timeframe specified in the brownfield site rehabilitation agreement, the person responsible for brownfield site rehabilitation may proceed to the next site rehabilitation task. However, the person responsible for brownfield site rehabilitation does so at its own risk and may be required by the department or local program to complete additional work on a previous task. Exceptions to this subsection include requests for "no further action," "monitoring only proposals," and feasibility studies, which must be approved prior to implementation.

(10) If the person responsible for brownfield site rehabilitation fails to comply with the brownfield site rehabilitation agreement, the department shall allow 90 days for the person responsible for brownfield site rehabilitation to return to compliance with the provision at issue or to negotiate a modification to the brownfield site rehabilitation agreement with the department for good cause shown. If an imminent hazard exists, the 90-day grace period shall not apply. If the project is not returned to compliance with the brownfield site rehabilitation agreement and a modification cannot be negotiated, the immunity provisions of s 376.82 are revoked.

(11) The department is specifically authorized and encouraged to enter into delegation agreements with local pollution control programs approved under s 403 182 to administer the brownfield program within their jurisdictions, thereby maximizing the integration of this process with the other local development processes needed to facilitate redevelopment of a brownfield area. When determining whether a

delegation pursuant to this subsection of all or part of the brownfields program to a local pollution control program is appropriate, the department shall consider the following. The local pollution control program must:

(a) have and maintain the administrative organization, staff, financial and other resources to effectively and efficiently implement and enforce the statutory requirements of the delegated brownfields program, and

(b) provide for the enforcement of the requirements of the delegated brownfields program, and for notice and a right to challenge governmental action, by appropriate administrative and judicial process, which shall be specified in the delegation.

The local pollution control program shall not be delegated authority to take action on or to make decisions regarding any brownfield on land owned by the local government. Any delegation agreement entered into pursuant to this subsection shall contain such terms and conditions necessary to ensure the effective and efficient administration and enforcement of the statutory requirements of the brownfields program as established by the act and the relevant rules and other criteria of the department.

Rep Constantine moved the adoption of the amendment, which was adopted.

Representative(s) Constantine and Eggleston offered the following

Amendment 3—On page 18, line(s) 5, through page 24 line 3; remove from the bill all of said lines

and insert in lieu thereof

(1) **ELIGIBILITY**—Any person who has not caused or contributed to the contamination of a brownfield site after July 1, 1997, is eligible to participate in the brownfield rehabilitation program established in ss. 376 77-376 84, subject to the following

(a) Potential brownfield sites that are subject to an ongoing formal judicial or administrative enforcement action or corrective action pursuant to federal authority, including, but not limited to, the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. ss 9601, et seq., as amended, the Safe Drinking Water Act, 42 U.S.C. ss 300f-300i, as amended, the Clean Water Act, 33 U.S.C. ss 1251-1387, as amended, or under an order from the United States Environmental Protection Agency pursuant to s 3008(h) of the Resource Conservation and Recovery Act, as amended (42 U.S.C.A. s. 6928(h)), or that have obtained or are required to obtain a permit for the operation of a hazardous waste treatment, storage, or disposal facility, a postclosure permit, or a permit pursuant to the federal Hazardous and Solid Waste Amendments of 1984, are not eligible for participation unless specific exemptions are secured by a memorandum of agreement with the United States Environmental Protection Agency pursuant to paragraph (2)(e). A brownfield site within an eligible brownfield area that subsequently becomes subject to formal judicial or administrative enforcement action or corrective action under such federal authority shall have its eligibility revoked unless specific exemptions are secured by a memorandum of agreement with the United States Environmental Protection Agency pursuant to paragraph (2)(g).

(b) Persons who have not caused or contributed to the contamination of a brownfield site after July 1, 1997, and who, prior to the department's approval of a brownfield site rehabilitation agreement, are subject to ongoing corrective action or enforcement under state authority established in chapter 376 or chapter 403, including those persons subject to a pending consent order with the state, are eligible for participation in a brownfield corrective action if

1 The proposed brownfield site is currently idle or underutilized as a result of the contamination, and participation in the brownfield program will immediately, after cleanup or sooner, result in increased economic productivity at the site, including at a minimum the creation of ten new jobs, whether permanent or part-time, which are not associated with implementation of the brownfield site corrective-action plan, and

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

(c) Potential brownfield sites owned by the state or a local government which contain contamination for which a governmental entity is potentially responsible and which are already designated as federal brownfield pilot projects or have filed an application for designation to the United States Environmental Protection Agency are eligible for participation in a brownfield corrective action

(d) Petroleum and dry cleaning contamination sites shall not receive both restoration funding assistance available for the discharge under chapter 376 and any state assistance available under s 288 107 Nothing in this act shall affect the cleanup criteria, priority ranking, and other rights and obligations inherent in petroleum contamination and dry cleaning contamination site rehabilitation under ss 376 30-376 319, or the availability of economic incentives otherwise provided for by law

(2) LIABILITY PROTECTION —

(a) Any person, including his or her successors and assigns, who executes and implements to successful completion a brownfield site rehabilitation agreement, shall be relieved of further liability for remediation of the contaminated site or sites to the state and to third parties and of liability in contribution to any other party who has or may incur cleanup liability for the contaminated site or sites

(b) This section shall not be construed as a limitation on the right of a third party other than the state to pursue an action for damages to property or person, however, such an action may not compel site rehabilitation in excess of that required in the approved brownfield site rehabilitation agreement or otherwise required by the department or approved local pollution control program

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

(d) The liability protection provided under this section shall become effective upon execution of a brownfield site rehabilitation agreement and shall remain effective, provided the person responsible for brownfield site rehabilitation complies with the terms of the site rehabilitation agreement. Any statute of limitations that would bar the department from pursuing relief in accordance with its existing authority is tolled from the time the agreement is executed until site rehabilitation is completed or immunity is revoked pursuant to s 376 80(10)

(e) Completion of the performance of the remediation obligations at the brownfield shall be evidenced by a site rehabilitation completion letter or a "no further action" letter issued by the department or the approved local pollution control program, which letter shall include the following statement "Based upon the information provided by (property owner) concerning property located at (address), it is the opinion of (the Florida Department of Environmental Protection or approved local pollution control program) that (party) has successfully and satisfactorily implemented the approved brownfield site rehabilitation agreement schedule and, accordingly, no further action is required to assure that any land use identified in the brownfield site rehabilitation agreement is consistent with existing and proposed uses."

(f) Compliance with the agreement referenced in s 376 80(5)(a) must be evidenced by a finding by the local government with jurisdiction over the brownfield that the terms of the agreement have been met.

(g) The Legislature recognizes its limitations in addressing cleanup liability under federal pollution control programs In an effort to secure federal liability protection for persons willing to undertake remediation responsibility at a brownfield, the department shall attempt to negotiate a memorandum of agreement or similar document with the United States Environmental Protection Agency, whereby the United States Environmental Protection Agency agrees to forgo enforcement of federal

corrective-action authority at brownfields that have received a site rehabilitation completion or "no further action" determination from the department or the approved local pollution control program or that are in the process of implementing a brownfield site rehabilitation agreement in accordance with this act

(h) No unit of state or local government may be held liable for implementing corrective actions at a contaminated site within an eligible brownfield as a result of the involuntary ownership of the site through bankruptcy, tax delinquency, abandonment, or other circumstances in which the state or local government involuntarily acquires title by virtue of its function as a sovereign, or as a result of ownership from donation or gift, unless the state or local government has otherwise caused or contributed to a release of a contaminant at the brownfield site

(i) The Legislature finds and declares that certain brownfields may be redeveloped for open space, or limited recreational, cultural, or historical preservation purposes, and that such facilities enhance the redeveloped environment, attract visitors, and provide wholesome activities for employees and residents of the area. Further, the Legislature finds that purchasers of contaminated sites who are nonprofit conservation organizations acting for the public interest and who did not cause or contribute to the release of contamination on the site warrant protection from liability

(j) Notwithstanding any provision of this chapter, chapter 403, other laws, or ordinances of local governments, a nonprofit, charitable, federal tax exempt, 501(c)(3) national land conservation corporation which purchases title to property in the state for the purpose of conveying such land to any governmental entity for conservation, historical preservation or cultural resource, park, greenway, or other similar uses shall not be liable to the state, local government, or any third party for penalties or remediation costs in connection with environmental contamination found in the soil or groundwater of such property, provided that such corporation did not cause the original deposit or release of the environmental contaminants, and provided the department and local pollution control program and responsible parties have access to the land for investigation, remediation, or monitoring purposes

(3) REOPENERS — Upon completion of site rehabilitation in compliance with ss 376 77-376 84, no additional site rehabilitation shall be required unless it is demonstrated.

(a) That fraud was committed in demonstrating site conditions or completion of site rehabilitation,

(b) That new information confirms the existence of an area of previously unknown contamination which exceeds the site-specific rehabilitation levels established in accordance with s 376 81, or which otherwise poses the threat of real and substantial harm to public health, safety, or the environment in violation of the terms of ss 376 77-376 84,

(c) That the remediation efforts failed to achieve the site rehabilitation criteria established under s 376 81,

(d) That the level of risk is increased beyond the acceptable risk established under s. 376 81 due to substantial changes in exposure conditions, such as a change in land use from nonresidential to residential use Any person who changes the land use of the brownfield site thus causing the level of risk to increase beyond the acceptable risk level may be required by the department to undertake additional remediation measures to assure that human health, public safety, and the environment are protected to levels consistent with s. 376 81, or

(e) That a new release occurs at the brownfield site subsequent to a determination of eligibility for participation in the brownfield program established under s. 376 80

(4) ADDITIONAL LIABILITY PROTECTION FOR LENDERS —

(a) The Legislature declares that, in order to achieve the economic redevelopment and site rehabilitation of brownfields in accordance with this act, it is imperative to encourage financing of real property transactions involving brownfield site rehabilitation plans. Accordingly, lenders, including those serving as a trustee, personal representative, or

in any other fiduciary capacity, in connection with a loan, are entitled to the liability protection established in subsection (2) if they have not caused or contributed to a release of a contaminant at the brownfield.

(b) Lenders who hold indicia of ownership of a parcel within a brownfield primarily to protect a security interest or who own a parcel within a brownfield as a result of foreclosure or a deed in lieu of foreclosure of a security interest and who seek to sell, transfer, or otherwise divest the parcel via sale at the earliest practicable time are not liable for the release or discharge of a contaminant from the parcel, for the failure of the person responsible for brownfield site rehabilitation to comply with the brownfield site rehabilitation agreement, or for future site rehabilitation activities required pursuant to a reopening provision established in subsection (3) where the lender has not divested the borrower of, or otherwise engaged in, decisionmaking control of the site rehabilitation or site operations or undertaken management activities beyond those required to protect its financial interest while making a good faith effort to sell the site as soon as practicable and when an act or omission of the lender has not otherwise caused or contributed to a release of a contaminant at the brownfield.

(c) The economic incentives that were granted to a person responsible for site rehabilitation by state or local governments shall not accrue to a lender who obtains ownership of the brownfield by one of the methods described in this subsection. The economic incentives are abated during the lender's ownership but they may be transferred and reinstated upon the sale of the brownfield.

Rep Eggleston moved the adoption of the amendment, which was adopted

Representative(s) Constantine and Eggleston offered the following

Amendment 4—On page 24, line(s) 22, through page 26 line 21; of the bill remove from the bill all of said lines insert in lieu thereof

Section 8. Section 376.84, Florida Statutes, is created to read:

376.84 Brownfield redevelopment economic incentives—It is the intent of the Legislature that brownfield redevelopment activities be viewed as opportunities to significantly improve the utilization, general condition, and appearance of these sites. Different standards than those in place for new development, as allowed under current state and local laws, should be used to the fullest extent to encourage the redevelopment of a brownfield. State and local governments are encouraged to offer redevelopment incentives for this purpose, as an ongoing public investment in infrastructure and services, to help eliminate the public health and environmental hazards, and to promote the creation of jobs in these areas. Such incentives may include financial, regulatory, and technical assistance to persons and businesses involved in the redevelopment of the brownfield pursuant to this act.

(1) Financial incentives and local incentives for redevelopment may include, but not be limited to:

(a) Tax increment financing through community redevelopment agencies pursuant to part III of chapter 163

(b) Enterprise zone tax exemptions for businesses pursuant to chapter 196 and chapter 290

(c) Safe neighborhood improvement districts as provided in ss 163.501-163.523.

(d) Waiver, reduction, or limitation by line of business with respect to occupational license taxes pursuant to chapter 205

(e) Tax exemption for historic properties as provided in s 196.1997

(f) Residential electricity exemption of up to the first 500 kilowatts of use may be exempted from the municipal public service tax pursuant to s 166.231

(g) Minority business enterprise programs as provided in s 287.0943

(h) Electric and gas tax exemption as provided in s. 166.231(6)

(i) Economic development tax abatement as provided in s 196.1995.

(j) Grants, including community development block grants

(k) Pledging of revenues to secure bonds

(l) Low-interest revolving loans and zero-interest loan pools

(m) Local grant programs for facade, storefront, signage, and other business improvements

(n) Governmental coordination of loan programs with lenders, such as microloans, business reserve fund loans, letter of credit enhancements, gap financing, land lease and sublease loans, and private equity.

(o) Payment schedules over time for payment of fees, within criteria, and marginal cost pricing

(2) Regulatory incentives may include, but not be limited to

(a) Cities' absorption of developers' concurrency needs.

(b) Developers' performance of certain analyses

(c) Exemptions and lessening of state and local review requirements.

(d) Water and sewer regulatory incentives

(e) Waiver of transportation impact fees and permit fees.

(f) Zoning incentives to reduce review requirements for redevelopment changes in use and occupancy, establishment of code criteria for specific uses, and institution of credits for previous use within the area

(g) Flexibility in parking standards and buffer zone standards

(h) Environmental management through specific code criteria and conditions allowed by current law.

(i) Maintenance standards and activities by ordinance and otherwise, and increased security and crime prevention measures available through special assessments

(j) Traffic-calming measures

(k) Historic preservation ordinances, loan programs, and review and permitting procedures

(l) One-stop permitting and streamlined development and permitting process

(3) Technical assistance incentives may include, but not be limited to

(a) Expedited development applications.

(b) Formal and informal information on business incentives and financial programs.

(c) Site design assistance.

(d) Marketing and promotion of projects or areas

Section 9 (1) The Legislature recognizes that the United States Environmental Protection Agency has created several pilot projects for redevelopment of brownfield areas to gather information on the best ways to return old industrial and commercial sites to productive use in situations where redevelopment is complicated by potential environmental contamination. These pilot project areas will perform initial work to seek developers to restore the sites, and will also incorporate the efforts of lenders, regulators, and other groups. The Environmental Protection Agency initiative is flexible, allowing local governments to use a variety of approaches to rehabilitate abandoned or underutilized sites, neighborhoods, and small regional areas

(2) The Legislature has determined that it would be beneficial to provide similar incentives in this state for the rehabilitation and redevelopment of brownfields. Accordingly, the department shall, contingent upon funds being available in the General Appropriations Act

for fiscal year 1997-98, award grants to each United States Environmental Protection national or regional brownfield pilot project

Section 10 Paragraphs (a), (b), and (d) of subsection (3) of section 288 095, Florida Statutes, 1996 Supplement, are amended to read:

288.095 Economic Development Trust Fund —

(3)(a) Contingent upon an annual appropriation by the Legislature, the Office of Tourism, Trade, and Economic Development may approve not more than the lesser of \$10 million in tax refunds pursuant to ss 288.104, ~~and~~ 288 106, and 288 107 or the amount appropriated to the Economic Development Incentives Account for such tax refunds, for a fiscal year pursuant to paragraph (b).

(b) The total amount of tax refunds approved by the Office of Tourism, Trade, and Economic Development pursuant to ss 288.104, ~~and~~ 288 106, and 288 107 shall not exceed the amount appropriated to the Economic Development Incentives Account for such purposes for the fiscal year. In the event the Legislature does not appropriate an amount sufficient to satisfy projections by the department for tax refunds under ss 288.104, ~~and~~ 288 106, and 288 107 in a fiscal year, the Office of Tourism, Trade, and Economic Development shall, not later than July 15 of such year, determine the proportion of each refund claim which shall be paid by dividing the amount appropriated for tax refunds for the fiscal year by the projected total of refund claims for the fiscal year. The amount of each claim for a tax refund shall be multiplied by the resulting quotient. If, after the payment of all such refund claims, funds remain in the Economic Development Incentives Account for tax refunds, the secretary shall recalculate the proportion for each refund claim and adjust the amount of each claim accordingly.

(d) Moneys in the Economic Development Incentives Account may be used only to pay tax refunds and other payments authorized under s 288.104, ~~or~~ s 288 106, or s 288 107

Section 11 Section 288 107, Florida Statutes, is created to read

288.107 Brownfield redevelopment bonus refunds —

(1) DEFINITIONS —As used in this section

(a) "Account" means the Economic Development Incentives Account as authorized in s 288 095

(b) "Brownfield" or "brownfield site" means a parcel or a contiguous area of one or more parcels, which have been designated by local government by resolution, that are generally abandoned, idled, or underused industrial and commercial properties where expansion or redevelopment is complicated by actual or perceived environmental contamination. Such areas may include, but are not limited to, portions of community redevelopment areas, enterprise zones, empowerment zones, other such designated economically deprived communities and areas, and United States Environmental Protection Agency designated brownfield pilot projects

(c) "Director" means the director of the Office of Tourism, Trade, and Economic Development

(d) "Eligible business" means a qualified target industry business as defined in s. 288 106(2)(o)

(e) "Jobs" means full-time equivalent positions, consistent with the use of such terms by the Department of Labor and Employment Security for the purpose of unemployment compensation tax, resulting directly from a project in this state. This number does not include temporary construction jobs involved with the construction of facilities for the project and which are not associated with the implementation of the site rehabilitation as provided in s 376.80

(f) "Office" means the Office of Tourism, Trade, and Economic Development

(g) "Project" means the creation of a new business or the expansion of an existing business as defined in s 288.106

(2) BROWNFIELD REDEVELOPMENT BONUS REFUND —There shall be allowed from the account a bonus refund of \$2,500 to any

qualified target industry business for each new Florida job created in a brownfield which is claimed on the qualified target industry business's annual refund claim authorized in s 288 106(6) and approved by the office as specified in the final order issued by the director

(3) CRITERIA.—The minimum criteria for participation in the brownfield redevelopment bonus refund are

(a) The creation of at least 10 new full-time permanent jobs. Such jobs shall not include construction or site rehabilitation jobs associated with the implementation of a brownfield site agreement as described in s 376 80(5)

(b) That the designation as a brownfield will diversify and strengthen the economy of the area surrounding the site

(c) That the designation as a brownfield will promote capital investment in the area beyond that contemplated for the rehabilitation of the site

(4) PAYMENT OF BROWNFIELD REDEVELOPMENT BONUS REFUNDS —

(a) To be eligible to receive a bonus refund for new Florida jobs created in a brownfield, a business must have been certified as a qualified target industry business under s 288 106 and must have indicated on the qualified target industry tax refund application form submitted in accordance with s 288 106(4) that the project for which the application is submitted is or will be located in a brownfield and that the business is applying for certification as a qualified brownfield business under this section, and must have signed a qualified target industry tax refund agreement with the office which indicates that the business has been certified as a qualified target industry business located in a brownfield and specifies the schedule of brownfield redevelopment bonus refunds that the business may be eligible to receive in each fiscal year

(b) To be considered to receive an eligible brownfield redevelopment bonus refund payment, the business meeting the requirements of paragraph (a) must submit a claim once each fiscal year on a claim form approved by the office which indicates the location of the brownfield, the address of the business facility's brownfield location, the name of the brownfield in which it is located, the number of jobs created, and the average wage of the jobs created by the business within the brownfield as defined in s 288 106 and the administrative rules and policies for that section

(c) The bonus refunds shall be available on the same schedule as the qualified target industry tax refund payments scheduled in the qualified target industry tax refund agreement authorized in s 288 106

(d) After entering into a tax refund agreement as provided in s 288 106, an eligible business may receive brownfield redevelopment bonus refunds from the account pursuant to s 288 106(3)(c).

(e) An eligible business that fraudulently claims a refund under this section:

1 Is liable for repayment of the amount of the refund to the account, plus a mandatory penalty in the amount of 200 percent of the tax refund, which shall be deposited into the General Revenue Fund.

2 Commits a felony of the third degree, punishable as provided in s. 775.082, s. 775 083, or s 775 084

(f) The office shall review all applications submitted under s. 288 106 which indicate that the proposed project will be located in a brownfield and determine, with the assistance of the Department of Environmental Protection, that the project location is within a brownfield as provided in this act

(g) The office shall approve all claims for a brownfield redevelopment bonus refund payment that are found to meet the requirements of paragraphs (b) and (d)

(h) The director, with such assistance as may be required from the office and the Department of Environmental Protection, shall specify by written final order the amount of the brownfield redevelopment bonus

refund that is authorized for the qualified target industry business for the fiscal year within 30 days after the date that the claim for the annual tax refund is received by the office

(i) The total amount of the bonus refunds approved by the director under this section in any fiscal year must not exceed the total amount appropriated to the Economic Development Incentives Account for this purpose for the fiscal year. In the event that the Legislature does not appropriate an amount sufficient to satisfy projections by the office for brownfield redevelopment bonus refunds under this section in a fiscal year, the office shall, not later than July 15 of such year, determine the proportion of each brownfield redevelopment bonus refund claim which shall be paid by dividing the amount appropriated for tax refunds for the fiscal year by the projected total of brownfield redevelopment bonus refund claims for the fiscal year. The amount of each claim for a brownfield redevelopment bonus tax refund shall be multiplied by the resulting quotient. If, after the payment of all such refund claims, funds remain in the Economic Development Incentives Account for brownfield redevelopment tax refunds, the office shall recalculate the proportion for each refund claim and adjust the amount of each claim accordingly.

(j) Upon approval of the brownfield redevelopment bonus refund, payment shall be made for the amount specified in the final order. If the final order is appealed, payment may not be made for a refund to the qualified target industry business until the conclusion of all appeals of that order.

(5) ADMINISTRATION—

(a) The office is authorized to verify information provided in any claim submitted for tax credits under this section with regard to employment and wage levels or the payment of the taxes to the appropriate agency or authority, including the Department of Revenue, the Department of Labor and Employment Security, or any local government or authority.

(b) To facilitate the process of monitoring and auditing applications made under this program, the office may provide a list of qualified target industry businesses to the Department of Revenue, to the Department of Labor and Employment Security, to the Department of Environmental Protection, or to any local government authority. The office may request the assistance of those entities with respect to monitoring the payment of the taxes listed in 288.106(3).

Section 12 From funds available in the 1997-1998 General Appropriations Act for Brownfields Redevelopment grants shall be made as follows:

(a) For United States Environmental Protection Agency brownfield pilot projects designated as of May 1, 1997, grants shall be issued in the amount of \$500,000 per pilot.

(b) For United States Environmental Protection Agency brownfield pilot projects designated by the effective date of this act grants shall be issued in the amount of \$200,000 per pilot. Should funds be insufficient to meet this provision then a pro-rata distribution shall be made among eligible pilot projects.

(c) Remaining funds shall be split on a pro-rata basis to those pilot projects that applied but did not receive the United States Environmental Protection Agency designation. Such grants shall not exceed \$200,000.

(d) Should the United States Environmental Protection Agency fail to designate pilot projects by the effective date of this act then remaining funds shall be distributed on a pro-rata share to those pilot projects that applied.

(e) Should funds remain after satisfying the provisions of (a), (b), (c), and (d) then distribution shall be done on a pro-rata basis to sites that applied or have been designated on or before May 1, 1997.

(f) Grant funds awarded pursuant to this section shall be used by local governments to set up and implement a program which promotes brownfield redevelopment. (renumber subsequent sections)

Rep Eggleton moved the adoption of the amendment, which was adopted.

Representative(s) Constantine and Eggleton offered the following:

Amendment 5—On page 26, line(s) 25 through 26, remove from the bill all of said lines

and insert in lieu thereof

the number, size and locations of brownfield sites that have been remediated under the provisions of this act, that are currently under rehabilitation pursuant to a negotiated site rehabilitation agreement with the department or a delegated local program, where alternative cleanup target levels have been established pursuant to s 376 81(1)(g)3, and, where engineering and institutional control strategies are being employed as conditions of a "no further action order" to maintain the protections provided in s 376 81(1)(g)1 and 2

Rep Constantine moved the adoption of the amendment, which was adopted.

Representative(s) Constantine offered the following:

Amendment 6—On page 26, line(s) 27, through page 27, line 14 remove from the bill all of said lines

and insert in lieu thereof

Section 10 The introductory paragraph and paragraph (k) of subsection (12) and paragraph (g) of subsection (13) of section 376 3071, Florida Statutes, 1996 Supplement, are amended to read:

376 3071 Inland Protection Trust Fund, creation, purposes, funding —

(12) REIMBURSEMENT FOR CLEANUP EXPENSES—Except as provided in s 2(3), chapter 95-2, Laws of Florida, this subsection shall not apply to any site rehabilitation program task initiated after March 29, 1995. Effective August 1, 1996, no further site rehabilitation work on sites eligible for state-funded cleanup from the Inland Protection Trust Fund shall be eligible for reimbursement pursuant to this subsection. The person responsible for conducting site rehabilitation may seek reimbursement for site rehabilitation program task work conducted after March 28, 1995, in accordance with s 2(2) and (3), chapter 95-2, Laws of Florida, regardless of whether the site rehabilitation program task is completed. A site rehabilitation program task shall be considered to be initiated when actual onsite work or engineering design, pursuant to chapter 62-770, Florida Administrative Code, which is integral to performing a site rehabilitation program task has begun and shall not include contract negotiation and execution, site research, or project planning. All reimbursement applications pursuant to this subsection must be submitted to the department by January 3, 1997 ~~December 31, 1996~~. The department shall not accept any applications for reimbursement or pay any claims on applications for reimbursement received after that date, provided, however if an application filed on or prior to January 3, 1997 was returned by the department on the grounds of untimely filing, it shall be refiled within 30 days after the effective date of this act in order to be processed.

(k) Audits —

1 The department is authorized to perform financial and technical audits in order to certify site restoration costs and ensure compliance with this chapter. The department shall seek recovery of any overpayments based on the findings of these audits. The department must commence any audit within 5 years after the date of reimbursement, except in cases where the department alleges specific facts indicating fraud.

2 Upon determination by the department that any portion of costs which have been reimbursed are disallowed, the department shall give written notice to the applicant setting forth with specificity the allegations of fact which justify the department's proposed action and ordering repayment of disallowed costs within 60 days of notification of the applicant.

3 In the event the applicant does not make payment to the department within 60 days of receipt of such notice, the department shall seek recovery in a court of competent jurisdiction to recover

reimbursement overpayments made to the person responsible for conducting site rehabilitation, unless the department finds the amount involved too small or the likelihood of recovery too uncertain

4 In addition to the amount of any overpayment, the applicant shall be liable to the department for interest of 1 percent per month or the prime rate, whichever is less, on the amount of overpayment, from the date of overpayment by the department until the applicant satisfies the department's request for repayment pursuant to this paragraph. The calculation of interest shall be tolled during the pendency of any litigation

5. Financial and technical audits frequently are conducted under this section many years after the site rehabilitation activities were performed and the costs examined in the course of the audit were incurred by the person responsible for site rehabilitation. During the intervening span of years, the department's rule requirements and its related guidance and other nonrule policy directives may have changed significantly. The Legislature finds that it may be appropriate for the department to provide relief to persons subject to such requirements in financial and technical audits conducted pursuant to this section

a The department is authorized to grant variances and waivers from the documentation requirements of subparagraph (e)2 and from the requirements of rules applicable in technical and financial audits conducted under this section. Variances and waivers shall be granted when the person responsible for site rehabilitation demonstrates to the department that application of a financial or technical auditing requirement would create a substantial hardship or would violate principles of fairness. For purposes of this subsection, "substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this subsection, "principles of fairness" are violated when the application of a requirement affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are affected by the requirement or when the requirement is being applied retroactively without due notice to the affected parties

b A person whose reimbursed costs are subject to a financial and technical audit under this section may file a written request to the department for grant of a variance or waiver. The request shall specify

- (I) The requirement from which a variance or waiver is requested
- (II) The type of action requested
- (III) The specific facts which would justify a waiver or variance
- (IV) The reason or reasons why the requested variance or waiver would serve the purposes of this section

c. Within 90 days after receipt of a written request for variance or waiver under this subsection, the department shall grant or deny the request. If the request is not granted or denied within 90 days of receipt, the request shall be deemed approved. An order granting or denying the request shall be in writing and shall contain a statement of the relevant facts and reasons supporting the department's action. The department's decision to grant or deny the petition shall be supported by competent substantial evidence and is subject to ss. 120.569 and 120.57. Once adopted, model rules promulgated by the Administration Commission under s. 120.542 shall govern the processing of requests under this provision, however, the department may process requests prior to the adoption of those model rules

6 The Comptroller may audit the records of persons who receive or who have received payments pursuant to this chapter in order to verify site restoration costs, ensure compliance with this chapter, and verify the accuracy and completeness of audits performed by the department pursuant to this paragraph. The Comptroller may contract with entities or persons to perform audits pursuant to this subparagraph. The Comptroller shall commence any audit within 1 year after the department's completion of an audit conducted pursuant to this paragraph, except in cases where the department or the Comptroller alleges specific facts indicating fraud.

(13) PETROLEUM CLEANUP PARTICIPATION PROGRAM—To encourage detection, reporting, and cleanup of contamination caused by discharges of petroleum or petroleum products, the department shall, within the guidelines established in this subsection, implement a cost-sharing cleanup program to provide rehabilitation funding assistance for all property contaminated by discharges of petroleum or petroleum products occurring before January 1, 1995, subject to a copayment provided for in a preapproved site rehabilitation agreement. Eligibility shall be subject to an annual appropriation from the Inland Protection Trust Fund. Additionally, funding for eligible sites shall be contingent upon annual appropriation in subsequent years. Such continued state funding shall not be deemed an entitlement or a vested right under this subsection. Eligibility in the program shall be notwithstanding any other provision of law, consent order, order, judgment, or ordinance to the contrary

(g) The following shall be excluded from participation in the program

1 Sites at which the department has been denied reasonable site access to implement the provisions of this section

2 Sites that were active facilities when owned or operated by the Federal Government

3 Sites that are identified by the United States Environmental Protection Agency to be on, or which qualify for listing on, the National Priorities List under Superfund. This exception does not apply to those sites for which eligibility has been requested or granted as of the effective date of this act under the Early Detection Incentive Program established pursuant to s. 15, chapter 86-159, Laws of Florida

4 The contamination is covered under the Early Detection Incentive Program, the Abandoned Tank Restoration Program or the Petroleum Liability and Restoration Insurance Program, in which case site rehabilitation funding assistance shall continue under the respective program

5. Any person who knowingly acquires title to contaminated property shall not be eligible for restoration funding pursuant to this subsection. The provisions of this subsection do not relieve any person who has acquired title subsequent to July 1, 1992, from the duty to establish by a preponderance of the evidence that he or she undertook, at the time of acquisition, all appropriate inquiry into the previous ownership and use of the property consistent with good commercial or customary practice in an effort to minimize liability, as required by s. 376.308(1)(c). *The provisions of this subparagraph do not apply to any person who acquires title by succession or devise*

Section 11 Subsections (2) and (7) of section 376.30711, Florida Statutes, 1996 Supplement, are amended to read:

376.30711 Preapproved site rehabilitation, effective March 29, 1995 —

(2)(a) *Competitive bidding pursuant to this section shall not be subject to the requirements of s. 287.055. The department is authorized to use competitive bid procedures or negotiated contracts for preapproving all costs and rehabilitation procedures for site-specific rehabilitation projects through performance-based contracts. Site rehabilitation shall be conducted according to the priority ranking order established pursuant to s. 376.3071(5).*

(7) The department shall conduct a pilot project to determine the effectiveness and feasibility of utilizing competitive bid procedures for procuring the services necessary to perform site rehabilitation. *During fiscal year 1997-98, the department is directed to use competitive bid procedures to procure site rehabilitation services on a minimum of 25 priority sites within availability of funding, where the department has requested that the property owner designate a qualified contractor and a qualified contractor has not been designated or assigned to a state cleanup site prior to July 1, 1997. The provisions of this subsection do not apply to those sites managed by a contracted local program pursuant to s. 376.3073. The department is directed to select a representative sample of sites such that the results of the project can be compared to*

~~other procurement methods.~~ The department shall submit a report, by March 1, 1998, to the Governor, the President of the Senate, and the Speaker of the House of Representatives. Such report shall contain, at a minimum, the cost-effectiveness of utilizing competitive bid procedures, a feasibility review on the department's experience with competitive bidding; a cost comparison of competitive bidding and negotiated contracts for site rehabilitation tasks, and recommendations concerning the use of competitive bidding.

Section 12 Subsection (3) of section 376.3072, Florida Statutes, 1996 Supplement, is amended to read

376.3072 Florida Petroleum Liability and Restoration Insurance Program —

(3) Sites that were certified as insured facilities and that were denied coverage for a discharge under the Petroleum Liability and Restoration Insurance Program may request a reevaluation under the criteria in subsection (2). Such request shall be made by December 31, 1996. If the contamination is redetermined to be eligible, the deductible and coverage limit in effect at the time the discharge was reported shall be applicable. The redetermination shall not affect the department's authority for assessing supplemental deductibles or civil penalties. The department shall not assess a supplemental deductible or civil penalty for alleged failure to report or abate a discharge when the owner or operator can establish no discharge occurred. *Notwithstanding any department order to the contrary, the supplemental deductibles in subparagraph (2)(d)2 f. shall not be applied cumulatively but, rather, the highest applicable supplemental deductible shall be applied.* (renumber subsequent section(s))

Rep. Constantine moved the adoption of the amendment, which was adopted.

Further consideration of CS for CS for SB's 1306 & 1934 was temporarily postponed.

CS for SB 948—A bill to be entitled An act relating to medical practitioners, requiring physicians, osteopathic physicians, podiatrists, and chiropractors to furnish specified biographical and other data to the Department of Health; requiring the department to verify certain of the information and compile the information submitted and other public record information into a practitioner profile of each licensee and to make the profiles available to the public, providing for rules; providing duties of practitioners to update information and duties of the department to update profiles, providing for retention of information in superseded profiles, amending ss 458.311, 458.313, 458.319, F.S.; requiring applicants for licensure or relicensure as physicians to submit information, fingerprints, and fees, providing for citations to, and fines of, certain practitioners, amending ss 459.0055, 459.008, F.S., requiring applicants for licensure or relicensure as osteopathic physicians to submit information, fingerprints, and fees; providing for citations to, and fines of, certain practitioners; amending ss 460.406, 460.407, F.S., requiring applicants for licensure or relicensure as chiropractors to submit information, fingerprints, and fees, providing for citations to, and fines of, certain practitioners, amending ss 461.006, 461.007, F.S., requiring applicants for licensure or relicensure as podiatrists to submit information, fingerprints, and fees, providing for citations to, and fines of, certain practitioners, amending s 455.225, F.S., providing legislative intent, revising procedures to discipline professionals, requiring the Agency for Health Care Administration or appropriate regulatory boards to establish plans to resolve incomplete investigations or disciplinary proceedings; amending ss. 458.320, 459.0085, F.S., requiring the agency to issue an emergency order suspending the license of a physician or osteopathic physician for certain violations, amending s 455.2285, F.S., requiring additional information in the annual report by the department and by the agency, creating s 455.2478, F.S., providing that reports on professional liability actions and information relating to bankruptcy proceedings of specified health care practitioners which are in the possession of the Department of Health are public records, requiring the department to make such information available to persons who request it, amending s 627.912, F.S., providing for insurer reporting of professional liability claims and actions, revising the timeframe for reporting, providing penalties, providing for a toll-free

telephone number for reporting complaints relating to medical care, providing applicability, amending ss 458.316, 458.3165, 458.317, F.S.; conforming cross-references, providing an effective date.

—was read the second time by title.

Representative(s) Bloom, Lippman, and Maygarden offered the following:

Amendment 1 (with title amendment)—On page 3, between line(s) 5 and 6 of the bill

insert

Section 1 Section 20.43, Florida Statutes, 1996 Supplement, is amended to read

20.43 Department of Health—There is created a Department of Health.

(3) ~~Effective July 1, 1997,~~ Division of Medical Quality Assurance, which is responsible for the following boards and professions established within the division:

The department ~~may~~ shall contract with the Agency for Health Care Administration who shall provide consumer complaint, investigative, and prosecutorial services required by the Division of Quality Assurance, councils, or boards, as appropriate.

Section 2. Section 11 of Chapter 96-403, Laws of Florida, is amended to read

Section 11 Effective July 1, 1997, the regulation of nursing assistants, as provided under s 400.211, Florida Statutes, health care services pools, as provided under s 402.48, Florida Statutes, the Board of Acupuncture, created under chapter 457, Florida Statutes, the Board of Medicine, created under chapter 458, Florida Statutes; the Board of Osteopathic Medicine, created under chapter 459, Florida Statutes, the Board of Chiropractic, created under chapter 460, Florida Statutes, the Board of Podiatric Medicine, created under chapter 461, Florida Statutes, naturopathy, as provided under chapter 462, Florida Statutes, the Board of Optometry, created under chapter 463, Florida Statutes, the Board of Nursing, created under chapter 464, Florida Statutes, the Board of Pharmacy, created under chapter 465, Florida Statutes, the Board of Dentistry, created under chapter 466, Florida Statutes; midwifery, as provided under chapter 467, Florida Statutes, the Board of Speech-Language Pathology and Audiology, created under part I of chapter 468, Florida Statutes, the Board of Nursing Home Administrators, created under part II of chapter 468, Florida Statutes; occupational therapy, as provided under part III of chapter 468, Florida Statutes, dietetics and nutrition practice, as provided under part X of chapter 468, Florida Statutes; electrolysis, as provided under chapter 478, Florida Statutes; the Board of Clinical Laboratory Personnel, created under part IV of chapter 483, Florida Statutes; medical physicists, as provided under part V of chapter 483, Florida Statutes, the Board of Opticianry, created under part I of chapter 484, Florida Statutes, the Board of Physical Therapy Practice, created under chapter 486, Florida Statutes, the Board of Psychology, created under chapter 490, Florida Statutes; and the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling, created under chapter 491, Florida Statutes, under the Division of Health Quality Assurance of the Agency for Health Care Administration, or under the agency, within the Department of Business and Professional Regulation, *but not including personnel, property, and unexpended balances of appropriations related to consumer complaints, investigative and prosecutorial services, including all licensing, examination, publication, administrative, and management information services, but not consumer complaint, investigative, or prosecutorial services, provided by the Agency for Health Care Administration, is transferred by a type two transfer, as defined in s 20.06(2), Florida Statutes, and assigned to the Division of Medical Quality Assurance within the Department of Health, as created by this act.* (renumber subsequent section(s))

ENROLLED

1997 Legislature

CS for CS for SB's 1306 & 1934
Second Engrossed

1
2 An act relating to environmental protection;
3 creating s. 376.77, F.S.; providing a short
4 title; creating s. 376.78, F.S.; providing
5 legislative intent; creating s. 376.79, F.S.;
6 defining terms; creating s. 376.80, F.S.;
7 providing for a brownfield program
8 administration process; providing duties of a
9 local government that designates a brownfield
10 for rehabilitation and redevelopment; providing
11 for notice to the Department of Environmental
12 Protection; providing for public hearings;
13 providing requirements for such designation and
14 specifying effect thereof; requiring
15 establishment of an advisory committee;
16 providing for a brownfield site rehabilitation
17 agreement and providing requirements with
18 respect thereto; providing requirements for
19 contractors performing site rehabilitation;
20 providing consequences of failure to comply
21 with a rehabilitation agreement; authorizing
22 the Department of Environmental Protection to
23 enter into delegation agreements with local
24 pollution control program; providing
25 requirements for local pollution control
26 programs; creating s. 376.81, F.S.; providing
27 for brownfield contamination cleanup criteria;
28 directing the Department of Environmental
29 Protection to establish by rule criteria for
30 determining tasks that comprise a site
31 rehabilitation program and the level at which

1

CODING: Words stricken are deletions; words underlined are additions.

ENROLLED

1997 Legislature

CS for CS for SB's 1306 & 1934
Second Engrossed

1 tasks and programs may be deemed completed;
2 providing that source removal may be required
3 under certain conditions; creating s. 376.82,
4 F.S.; providing eligibility requirements for
5 participation in brownfield rehabilitation;
6 providing liability protection for persons who
7 successfully complete a rehabilitation
8 agreement; providing requirements for the
9 issuance of a "no further action" letter
10 evidencing completion of rehabilitation;
11 authorizing negotiation with the United States
12 Environmental Protection Agency regarding
13 enforcement; providing certain liability
14 protection for state and local governments and
15 for certain nonprofit land conservation
16 corporations; providing conditions under which
17 further rehabilitation may be required;
18 providing liability protection for certain
19 lenders; creating s. 376.83, F.S.; specifying
20 violations and providing penalties; providing
21 for pilot projects; creating s. 376.84, F.S.;
22 specifying financial, local, regulatory, and
23 technical assistance incentives that may be
24 included; amending s. 288.095, F.S.; to
25 conform; creating s. 288.107, F.S.; creating a
26 brownfield bonus refund program; providing for
27 refunds from the Economic Development Incentive
28 Account to certain qualified target industry
29 businesses for jobs created in a brownfield;
30 providing criteria for participation; providing
31 procedures and requirements for refunds;

2

CODING: Words stricken are deletions; words underlined are additions.

1 providing penalties; providing for
2 administration; providing for the disbursement
3 of funds; requiring the Department of
4 Environmental Protection to report annually;
5 amending s. 376.3071, F.S.; revising
6 application deadlines for cleanup reimbursement
7 from the Inland Protection Trust Fund;
8 providing for audits by the Comptroller;
9 revising eligibility criteria relating to the
10 petroleum cleanup participation program;
11 amending s. 376.30711, F.S.; providing for
12 competitive bidding for certain site
13 rehabilitations; amending s. 376.3072, F.S.;
14 specifying the process for applying certain
15 supplemental deductibles; amending s. 403.0072,
16 F.S.; clarifying permit filing deadlines;
17 providing an effective date.

18
19 Be It Enacted by the Legislature of the State of Florida:

20
21 Section 1. Section 376.77, Florida Statutes, is
22 created to read:

23 376.77 Short title.--Sections 376.77-376.83 may be
24 cited as the "Brownfields Redevelopment Act."

25 Section 2. Section 376.78, Florida Statutes, is
26 created to read:

27 376.78 Legislative intent.--The Legislature finds and
28 declares the following:

29 (1) The reduction of public health and environmental
30 hazards on existing commercial and industrial sites is vital
31 to their use and reuse as sources of employment, housing,

1 recreation, and open-space areas. The reuse of industrial land
2 is an important component of sound land-use policy for
3 productive urban purposes which will help prevent the
4 premature development of farmland, open-space areas, and
5 natural areas, and reduce public costs for installing new
6 water, sewer, and highway infrastructure.

7 (2) The abandonment or underuse of brownfield sites
8 also results in the inefficient use of public facilities and
9 services, as well as land and other natural resources, extends
10 conditions of blight in local communities, and contributes to
11 concerns about environmental equity and the distribution of
12 environmental risks across population groups.

13 (3) Incentives should be put in place to encourage
14 responsible persons to voluntarily develop and implement
15 cleanup plans without the use of taxpayer funds or the need
16 for enforcement actions by state and local governments.

17 (4) Environmental and public health hazards cannot be
18 eliminated without clear, predictable remediation standards
19 that provide for the protection of the environment and public
20 health.

21 (5) Site rehabilitation should be based on the actual
22 risk that contamination may pose to the environment and public
23 health, taking into account current and future land and water
24 use and the degree to which contamination may spread and place
25 the public or the environment at risk.

26 (6) According to the statistical proximity study
27 contained in the final report of the Environmental Equity and
28 Justice Commission, minority and low-income communities are
29 disproportionately impacted by targeted environmentally
30 hazardous sites. The results indicate the need for the health
31 and risk exposure assessments of minority and poverty

1 populations around environmentally hazardous sites in this
2 state. Redevelopment of hazardous sites should address
3 questions relating to environmental and health consequences.

4 (7) Environmental justice considerations should be
5 inherent in meaningful public participation elements of a
6 brownfields redevelopment program.

7 (8) The existence of brownfields within a community
8 may contribute to, or may be a symptom of, overall community
9 decline, including issues of human disease and illness, crime,
10 educational and employment opportunities, and infrastructure
11 decay. The environment is an important element of quality of
12 life in any community, along with economic opportunity,
13 educational achievement, access to health care, housing
14 quality and availability, provision of governmental services,
15 and other socioeconomic factors. Brownfields redevelopment,
16 properly done, can be a significant element in community
17 revitalization.

18 (9) Cooperation among federal, state, and local
19 agencies, local community development organizations, and
20 current owners and prospective purchasers of brownfield sites
21 is required to accomplish timely cleanup activities and the
22 redevelopment or reuse of brownfield sites.

23 Section 3. Section 376.79, Florida Statutes, is
24 created to read:

25 376.79 Definitions.—As used in ss. 376.77-376.85, the
26 term:

27 (1) "Additive effects" means a scientific principle
28 that the toxicity that occurs as a result of exposure is the
29 sum of the toxicities of the individual chemicals to which the
30 individual is exposed.

1 (2) "Antagonistic effects" means a scientific
2 principle that the toxicity that occurs as a result of
3 exposure is less than the sum of the toxicities of the
4 individual chemicals to which the individual is exposed.

5 (3) "Brownfield sites" means sites that are generally
6 abandoned, idled, or under-used industrial and commercial
7 properties where expansion or redevelopment is complicated by
8 actual or perceived environmental contamination.

9 (4) "Brownfield area" means a contiguous area of one
10 or more brownfield sites, some of which may not be
11 contaminated, and which has been designated by a local
12 government by resolution. Such areas may include all or
13 portions of community redevelopment areas, enterprise zones,
14 empowerment zones, other such designated economically deprived
15 communities and areas, and Environmental Protection
16 Agency-designated brownfield pilot projects.

17 (5) "Contaminated site" means any contiguous land,
18 surface water, or groundwater areas that contain contaminants
19 that may be harmful to human health or the environment.

20 (6) "Department" means the Department of Environmental
21 Protection.

22 (7) "Engineering controls" means modifications to a
23 site to reduce or eliminate the potential for exposure to
24 contaminants. Such modifications may include, but are not
25 limited to, physical or hydraulic control measures, capping,
26 point of use treatments, or slurry walls.

27 (8) "Environmental justice" means the fair treatment
28 of all people of all races, cultures, and incomes with respect
29 to the development, implementation, and enforcement of
30 environmental laws, regulations, and policies.

1 (9) "Institutional controls" means the restriction on
2 use of or access to a site to eliminate or minimize exposure
3 to contaminants. Such restrictions may include, but are not
4 limited to, deed restrictions, use restrictions, or
5 restrictive zoning.

6 (10) "Local pollution control program" means a local
7 pollution control program that has received delegated
8 authority from the Department of Environmental Protection
9 under s. 403.182.

10 (11) "Natural attenuation" means the verifiable
11 reduction of contaminants through natural processes, which may
12 include diffusion, dispersion, absorption, and biodegradation.

13 (12) "Person responsible for brownfield site
14 rehabilitation" means the individual or entity that is
15 designated by the local government in its resolution
16 establishing a brownfield area to enter into the brownfield
17 site rehabilitation agreement with the department and enters
18 into an agreement with the local government for redevelopment
19 of the site.

20 (13) "Person" means any individual, partner, joint
21 venture, or corporation; any group of the foregoing, organized
22 or united for a business purpose; or any governmental entity.

23 (14) "Site rehabilitation" means the assessment of
24 site contamination and the remediation activities that reduce
25 the levels of contaminants at a site through accepted
26 treatment methods to meet the cleanup target levels
27 established for that site.

28 (15) "Source removal" means the removal of free
29 product or contaminants from soil that has been contaminated
30 to the extent that leaching to groundwater has or is
31 occurring.

1 (16) "Synergistic effects" means a scientific
2 principle that the toxicity that occurs as a result of
3 exposure is more than the sum of the toxicities of the
4 individual chemicals to which the individual is exposed.

5 Section 4. Section 376.80, Florida Statutes, is
6 created to read:

7 376.80 Brownfield program administration process.--

8 (1) A local government with jurisdiction over the
9 brownfield area must notify the department of its decision to
10 designate a brownfield area for rehabilitation for the
11 purposes of ss. 376.77-376.84. The notification must include a
12 resolution, by the local government body, to which is attached
13 a map adequate to clearly delineate exactly which parcels are
14 to be included in the brownfield area or alternatively a
15 less-detailed map accompanied by a detailed legal description
16 of the brownfield area. If a property owner within the area
17 proposed for designation by the local government requests in
18 writing to have his or her property removed from the proposed
19 designation, the local government shall grant the request. For
20 municipalities, the governing body shall adopt the resolution
21 in accordance with the procedures outlined in s. 166.041,
22 except that the notice for the public hearings on the proposed
23 resolution must be in the form established in s.
24 166.041(3)(c)2. For counties, the governing body shall adopt
25 the resolution in accordance with the procedures outlined in
26 s. 125.66, except that the notice for the public hearings on
27 the proposed resolution shall be in the form established in s.
28 125.66(4)(b)2.

29 (2)(a) If a local government proposes to designate a
30 brownfield area that is outside community redevelopment areas,
31 enterprise zones, empowerment zones, or designated brownfield

1 pilot project areas, the local government must conduct at
 2 least one public hearing in the area to be designated to
 3 provide an opportunity for public input on the size of the
 4 area, the objectives for rehabilitation, job opportunities and
 5 economic developments anticipated, neighborhood residents'
 6 considerations, and other relevant local concerns. Notice of
 7 the public hearing must be made in a newspaper of general
 8 circulation in the area and the notice must be at least 16
 9 square inches in size, must be in ethnic newspapers or local
 10 community bulletins, must be posted in the affected area, and
 11 must be announced at a scheduled meeting of the local
 12 governing body before the actual public hearing. In
 13 determining the areas to be designated, the local government
 14 must consider:

15 1. Whether the brownfield area warrants economic
 16 development and has a reasonable potential for such
 17 activities;

18 2. Whether the proposed area to be designated
 19 represents a reasonably focused approach and is not overly
 20 large in geographic coverage;

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

23 4. Whether the area contains sites or parts of sites
 24 suitable for limited recreational open space, cultural, or
 25 historical preservation purposes.

26 (b) A local government shall designate a brownfield
 27 area under the provisions of this act provided that:

28 1. A person who owns or controls a potential
 29 brownfield site is requesting the designation and has agreed
 30 to rehabilitate and redevelop the brownfield site;
 31

1 2. The rehabilitation and redevelopment of the
 2 proposed brownfield site will result in economic productivity
 3 of the area, along with the creation of at least ten new jobs,
 4 full-time or part-time, which are not associated with the
 5 implementation of the rehabilitation agreement or an
 6 agreement, between the person responsible for site
 7 rehabilitation and the local government with jurisdiction,
 8 which contains terms for the redevelopment of the brownfield
 9 site or brownfield area;

10 3. The redevelopment of the proposed brownfield site
 11 is consistent with the local comprehensive plan and is a
 12 permissible use under the applicable local land development
 13 regulations;

14 4. Notice of the proposed rehabilitation of the
 15 brownfield area has been provided to neighbors and nearby
 16 residents of the proposed area to be designated and the person
 17 proposing the area for designation has afforded to those
 18 receiving notice the opportunity for comments and suggestions
 19 about rehabilitation. Notice pursuant to this subsection must
 20 be made in a newspaper of general circulation in the area, at
 21 least 16 square inches in size, and the notice must be posted
 22 in the affected area; and

23 5. The person proposing the area for designation has
 24 provided reasonable assurance that he or she has sufficient
 25 financial resources to implement and complete the
 26 rehabilitation agreement and redevelopment plan.

27 (c) The designation of a brownfield area and the
 28 identification of a person responsible for brownfield site
 29 rehabilitation simply entitles the identified person to
 30 negotiate a brownfield rehabilitation agreement with the
 31 department or approved local government.

1 (3) The local government must at the time of the
2 adoption of the resolution notify the department of the entity
3 that it is designating as the person responsible for
4 brownfield site rehabilitation. If the agency or person who
5 will be responsible for the coordination changes during the
6 approval process specified in subsections (4), (5), and (6),
7 the department or the affected approved local pollution
8 control program must notify the affected local government when
9 the change occurs.

10 (4) Local governments or persons responsible for
11 rehabilitation and redevelopment of brownfield areas must
12 establish an advisory committee for the purpose of improving
13 public participation and receiving public comments on
14 rehabilitation and redevelopment of the brownfield area,
15 future land use, local employment opportunities, community
16 safety, and environmental justice. Such advisory committee
17 should include residents within or adjacent to the brownfield
18 area, businesses operating within the brownfield area, and
19 others deemed appropriate. The advisory committee must review
20 and provide recommendations to the board of the local
21 government with jurisdiction on the proposed site
22 rehabilitation agreement provided in s. 376.80(5).

23 (5) The person responsible for brownfield site
24 rehabilitation must enter into a brownfield site
25 rehabilitation agreement with the department or an approved
26 local environmental program. The brownfield site
27 rehabilitation agreement must include:

28 (a) A brownfield site rehabilitation schedule,
29 including milestones for completion of site rehabilitation
30 tasks and submittal of technical reports and rehabilitation
31 plans as agreed upon by the parties to the agreement;

1 (b) A commitment to conduct site rehabilitation
2 activities under the observation of professional engineers or
3 geologists who are registered in accordance with the
4 requirements of chapter 471 or chapter 492, respectively,
5 submittals provided by the person responsible for brownfield
6 site rehabilitation must be signed and sealed by a
7 professional engineer registered under chapter 471, or a
8 professional geologist registered under chapter 492,
9 certifying that the submittal and associated work comply with
10 the law and rules of the department and those governing the
11 profession. In addition, upon completion of the approved
12 remedial action, the department shall require a professional
13 engineer registered under chapter 471 or a professional
14 geologist registered under chapter 492 to certify that the
15 corrective action was, to the best of his or her knowledge,
16 completed in substantial conformance with the plans and
17 specifications approved by the department;

18 (c) A commitment to conduct site rehabilitation in
19 accordance with an approved comprehensive quality assurance
20 plan under department rules;

21 (d) A commitment to conduct site rehabilitation
22 consistent with state, federal, and local laws and consistent
23 with the brownfield site contamination cleanup criteria in s.
24 376.81, including any applicable requirements for risk-based
25 corrective action;

26 (e) Timeframes for the department's review of
27 technical reports and plans submitted in accordance with the
28 agreement. The department shall make every effort to adhere
29 to established agency goals for reasonable timeframes for
30 review of such documents;

31

1 (f) A commitment to secure site access for the
 2 department or approved local environmental program to all
 3 brownfield sites within the eligible brownfield area for
 4 activities associated with site rehabilitation;
 5 (g) Other provisions that the person responsible for
 6 brownfield site rehabilitation and the department agree upon,
 7 that are consistent with ss. 376.77-376.84, and that will
 8 improve or enhance the brownfield site rehabilitation process;
 9 (h) A commitment to consider appropriate pollution
 10 prevention measures and to implement those that the person
 11 determines are reasonable and cost-effective, taking into
 12 account the ultimate use or uses of the brownfield site. Such
 13 measures may include improved inventory or production controls
 14 and procedures for preventing a loss, spills, and leaks of
 15 hazardous waste and materials, and include goals for the
 16 reduction of releases of toxic materials;
 17 (i) An agreement between the person responsible for
 18 site rehabilitation and the local government with jurisdiction
 19 over the brownfield. Such agreement shall contain terms for
 20 the redevelopment of the brownfield.
 21 (6) Any contractor performing site rehabilitation
 22 program tasks must demonstrate to the department that the
 23 contractor:
 24 (a) Meets all certification and license requirements
 25 imposed by law; and
 26 (b) Has obtained approval for the comprehensive
 27 quality-assurance plan prepared under department rules.
 28 (7) The contractor must certify to the department that
 29 the contractor:
 30 (a) Complies with applicable OSHA regulations.
 31

1 (b) Maintains workers' compensation insurance for all
 2 employees as required by the Florida Workers' Compensation
 3 Law.
 4 (c) Maintains comprehensive general liability and
 5 comprehensive automobile liability insurance with minimum
 6 limits of at least \$1 million per occurrence and \$1 million
 7 annual aggregate, sufficient to protect it from claims for
 8 damage for personal injury, including accidental death, as
 9 well as claims for property damage which may arise from
 10 performance of work under the program, designating the state
 11 as an additional insured party.
 12 (d) Maintains professional liability insurance of at
 13 least \$1 million per occurrence and \$1 million annual
 14 aggregate.
 15 (e) Has the capacity to perform or directly supervise
 16 the majority of the work at a site in accordance with s.
 17 489.113(9).
 18 (8) Any professional engineer or geologist providing
 19 professional services relating to site rehabilitation program
 20 tasks must carry professional liability insurance with a
 21 coverage limit of at least \$1 million.
 22 (9) During the cleanup process, if the department or
 23 local program fails to complete review of a technical document
 24 within the timeframe specified in the brownfield site
 25 rehabilitation agreement, the person responsible for
 26 brownfield site rehabilitation may proceed to the next site
 27 rehabilitation task. However, the person responsible for
 28 brownfield site rehabilitation does so at its own risk and may
 29 be required by the department or local program to complete
 30 additional work on a previous task. Exceptions to this
 31 subsection include requests for "no further action."

1 "monitoring only proposals," and feasibility studies, which
 2 must be approved prior to implementation.
 3 (10) If the person responsible for brownfield site
 4 rehabilitation fails to comply with the brownfield site
 5 rehabilitation agreement, the department shall allow 90 days
 6 for the person responsible for brownfield site rehabilitation
 7 to return to compliance with the provision at issue or to
 8 negotiate a modification to the brownfield site rehabilitation
 9 agreement with the department for good cause shown. If an
 10 imminent hazard exists, the 90-day grace period shall not
 11 apply. If the project is not returned to compliance with the
 12 brownfield site rehabilitation agreement and a modification
 13 cannot be negotiated, the immunity provisions of s. 376.02 are
 14 revoked.
 15 (11) The department is specifically authorized and
 16 encouraged to enter into delegation agreements with local
 17 pollution control programs approved under s. 403.182 to
 18 administer the brownfield program within their jurisdictions,
 19 thereby maximizing the integration of this process with the
 20 other local development processes needed to facilitate
 21 redevelopment of a brownfield area. When determining whether
 22 a delegation pursuant to this subsection of all or part of the
 23 brownfields program to a local pollution control program is
 24 appropriate, the department shall consider the following. The
 25 local pollution control program must:
 26 (a) Have and maintain the administrative organization,
 27 staff, financial and other resources to effectively and
 28 efficiently implement and enforce the statutory requirements
 29 of the delegated brownfields program; and
 30 (b) Provide for the enforcement of the requirements of
 31 the delegated brownfields program, and for notice and a right

1 to challenge governmental action, by appropriate
 2 administrative and judicial process, which shall be specified
 3 in the delegation.
 4
 5 The local pollution control program shall not be delegated
 6 authority to take action on or to make decisions regarding any
 7 brownfield on land owned by the local government. Any
 8 delegation agreement entered into pursuant to this subsection
 9 shall contain such terms and conditions necessary to ensure
 10 the effective and efficient administration and enforcement of
 11 the statutory requirements of the brownfields program as
 12 established by the act and the relevant rules and other
 13 criteria of the department.
 14 (12) Local governments are encouraged to use the full
 15 range of economic and tax incentives available to facilitate
 16 and promote the rehabilitation of brownfield areas, to help
 17 eliminate the public health and environmental hazards, and to
 18 promote the creation of jobs and economic development in these
 19 previously run-down, blighted, and underutilized areas.
 20 Section 5. Section 376.01, Florida Statutes, is
 21 created to read:
 22 376.01 Brownfield site and brownfield areas
 23 contamination cleanup criteria.--
 24 (1) It is the intent of the Legislature to protect the
 25 health of all people under actual circumstances of exposure.
 26 By July 1, 1998, the secretary of the department shall
 27 establish criteria by rule for the purpose of determining, on
 28 a site-specific basis, the rehabilitation program tasks that
 29 comprise a site rehabilitation program and the level at which
 30 a rehabilitation program task and a site rehabilitation
 31 program may be deemed completed. In establishing the rule,

1 ~~the department shall incorporate, to the maximum extent~~
 2 ~~feasible, risk-based corrective-action principles to achieve~~
 3 ~~protection of human health and safety and the environment in a~~
 4 ~~cost-effective manner as provided in this subsection. The~~
 5 ~~rule shall also include protocols for the use of natural~~
 6 ~~attenuation and the issuance of "no further action" letters.~~
 7 ~~The criteria for determining what constitutes a rehabilitation~~
 8 ~~program task or completion of a site rehabilitation program~~
 9 ~~task or site rehabilitation program must:~~

10 (a) Consider the current exposure and potential risk
 11 of exposure to humans and the environment, including multiple
 12 pathways of exposure. The physical, chemical, and biological
 13 characteristics of each contaminant must be considered in
 14 order to determine the feasibility of risk-based
 15 corrective-action assessment.

16 (b) Establish the point of compliance at the source of
 17 the contamination. However, the department is authorized to
 18 temporarily move the point of compliance to the boundary of
 19 the property, or to the edge of the plume when the plume is
 20 within the property boundary, while cleanup, including cleanup
 21 through natural attenuation processes in conjunction with
 22 appropriate monitoring, is proceeding. The department also is
 23 authorized, pursuant to criteria provided for in this section,
 24 to temporarily extend the point of compliance beyond the
 25 property boundary with appropriate monitoring, if such
 26 extension is needed to facilitate natural attenuation or to
 27 address the current conditions of the plume, provided human
 28 health, public safety, and the environment are protected.
 29 When temporarily extending the point of compliance beyond the
 30 property boundary, it cannot be extended further than the
 31 lateral extent of the plume at the time of execution of the

1 brownfield site rehabilitation agreement, if known, or the
 2 lateral extent of the plume as defined at the time of site
 3 assessment. Temporary extension of the point of compliance
 4 beyond the property boundary, as provided in this paragraph,
 5 must include actual notice by the person responsible for
 6 brownfield site rehabilitation to local governments and the
 7 owners of any property into which the point of compliance is
 8 allowed to extend and constructive notice to residents and
 9 business tenants of the property into which the point of
 10 compliance is allowed to extend. Persons receiving notice
 11 pursuant to this paragraph shall have the opportunity to
 12 comment within 30 days of receipt of the notice.

13 (c) Ensure that the site-specific cleanup goal is that
 14 all contaminated brownfield sites and brownfield areas
 15 ultimately achieve the applicable cleanup target levels
 16 provided in this section. In the circumstances provided below,
 17 and after constructive notice and opportunity to comment
 18 within 30 days from receipt of the notice to local government,
 19 to owners of any property into which the point of compliance
 20 is allowed to extend, and to residents on any property into
 21 which the point of compliance is allowed to extend, the
 22 department may allow concentrations of contaminants to
 23 temporarily exceed the applicable cleanup target levels while
 24 cleanup, including cleanup through natural attenuation
 25 processes in conjunction with appropriate monitoring, is
 26 proceeding, if human health, public safety, and the
 27 environment are protected.

28 (d) Allow brownfield site and brownfield area
 29 rehabilitation programs to include the use of institutional or
 30 engineering controls, where appropriate, to eliminate or
 31 control the potential exposure to contaminants of humans or

1 the environment. The use of controls must be preapproved by
 2 the department and only after constructive notice and
 3 opportunity to comment within 30 days from receipt of notice
 4 is provided to local governments, to owners of any property
 5 into which the point of compliance is allowed to extend, and
 6 to residents on any property into which the point of
 7 compliance is allowed to extend. When institutional or
 8 engineering controls are implemented to control exposure, the
 9 removal of the controls must have prior department approval
 10 and must be accompanied by the resumption of active cleanup,
 11 or other approved controls, unless cleanup target levels under
 12 this section have been achieved.

13 (e) Consider the additive effects of contaminants.
 14 The synergistic and antagonistic effects shall also be
 15 considered when the scientific data become available.

16 (f) Take into consideration individual site
 17 characteristics, which shall include, but not be limited to,
 18 the current and projected use of the affected groundwater and
 19 surface water in the vicinity of the site, current and
 20 projected land uses of the area affected by the contamination,
 21 the exposed population, the degree and extent of
 22 contamination, the rate of contaminant migration, the apparent
 23 or potential rate of contaminant degradation through natural
 24 attenuation processes, the location of the plume, and the
 25 potential for further migration in relation to site property
 26 boundaries.

27 (g) Apply state water quality standards as follows:

28 1. Cleanup target levels for each contaminant found in
 29 groundwater shall be the applicable state water quality
 30 standards. Where such standards do not exist, the cleanup
 31 target levels for groundwater shall be based on the minimum

1 criteria specified in department rule. The department shall
 2 consider the following, as appropriate, in establishing the
 3 applicable minimum criteria: calculations using a lifetime
 4 cancer risk level of $1.0E-6$; a hazard index of 1 or less; the
 5 best achievable detection limit; the naturally occurring
 6 background concentration; or nuisance, organoleptic, and
 7 aesthetic considerations.

8 2. Where surface waters are exposed to contaminated
 9 groundwater, the cleanup target levels for the contaminants
 10 shall be based on the surface water standards as established
 11 by department rule. The point of measuring compliance with
 12 the surface water standards shall be in the groundwater
 13 immediately adjacent to the surface water body.

14 3. The department may set alternative cleanup target
 15 levels based upon an applicant's demonstration, using
 16 site-specific modeling and risk assessment studies, that human
 17 health, public safety, and the environment are protected to
 18 the same degree as provided in subparagraphs 1, and 2. Where
 19 a state water quality standard is applicable, a deviation may
 20 not result in the application of cleanup target levels more
 21 stringent than the standard. In determining whether it is
 22 appropriate to establish alternative cleanup target levels at
 23 a site, the department must consider the effectiveness of
 24 source removal that has been completed at the site and the
 25 practical likelihood of the use of low-yield or poor quality
 26 groundwater, the use of groundwater near marine surface water
 27 bodies, the current and projected use of the affected
 28 groundwater in the vicinity of the site, or the use of
 29 groundwater in the immediate vicinity of the contaminated
 30 area, where it has been demonstrated that the groundwater
 31 contamination is not migrating away from such localized

1 source, provided human health, public safety, and the
 2 environment are protected.
 3 (h) Provide for the department to issue a "no further
 4 action order" when alternative cleanup target levels
 5 established pursuant to subparagraph (g)3. have been achieved.
 6 (i) Provide for the department to issue a "no further
 7 action order" with conditions, where appropriate, when
 8 alternative cleanup target levels established pursuant to
 9 subparagraph (g)3. have been achieved, or when the person
 10 responsible for brownfield site rehabilitation can demonstrate
 11 that the cleanup target level is unachievable within available
 12 technologies. Prior to issuing such an order, the department
 13 shall consider the feasibility of an alternative site
 14 rehabilitation technology in the brownfield area.
 15 (1) Establish appropriate cleanup target levels for
 16 soils.
 17 1. In establishing soil cleanup target levels for
 18 human exposure to each contaminant found in soils from the
 19 land surface to 2 feet below land surface, the department
 20 shall consider the following, as appropriate: calculations
 21 using a lifetime cancer risk level of 1.0E-6; a hazard index
 22 of 1 or less; the best achievable detection limit; or the
 23 naturally occurring background concentration. Institutional
 24 controls or other methods shall be used to prevent human
 25 exposure to contaminated soils more than 2 feet below the land
 26 surface. Any removal of such institutional controls shall
 27 require such contaminated soils to be remediated.
 28 2. Leachability-based soil target levels shall be
 29 based on protection of the groundwater cleanup target levels
 30 or the alternate cleanup target levels for groundwater
 31 established pursuant to this paragraph, as appropriate.

1 Source removal and other cost-effective alternatives that are
 2 technologically feasible shall be considered in achieving the
 3 leachability soil target levels established by the department.
 4 The leachability goals shall not be applicable if the
 5 department determines, based upon individual site
 6 characteristics, that contaminants will not leach into the
 7 groundwater at levels which pose a threat to human health,
 8 public safety, and the environment.
 9 3. The department may set alternative cleanup target
 10 levels based upon an applicant's demonstration, using
 11 site-specific modeling and risk assessment studies, that human
 12 health, public safety, and the environment are protected.
 13 (2) The department shall require source removal, if
 14 warranted and cost-effective. Once source removal at a site
 15 is complete, the department shall reevaluate the site to
 16 determine the degree of active cleanup needed to continue.
 17 Further, the department shall determine if the reevaluated
 18 site qualifies for monitoring only or if no further action is
 19 required to rehabilitate the site. If additional site
 20 rehabilitation is necessary to reach "no further action"
 21 status, the department is encouraged to utilize natural
 22 attenuation and monitoring where site conditions warrant.
 23 Section 6. Section 376.82, Florida Statutes, is
 24 created to read:
 25 376.82 Eligibility criteria and liability
 26 protection.--
 27 (1) ELIGIBILITY.--Any person who has not caused or
 28 contributed to the contamination of a brownfield site after
 29 July 1, 1997, is eligible to participate in the brownfield
 30 rehabilitation program established in ss. 376.77-376.84,
 31 subject to the following:

1 (a) Potential brownfield sites that are subject to an
 2 ongoing formal judicial or administrative enforcement action
 3 or corrective action pursuant to federal authority, including,
 4 but not limited to, the Comprehensive Environmental Response
 5 Compensation and Liability Act, 42 U.S.C. ss. 9601, et seq.,
 6 as amended; the Safe Drinking Water Act, 42 U.S.C. ss.
 7 300f-300i, as amended; the Clean Water Act, 33 U.S.C. ss.
 8 1251-1387, as amended, or under an order from the United
 9 States Environmental Protection Agency pursuant to s. 3008(h)
 10 of the Resource Conservation and Recovery Act, as amended (42
 11 U.S.C.A. s. 6928(h)), or that have obtained or are required to
 12 obtain a permit for the operation of a hazardous waste
 13 treatment, storage, or disposal facility, a postclosure
 14 permit, or a permit pursuant to the federal Hazardous and
 15 Solid Waste Amendments of 1984, are not eligible for
 16 participation unless specific exemptions are secured by a
 17 memorandum of agreement with the United States Environmental
 18 Protection Agency pursuant to paragraph (2)(e). A brownfield
 19 site within an eligible brownfield area that subsequently
 20 becomes subject to formal judicial or administrative
 21 enforcement action or corrective action under such federal
 22 authority shall have its eligibility revoked unless specific
 23 exemptions are secured by a memorandum of agreement with the
 24 United States Environmental Protection Agency pursuant to
 25 paragraph (2)(a).

26 (b) Persons who have not caused or contributed to the
 27 contamination of a brownfield site after July 1, 1997, and
 28 who, prior to the department's approval of a brownfield site
 29 rehabilitation agreement, are subject to ongoing corrective
 30 action or enforcement under state authority established in
 31 chapter 376 or chapter 403, including those persons subject to

1 a pending consent order with the state, are eligible for
 2 participation in a brownfield corrective action if:
 3 1. The proposed brownfield site is currently idle or
 4 underutilized as a result of the contamination, and
 5 participation in the brownfield program will immediately,
 6 after cleanup or sooner, result in increased economic
 7 productivity at the site, including at a minimum the creation
 8 of ten new jobs, whether permanent or part-time, which are not
 9 associated with implementation of the brownfield site
 10 corrective-action plan; and
 11 2. The person is complying in good faith with the
 12 terms of an existing consent order or department-approved
 13 corrective-action plan, or responding in good faith to an
 14 enforcement action, as evidenced by a determination issued by
 15 the department or an approved local pollution control program.
 16 (c) Potential brownfield sites owned by the state or a
 17 local government which contain contamination for which a
 18 governmental entity is potentially responsible and which are
 19 already designated as federal brownfield pilot projects or
 20 have filed an application for designation to the United States
 21 Environmental Protection Agency are eligible for participation
 22 in a brownfield corrective action.
 23 (d) Petroleum and dry cleaning contamination sites
 24 shall not receive both restoration funding assistance
 25 available for the discharge under chapter 376 and any state
 26 assistance available under s. 298.107. Nothing in this act
 27 shall affect the cleanup criteria, priority ranking, and other
 28 rights and obligations inherent in petroleum contamination and
 29 dry cleaning contamination site rehabilitation under ss.
 30 376.30-376.319, or the availability of economic incentives
 31 otherwise provided for by law.

(2) LIABILITY PROTECTION.--

(a) Any person, including his or her successors and assigns, who executes and implements to successful completion a brownfield site rehabilitation agreement, shall be relieved of further liability for remediation of the contaminated site or sites to the state and to third parties and of liability in contribution to any other party who has or may incur cleanup liability for the contaminated site or sites.

(b) This section shall not be construed as a limitation on the right of a third party other than the state to pursue an action for damages to property or person; however, such an action may not compel site rehabilitation in excess of that required in the approved brownfield site rehabilitation agreement or otherwise required by the department or approved local pollution control program.

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

(d) The liability protection provided under this section shall become effective upon execution of a brownfield site rehabilitation agreement and shall remain effective, provided the person responsible for brownfield site rehabilitation complies with the terms of the site rehabilitation agreement. Any statute of limitations that would bar the department from pursuing relief in accordance with its existing authority is tolled from the time the agreement is executed until site rehabilitation is completed or immunity is revoked pursuant to s. 376.80(10).

(e) Completion of the performance of the remediation obligations at the brownfield shall be evidenced by a site

rehabilitation completion letter or a "no further action" letter issued by the department or the approved local pollution control program, which letter shall include the following statement: "Based upon the information provided by (property owner) concerning property located at (address), it is the opinion of (the Florida Department of Environmental Protection or approved local pollution control program) that (party) has successfully and satisfactorily implemented the approved brownfield site rehabilitation agreement schedule and, accordingly, no further action is required to assure that any land use identified in the brownfield site rehabilitation agreement is consistent with existing and proposed uses."

(f) Compliance with the agreement referenced in s. 376.80(5)(i) must be evidenced by a finding by the local government with jurisdiction over the brownfield that the terms of the agreement have been met.

(g) The Legislature recognizes its limitations in addressing cleanup liability under federal pollution control programs. In an effort to secure federal liability protection for persons willing to undertake remediation responsibility at a brownfield, the department shall attempt to negotiate a memorandum of agreement or similar document with the United States Environmental Protection Agency, whereby the United States Environmental Protection Agency agrees to forego enforcement of federal corrective-action authority at brownfields that have received a site rehabilitation completion or "no further action" determination from the department or the approved local pollution control program or that are in the process of implementing a brownfield site rehabilitation agreement in accordance with this act.

1 (h) No unit of state or local government may be held
 2 liable for implementing corrective actions at a contaminated
 3 site within an eligible brownfield as a result of the
 4 involuntary ownership of the site through bankruptcy, tax
 5 delinquency, abandonment, or other circumstances in which the
 6 state or local government involuntarily acquires title by
 7 virtue of its function as a sovereign, or as a result of
 8 ownership from donation or gift, unless the state or local
 9 government has otherwise caused or contributed to a release of
 10 a contaminant at the brownfield site.

11 (i) The Legislature finds and declares that certain
 12 brownfields may be redeveloped for open space, or limited
 13 recreational, cultural, or historical preservation purposes,
 14 and that such facilities enhance the redeveloped environment,
 15 attract visitors, and provide wholesome activities for
 16 employees and residents of the area. Further, the Legislature
 17 finds that purchasers of contaminated sites who are nonprofit
 18 conservation organizations acting for the public interest and
 19 who did not cause or contribute to the release of
 20 contamination on the site warrant protection from liability.

21 (j) Notwithstanding any provision of this chapter,
 22 chapter 403, other laws, or ordinances of local governments, a
 23 nonprofit, charitable, federal tax exempt, 501(c)(3) national
 24 land conservation corporation which purchases title to
 25 property in the state for the purpose of conveying such land
 26 to any governmental entity for conservation, historical
 27 preservation or cultural resource, park, greenway, or other
 28 similar uses shall not be liable to the state, local
 29 government, or any third party for penalties or remediation
 30 costs in connection with environmental contamination found in
 31 the soil or groundwater of such property, provided that such

1 corporation did not cause the original deposit or release of
 2 the environmental contaminants, and provided the department
 3 and local pollution control program and responsible parties
 4 have access to the land for investigation, remediation, or
 5 monitoring purposes.

6 (3) REOPENERS.--Upon completion of site rehabilitation
 7 in compliance with ss. 376.77-376.84, no additional site
 8 rehabilitation shall be required unless it is demonstrated:

9 (a) That fraud was committed in demonstrating site
 10 conditions or completion of site rehabilitation;

11 (b) That new information confirms the existence of an
 12 area of previously unknown contamination which exceeds the
 13 site-specific rehabilitation levels established in accordance
 14 with s. 376.81, or which otherwise poses the threat of real
 15 and substantial harm to public health, safety, or the
 16 environment in violation of the terms of ss. 376.77-376.84;

17 (c) That the remediation efforts failed to achieve the
 18 site rehabilitation criteria established under s. 376.81;

19 (d) That the level of risk is increased beyond the
 20 acceptable risk established under s. 376.81 due to substantial
 21 changes in exposure conditions, such as a change in land use
 22 from nonresidential to residential use. Any person who changes
 23 the land use of the brownfield site thus causing the level of
 24 risk to increase beyond the acceptable risk level may be
 25 required by the department to undertake additional remediation
 26 measures to assure that human health, public safety, and the
 27 environment are protected to levels consistent with s. 376.81;
 28 or

29 (e) That a new release occurs at the brownfield site
 30 subsequent to a determination of eligibility for participation
 31 in the brownfield program established under s. 376.80.

1 (4) ADDITIONAL LIABILITY PROTECTION FOR LENDERS.--
 2 (a) The Legislature declares that, in order to achieve
 3 the economic redevelopment and site rehabilitation of
 4 brownfields in accordance with this act, it is imperative to
 5 encourage financing of real property transactions involving
 6 brownfield site rehabilitation plans. Accordingly, lenders,
 7 including those serving as a trustee, personal representative,
 8 or in any other fiduciary capacity, in connection with a loan,
 9 are entitled to the liability protection established in
 10 subsection (2) if they have not caused or contributed to a
 11 release of a contaminant at the brownfield.
 12 (b) Lenders who hold indicia of ownership of a parcel
 13 within a brownfield primarily to protect a security interest
 14 or who own a parcel within a brownfield as a result of
 15 foreclosure or a deed in lieu of foreclosure of a security
 16 interest and who seek to sell, transfer, or otherwise divest
 17 the parcel via sale at the earliest practicable time are not
 18 liable for the release or discharge of a contaminant from the
 19 parcel; for the failure of the person responsible for
 20 brownfield site rehabilitation to comply with the brownfield
 21 site rehabilitation agreement; or for future site
 22 rehabilitation activities required pursuant to a reopener
 23 provision established in subsection (3) where the lender has
 24 not divested the borrower of, or otherwise engaged in,
 25 decisionmaking control of the site rehabilitation or site
 26 operations or undertaken management activities beyond those
 27 required to protect its financial interest while making a good
 28 faith effort to sell the site as soon as practicable and when
 29 an act or omission of the lender has not otherwise caused or
 30 contributed to a release of a contaminant at the brownfield.
 31

1 (c) The economic incentives that were granted to a
 2 person responsible for site rehabilitation by state or local
 3 governments shall not accrue to a lender who obtains ownership
 4 of the brownfield by one of the methods described in this
 5 subsection. The economic incentives are abated during the
 6 lender's ownership but they may be transferred and reinstated
 7 upon the sale of the brownfield.
 8 Section 7. Section 376.83, Florida Statutes, is
 9 created to read:
 10 376.83 Violation; penalties.--
 11 (1) It is a violation of ss. 376.77-376.82, and it is
 12 prohibited for any person, to knowingly make any false
 13 statement, representation, or certification in any
 14 application, record, report, plan, or other document filed or
 15 required to be maintained, or to falsify, tamper with, or
 16 knowingly render inaccurate any monitoring device or method
 17 required to be maintained under ss. 376.77-376.82, or by any
 18 permit, rule, or order issued under this chapter or chapter
 19 403.
 20 (2) Any person who willfully commits a violation
 21 specified in subsection (1) is guilty of a misdemeanor of the
 22 first degree, punishable by a fine of not more than \$10,000 or
 23 by 6 months in jail, or by both, for each offense. Each day
 24 during any portion of which such violation occurs constitutes
 25 a separate offense.
 26 Section 8. Section 376.84, Florida Statutes, is
 27 created to read:
 28 376.84 Brownfield redevelopment economic
 29 incentives.--It is the intent of the Legislature that
 30 brownfield redevelopment activities be viewed as opportunities
 31 to significantly improve the utilization, general condition,

1 and appearance of these sites. Different standards than those
 2 in place for new development, as allowed under current state
 3 and local laws, should be used to the fullest extent to
 4 encourage the redevelopment of a brownfield. State and local
 5 governments are encouraged to offer redevelopment incentives
 6 for this purpose, as an ongoing public investment in
 7 infrastructure and services, to help eliminate the public
 8 health and environmental hazards, and to promote the creation
 9 of jobs in these areas. Such incentives may include
 10 financial, regulatory, and technical assistance to persons and
 11 businesses involved in the redevelopment of the brownfield
 12 pursuant to this act.

13 (1) Financial incentives and local incentives for
 14 redevelopment may include, but not be limited to:

15 (a) Tax increment financing through community
 16 redevelopment agencies pursuant to part III of chapter 163.

17 (b) Enterprise zone tax exemptions for businesses
 18 pursuant to chapter 196 and chapter 290.

19 (c) Safe neighborhood improvement districts as
 20 provided in ss. 163.501-163.523.

21 (d) Waiver, reduction, or limitation by line of
 22 business with respect to occupational license taxes pursuant
 23 to chapter 205.

24 (e) Tax exemption for historic properties as provided
 25 in s. 196.1927.

26 (f) Residential electricity exemption of up to the
 27 first 500 kilowatts of use may be exempted from the municipal
 28 public service tax pursuant to s. 166.231.

29 (g) Minority business enterprise programs as provided
 30 in s. 287.0243.

1 (h) Electric and gas tax exemption as provided in s.
 2 166.231(6).
 3 (i) Economic development tax abatement as provided in
 4 s. 196.1925.
 5 (j) Grants, including community development block
 6 grants.
 7 (k) Pledging of revenues to secure bonds.
 8 (l) Low-interest revolving loans and zero-interest
 9 loan pools.
 10 (m) Local grant programs for facade, storefront,
 11 signage, and other business improvements.
 12 (n) Governmental coordination of loan programs with
 13 lenders, such as microloans, business reserve fund loans,
 14 letter of credit enhancements, gap financing, land lease and
 15 sublease loans, and private equity.
 16 (o) Payment schedules over time for payment of fees,
 17 within criteria, and marginal cost pricing.
 18 (2) Regulatory incentives may include, but not be
 19 limited to:
 20 (a) Cities' absorption of developers' concurrency
 21 needs.
 22 (b) Developers' performance of certain analyses.
 23 (c) Exemptions and lessening of state and local review
 24 requirements.
 25 (d) Water and sewer regulatory incentives.
 26 (e) Waiver of transportation impact fees and permit
 27 fees.
 28 (f) Zoning incentives to reduce review requirements
 29 for redevelopment changes in use and occupancy; establishment
 30 of code criteria for specific uses; and institution of credits
 31 for previous use within the area.

1 (g) Flexibility in parking standards and buffer zone
2 standards.
3 (h) Environmental management through specific code
4 criteria and conditions allowed by current law.
5 (i) Maintenance standards and activities by ordinance
6 and otherwise, and increased security and crime prevention
7 measures available through special assessments.
8 (j) Traffic-calming measures.
9 (k) Historic preservation ordinances, loan programs,
10 and review and permitting procedures.
11 (l) One-stop permitting and streamlined development
12 and permitting process.
13 (3) Technical assistance incentives may include, but
14 not be limited to:
15 (a) Expedited development applications.
16 (b) Formal and informal information on business
17 incentives and financial programs.
18 (c) Site design assistance.
19 (d) Marketing and promotion of projects or areas.
20 Section 9. (1) The Legislature recognizes that the
21 United States Environmental Protection Agency has created
22 several pilot projects for redevelopment of brownfield areas
23 to gather information on the best ways to return old
24 industrial and commercial sites to productive use in
25 situations where redevelopment is complicated by potential
26 environmental contamination. These pilot project areas will
27 perform initial work to seek developers to restore the sites,
28 and will also incorporate the efforts of lenders, regulators,
29 and other groups. The Environmental Protection Agency
30 initiative is flexible, allowing local governments to use a
31

1 variety of approaches to rehabilitate abandoned or
2 underutilized sites, neighborhoods, and small regional areas.
3 (2) The Legislature has determined that it would be
4 beneficial to provide similar incentives in this state for the
5 rehabilitation and redevelopment of brownfields. Accordingly,
6 the department shall, contingent upon funds being available in
7 the General Appropriations Act for fiscal year 1997-1998,
8 award grants to each United States Environmental Protection
9 national or regional brownfield pilot project.
10 Section 10. Paragraphs (a), (b), and (d) of subsection
11 (3) of section 288.095, Florida Statutes, 1996 Supplement, are
12 amended to read:
13 288.095 Economic Development Trust Fund.--
14 (3)(a) Contingent upon an annual appropriation by the
15 Legislature, the Office of Tourism, Trade, and Economic
16 Development may approve not more than the lesser of \$10
17 million in tax refunds pursuant to ss. 288.104₂ and 288.106₂
18 and 288.107 or the amount appropriated to the Economic
19 Development Incentives Account for such tax refunds, for a
20 fiscal year pursuant to paragraph (b).
21 (b) The total amount of tax refunds approved by the
22 Office of Tourism, Trade, and Economic Development pursuant to
23 ss. 288.104₂ and 288.106₂ and 288.107 shall not exceed the
24 amount appropriated to the Economic Development Incentives
25 Account for such purposes for the fiscal year. In the event
26 the Legislature does not appropriate an amount sufficient to
27 satisfy projections by the department for tax refunds under
28 ss. 288.104₂ and 288.106₂ and 288.107 in a fiscal year, the
29 Office of Tourism, Trade, and Economic Development shall, not
30 later than July 15 of such year, determine the proportion of
31 each refund claim which shall be paid by dividing the amount

1 appropriated for tax refunds for the fiscal year by the
2 projected total of refund claims for the fiscal year. The
3 amount of each claim for a tax refund shall be multiplied by
4 the resulting quotient. If, after the payment of all such
5 refund claims, funds remain in the Economic Development
6 Incentives Account for tax refunds, the secretary shall
7 recalculate the proportion for each refund claim and adjust
8 the amount of each claim accordingly.

9 (d) Moneys in the Economic Development Incentives
10 Account may be used only to pay tax refunds and other payments
11 authorized under s. 288.104, or s. 288.106, or s. 288.107.

12 Section 11. Section 288.107, Florida Statutes, is
13 created to read:

14 288.107. Brownfield redevelopment bonus refunds.--

15 (1) DEFINITIONS.--As used in this section:

16 (a) "Account" means the Economic Development
17 Incentives Account as authorized in s. 288.095.

18 (b) "Brownfield" or "brownfield site" means a parcel
19 or a contiguous area of one or more parcels, which have been
20 designated by local government by resolution, that are
21 generally abandoned, idled, or underused industrial and
22 commercial properties where expansion or redevelopment is
23 complicated by actual or perceived environmental
24 contamination. Such areas may include, but are not limited
25 to, portions of community redevelopment areas, enterprise
26 zones, empowerment zones, other such designated economically
27 deprived communities and areas, and United States
28 Environmental Protection Agency designated brownfield pilot
29 projects.

30 (c) "Director" means the director of the Office of
31 Tourism, Trade, and Economic Development.

1 (d) "Eligible business" means a qualified target
2 industry business as defined in s. 288.106(2)(c).

3 (e) "Jobs" means full-time equivalent positions,
4 consistent with the use of such terms by the Department of
5 Labor and Employment Security for the purpose of unemployment
6 compensation tax, resulting directly from a project in this
7 state. This number does not include temporary construction
8 jobs involved with the construction of facilities for the
9 project and which are not associated with the implementation
10 of the site rehabilitation as provided in s. 376.80.

11 (f) "Office" means the Office of Tourism, Trade, and
12 Economic Development.

13 (g) "Project" means the creation of a new business or
14 the expansion of an existing business as defined in s.
15 288.106.

16 (2) BROWNFIELD REDEVELOPMENT BONUS REFUND.--There
17 shall be allowed from the account a bonus refund of \$2,500 to
18 any qualified target industry business for each new Florida
19 job created in a brownfield which is claimed on the qualified
20 target industry business's annual refund claim authorized in
21 s. 288.106(f) and approved by the office as specified in the
22 final order issued by the director.

23 (3) CRITERIA.--The minimum criteria for participation
24 in the brownfield redevelopment bonus refund are:

25 (a) The creation of at least 10 new full-time
26 permanent jobs. Such jobs shall not include construction or
27 site rehabilitation jobs associated with the implementation of
28 a brownfield site agreement as described in s. 376.80(5).

29 (b) That the designation as a brownfield will
30 diversify and strengthen the economy of the area surrounding
31 the site.

1 (C) That the designation as a brownfield will promote
2 capital investment in the area beyond that contemplated for
3 the rehabilitation of the site.

4 (4) PAYMENT OF BROWNFIELD REDEVELOPMENT BONUS

5 REFUNDS.--

6 (a) To be eligible to receive a bonus refund for new
7 Florida jobs created in a brownfield, a business must have
8 been certified as a qualified target industry business under
9 s. 289.106 and must have indicated on the qualified target
10 industry tax refund application form submitted in accordance
11 with s. 289.106(4) that the project for which the application
12 is submitted is or will be located in a brownfield and that
13 the business is applying for certification as a qualified
14 brownfield business under this section, and must have signed a
15 qualified target industry tax refund agreement with the office
16 which indicates that the business has been certified as a
17 qualified target industry business located in a brownfield and
18 specifies the schedule of brownfield redevelopment bonus
19 refunds that the business may be eligible to receive in each
20 fiscal year.

21 (b) To be considered to receive an eligible brownfield
22 redevelopment bonus refund payment, the business meeting the
23 requirements of paragraph (a) must submit a claim once each
24 fiscal year on a claim form approved by the office which
25 indicates the location of the brownfield, the address of the
26 business facility's brownfield location, the name of the
27 brownfield in which it is located, the number of jobs created,
28 and the average wage of the jobs created by the business
29 within the brownfield as defined in s. 289.106 and the
30 administrative rules and policies for that section.
31

1 (c) The bonus refunds shall be available on the same
2 schedule as the qualified target industry tax refund payments
3 scheduled in the qualified target industry tax refund
4 agreement authorized in s. 289.106.

5 (d) After entering into a tax refund agreement as
6 provided in s. 289.106, an eligible business may receive
7 brownfield redevelopment bonus refunds from the account
8 pursuant to s. 289.106(3)(c).

9 (e) An eligible business that fraudulently claims a
10 refund under this section:

11 1. Is liable for repayment of the amount of the refund
12 to the account, plus a mandatory penalty in the amount of 200
13 percent of the tax refund, which shall be deposited into the
14 General Revenue Fund.

15 2. Commits a felony of the third degree, punishable as
16 provided in s. 775.082, s. 775.083, or s. 775.084.

17 (f) The office shall review all applications submitted
18 under s. 289.106 which indicate that the proposed project will
19 be located in a brownfield and determine, with the assistance
20 of the Department of Environmental Protection, that the
21 project location is within a brownfield as provided in this
22 act.

23 (g) The office shall approve all claims for a
24 brownfield redevelopment bonus refund payment that are found
25 to meet the requirements of paragraphs (b) and (d).

26 (h) The director, with such assistance as may be
27 required from the office and the Department of Environmental
28 Protection, shall specify by written final order the amount of
29 the brownfield redevelopment bonus refund that is authorized
30 for the qualified target industry business for the fiscal year
31

1 within 30 days after the date that the claim for the annual
2 tax refund is received by the office.

3 (i) The total amount of the bonus refunds approved by
4 the director under this section in any fiscal year must not
5 exceed the total amount appropriated to the Economic
6 Development Incentives Account for this purpose for the fiscal
7 year. In the event that the Legislature does not appropriate
8 an amount sufficient to satisfy projections by the office for
9 brownfield redevelopment bonus refunds under this section in a
10 fiscal year, the office shall, not later than July 15 of such
11 year, determine the proportion of each brownfield
12 redevelopment bonus refund claim which shall be paid by
13 dividing the amount appropriated for tax refunds for the
14 fiscal year by the projected total of brownfield redevelopment
15 bonus refund claims for the fiscal year. The amount of each
16 claim for a brownfield redevelopment bonus tax refund shall be
17 multiplied by the resulting quotient. If, after the payment
18 of all such refund claims, funds remain in the Economic
19 Development Incentives Account for brownfield redevelopment
20 tax refunds, the office shall recalculate the proportion for
21 each refund claim and adjust the amount of each claim
22 accordingly.

23 (i) Upon approval of the brownfield redevelopment
24 bonus refund, payment shall be made for the amount specified
25 in the final order. If the final order is appealed, payment
26 may not be made for a refund to the qualified target industry
27 business until the conclusion of all appeals of that order.

28 (5) ADMINISTRATION.--

29 (a) The office is authorized to verify information
30 provided in any claim submitted for tax credits under this
31 section with regard to employment and wage levels of the

1 payment of the taxes to the appropriate agency or authority,
2 including the Department of Revenue, the Department of Labor
3 and Employment Security, or any local government or authority.

4 (b) To facilitate the process of monitoring and
5 auditing applications made under this program, the office may
6 provide a list of qualified target industry businesses to the
7 Department of Revenue, to the Department of Labor and
8 Employment Security, to the Department of Environmental
9 Protection, or to any local government authority. The office
10 may request the assistance of those entities with respect to
11 monitoring the payment of the taxes listed in 288.106(3).

12 section 12. From funds available in the 1997-1998
13 General Appropriations Act for Brownfields Redevelopment
14 grants shall be made as follows:

15 (a) For United States Environmental Protection Agency
16 brownfield pilot projects designated as of May 1, 1997, grants
17 shall be issued in the amount of \$500,000 per pilot.

18 (b) For United States Environmental Protection Agency
19 brownfield pilot projects designated by the effective date of
20 this act grants shall be issued in the amount of \$200,000 per
21 pilot. Should funds be insufficient to meet this provision
22 than a pro-rata distribution shall be made among eligible
23 pilot projects.

24 (c) Remaining funds shall be split on a pro-rata basis
25 to those pilot projects that applied but did not receive the
26 United States Environmental Protection Agency designation.
27 Such grants shall not exceed \$200,000.

28 (d) Should the United States Environmental Protection
29 Agency fail to designate pilot projects by the effective date
30 of this act then remaining funds shall be distributed on a
31 pro-rata share to those pilot projects that applied.

1 (e) Should funds remain after satisfying the
2 provisions of (a), (b), (c), and (d) then distribution shall
3 be done on a pro-rata basis to sites that applied or have been
4 designated on or before May 1, 1997.

5 (f) Grant funds awarded pursuant to this section shall
6 be used by local governments to set up and implement a program
7 which promotes brownfield redevelopment.

8 Section 13. The Department of Environmental Protection
9 shall prepare an annual report to the Legislature, beginning
10 in December 1996, which shall include, but not be limited to
11 the number, size and locations of brownfield sites; that have
12 been remediated under the provisions of this act; that are
13 currently under rehabilitation pursuant to a negotiated site
14 rehabilitation agreement with the department or a delegated
15 local program; where alternative cleanup target levels have
16 been established pursuant to s. 376.81(1)(g)3.; and, where
17 engineering and institutional control strategies are being
18 employed as conditions of a "no further action order" to
19 maintain the protections provided in s. 376.81(1)(g)1. and 2.

20 Section 14. The introductory paragraph and paragraph
21 (k) of subsection (12) and paragraph (g) of subsection (13) of
22 section 376.3071, Florida Statutes, 1996 Supplement, are
23 amended to read:

24 376.3071 Inland Protection Trust Fund; creation;
25 purposes; funding.--

26 (12) REIMBURSEMENT FOR CLEANUP EXPENSES.--Except as
27 provided in s. 2(3); chapter 95-2, Laws of Florida, this
28 subsection shall not apply to any site rehabilitation program
29 task initiated after March 29, 1995. Effective August 1, 1996,
30 no further site rehabilitation work on sites eligible for
31 state-funded cleanup from the Inland Protection Trust Fund

1 shall be eligible for reimbursement pursuant to this
2 subsection. The person responsible for conducting site
3 rehabilitation may seek reimbursement for site rehabilitation
4 program task work conducted after March 28, 1995, in
5 accordance with s. 2(2) and (3), chapter 95-2, Laws of
6 Florida, regardless of whether the site rehabilitation program
7 task is completed. A site rehabilitation program task shall
8 be considered to be initiated when actual onsite work or
9 engineering design, pursuant to chapter 62-770, Florida
10 Administrative Code, which is integral to performing a site
11 rehabilitation program task has begun and shall not include
12 contract negotiation and execution, site research, or project
13 planning. All reimbursement applications pursuant to this
14 subsection must be submitted to the department by January 3,
15 1997 December-31, 1996. The department shall not accept any
16 applications for reimbursement or pay any claims on
17 applications for reimbursement received after that date;
18 provided, however if an application filed on or prior to
19 January 3, 1997 was returned by the department on the grounds
20 of untimely filing, it shall be refiled within 30 days after
21 the effective date of this act in order to be processed.

22 (k) Audits.--

23 1. The department is authorized to perform financial
24 and technical audits in order to certify site restoration
25 costs and ensure compliance with this chapter. The department
26 shall seek recovery of any overpayments based on the findings
27 of these audits. The department must commence any audit within
28 5 years after the date of reimbursement, except in cases where
29 the department alleges specific facts indicating fraud.

30 2. Upon determination by the department that any
31 portion of costs which have been reimbursed are disallowed,

1 the department shall give written notice to the applicant
2 setting forth with specificity the allegations of fact which
3 justify the department's proposed action and ordering
4 repayment of disallowed costs within 60 days of notification
5 of the applicant.

6 3. In the event the applicant does not make payment to
7 the department within 60 days of receipt of such notice, the
8 department shall seek recovery in a court of competent
9 jurisdiction to recover reimbursement overpayments made to the
10 person responsible for conducting site rehabilitation, unless
11 the department finds the amount involved too small or the
12 likelihood of recovery too uncertain.

13 4. In addition to the amount of any overpayment, the
14 applicant shall be liable to the department for interest of 1
15 percent per month or the prime rate, whichever is less, on the
16 amount of overpayment, from the date of overpayment by the
17 department until the applicant satisfies the department's
18 request for repayment pursuant to this paragraph. The
19 calculation of interest shall be tolled during the pendency of
20 any litigation.

21 5. Financial and technical audits frequently are
22 conducted under this section many years after the site
23 rehabilitation activities were performed and the costs
24 examined in the course of the audit were incurred by the
25 person responsible for site rehabilitation. During the
26 intervening span of years, the department's rule requirements
27 and its related guidance and other nonrule policy directives
28 may have changed significantly. The Legislature finds that it
29 may be appropriate for the department to provide relief to
30 persons subject to such requirements in financial and
31 technical audits conducted pursuant to this section.

1 a. The department is authorized to grant variances and
2 waivers from the documentation requirements of subparagraph
3 (e)2. and from the requirements of rules applicable in
4 technical and financial audits conducted under this section.
5 Variances and waivers shall be granted when the person
6 responsible for site rehabilitation demonstrates to the
7 department that application of a financial or technical
8 auditing requirement would create a substantial hardship or
9 would violate principles of fairness. For purposes of this
10 subsection, "substantial hardship" means a demonstrated
11 economic, technological, legal, or other type of hardship to
12 the person requesting the variance or waiver. For purposes of
13 this subsection, "principles of fairness" are violated when
14 the application of a requirement affects a particular person
15 in a manner significantly different from the way it affects
16 other similarly situated persons who are affected by the
17 requirement or when the requirement is being applied
18 retroactively without due notice to the affected parties.

19 b. A person whose reimbursed costs are subject to a
20 financial and technical audit under this section may file a
21 written request to the department for grant of a variance or
22 waiver. The request shall specify:

23 (I) The requirement from which a variance or waiver is
24 requested.

25 (II) The type of action requested.

26 (III) The specific facts which would justify a waiver
27 or variance.

28 (IV) The reason or reasons why the requested variance
29 or waiver would serve the purposes of this section.

30 c. Within 90 days after receipt of a written request
31 for variance or waiver under this subsection, the department

1 shall grant or deny the request. If the request is not granted
 2 or denied within 90 days of receipt, the request shall be
 3 deemed approved. An order granting or denying the request
 4 shall be in writing and shall contain a statement of the
 5 relevant facts and reasons supporting the department's action.
 6 The department's decision to grant or deny the petition shall
 7 be supported by competent substantial evidence and is subject
 8 to ss. 120.569 and 120.57. Once adopted, model rules
 9 promulgated by the Administration Commission under s. 120.542
 10 shall govern the processing of requests under this provision;
 11 however, the department may process requests prior to the
 12 adoption of those model rules.

13 5. The Comptroller may audit the records of persons
 14 who receive or who have received payments pursuant to this
 15 chapter in order to verify site restoration costs, ensure
 16 compliance with this chapter, and verify the accuracy and
 17 completeness of audits performed by the department pursuant to
 18 this paragraph. The Comptroller may contract with entities or
 19 persons to perform audits pursuant to this subparagraph. The
 20 Comptroller shall commence any audit within 1 year after the
 21 department's completion of an audit conducted pursuant to this
 22 paragraph, except in cases where the department or the
 23 Comptroller alleges specific facts indicating fraud.

24 (13) PETROLEUM CLEANUP PARTICIPATION PROGRAM.—To
 25 encourage detection, reporting, and cleanup of contamination
 26 caused by discharges of petroleum or petroleum products, the
 27 department shall, within the guidelines established in this
 28 subsection, implement a cost-sharing cleanup program to
 29 provide rehabilitation funding assistance for all property
 30 contaminated by discharges of petroleum or petroleum products
 31 occurring before January 1, 1995, subject to a copayment

1 provided for in a preapproved site rehabilitation agreement.
 2 Eligibility shall be subject to an annual appropriation from
 3 the Inland Protection Trust Fund. Additionally, funding for
 4 eligible sites shall be contingent upon annual appropriation
 5 in subsequent years. Such continued state funding shall not
 6 be deemed an entitlement or a vested right under this
 7 subsection. Eligibility in the program shall be
 8 notwithstanding any other provision of law, consent order,
 9 order, judgment, or ordinance to the contrary.

10 (g) The following shall be excluded from participation
 11 in the program:

- 12 1. Sites at which the department has been denied
 13 reasonable site access to implement the provisions of this
 14 section.
- 15 2. Sites that were active facilities when owned or
 16 operated by the Federal Government.
- 17 3. Sites that are identified by the United States
 18 Environmental Protection Agency to be on, or which qualify for
 19 listing on, the National Priorities List under Superfund.
 20 This exception does not apply to those sites for which
 21 eligibility has been requested or granted as of the effective
 22 date of this act under the Early Detection Incentive Program
 23 established pursuant to s. 15, chapter 86-159, Laws of
 24 Florida.
- 25 4. The contamination is covered under the Early
 26 Detection Incentive Program, the Abandoned Tank Restoration
 27 Program or the Petroleum Liability and Restoration Insurance
 28 Program, in which case site rehabilitation funding assistance
 29 shall continue under the respective program.
- 30 5. Any person who knowingly acquires title to
 31 contaminated property shall not be eligible for restoration

1 funding pursuant to this subsection. The provisions of this
2 subsection do not relieve any person who has acquired title
3 subsequent to July 1, 1992, from the duty to establish by a
4 preponderance of the evidence that he or she undertook, at the
5 time of acquisition, all appropriate inquiry into the previous
6 ownership and use of the property consistent with good
7 commercial or customary practice in an effort to minimize
8 liability, as required by s. 376.306(1)(c). The provisions of
9 this subparagraph do not apply to any person who acquires
10 title by succession or devise.

11 Section 15. Subsections (2) and (7) of section
12 376.30711, Florida Statutes, 1996 Supplement, are amended to
13 read:

14 376.30711 Preapproved site rehabilitation, effective
15 March 29, 1995.--

16 (2)(a) Competitive bidding pursuant to this section
17 shall not be subject to the requirements of s. 287.055. The
18 department is authorized to use competitive bid procedures or
19 negotiated contracts for preapproving all costs and
20 rehabilitation procedures for site-specific rehabilitation
21 projects through performance-based contracts. Site
22 rehabilitation shall be conducted according to the priority
23 ranking order established pursuant to s. 376.3071(5).

24 (7) The department shall conduct a pilot project to
25 determine the effectiveness and feasibility of utilizing
26 competitive bid procedures for procuring the services
27 necessary to perform site rehabilitation. During fiscal year
28 1997-1998, the department is directed to use competitive bid
29 procedures to procure site rehabilitation services on a
30 minimum of 25 priority sites within availability of funding,
31 where the department has requested that the property owner

1 designate a qualified contractor and a qualified contractor
2 has not been designated or assigned to a state cleanup site
3 prior to July 1, 1997. The provisions of this subsection do
4 not apply to those sites managed by a contracted local program
5 pursuant to s. 376.3073. The department is directed to select
6 a representative sample of sites such that the results of the
7 project can be compared to other procurement methods. The
8 department shall submit a report, by March 1, 1998, to the
9 Governor, the President of the Senate, and the Speaker of the
10 House of Representatives. Such report shall contain, at a
11 minimum: the cost-effectiveness of utilizing competitive bid
12 procedures; a feasibility review on the department's
13 experience with competitive bidding; a cost comparison of
14 competitive bidding and negotiated contracts for site
15 rehabilitation tasks; and recommendations concerning the use
16 of competitive bidding.

17 Section 16. Subsection (3) of section 376.3072,
18 Florida Statutes, 1996 Supplement, is amended to read:

19 376.3072 Florida Petroleum Liability and Restoration
20 Insurance Program.--

21 (3) Sites that were certified as insured facilities
22 and that were denied coverage for a discharge under the
23 Petroleum Liability and Restoration Insurance Program may
24 request a reevaluation under the criteria in subsection (2).
25 Such request shall be made by December 31, 1996. If the
26 contamination is redetermined to be eligible, the deductible
27 and coverage limit in effect at the time the discharge was
28 reported shall be applicable. The redetermination shall not
29 affect the department's authority for assessing supplemental
30 deductibles or civil penalties. The department shall not
31 assess a supplemental deductible or civil penalty for alleged

1 failure to report or abate a discharge when the owner or
2 operator can establish no discharge occurred. Notwithstanding
3 any department order to the contrary, the supplemental
4 deductibles in subparagraph (2)(d)2.f. shall not be applied
5 cumulatively but, rather, the highest applicable supplemental
6 deductible shall be applied.

7 Section 17. Subsection (1) of section 403.767, Florida
8 Statutes, is amended to read:

9 403.767 Certification of used oil transporters.--

10 (1) Any person who transports over public highways
11 after January 1, 1990, more than 500 gallons annually of used
12 oil must be a certified transporter. This subsection does not
13 apply to:

14 (a) Local governments or private solid waste haulers
15 under contract to a local government that transport used oil
16 collected from households to a public used oil collection
17 center.

18 (b) Persons who transport less than 55 gallons of used
19 oil at one time that is stored in tightly closed containers
20 which are secured in a totally enclosed section of the
21 transport vehicle.

22 (c) Persons who transport their own used oil, which is
23 generated at their own noncontiguous facilities, to their own
24 central collection facility for storage, processing, or energy
25 recovery. However, such persons shall provide the same proof
26 of liability insurance or other means of financial
27 responsibility for liability which may be incurred in the
28 transport of used oil as provided by certified transporters
29 under subsection (3).

30 Section 18. Subparagraph 7. of subsection (1)(a) of
31 section 403.0872, Florida Statutes, is amended to read:

1 403.0872 Operation permits for major sources of air
2 pollution; annual operation license fee.--Provided that
3 program approval pursuant to 42 U.S.C. s. 7661a has been
4 received from the United States Environmental Protection
5 Agency, beginning January 2, 1995, each major source of air
6 pollution, including electrical power plants certified under
7 s. 403.511, must obtain from the department an operation
8 permit for a major source of air pollution under this section,
9 which is the only department operation permit for a major
10 source of air pollution required for such source. Operation
11 permits for major sources of air pollution, except general
12 permits issued pursuant to s. 403.814, must be issued in
13 accordance with the following procedures and in accordance
14 with chapter 120; however, to the extent that chapter 120 is
15 inconsistent with the provisions of this section, the
16 procedures contained in this section prevail:

17 (1) Commencing in 1993, each major source of air
18 pollution permitted to operate in this state must pay between
19 January 15 and March 1 of each year, upon written notice from
20 the department, an annual operation license fee in an amount
21 determined by department rule. The annual operation license
22 fee shall be terminated immediately in the event the United
23 States Environmental Protection Agency imposes annual fees
24 solely to implement and administer the major source
25 air-operation permit program in Florida under 40 C.F.R. s.
26 70.10(d).

27 (a) The annual fee must be assessed based upon the
28 source's previous year's emissions and must be calculated by
29 multiplying the applicable annual operation license fee factor
30 times the tons of each regulated air pollutant (except carbon
31 monoxide) allowed to be emitted per hour by specific condition

1 of the source's most recent construction or operation permit,
 2 times the annual hours of operation allowed by permit
 3 condition; provided, however, that:
 4 7. If the department has not received the fee by
 5 February 15 of the calendar year, the permittee must be sent a
 6 written warning of the consequences for failing to pay the fee
 7 by March 1. If ~~the department has not received the fee~~ is not
 8 postmarked by March 1 of the calendar year, commencing with
 9 calendar year 1997, the department shall impose, in addition
 10 to the fee, a penalty of 50 percent of the amount of the fee,
 11 plus interest on such amount computed in accordance with s.
 12 220.807. The department may not impose such penalty or
 13 interest on any amount underpaid, provided that the permittee
 14 has timely remitted payment of at least 90 percent of the
 15 amount determined to be due and remits full payment within 60
 16 days after receipt of notice of the amount underpaid. The
 17 department may waive the collection of underpayment and shall
 18 not be required to refund overpayment of the fee, if the
 19 amount due is less than 1 percent of the fee, up to \$50. The
 20 department may revoke any major air pollution source operation
 21 permit if it finds that the permitholder has failed to timely
 22 pay any required annual operation license fee, penalty, or
 23 interest.

24 Section 19. This act shall take effect July 1, 1997.
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By Representative Eggelton

1 A bill to be entitled

2 An act relating to environmental equity;
3 creating the "Brownfields Community
4 Revitalization Act", providing legislative
5 findings; providing definitions, creating the
6 Brownfields Community Revitalization
7 Interagency Coordinating Council; providing
8 purposes and membership of the council;
9 establishing the Brownfields Community
10 Revitalization Program; providing program
11 requirements, providing criteria for
12 eligibility; creating s. 220 185, F.S.,
13 authorizing a credit against the corporate
14 income tax for developers of brownfield sites;
15 providing for carryover of the credit; amending
16 s. 220 02, F.S.; providing order of credits
17 against the tax, providing an effective
18

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

20
21 Section 1. Short title.--This act shall be known and
22 may be cited as the "Brownfields Community Revitalization
23 Act."

24 Section 2. Legislative findings.--It is the finding of
25 the Legislature of the State of Florida that, based upon the
26 findings of the Florida Environmental Equity and Justice
27 Commission, minority and low-income communities are
28 disproportionately impacted by targeted environmentally
29 hazardous sites in Florida, and citizens living in communities
30 near these sites lack access to health care which is needed or
31 may be needed as a possible consequence of exposure to

503-143-97

1 pollution. The Legislature further finds that community
2 revitalization which incorporates environmental justice can
3 stem the ecologically untenable, environmentally damaging,
4 socially costly, and racially divisive phenomenon of urban
5 sprawl and greenfields development by providing opportunities
6 for building partnerships between government, developers, and
7 environmentally overburdened communities.

8 Section 3. Definitions.--For purposes of this section,
9 the term:

10 (1) "Brownfield" means a land area that contains one
11 or more contaminated sites, that was last used for
12 nonagricultural purposes, is currently undeveloped, abandoned,
13 or underutilized, and is located within a planned urban
14 development area, community redevelopment area, enterprise
15 zone, or federally designated brownfield pilot project area.

16 (2) "Contaminated site" means property that contains,
17 in the soil or in the surface water or groundwater in contact
18 with the site, physical, chemical, or biological contaminants
19 which may be harmful to human health or the environment.

20 (3) "Environmental justice" means the fair treatment
21 of people of all races, cultures, and income levels with
22 respect to the development, implementation, and enforcement of
23 environmental laws, regulations, and policies, and the right
24 of all people, regardless of race or income, to have the right
25 to live in a healthy community.

26 (4) "Fair treatment" means that no racial, ethnic, or
27 socioeconomic group bears a disproportionate share of negative
28 environmental consequences resulting from the operation of
29 industrial, municipal, or commercial enterprises or from the
30 execution of federal, state, local, or tribal programs and
31 policies.

1 Section 4 Brownfields Community Revitalization
2 Interagency Coordinating Council --

3 (1) There is created within the Department of
4 Community Affairs the Brownfields Community Revitalization
5 Interagency Coordinating Council. The council shall be
6 composed of the Secretary of Community Affairs, the Secretary
7 of Environmental Protection, the Secretary of Health, or their
8 respective designees, and the Attorney General or the Attorney
9 General's designee.

10 (2) The purpose of the Brownfields Community
11 Revitalization Interagency Coordinating Council is to:

12 (a) Administer the Brownfields Community
13 Revitalization Program pursuant to sections 5 and 6 of this
14 act.

15 (b) Create an ombudsman to serve as an intermediary
16 between property owners, parties responsible for
17 contamination, lenders associated with contaminated property,
18 prospective purchasers of contaminated property, state and
19 local government, the Federal Government, and affected
20 citizens and community organizations.

21 (c) Facilitate site assessments through acquisition of
22 financial and technical assistance from the United States
23 Environmental Protection Agency and the Department of
24 Environmental Protection by prioritizing sites participating
25 in the Brownfields Community Revitalization Program.

26 (d) Provide technical assistance to local governments,
27 potential developers, lending institutions, and affected
28 communities participating in the program.

29 (e) Coordinate efforts to ensure the delivery of
30 health services to low-income individuals living in or
31 adjacent to contaminated sites.

1 (f) Ensure effective participation by individuals
 2 living adjacent to or near a contaminated site in decisions
 3 affecting revitalization of the site, including, but not
 4 limited to, remediation and future land use.

5 (g) Promote the use of pollution prevention measures
 6 to address pollution sources operating in the community and
 7 ensure utilization of state-of-the-art pollution prevention
 8 measures for new facilities located in the community.

9 Section 5. Brownfields Community Revitalization
 10 Program, eligibility --Contaminated sites eligible for
 11 participation in the Brownfields Community Revitalization
 12 Program are sites

13 (1) That are not listed on the Superfund National
 14 Priority List.

15 (2) That are not petroleum sites or dry-cleaning
 16 sites.

17 (3) That are not subject to a consent order.

18 (4) At which the parties responsible for contamination
 19 are not financially able to undertake remediation under
 20 current regulatory criteria.

21 (5) That are located in urban areas with significant
 22 deterioration

23 (6) That are an integral part of a local development
 24 plan, with commitments of municipal resources for other
 25 components of the project

26 (7) At which the current owners have the ability to
 27 execute a remediation plan with sufficient resources for site
 28 rehabilitation and redevelopment, including consideration of
 29 community safety, environmental justice, and local employment
 30 opportunities.

Section 6. Brownfields Community Revitalization

Program; requirements.--Contaminated sites eligible for participation in the Brownfields Community Revitalization Program shall meet the following requirements:

(1) Cleanup levels for contaminants in soils and water shall be a cancer risk level of 1.0 E-6 and a hazard index of less than 1.

(2) Sites eligible for the Brownfields Community Revitalization Program must provide to the Department of Environmental Protection notice of intent to initiate cleanup activities and an approximate timeframe for the commencement of work tasks. Monthly reports describing the remediation shall be provided to the department. The administration and supervision of this responsibility may be delegated to an approved local environmental program.

(3) Pollution prevention measures shall be incorporated by requiring that existing and new facilities built on a brownfield site employ pollution prevention, such as the use of improved inventory and production controls and procedures for preventing loss, spills, and leaks of hazardous wastes.

(4) Participation by persons living and working in the affected community in the development, implementation, and monitoring of the revitalization of the contaminated site must be ensured through the preparation and implementation of a community participation plan. The plan shall propose measures to involve the public in the development and review of the remedial investigation analysis, risk assessment analysis, cleanup plan, and final action plan. Measures to ensure effective community involvement shall include:

1 (a) The development of a proactive community
2 information and consultation program which includes notice of
3 activities related to remediation, public meetings and
4 roundtable discussions, convenient locations where documents
5 related to remediation can be made available to the public,
6 and designation of a single contact person to whom community
7 residents can direct questions.

8 (b) The formation of a community-based group for the
9 purpose of soliciting suggestions and comments on the various
10 analyses performed.

11 (c) The establishment of a fund for technical and
12 financial assistance to community groups evaluating the
13 proposed brownfields revitalization plan.

14 (d) The retention of trained, independent third
15 parties to facilitate meetings and discussions and perform
16 mediation services, if needed.

17 (5) Notice to the public via local media in an area
18 affected by community revitalization shall be provided to
19 advise citizens in the area of any government action
20 regarding a brownfield site.

21 Section 7. Section 220.185, Florida Statutes, is
22 created to read:

23 220.185 Brownfield site development tax credit.--

24 (1) A credit against the tax imposed by this chapter
25 shall be allowed to any developer of a brownfield site
26 administered by the Brownfields Community Revitalization
27 Program, which credit shall be equal to 10 percent of costs
28 paid for demolition, construction, restoration, alteration,
29 and renovation of a brownfield site.

30 (2) If the tax credit granted pursuant to this section
31 is not fully used in any one year because of insufficient tax

1 liability on the part of the taxpayer, the unused portion may
2 be carried forward for a period not to exceed 5 years. The
3 carryover credit may be used in a subsequent year when the tax
4 imposed by this chapter for such year exceeds the credit for
5 such year under this section after applying the other credits
6 and unused credit carryovers in the order provided in s.
7 220.02(10).

8 Section 8. Subsection (10) of section 220.02, Florida
9 Statutes, is amended to read

10 220.02 Legislative intent.--

11 (10) It is the intent of the Legislature that credits
12 against either the corporate income tax or the franchise tax
13 be applied in the following order: those enumerated in s.
14 220.68, those enumerated in s. 631.719(1), those enumerated in
15 s. 631.705, those enumerated in s. 220.18, those enumerated in
16 s. 631.828, those enumerated in s. 220.181, those enumerated
17 in s. 220.183, those enumerated in s. 220.182, those
18 enumerated in s. 221.02, those enumerated in s. 220.184, those
19 enumerated in s. 220.186, and those enumerated in s. 220.188,
20 and those enumerated in s. 220.185

21 Section 9. This act shall take effect upon becoming a
22 law.

HOUSE SUMMARY

Creates the "Brownfields Community Revitalization Act" for the purpose of addressing and correcting disproportionate impact upon minority and low-income communities located in or near contaminated, environmentally hazardous sites within the state, and lack of access to health care which is needed or may be needed as a possible consequence of exposure to pollution or contamination existing at or adjacent to such sites

Defines "brownfield" for the purposes of the act as a land area containing one or more contaminated sites, which was last used for nonagricultural purposes, is currently undeveloped, abandoned, or underutilized, and is located within a planned urban development area, community redevelopment area, enterprise zone, or federally designated brownfield pilot project area. Defines "contaminated site" for purposes of the act.

Creates the Brownfields Community Revitalization Interagency Coordinating Council within the Department of Community Affairs for the purposes of:

- 1. Administering the Brownfields Community Revitalization Program.
- 2. Serving as an intermediary between citizens, relevant parties, government entities, and community organizations.
- 3. Facilitating site assessments through acquisition of financial and technical assistance.
- 4. Providing technical assistance to program participants.
- 5. Coordinating efforts to ensure the delivery of health services to low-income individuals living in or adjacent to contaminated sites.
- 6. Promoting the use of pollution prevention measures.

Provides standards of eligibility for participation in the Brownfields Community Revitalization Program and requirements for participating sites.

Provides a credit against the corporate income tax to any developer of a brownfield site administered by the Brownfields Community Revitalization Program in the amount of 10 percent of costs paid for demolition, construction, restoration, alteration, and renovation of a brownfield site. Provides for carryover of the credit.

STORAGE NAME: h1067 ep
DATE: April 1, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
ENVIRONMENTAL PROTECTION
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL # HB 1067
RELATING TO Brownfield redevelopment
SPONSOR(S): Representative Constantine
STATUTE(S) AFFECTED. Creates s. 376.77, 376.78, 376.79, 376.80, 376.81, 376.82, 376.83, and 376.84, F.S.
COMPANION BILL(S): HB 955(c), CS/CS/SB 1306 and 1934(s)
ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) ENVIRONMENTAL PROTECTION
(2) BUSINESS DEVELOPMENT AND INTERNATIONAL TRADE
(3) GENERAL GOVERNMENT APPROPRIATIONS
(4)
(5)

I. SUMMARY

This bill research document is based upon the remove and insert amendment

This bill creates the Brownfields Redevelopment Act. Provides legislative intent and definitions. Provides for a brownfield program administration process. Provides that a brownfield area must be designated by a local government by resolution. Provides notice requirements for a brownfields designation. Requires the person responsible for brownfield site rehabilitation to enter into a brownfield site rehabilitation agreement with the Department of Environmental Protection (DEP) or an approved local environmental program. Specifies what the agreement must include. Provides that contractors must meet certain qualifications. Provides that any professional engineer or geologist providing professional services relating to site rehabilitation must carry professional liability insurance with a specified coverage amount. Provides that certain immunity provisions may be revoked under certain circumstances. Provides for cleanup criteria. Provides eligibility criteria and liability protection under certain circumstances. Provides penalties for violations of this act.

This bill shall take effect July 1, 1997

II. SUBSTANTIVE RESEARCH:

A PRESENT SITUATION:

Broadly defined, "brownfields" are abandoned, idled, or underused industrial and commercial properties where expansion or redevelopment is complicated by real or perceived environmental contamination. Brownfields are a chronic problem for both urban and rural areas. The U.S. General Accounting Office estimates that there are between 130,000 and 450,000 brownfield sites with a price tag of over \$650 billion to cleanup. Economic loss in jobs, loss of property taxes, and lender fear of financing the redevelopment of brownfields have resulted in support by the U.S. Environmental Protection Agency (EPA) and some twenty-two states with brownfield statutes.

Because of the cost of cleaning up a contaminated site and the potentially serious liability issues, it has been easier and more cost-effective for developers to ignore these sites in favor of developing open greenspace areas, even though many of the sites in a brownfield area may contain little or no actual environmental contamination. Concern over the rapid development of greenspace nationwide has prompted a great deal of interest in the redevelopment of brownfields.

In Florida, there are approximately 1,562 hazardous waste sites (not including sites which may contain contamination from petroleum products and drycleaning solvents) that are currently being managed by the Department of Environmental Protection's enforcement program. Also, there are 893 additional sites in Florida that are listed in the EPA's Environmental Response Compensation and Liability Information System (CERCLIS). The CERCLIS list is used by the EPA to track potentially contaminated sites evaluated under the federal Superfund program.

The EPA has launched the Brownfields Initiative to empower states, communities, and other stakeholders in economic redevelopment to work together in a timely manner to prevent, assess, safely cleanup, and sustainably reuse brownfields. The anticipated benefits of the Brownfields Initiative in the affected communities will be a cleaner environment, new jobs, an enhanced tax base, and a sense of optimism about the future. The EPA activities to help states implement and realize the benefits of the Brownfields Initiative include clarification of liability issues, partnership and outreach, brownfields pilot projects, and job development training. To date, Florida has two pilot projects receiving Brownfield Initiative funds from the EPA, these are located in Clearwater and Miami.

It is the uncertainty concerning the perceived risk or liability to the developer, purchaser, investor, or lender on such a transaction, as much as it is the contamination at the site, that is the main impediment to redevelopment. The threat of future and unlimited liability, property devaluation, reopens in "No Further Action" letters, stringent cleanup standards, and lender liability keeps potentially interested parties from recycling contaminated properties. In Florida, strict liability laws patterned after federal laws compel persons responsible for causing contamination from hazardous substances to be financially responsible for cleaning up the contaminated sites. Generally, these laws operate to hold everyone in the chain of title for a contaminated property jointly and severally responsible for the costs of cleanup and rehabilitation. These proceedings can be costly and drawn out over long periods of time.

Florida does not have a brownfields program. Cleanup of contaminated properties in Florida is completed by property owners and responsible parties pursuant to the DEP's enforcement authority provided in Chapter 403, F.S. A person who buys contaminated property is liable as an owner, even if the contamination resulted from the operations of a prior owner or tenant. The DEP usually requires parties to enter into a Consent Order, although the Department often waives formal enforcement actions and civil penalties on a case by case basis for parties that voluntarily complete a site cleanup.

For sites that pose immediate environmental and public health threats, Florida uses the Water Quality Assurance Trust Fund to respond while legal proceedings are under way to recover costs from responsible parties. This trust fund, however, serves a variety of needs and at the current rate of expenditures on brownfield sites, it will take decades to respond to the current list of potential brownfield sites.

A common feature of various Brownfield programs is the discretion to cleanup to less than prevailing target levels using Risk-Based Corrective Action (RBCA, pronounced Rebecca) principles. The RBCA principles allow use of engineering measures such as impermeable caps and institutional controls such as land use restrictions and deed notices in lieu of cleanups. Also, adjustments to cleanup target levels can be made based on industrial/commercial land use in contrast to residential land use. Target levels for cleanup in other states may be based on cancer risk management levels ranging from one in ten thousand to one in one million.

Based on 1996 legislation, the DEP has adopted RBCA principles for petroleum sites and is developing guidelines for the appropriate use of RBCA principles for non-petroleum sites. However, the contaminants at non-petroleum sites are often more hazardous and have different mobility and degradation rates than petroleum contaminants resulting in sites that are technically more complex and costly to cleanup. State law (s. 376.3071, F.S.) requires petroleum sites be managed at one in one million cancer risk level (10^{-6}) and a hazard index of 1 or less for non-carcinogens. The cleanup guidance criteria for non-petroleum sites are similarly based.

B. EFFECT OF PROPOSED CHANGES.

This bill creates the Brownfields Redevelopment Act.

Section 1: Section 376.77, F.S., is created to provide that the act shall be cited as the "Brownfields Redevelopment Act."

Section 2: Section 376.78, F.S., is created to provide legislative intent with regard to brownfields. The reduction of public health and environmental hazards on existing commercial and industrial sites is vital to their use and reuse as sources of employment, housing, recreation, and open-space areas. The reuse of industrial land is an important component of sound land-use policy for productive urban purposes that will help prevent the premature development of farmland, open-space areas, and natural areas, and reduce public costs for installing new water, sewer, and highway infrastructure. Further, the abandonment or underuse of brownfield sites results in the inefficient use of public facilities and services, as well as land and other natural resources, extends conditions of blight in local communities, and contributes to concerns about environmental equity and the distribution of environmental risks across population groups.

Incentives should be put in place to encourage responsible persons to voluntarily

develop and implement cleanup plans without the use of taxpayer funds or the need for enforcement actions by state and local governments. Site rehabilitation should be based on the actual risk that contamination on a site may pose to the environment and public health, taking into account its current and future use and the degree to which contamination may spread and expose the public or the environment to risk

This section further provides intent and findings regarding environmental justice considerations and recognition that the environment is an important element of the quality of life in any community. Environmental justice considerations should be inherent in meaningful public participation elements of a brownfields redevelopment program

Cooperation among federal, state, and local agencies, local community development organizations, current owners, and prospective purchasers of brownfield sites is required to accomplish timely cleanup activities and the redevelopment or reuse of brownfield sites.

Section 3: Section 376.79, F.S., is created to define the following terms: "additive effects", "antagonistic effects", "brownfield sites", "brownfield area", "department", "engineering controls", "institutional controls", "local pollution control program", "natural attenuation", "person responsible for brownfield site rehabilitation", "person", "site rehabilitation", "source removal", and "synergistic effects"

Section 4: Section 376 80, F.S., is created to provide for a brownfield program administration process. A local government with jurisdiction over the brownfield area must notify the DEP of its decision to designate a brownfield area for rehabilitation. The notification must include a resolution by the local government body to which is attached a map adequate to clearly designate exactly which parcels are to be included in the brownfield area or a less detailed map which is accompanied by a legal description of the brownfield area. Any property owner within a proposed brownfield area may request in writing to have his property removed from the proposed designation and the local government is required to grant the request. The local government shall provide for public hearings and notice of the proposed designation.

If a local government proposes to designate a brownfield area that is outside community redevelopment areas, enterprise zones, empowerment zones, or designated brownfield pilot project areas, the local government must conduct at least one public hearing in the area to be designated to provide an opportunity for public input on the size of the area, the objectives for rehabilitation, job opportunities and economic developments anticipated, neighborhood residents' considerations, and other relevant local concerns. This section also provides the specifications for the notice of the public hearing requiring that the notice be at least 6 inches square in size, appear in ethnic newspapers or local community bulletins, be posted in the affected area, and be announced at a scheduled meeting of the local governing body before the actual public hearing

The local government must consider the following in determining the area to be designated as a brownfield area:

- Whether the brownfield area warrants economic development and has a reasonable potential for such activities,

-Whether the proposed area to be designated represents a reasonable, focused approach and is not overly large in geographic coverage,

- Whether the area has potential to interest the private sector in participating in rehabilitation; and

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

The local government shall designate a brownfield area under the provisions of this act provided that:

- A person who owns or controls a potential brownfield site is requesting the designation and has agreed to rehabilitate and redevelop the brownfield site;

- The rehabilitation and redevelopment of the proposed brownfield site will result in economic productivity of the area along with the creation of new jobs which are not associated with the implementation of the rehabilitation agreement;

- The redevelopment of the proposed brownfield site is consistent with the local comprehensive plan and is a permissible use under the applicable local land development regulations,

- Adjacent property owners and residents have been provided with the notice of the proposed rehabilitation and have been given an opportunity to give comments and suggestions about the site rehabilitation. This notice must be made in a newspaper of general circulation in the area, it must be at least 6 inches square in size, and it must also be posted in the affected area

- The person proposing the area for designation has provided reasonable assurance that he or she has sufficient financial resources to implement and complete the rehabilitation agreement and development plan.

At the time of the adoption of the resolution, the local government must notify the DEP of the entity that it is designating as the person responsible for brownfield site rehabilitation. If the agency or person who will be responsible for the coordination changes during the brownfield site rehabilitation process, the DEP or the affected local pollution control program must notify the affected local government when the change occurs

The person responsible for brownfield site rehabilitation must enter into a brownfield site rehabilitation agreement with DEP or an approved local pollution control program. The agreement must include:

- A brownfield rehabilitation schedule.

- A commitment to conduct site rehabilitation activities under the observation of professional engineers or geologists. Upon completion of the approved remedial action, the department shall require the professional engineer or professional geologist to certify that the corrective action was, to the best of his knowledge, completed in substantial conformance with the plans and specifications approved by the department.

- A commitment to conduct site rehabilitation in accordance with an approved comprehensive quality assurance plan under DEP rules.
- A commitment to conduct site rehabilitation consistent with federal, state, and local laws and consistent with the brownfield site contamination cleanup criteria specified in this bill.
- A commitment to secure site access for the department or approved local pollution control program to all brownfield sites within the eligible brownfield area for activities associated with rehabilitation
- Other provisions that the person responsible for brownfield site rehabilitation and the DEP agree upon that will improve or enhance the brownfield site rehabilitation process.

Contractors must meet certain qualifications.

Any professional engineer or geologist providing professional services relating to site rehabilitation program tasks must carry professional liability insurance with a coverage limit of at least \$1 million.

During the cleanup process, an eligible party may proceed from one phase or task of cleanup to the next prior to obtaining approval of the technical document for the next phase or task of cleanup. However, the eligible party will be required to complete any additional tasks identified by the department or local pollution control program found during the review.

If the person responsible for brownfield site rehabilitation fails to comply with the brownfield site rehabilitation agreement, DEP shall allow 90 days for that person to return to compliance to return to compliance with the provision at issue or to renegotiate a modification to the agreement with the DEP for good cause shown. If imminent hazard exists, the 90 grace period shall not apply. If the project is not returned to compliance with the agreement and a modification cannot be negotiated, the immunity provisions of s. 376.83, F.S. shall be revoked.

The DEP is authorized and encouraged to enter into delegation agreements with local pollution control programs

Failure by the department or local pollution control program to adhere to site rehabilitation milestones shall constitute approval of the specific task. Exceptions include requests for "no further action," "monitoring only proposals," and feasibility studies.

Section 5: Section 376.81, F.S., provides brownfield redevelopment economic incentives. State and local governments are encouraged to offer redevelopment incentives to encourage the redevelopment of brownfield sites, and the bill delineates various examples of financial, regulatory, and technical assistance incentives that may be used to encourage redevelopment of brownfield sites.

Section 6: Creates section 376.82, F.S., establishing criteria by rule for the purpose of determining, on a site-specific basis, the rehabilitation program tasks that comprise a site

rehabilitation program and the level at which a rehabilitation program may be completed. The criteria for determining what constitutes a rehabilitation program task or completion of a site rehabilitation program task or site rehabilitation program must:

- Consider the current exposure and potential risk of exposure to humans and the environment, including multiple pathways of exposure.
- Establish the point of compliance at the source of the contamination.
- Ensure that the site-specific cleanup goal is that all contaminated brownfield sites and brownfield areas ultimately achieve the applicable cleanup target levels
- Allow brownfield site and brownfield area rehabilitation programs to include the use of institutional or engineering controls to eliminate or control the potential exposure to contaminants to humans or the environment. Use of such controls must be preapproved by the department.
- Consider the synergistic, antagonistic, and additive effects of contaminants when the scientific data becomes available
- Take into consideration individual site characteristics.
- Apply state water quality standards
- Provide for the department to issue a "no further action order" when alternative cleanup target levels have been achieved or based upon the degree to which the desired cleanup target level is achievable and can be reasonably and cost effectively implemented
- Establish appropriate cleanup target levels for soils

The department shall require source removal, if warranted and cost effective. Once source removal at a site is complete, the department shall reevaluate the site to determine the degree of active cleanup needed to continue. The department shall determine if the reevaluated site qualifies for monitoring only or if "no further action" is required to rehabilitate the site.

Section 7: Creates section 376 83, F.S., to provide eligibility criteria and liability protection:

Eligibility criteria will be:

- Any person who has not caused or contributed to the contamination of a brownfield site after July 1, 1997
- Persons who have not caused or contributed to the contamination of a brownfield site after July 1, 1997, and who, prior to the department's approval of a brownfield site rehabilitation agreement, are subject to ongoing corrective action or enforcement under state authority, including those persons subject to a pending consent orders with the state if:

- * The proposed brownfield site is currently idle or underutilized as a result of contamination, and participation will immediately, after cleanup or sooner, result in increased economic productivity, including the creation of new jobs, whether permanent or part time, which are not associated with implementation of the brownfield site corrective action plan; and
- * The person is complying in good faith with the terms of an existing consent order or department-approved corrective action plan, or responding in good faith to an enforcement action.

Liability protection criteria will be

- Any person, including his or her successors and assigns, who executes and implements to successful completion a brownfield site rehabilitation agreement, shall be relieved of further liability for remediation of the site to the state and to third parties

The liability protection shall not:

- be construed as a limitation on the right of a third party other than the state to pursue an action for damages to property or person.
- affect the ability or authority to seek contribution from any person who may have liability with respect to the site and who did not receive cleanup liability protection

Liability protection will become effective upon execution of a brownfield site rehabilitation agreement and will remain effective, provided the person responsible for brownfield site rehabilitation complies with the terms of the agreement

Completion of the performance of the remediation obligations at the brownfield site will be evidenced by a site rehabilitation completion letter or a "no further action" letter issued by the department.

Reopener criteria

- Upon completion of site rehabilitation in compliance with the act no additional site rehabilitation shall be required unless it is demonstrated that: fraud was committed, new information confirms the existence of an area of previously unknown contamination that poses an imminent threat to human health and the environment; the remedial efforts failed to achieve the site rehabilitation goals, the level of risk is increased beyond the acceptable risk established; or a new release occurs.

Additional liability for lenders is also provided in this section.

Section 8: Creates section 376.84, F.S., establishing violations and penalties. Any person who willingly commits a violation is guilty of a misdemeanor of the first degree, punishable by a fine of not more than \$10,000 or six months in jail, or both, for each offense

Section 9: The DEP is required to prepare an annual report to the Legislature, beginning in December 1998. The report shall include the number of sites remediated, the number of sites undergoing remediation, the number and size of brownfield sites or

areas that have been designated, the number of sites that have utilized site-specific criteria, information regarding the relationship between the program and the EPA's brownfields program, and information regarding brownfield redevelopment incentives that have been offered by local governments.

C APPLICATION OF PRINCIPLES

1 Less Government.

a Does the bill create, increase or reduce, either directly or indirectly.

(1) any authority to make rules or adjudicate disputes?

Rule authority increases for the department as it relates to developing RBCA tables and guidelines for application to new forms of contaminants

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Local governments will be required to designate by resolution brownfield sites or areas

(3) any entitlement to a government service or benefit?

No

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes

a. Does the bill increase anyone's taxes?

No

b. Does the bill require or authorize an increase in any fees?

No

c. Does the bill reduce total taxes, both rates and revenues?

No

d. Does the bill reduce total fees, both rates and revenues?

No

e. Does the bill authorize any fee or tax increase by any local government?

No

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Yes

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No

5. Family Empowerment:

a If the bill purports to provide services to families or children.

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority.

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. SECTION-BY-SECTION RESEARCH

See "Effect of Proposed Changes"

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS

1. Non-recurring Effects

Some administrative cost will occur for the department as it relates to the processing of brownfield designations and negotiations related to site rehabilitation plans.

2. Recurring Effects

The department will have additional workloads for ongoing review and monitoring of the implementation of brownfield site agreements and utilization of RBCA cleanups. The amount is indeterminate and will be directly related to the number and size of brownfield site areas

3. Long Run Effects Other Than Normal Growth.

N/A

4. Total Revenues and Expenditures:

See A 1. and A 2

B FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE.

1. Non-recurring Effects

Local governments will absorb portions of the costs associated with designation of brownfield sites and areas, these include noticing requirements, participation in negotiating site rehabilitation agreements, and additional administrative costs associated with adopting a resolution

2. Recurring Effects:

None

3. Long Run Effects Other Than Normal Growth

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs

None

2. Direct Private Sector Benefits

Cost associated with rehabilitation of brownfield sites would be reduced under provisions of the bill.

3. Effects on Competition, Private Enterprise and Employment Markets

The redevelopment of brownfield sites should contribute to economic revitalization, spurring business competition and additional employment opportunities in areas that have been economically depressed.

D. FISCAL COMMENTS.

Direct costs for any parties participating in this program are indeterminate due to their relationship to the size of the brownfield and the complexity of any cleanups.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION.

This bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds

B. REDUCTION OF REVENUE RAISING AUTHORITY

The bill does not reduce the authority that municipalities or counties have to raise revenues.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the percentage of state tax shared with counties and municipalities

V. COMMENTS

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES

STORAGE NAME: h1067.ep

DATE: April 1, 1997

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VII. SIGNATURES:

COMMITTEE ON ENVIRONMENTAL PROTECTION.

Prepared by

Legislative Research Director

Wayne S Kiger

Wayne S. Kiger

By Representative Constantine

A bill to be entitled

2 An act relating to brownfields redevelopment;
 3 creating ss. 376.77-376.82, F.S., the
 4 Brownfields Redevelopment Act of 1997;
 5 providing legislative intent; providing
 6 definitions; providing duties of a local
 7 government that designates a brownfield area
 8 for rehabilitation; providing for notice to the
 9 Department of Environmental Protection;
 10 providing for public hearings; providing
 11 requirements for such designation; providing
 12 responsibilities of persons eligible for
 13 brownfield rehabilitation; requiring approval
 14 of a Corrective Action Rehabilitation Schedule;
 15 providing requirements for contractors and site
 16 assessment and cleanup activities; requiring
 17 approval of site assessments, remedial action
 18 reports, and completed tasks, with certain
 19 exceptions, providing consequences of failure
 20 to comply with a rehabilitation agreement;
 21 specifying the factors and criteria to be used
 22 in directing and supervising rehabilitation of
 23 brownfield sites; providing for issuance of a
 24 "No Further Action Order"; providing that
 25 source removal may be required under certain
 26 conditions; providing requirements for
 27 participation in brownfield rehabilitation;
 28 providing liability protection for persons who
 29 successfully complete an approved
 30 rehabilitation schedule; providing requirements
 31 for issuance of a letter evidencing completion

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1 of rehabilitation; authorizing negotiation with
2 the United States Environmental Protection
3 Agency regarding enforcement; providing
4 conditions under which further remedial action
5 may be required; providing liability protection
6 for certain financial institutions; providing
7 an effective date
8

9 Be It Enacted by the Legislature of the State of Florida:
10

11 Section 1. Section 376.77, Florida Statutes, is
12 created to read:

13 376.77 Short title.--Sections 376.77-376.82 may be
14 cited as the "Brownfields Redevelopment Act of 1997."

15 Section 2. Section 376.78, Florida Statutes, is
16 created to read:

17 376.78 Legislative intent.--The Legislature finds and
18 declares the following.

19 (1) The reduction of public health and environmental
20 hazards on existing commercial and industrial sites is vital
21 to their use and reuse as sources of employment and for
22 housing, recreation, and open-space areas. The productive
23 reuse of land is an important component of sound land-use
24 policy that will help prevent the needless development of
25 prime farmland, open-space areas, and natural areas, and
26 reduce public costs for installing new water, sewer, and
27 highway infrastructure.

28 (2) The abandonment or underuse of brownfield sites
29 also results in the inefficient use of public facilities and
30 services, as well as land and other natural resources; extends
31 conditions of blight in local communities; and contributes to

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2 concerns about environmental equity and the distribution of
3 environmental risks across population groups.

4 (3) Incentives should be put in place to encourage
5 responsible persons to voluntarily develop and implement
6 cleanup plans without the use of taxpayer funds or the need
7 for adversarial enforcement actions by state and local
8 governments which frequently serve to delay cleanups and
9 increase their cost.

10 (4) Environmental and public health hazards cannot be
11 eliminated without clear, predictable remediation standards
12 which provide for the protection of the environment and public
13 health.

14 (5) Cleanup plans should be based on the actual risk
15 that contamination on a site may pose to the environment and
16 public health, taking into account its current and future use
17 and the degree to which contamination can spread off site and
18 expose the public or the environment to risk.

19 (6) Cooperation among federal, state, and local
20 agencies, local community development organizations, current
21 owners, and prospective purchasers of brownfield sites is
22 required to accomplish timely cleanup activities and the
23 redevelopment or reuse of brownfield sites.

24 Section 3. Section 376.79, Florida Statutes, is
25 created to read.

26 376.79 Definitions.--As used in ss. 376.77-376.82,
27 unless the context otherwise indicates:

28 (1) "Brownfield sites" means generally commercial or
29 industrial properties where expansion or potential
30 redevelopment is complicated by actual or perceived
31 environmental contamination.

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1 (2) "Brownfield area" means a contiguous area of
2 several brownfield sites, some of which may not be
3 contaminated, and which has been designated by a local
4 government by resolution. Such areas may include all or
5 portions of community redevelopment areas, empowerment zones,
6 enterprise communities, other such designated economically
7 deprived communities and areas, and brownfield pilot projects
8 designated by the United States Environmental Protection
9 Agency.

10 (3) "Department" means the Department of Environmental
11 Protection.

12 (4) "Person" means any individual, partner, joint
13 venture, or corporation; any group of the foregoing, organized
14 or united for a business purpose; or any governmental entity.

15 Section 4. Section 376.80, Florida Statutes, is
16 created to read:

17 376.80 Brownfield program administration process.--

18 (1) A local government with jurisdiction over a
19 brownfield area must notify the department of its decision to
20 designate a brownfield area for rehabilitation for the
21 purposes of ss. 376.77-376.82. The notification must include
22 a resolution by the local government body to which is attached
23 a detailed map adequate to clearly delineate exactly which
24 parcels are to be included in the brownfield area or,
25 alternatively, a less detailed map accompanied by a detailed
26 legal description of the brownfield area. If a property owner
27 within the area proposed for designation by the local
28 government requests in writing to have his or her property
29 removed from the proposed designation, the local government
30 shall grant the request.

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2 (2) If a local government proposes to designate a
3 brownfield area that is outside of community redevelopment
4 areas, empowerment zones, enterprise communities, or
5 brownfield pilot project areas designated by the United States
6 Environmental Protection Agency, the local government must
7 conduct at least one public hearing in the area to be
8 designated to provide an opportunity for public input on the
9 size of the area, the objectives for rehabilitation, job
10 opportunities and economic developments anticipated,
11 neighborhood residents' considerations, and other local
12 concerns. Notice of the public hearing must be made in a
13 newspaper of general circulation in the area and such notice
14 must be at least 6 inches square in size, must be in ethnic
15 newspapers or local community bulletins, must be posted in the
16 affected area, and must be announced at a scheduled meeting of
17 the local governing body prior to the actual public hearing.
18 In determining the areas to be designated, the local

19 (a) Whether the brownfield area has a reasonable
20 potential for economic development activities.

21 (b) Whether the proposed area to be designated
22 represents a reasonable, focused approach and is not overly
23 large in geographic coverage.

24 (c) Whether the area has interest from the private
25 sector to participate in rehabilitation.

26 (3) The local government must notify the department of
27 the agency or person who will be responsible for the
28 coordination of local private actions to rehabilitate the
29 brownfield area.

30 (4) The party eligible for brownfield rehabilitation
31 must provide a Corrective Action Rehabilitation Schedule to

1 the department or the approved local pollution control program
2 for approval.

3 (5) The eligible party must submit documentation to
4 the department or approved local pollution control program
5 that the contractor performing site rehabilitation activities
6 is a certified professional engineer or a certified geologist
7 who meets all the certification and licensure requirements
8 imposed by law, and has submitted and obtained approval of its
9 comprehensive quality assurance plan prepared under the
10 department's rules.

11 (6) Site assessment and cleanup activities must be
12 consistent with state and federal laws and rules and must be
13 consistent with the department's risk-based corrective action
14 rules and guidelines.

15 (7) All site assessment and remedial action reports
16 must be submitted to and approved by the department or the
17 approved local pollution control program. The department or
18 approved local pollution control program shall approve, deny,
19 or approve with modifications site assessments and remedial
20 action reports within 30 days after their receipt.

21 (8) The department or the approved local pollution
22 control program shall approve, deny, or approve with
23 modifications all completed cleanup phases or tasks within 30
24 days after being notified of their completion.

25 (9) Failure by the department or approved local
26 pollution control program to meet the provisions of subsection
27 (7) or subsection (8) shall constitute approval of the
28 assessment, report, phase, or task, and the eligible party may
29 proceed with site rehabilitation.

30 (10) During the cleanup process, an eligible party may
31 proceed from one phase or task of cleanup to the next prior to

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obtaining approval of the technical document for the next phase or task of cleanup. However, the eligible party will be required to complete any additional tasks identified by the department or local pollution control program found during the reviews provided for by subsections (7) and (8).

(11) Exceptions to the provisions of subsections (7), (8), and (10) include requests for "No Further Action," "Monitoring Only Proposals," and feasibility studies which must be approved prior to implementation. The department or local pollution control program shall review and approve, deny, or approve with modifications these requests within 60 days after their receipt. Failure by the department or approved local pollution control program to meet the provisions of this subsection shall constitute approval of the request.

(12) If the person responsible for brownfield site rehabilitation fails to comply with the brownfield site rehabilitation agreement, the department shall allow 90 days for such person to return to compliance with the provision at issue or to negotiate a modification to the brownfield site rehabilitation agreement with the department for good cause shown. If the project is not returned to compliance with the brownfield site rehabilitation agreement and a modification cannot be negotiated, the provisions of s 376.02 shall be revoked.

(13) The department is authorized and encouraged to enter into delegation agreements with local pollution control programs to administer the brownfield program within their jurisdiction, thereby maximizing the integration of this process with the other local development processes needed to facilitate redevelopment of a brownfield area.

1 Section 5 Section 376.81, Florida Statutes, is
2 created to read:

3 376.81 Brownfield sites and brownfield area
4 contamination cleanup criteria.--

5 (1) The department and local governments with
6 delegated department responsibilities shall utilize the
7 following factors and criteria in directing and supervising
8 the cleanup and rehabilitation of brownfield sites and
9 brownfield areas contaminated with substances regulated by the
10 department:

11 (a) The current exposure and potential risk of
12 exposure to humans and the environment, including multiple
13 pathways of exposure.

14 (b) The point of compliance shall be at the source of
15 the contamination. However, the department is authorized to
16 temporarily move the point of compliance to the boundary of
17 the property, or to the edge of the plume when the plume is
18 within the property boundary, while cleanup, including cleanup
19 through natural attenuation processes in conjunction with
20 appropriate monitoring, is proceeding. The department also is
21 authorized, pursuant to criteria provided for in this section,
22 to temporarily extend the point of compliance beyond the
23 property boundary with appropriate monitoring, if such
24 extension is needed to facilitate natural attenuation or to
25 address the current conditions of the plume, provided human
26 health, public safety, and the environment are adequately
27 protected. Temporary extension of the point of compliance
28 beyond the property boundary, as provided in this paragraph,
29 shall include notice to local governments and owners of any
30 property into which the point of compliance is allowed to
31 extend.

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2 (c) The cleanup goal shall be that all contaminated
3 brownfields sites and brownfield areas ultimately achieve the
4 applicable cleanup target levels provided in this section.
5 However, the department is authorized to allow concentrations
6 of contaminants to temporarily exceed the applicable cleanup
7 target levels while cleanup, including cleanup through natural
8 attenuation processes in conjunction with appropriate
9 monitoring, is proceeding, provided human health, public
10 safety, and the environment are adequately protected.

11 (d) Brownfield site and brownfield area rehabilitation
12 programs may include the use of institutional or engineering
13 controls to eliminate the potential exposure to contaminants
14 to humans or the environment. Use of such controls must be
15 preapproved by the department. When institutional or
16 engineering controls are implemented to control exposure, the
17 removal of such controls must have prior department approval
18 and must be accompanied by the resumption of active cleanup,
19 or other approved controls, unless cleanup target levels
20 pursuant to this section have been achieved.

21 (e) The synergistic, antagonistic, and additive
22 effects of contaminants shall also be considered when the
23 scientific data become available.

24 (f) Individual site characteristics, which shall
25 include, but not be limited to, the current and projected use
26 of the affected groundwater and surface water in the vicinity
27 of the site, current and projected land uses of the area
28 affected by the contamination, the exposed population, the
29 degree and extent of contamination, the rate of contaminant
30 migration, the apparent or potential rate of contaminant
31 degradation through natural attenuation processes, the

1 location of the plume, and the potential for further migration
2 in relation to site property boundaries.

3 (g) Applicable state water quality standards

4 1. Cleanup target levels for each contaminant found in
5 groundwater shall be the applicable state water quality
6 standards. Where such standards do not exist, the cleanup
7 target levels for groundwater shall be based on the minimum
8 criteria specified in department rule. The department shall
9 consider the following, as appropriate, in establishing the
10 applicable minimum criteria: calculations using a lifetime
11 cancer risk level of 1.0E-6; a hazard index of 1 or less; the
12 best achievable detection limit, the naturally occurring
13 background concentration; or nuisance, organoleptic, and
14 aesthetic considerations

15 2. Where surface waters are exposed to contaminated
16 groundwater, the cleanup target levels for the contaminants
17 shall be based on the surface water standards as established
18 by department rule. The point of measuring compliance with
19 the surface water standards shall be in the groundwater
20 immediately adjacent to the surface water body.

21 (h) The department may issue a "No Further Action
22 Order" based upon the degree to which the desired cleanup
23 target level is achievable and can be reasonably and
24 cost-effectively implemented within available technologies or
25 engineering and institutional control strategies. Where a
26 state water quality standard is applicable, a deviation may
27 not result in the application of cleanup target levels more
28 stringent than said standard. In determining whether it is
29 appropriate to establish alternate cleanup target levels at a
30 site, the department may consider the effectiveness of source
31 removal that has been completed at the site and the practical

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likelihood of: the use of low yield or poor quality groundwater; the use of groundwater near marine surface water bodies; the current and projected use of the affected groundwater in the vicinity of the site; or the use of groundwater in the immediate vicinity of the contaminated area, where it has been demonstrated that the groundwater contamination is not migrating away from such localized source; provided human health, public safety, and the environment are adequately protected.

(i) Appropriate cleanup target levels for soils.

1. In establishing soil cleanup target levels for human exposure to each contaminant found in soils from the land surface to 2 feet below land surface, the department shall consider the following, as appropriate: calculations using a lifetime cancer risk level of $1.0E-6$; a hazard index of 1 or less; the best achievable detection limit; or the naturally occurring background concentration.

2. Leachability-based soil target levels shall be based on protection of the groundwater cleanup target levels or the alternate cleanup target levels for groundwater established pursuant to this paragraph, as appropriate. Source removal and other cost-effective alternatives that are technologically feasible shall be considered in achieving the leachability soil target levels established by the department. The leachability goals shall not be applicable if the department determines, based upon individual site characteristics, that contaminants will not leach into the groundwater at levels which pose a threat to human health, public safety, and the environment.

(2) The department shall require source removal, if warranted and cost-effective. Once source removal at a site

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1 is complete, the department shall reevaluate the site to
2 determine the degree of active cleanup needed to continue.
3 Further, the department shall determine if the reevaluated
4 site qualifies for monitoring only or if no further action is
5 required to rehabilitate the site. If additional site
6 rehabilitation is necessary to reach no-further-action status,
7 the department is encouraged to utilize natural attenuation
8 and monitoring where site conditions warrant.

9 Section 6. Section 376.82, Florida Statutes, is
10 created to read:

11 376.82 Eligibility criteria and liability
12 protection.--

13 (1) ELIGIBILITY.--Any person who has not caused or
14 contributed to the contamination of a brownfield site after
15 July 1, 1997, shall be eligible to participate in the
16 brownfield rehabilitation program established in this act,
17 subject to the following:

18 (a) Potential brownfield sites currently subject to
19 ongoing corrective action or enforcement pursuant to federal
20 authority under the Solid Waste Disposal Act, 42 U.S.C. s.
21 6901 et seq., as amended; the Comprehensive Environmental
22 Response Compensation and Liability Act (CERCLA), 42 U.S.C. s.
23 9601 et seq., as amended; the Safe Drinking Water Act, 42
24 U.S.C. ss. 300f-300i, as amended; or the Clean Water Act, 33
25 U.S.C. ss. 1251-1387, as amended, are not eligible for
26 participation in a brownfield corrective action.

27 (b) Potential brownfield sites currently subject to
28 ongoing corrective action or enforcement pursuant to state
29 authority established in this chapter or chapter 403,
30 including those sites currently subject to a pending consent
31

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order with the state, are eligible for participation in a brownfield corrective action, provided:

1. The proposed brownfield site will, immediately after cleanup or sooner, result in increased economic productivity at the site, including at a minimum the creation of 10 new jobs, whether permanent or part time, which are not associated with implementation of the brownfield site corrective action plan; and

2. The party is in good faith compliance with the terms of the existing consent order or corrective action plan or is responding to an enforcement action as evidenced by a good faith determination issued by the department or an approved local pollution control program.

(2) LIABILITY PROTECTION.--

(a) Any person, including his or her successors and assigns, who submits a brownfield site Corrective Action Rehabilitation Schedule to the department or an approved local pollution control program, which schedule is approved and implemented to successful completion, shall be relieved of further liability for remediation of the site to the state and to third parties and for liability in contribution to any other party who has or may incur cleanup liability for the brownfield site.

(b) This section shall not be construed as a limitation on the right of a third party other than the state to pursue an action for damages to property or person; however, such an action cannot compel site rehabilitation in excess of that required in the approved Corrective Action Rehabilitation Schedule or otherwise required by the department or approved local pollution control program.

1 (c) This section shall not affect the ability or
2 authority to seek contribution from any person who may have
3 liability with respect to the site and who did not receive
4 cleanup liability protection under this section.

5 (d) The liability protection provided by this section
6 shall become effective upon the approval of a brownfield site
7 Corrective Action Rehabilitation Schedule and shall remain
8 effective, provided the person implements and completes the
9 approved schedule.

10 (e) Completion of the performance of the remedial
11 obligations at the brownfield site shall be evidenced by a
12 "Site Rehabilitation Completion" letter or a "No Further
13 Action" letter issued by the department or the approved local
14 pollution control program, which letter shall include the
15 following paragraph: "Based upon the information provided by
16 (property owner) concerning property located at (address), it
17 is the opinion of the Florida Department of Environmental
18 Protection (substitute local pollution control agency where
19 applicable) that (party) has successfully and satisfactorily
20 implemented the approved brownfield site Corrective Action
21 Rehabilitation Schedule and, accordingly, no further action is
22 required to assure that this property, when used for the land
23 use identified in the Corrective Action Rehabilitation
24 Schedule, is protective of existing and proposed uses and does
25 not pose an unacceptable risk to human health or the
26 environment."

27 (f) The Legislature recognizes its limitations in
28 addressing cleanup liability under federal pollution control
29 programs. In an effort to secure federal liability protection
30 for persons willing to undertake remediation responsibility at
31 a brownfield site or brownfield area, the department is

2 directed to attempt to negotiate a memorandum of agreement or
3 similar document with the United States Environmental
4 Protection Agency, whereby the United States Environmental
5 Protection Agency agrees to forego enforcement of federal
6 corrective action authority at brownfield sites or brownfield
7 areas which have received a "Site Rehabilitation Completion"
8 or "No Further Action" determination from the department or
9 the approved local pollution control program or are in the
10 process of implementing a Corrective Action Rehabilitation
11 Schedule in accordance with this act.

12 (3) REOPENERS.--Any person who completes remediation
13 in compliance with this act shall not be required to undertake
14 additional remedial actions unless the department demonstrates
15 any of the following:

16 (a) That fraud was committed in demonstrating site
17 conditions or completion of the Corrective Action
18 Rehabilitation Schedule.

19 (b) That new information confirms the existence of an
20 area of previously unknown contamination which exceeds the
21 site-specific rehabilitation levels established by the
22 department. This reopener shall not be construed to impose
23 future remedial obligations when newly discovered risks or
24 contaminants at a site are the result of advancements in
25 science and technology such as improved detection limits,
26 comprehension of synergistic effects of contamination, or the
27 listing of a new contaminant.

28 (c) That the remediation efforts failed to achieve the
29 cleanup standards or protection levels established by this
30 act.

31 (d) That the level of risk is increased beyond the
32 acceptable risk established in this act due to substantial

1 changes in exposure conditions, such as in a change in land
2 use from nonresidential use to residential use. Any person
3 who changes the land use of the brownfield site or brownfield
4 area, thus causing the level of risk to increase beyond the
5 acceptable risk level, may be required by the department or
6 approved local pollution control program to undertake
7 additional remediation measures to assure that human health,
8 public safety, and the environment are protected to levels
9 consistent with this act.

10 (e) That a new release occurs at the brownfield site
11 subsequent to a determination of eligibility for participation
12 in the brownfield program established in this act.

13 (4) ADDITIONAL LIABILITY PROTECTION FOR FINANCIAL
14 INSTITUTIONS.--

15 (a) The Legislature declares that, in order to achieve
16 the economic redevelopment and site rehabilitation of
17 brownfield sites and brownfield areas in accordance with this
18 act, it is imperative to encourage financing of real property
19 transactions involving brownfield site corrective action
20 plans. Accordingly, lenders, trustees, personal
21 representatives, or any other fiduciaries are entitled to the
22 liability protection established under subsection (2),
23 provided they have not caused or contributed to a release of a
24 contaminant at the brownfield site or brownfield area.

25 (b) Lenders who hold indicia of ownership at a
26 brownfield site primarily to protect a security interest or
27 who own a brownfield site as a result of foreclosure of a
28 security interest who seek to sell, transfer, or otherwise
29 divest the site by means of sale at the earliest possible time
30 shall not be liable for the release or discharge of a
31 contaminant from a brownfield site; for the failure of a

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brownfield site owner to complete the Corrective Action Rehabilitation Schedule; or for future site rehabilitation activities required pursuant to a recopener established under subsection (3) where the lender has not divested the borrower of, or otherwise engaged in, decisionmaking control of the site rehabilitation or site operations or undertaken management activities beyond those required to protect its financial interest and where the lender has not otherwise caused or contributed to a release of a contaminant at the brownfield site.

Section 7. This act shall take effect July 1, 1997.

HOUSE SUMMARY

Creates the Brownfields Redevelopment Act of 1997. Provides legislative intent and definitions. Provides duties of a local government that designates a brownfield area for rehabilitation. Provides for notice to the Department of Environmental Protection and provides for public hearings. Provides requirements for such designation. Provides responsibilities of persons eligible for brownfield rehabilitation. Requires approval of a Corrective Action Rehabilitation Schedule. Provides requirements for contractors and site assessment and cleanup activities. Requires approval of site assessments, remedial action reports, and completed tasks, with certain exceptions. Provides consequences of failure to comply with a rehabilitation agreement. Specifies the factors and criteria to be used in directing and supervising rehabilitation of brownfield sites." Provides for issuance of a "No Further Action Order." Provides that source removal may be required under certain conditions. Provides requirements for participation in brownfield rehabilitation. Provides liability protection for persons who successfully complete an approved rehabilitation schedule. Provides requirements for issuance of a letter evidencing completion of rehabilitation. Authorizes negotiation with the United States Environmental Protection Agency regarding enforcement. Provides conditions under which further remedial action may be required. Provides liability protection for certain financial institutions.

STORAGE NAME h0955.ep
DATE April 2, 1997

HOUSE OF REPRESENTATIVES
COMMITTEE ON
ENVIRONMENTAL PROTECTION
BILL RESEARCH & ECONOMIC IMPACT STATEMENT

BILL #. HB 955
RELATING TO: Environmental Equity
SPONSOR(S): Representative Eggelton
STATUTE(S) AFFECTED: ss 220.03 and 220.02, F S and creates s 220.185, F S
COMPANION BILL(S) HB 1067 (c), CS/CS/SB 1306, and SB 1934
ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) ENVIRONMENTAL PROTECTION
(2) BUSINESS DEVELOPMENT & INTERNATIONAL TRADE
(3) COMMUNITY AFFAIRS
(4) FINANCE & TAXATION
(5) GENERAL GOVERNMENT APPROPRIATIONS

I SUMMARY.

This bill research document is based upon the remove and insert amendment.

HB 955 creates the Brownfields Community Revitalization Act. It establishes the Brownfields Community Revitalization Program (program), which is to be administered by the Brownfields Community Revitalization Coordinating Council (Council). The Council is created within the Department of Community Affairs, and is composed of the Secretary of Community Affairs, the Secretary of Environmental Protection, the Secretary of Health, and the Attorney General. The Council shall facilitate the acquisition of state and federal funding, provide technical assistance to local governments, coordinate health care delivery to low-income persons, ensure public participation, and promote pollution prevention. Contaminated sites that are not petroleum or dry-cleaning sites and meet additional criteria will be eligible to participate in the program. The cleanup levels for contaminants at participating sites shall be a cancer risk level of 1.0×10^{-6} and a hazard index of less than 1. Brownfields sites will be rehabilitated subject to an agreement between the person responsible for the Site and the Department of Environmental Protection (DEP) or an approved local program. Participation by local residents is to be ensured through development and implementation of a community participation plan. Site cleanup must be conducted under the supervision of a professional engineer or geologist meeting additional qualifications specified in the bill. Any person who has not caused or contributed to the contamination of a site and successfully completes site cleanup pursuant to a brownfield site rehabilitation agreement, shall be eligible for protection from liability for additional cleanup. However, the bill also provides for "reopeners," such as fraud or changes in the level of risk, which can compel additional cleanup. State and local governments are authorized to provide various financial, regulatory, and technical assistance incentives to promote redevelopment of brownfield sites. Tax credits against the corporate income tax are extended to persons who successfully rehabilitate brownfield sites.

The bill appropriates \$5 million in general revenue for brownfields rehabilitation pilot projects and \$425,000 from the Water Quality Assurance Trust Fund to the Department of Community Affairs to administer the program.

The bill provides that the act shall take effect July, 1, 1997.

II SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Broadly defined, "brownfields" are abandoned, idled, or underused industrial and commercial properties where expansion or redevelopment is complicated by real or perceived environmental contamination. Brownfields are a chronic problem for both urban and rural areas. The U.S. General Accounting Office estimates that there are between 130,000 and 450,000 brownfield sites with a price tag of over \$650 billion to cleanup. Economic loss in jobs, loss of property taxes, and lender fear of financing the redevelopment of brownfields have resulted in support by the U.S. Environmental Protection Agency (EPA) and some twenty-two states with brownfield statutes

Because of the cost of cleaning up a contaminated site and the potentially serious liability issues, it has been easier and more cost-effective for developers to ignore these sites in favor of developing open greenspace areas, even though many of the sites in a brownfield area may contain little or no actual environmental contamination. Concern over the rapid development of greenspace nationwide has prompted a great deal of interest in the redevelopment of brownfields.

In Florida, there are approximately 1,562 hazardous waste sites (not including sites which may contain contamination from petroleum products and drycleaning solvents) that are currently being managed by the Department of Environmental Protection's enforcement program. Also, there are 893 additional sites in Florida that are listed in the EPA's Environmental Response Compensation and Liability Information System (CERCLIS). The CERCLIS list is used by the EPA to track potentially contaminated sites evaluated under the federal Superfund program.

The EPA has launched the Brownfields Initiative to empower states, communities, and other stakeholders in economic redevelopment to work together in a timely manner to prevent, assess, safely cleanup, and sustainably reuse brownfields. The anticipated benefits of the Brownfields Initiative in the affected communities will be a cleaner environment, new jobs, an enhanced tax base, and a sense of optimism about the future. The EPA activities to help states implement and realize the benefits of the Brownfields Initiative include clarification of liability issues, partnership and outreach, brownfields pilot projects, and job development training. To date, Florida has two pilot projects receiving Brownfield Initiative funds from the EPA; these are located in Clearwater and Miami.

It is the uncertainty concerning the perceived risk or liability to the developer, purchaser, investor, or lender on such a transaction as much as it is the contamination at the site, that is the main impediment to redevelopment. The threat of future and unlimited liability, property devaluation, reopens in "No Further Action" letters, stringent cleanup standards, and lender liability keeps potentially interested parties from recycling contaminated properties. In Florida, strict liability laws patterned after federal laws compel persons responsible for causing contamination from hazardous substances to be financially responsible for cleaning up the contaminated sites. Generally, these laws operate to hold everyone in the chain of title for a contaminated property jointly and severally responsible for the costs of cleanup and rehabilitation. These proceedings can be costly and drawn out over long periods of time.

Florida does not have a brownfields program. Cleanup of contaminated properties in Florida is completed by property owners and responsible parties pursuant to the DEP's enforcement authority provided in Chapter 403, F.S. A person who buys contaminated property is liable as an owner, even if the contamination resulted from the operations of a prior owner or tenant. The DEP usually requires parties to enter into a Consent Order, although the DEP often waives formal enforcement actions and civil penalties on a case by case basis for parties that voluntarily complete a site cleanup

For sites that pose immediate environmental and public health threats, Florida uses the Water Quality Assurance Trust Fund to respond while legal proceedings are under way to recover costs from responsible parties. This trust fund, however, serves a variety of needs and at the current rate of expenditures on brownfield sites, it will take decades to respond to the current list of potential brownfield sites

A common feature of various Brownfield programs is the discretion to cleanup to less than prevailing target levels using Risk-Based Corrective Action (RBCA, pronounced Rebecca) principles. The RBCA principles allow use of engineering measures such as impermeable caps and institutional controls such as land use restrictions and deed notices in lieu of cleanups. Also, adjustments to cleanup target levels can be made based on industrial/commercial land use in contrast to residential land use. Target levels for cleanup in other states may be based on cancer risk management levels ranging from one in ten thousand to one in one million

Based on 1996 legislation, the DEP has adopted RBCA principles for petroleum sites and is developing guidelines for the appropriate use of RBCA principles for non-petroleum sites. However, the contaminants at non-petroleum sites are often more hazardous and have different mobility and degradation rates than petroleum contaminants resulting in sites that are technically more complex and costly to cleanup. State law (s 376.3071, F S) requires petroleum sites be managed at one in one million cancer risk level (10^{-6}) and a hazard index of 1 or less for non-carcinogens. The cleanup guidance criteria for non-petroleum sites are similarly based

B. EFFECT OF PROPOSED CHANGES:

HB 955 creates the Brownfields Community Revitalization Act.

The bill includes the following legislative findings:

- o Elimination of public health and environmental hazards on abandoned or idle industrial sites is necessary for their use and reuse and such reuse contributes to sound land-use policy, preventing development of green spaces and reducing public costs of new infrastructure;
- o Degraded, hazardous physical environments are characteristic of contaminated sites and have contributed to numerous public health, economic, and social problems,
- o Abandonment or underuse of brownfield sites results in inefficient use of public facilities and services as well as land and other natural resources, extends conditions of blight, and contributes to concern regarding environmental equity and justice.

- o Minority and low-income communities are disproportionately impacted by targeted hazardous environmental sites, and lack access to health care information regarding associated risks; and
- o Environmental justice provides a framework for addressing Florida's urban crisis, and combined with community revitalization can help resolve urban problems through partnerships between government, developers, and environmentally overburdened communities.

"Brownfield" is defined by the bill as a "land area that contains one or more contaminated sites, that was last used for nonagricultural purposes, is currently undeveloped, abandoned, or underutilized, and is located within a planned urban development area, community redevelopment area, empowerment zone, enterprise zone, or federally designated brownfield pilot project area." Definitions are also provided for "contaminated site," "environmental justice," and "fair treatment."

A Brownfields Community Revitalization Program (program) is created, which will be administered by the Brownfields Community Revitalization Interagency Coordinating Council (Council). The Council will be composed of the Secretary of Community Affairs, the Secretary of Environmental Protection, the Secretary of Health, and the Attorney General, or their respective designees. An ombudsman will be created by the Council to serve as an intermediary among the various parties involved in or affected by brownfields redevelopment. Duties of the Council will include

- o Facilitating site assessment through acquisition of financial and technical assistance from the United States Environmental Protection agency (EPA) and the DEP,
- o Providing technical assistance to local governments, potential developers, lending institutions, and affected communities participating in the program,
- o Coordinating delivery of health care services to low-income individuals living in or adjacent to contaminated sites;
- o Ensuring participation by individuals living adjacent to or near a contaminated site in decisions affecting revitalization of the site, and
- o Promoting the use of pollution prevention measures for new facilities in the community

Contaminated sites would be eligible for program participation if they have existing contamination; if they are not subject to ongoing corrective action or enforcement pursuant to federal authority under specified federal laws, if they are not petroleum sites or dry-cleaning sites, if they are subject to ongoing corrective action or enforcement pursuant to state authority and satisfy additional conditions, including good faith effort by the responsible person; if the parties responsible for the contamination are financially unable to undertake site remediation; if they are located in urban areas with significant deterioration; if they are an integral part of a local development plan, and if the current owners have the ability to execute a remediation plan.

Under the program, the cleanup level for eligible sites shall be a cancer risk level of 1.0×10^{-6} and a hazard index of less than 1. In addition, a notice of intent to initiate cleanup

and an approximate commencement date must be submitted to the DEP; monthly remediation progress reports must be provided to the DEP; pollution prevention measures shall be adopted by existing or new facilities on the site; community participation shall be provided for through development and implementation of a community participation plan; and additional public participation procedures must be provided.

The person responsible for cleanup of a brownfield site must have a contractual right or obligation over the site for completing brownfield site rehabilitation and enter into an agreement with the DEP or an approved local program. The agreement must include posting of a performance bond; a rehabilitation schedule, a commitment to supervision of the site rehabilitation by a professional engineer or geologists meeting specified qualifications; a commitment to conduct rehabilitation in accordance with a comprehensive quality assurance plan, a commitment to conducting rehabilitation consistent with applicable local, state, and federal laws, and the DEP's risk based corrective action rules and guidelines, time frames for review and approval of reports and plans; and other necessary provisions. A pollution prevention plan must also be developed. The responsible person must demonstrate the financial ability to construct a locally approved urban redevelopment or urban infill project. Finally, the responsible person must demonstrate that certain economic benefits will result from rehabilitation of the site.

Any person who has not caused or contributed to contamination of a site and who participates in the program, shall be eligible for liability protection. Upon successful completion of a brownfield site rehabilitation agreement, the eligible person is relieved of further liability for remediation of the site to the state or a third party. Third parties, other than the state, retain the right to pursue an action for damages. There is no limitation placed on the ability or authority to seek contribution from any person who may have liability with respect to the site and who has not received liability protection under the program. Exceptional conditions, under which a person that received such liability protection may be compelled to undertake additional remediation include commission of fraud related to the cleanup by that person, discovery of additional contamination exceeding the standards applied during remediation, failure to achieve the cleanup standards or protection levels established for the program, an unacceptable change in the risk level due to substantial changes in exposure conditions, and occurrence of a new release at the brownfield site. Lenders, trustees, personal representatives, or any other fiduciary are eligible for liability protection under the program if they have not caused or contributed to a release of a contaminant at the site.

Legislative intent is provided that redevelopment activities be viewed as opportunities to significantly improve the utilization, general condition, and appearance of older or unused structures and sites. As a result, different standards than are applied to new development should be used to encourage redevelopment of brownfield sites. State and local agencies are authorized to offer redevelopment incentives, and the bill delineates various examples of financial, regulatory, and technical assistance incentives that may be used to encourage redevelopment of brownfield sites.

As an additional incentive, the bill creates a brownfield site development tax credit. The developer of a brownfield site administered by the program is eligible for a credit against the corporate income tax equal to 10 percent of the cost of demolition, construction, restoration, alteration, and renovation of the brownfield site. If the tax credit is not fully used in a single year due to insufficient tax liability in that year, the unused portion of the

tax credit may be carried forward to subsequent years for a period not to exceed five years.

The Council is required to prepare an annual report to the Legislature, beginning in December 1998. The report shall include the number of sites remediated, the number of sites undergoing remediation, the number and size of brownfield sites or areas that have been designated, the number of sites that have utilized site-specific criteria, information regarding the relationship between the program and the EPA's brownfields program, information regarding brownfield redevelopment incentives that have been offered by local governments, and the number of sites redeveloped with a list of jobs created at those sites.

The Council is directed to establish pilot projects for the rehabilitation of brownfield areas. Criteria are to be established by the Council for the purposes selecting such pilot projects. A total of \$5 million is appropriated from the General Revenue Fund for FY 1997-98 to the Department of Community Affairs for the Council to fund the pilot projects. Of the \$5 million appropriation, \$500,000 must be allocated to areas where the EPA has already designated pilot projects. A total of \$425,000 is appropriated from the Water Quality Assurance Trust Fund and seven positions are authorized for FY 1997-98 for the Department of Community Affairs to carry out its responsibilities under the act.

C APPLICATION OF PRINCIPLES:

1. Less Government

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

The bill creates the Brownfields Community Revitalization Interagency Coordinating Council within the Department of Community Affairs to administer the Brownfields Community Revitalization Program. The DEP would have new responsibilities related to the development of brownfield site rehabilitation agreements and monitoring implementation of those agreements.

(3) any entitlement to a government service or benefit?

No

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

Not applicable

(2) what is the cost of such responsibility at the new level/agency?

Not applicable

(3) how is the new agency accountable to the people governed?

Not applicable.

2. Lower Taxes

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No

- b Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4 Individual Freedom:

- a Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children

- (1) Who evaluates the family's needs?

Not applicable.

- (2) Who makes the decisions?

Not applicable

- (3) Are private alternatives permitted?

Not applicable

- (4) Are families required to participate in a program?

Not applicable.

- (5) Are families penalized for not participating in a program?

Not applicable.

- b. Does the bill directly affect the legal rights and obligations between family members?

No.

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority.

(1) parents and guardians?

Not applicable

(2) service providers?

Not applicable.

(3) government employees/agencies?

Not applicable

D. SECTION-BY-SECTION RESEARCH

Section 1. Provides a short title, "Brownfields Community Revitalization Act."

Section 2: Provides legislative findings.

Section 3: Provides definitions for "brownfield," "contaminated site," "environmental justice," and "fair treatment "

Section 4: Creates the Brownfields Community Revitalization Interagency Coordinating Council.

Section 5: Provides eligibility criteria for the Brownfields Community Revitalization Program.

Section 6. Provides additional eligibility criteria.

Section 7. Provides criteria for persons responsible for brownfield site rehabilitation

Section 8: Provides eligibility criteria for liability protection for persons participating in the Brownfields Community Revitalization Program; specifies circumstances under which a person that has completed rehabilitation of a brownfield site can be required to undertake additional remedial action, and provides liability protection for lenders under specified circumstances.

Section 9: Provides legislative intent regarding incentives for redevelopment of brownfield sites and authorizes financial, regulatory, and technical assistance incentives

Section 10: Creates s 220 185, F.S , authorizing a corporate income tax credit for developers of brownfield sites

Section 11: Amends s. 220 03, F S., providing definitions for "brownfield," "Brownfields Community Revitalization Interagency Coordinating Council," and "contaminated site."

Section 12. Amends s. 220 02, F S , providing legislative intent regarding the order in which either corporate income tax credits or franchise tax credits are applied.

Section 13. Provides legislative finding and intent regarding pilot projects for redevelopment of brownfield areas and directs the Brownfields Community Revitalization Interagency Coordinating Council to establish such pilot projects.

Section 14. Provides for an annual report by the Brownfields Community Revitalization Interagency Coordinating Council.

Section 15. Provides an appropriation of \$5 million from the General Revenue Fund for FY 1997-98 to the Department of Community Affairs for the Brownfields Community Revitalization Interagency Coordinating Council; specifies the use of such funds, and provides an appropriation of \$425,000 from the Water Quality Assurance Trust Fund and seven positions for FY 1997-98 for the Department of Community Affairs to perform its responsibilities under the act.

III FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

	<u>FY 1997-98</u>
<u>Revenues</u>	Indeterminate*
<u>Expenditures:</u>	
General Revenues	\$5,000,000
Water Quality Assurance TF	\$425,000**

* An indeterminate reduction in revenues from the corporate income tax results from the brownfields site development tax credit. Because the number of brownfield sites to be successfully rehabilitated is unknown, this impact cannot be estimated.

**The \$425,000 appropriation from the Water Quality Assurance Trust Fund is accompanied by an authorization for seven positions for the Department of Community Affairs to carry out its responsibilities under the act

2 Recurring Effects:

A recurring obligation results from the seven positions, though the bill only provides an appropriation to support those positions in FY 1997-98. In addition, there will be an indeterminate, recurring reduction in revenues from the corporate income tax resulting from the brownfields site development tax credit. Because the number of brownfield sites to be successfully rehabilitated is unknown, this impact cannot be estimated

3. Long Run Effects Other Than Normal Growth.

None.

4. Total Revenues and Expenditures:

See A 1

B FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE.

1 Non-recurring Effects:

FY 1997-98

Revenues: \$5,000,000

Revenues provided to selected brownfields rehabilitation pilot projects

2 Recurring Effects

None.

3 Long Run Effects Other Than Normal Growth

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1 Direct Private Sector Costs

None.

2 Direct Private Sector Benefits:

Cost associated with rehabilitation of brownfield sites would be reduced under provisions of the bill.

3. Effects on Competition, Private Enterprise and Employment Markets:

The redevelopment of brownfield sites should contribute to economic revitalization, spurring business competition and additional employment opportunities in areas that have been economically depressed. Those receiving the most immediate benefit are communities and businesses participating in the brownfields pilot projects.

D. FISCAL COMMENTS.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY

The bill does not reduce the authority that municipalities or counties have to raise revenues.

C REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES

The bill does not reduce the percentage of state tax shared with counties and municipalities

V COMMENTS:

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES.

VII SIGNATURES.

COMMITTEE ON ENVIRONMENTAL PROTECTION

Prepared by:

Legislative Research Director:

W Ray Scott

Wayne S Kiger

By the Committee on Environmental Protection and
Representatives Constantine, Eggelation, Crow, Muran,
Peadar, Greene and Putnam

A bill to be entitled

1 An act relating to brownfields redevelopment;
2 creating ss. 376.77-376.84, F.S., the
3 Brownfields Redevelopment Act; providing
4 legislative intent; providing definitions;
5 providing duties of a local government that
6 designates a brownfield area for
7 rehabilitation; providing for notice to the
8 Department of Environmental Protection;
9 providing for public hearings; providing
10 requirements for such designation and
11 specifying effect thereof; requiring
12 establishment of an advisory committee;
13 providing for a brownfield site rehabilitation
14 agreement and providing requirements with
15 respect thereto; providing requirements for
16 contractors performing site rehabilitation and
17 for professional engineers and geologists;
18 providing consequences of failure to comply
19 with a rehabilitation agreement; authorizing
20 the department to enter into delegation
21 agreements with local pollution control
22 programs; encouraging state and local
23 governments to offer redevelopment incentives;
24 specifying financial, local, regulatory, and
25 technical assistance incentives that may be
26 included; directing the department to establish
27 by rule criteria for determining the tasks that
28 comprise a rehabilitation program and the level
29 at which tasks and programs may be deemed
30 completed; providing requirements for such
31

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1 criteria; providing that source removal may be
2 required under certain conditions; providing
3 eligibility requirements for participation in
4 brownfield rehabilitation; providing liability
5 protection for persons who successfully
6 complete a rehabilitation agreement; providing
7 requirements for issuance of a "no further
8 action" letter evidencing completion of
9 rehabilitation; authorizing negotiation with
10 the United States Environmental Protection
11 Agency regarding enforcement; providing certain
12 liability protection for state and local
13 governments and for certain nonprofit land
14 conservation corporations; providing conditions
15 under which further rehabilitation may be
16 required; providing liability protection for
17 certain financial institutions; specifying
18 violations and providing penalties; requiring
19 an annual report; providing an effective date.

20
21 Be It Enacted by the Legislature of the State of Florida:

22
23 Section 1. Section 376.77, Florida Statutes, is
24 created to read:

25 376.77 Short title.--Sections 376.77-376.84 may be
26 cited as the "Brownfields Redevelopment Act."

27 Section 2. Section 376.78, Florida Statutes, is
28 created to read:

29 376.78 Legislative intent.--The Legislature finds and
30 declares the following:

31

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1 (1) The reduction of public health and environmental
2 hazards on existing commercial and industrial sites is vital
3 to their use and reuse as sources of employment, housing,
4 recreation, and open-space areas. The productive reuse of
5 land is an important component of sound land-use policy that
6 will help prevent the premature development of prime farmland,
7 open-space areas, and natural areas, and reduce public costs
8 for installing new water, sewer, and highway infrastructure.

9 (2) The abandonment or underuse of brownfield sites
10 also results in the inefficient use of public facilities and
11 services, as well as land and other natural resources; extends
12 conditions of blight in local communities; and contributes to
13 concerns about environmental equity and the distribution of
14 environmental risks across population groups.

15 (3) Incentives should be put in place to encourage
16 responsible persons to voluntarily develop and implement
17 cleanup plans without the use of taxpayer funds or the need
18 for enforcement actions by state and local governments.

19 (4) Environmental and public health hazards cannot be
20 eliminated without clear, predictable remediation standards
21 that provide for the protection of the environment and public
22 health.

23 (5) Site rehabilitation should be based on the actual
24 risk that contamination may pose to the environment and public
25 health, taking into account current and future use and the
26 degree to which contamination may spread and expose the public
27 or the environment to risk.

28 (6) Environmental justice considerations, which
29 include but are not limited to the impact of environmentally
30 hazardous sites on minority and low-income communities and the
31 fair treatment of all people, relating to the redevelopment of

1 hazardous sites should be inherent in meaningful public
2 participation elements of a brownfields redevelopment program.

3 (7) That a commitment exists to consider appropriate
4 pollution prevention measures and to implement those that the
5 person determines are reasonable and cost-effective, taking
6 into account the ultimate use or uses of the brownfield site.
7 Such measures may include improved inventory or production
8 controls and procedures for preventing a loss, spills, and
9 leaks of hazardous waste and materials, and include goals for
10 the reduction of releases of toxic materials.

11 (8) Cooperation among federal, state, and local
12 agencies, local community development organizations, current
13 owners, and prospective purchasers of brownfield sites is
14 required to accomplish timely cleanup activities and the
15 redevelopment or reuse of brownfield sites.

16 Section 3. Section 376.79, Florida Statutes, is
17 created to read:

18 376.79 Definitions.--As used in ss. 376.77-376.84,
19 unless the context otherwise indicates:

20 (1) "Additive effects" means a scientific principle
21 that the toxicity that occurs as a result of exposure is the
22 sum of the toxicities of the individual chemicals to which the
23 individual is exposed.

24 (2) "Antagonistic effects" means a scientific
25 principle that the toxicity that occurs as a result of
26 exposure is less than the sum of the toxicities of the
27 individual chemicals to which the individual is exposed.

28 (3) "Brownfield" means a site or a contiguous area of
29 one or more sites, which have been designated by local
30 government by resolution, that are generally abandoned, idled,
31 or underused industrial and commercial properties where

1 expansion or redevelopment is complicated by actual or
2 perceived environmental contamination. Such areas may
3 include, but are not limited to, portions of community
4 redevelopment areas, enterprise zones, empowerment zones,
5 other such designated economically deprived communities and
6 areas, and United States Environmental Protection Agency
7 designated brownfield pilot projects.

8 (4) "Department" means the Department of Environmental
9 Protection.

10 (5) "Engineering controls" means modifications to a
11 site to reduce or eliminate the potential for exposure to
12 contaminants. Such modifications may include, but are not
13 limited to, physical or hydraulic control measures, capping,
14 point of use treatments, or slurry walls.

15 (6) "Institutional controls" means the restriction on
16 use or access to a site to eliminate or minimize exposure to
17 contaminants. Such restrictions may include, but are not
18 limited to, deed restrictions, use restrictions, or
19 restrictive zoning.

20 (7) "Local pollution control program" means a local
21 pollution control program that has received delegated
22 authority from the Department of Environmental Protection
23 under s. 403.182.

24 (8) "Natural attenuation" means the verifiable
25 reduction of contaminants through natural processes, which may
26 include diffusion, dispersion, absorption, and biodegradation.

27 (9) "Person responsible for brownfield site
28 rehabilitation" means the individual or entity that is
29 designated by the local government in its resolution
30 establishing a brownfield area to enter into the brownfield
31 site rehabilitation agreement with the department.

1 **(b) Whether the proposed area to be designated**
2 **represents a reasonably focused approach and is not overly**
3 **large in geographic coverage.**

4 **(c) Whether the area has interest from the private**
5 **sector to participate in rehabilitation.**

6 **(d) Whether the area contains sites or parts of sites**
7 **suitable for limited recreational open space or cultural or**
8 **historical preservation purposes.**

9 **(3) A local government shall designate a brownfield**
10 **area under the provisions of this act provided that:**

11 **(a) A person who owns or controls a potential**
12 **brownfield site is requesting the designation and has agreed**
13 **to rehabilitate and redevelop the brownfield site.**

14 **(b) The rehabilitation and redevelopment of the**
15 **proposed brownfield site will result in economic productivity**
16 **of the area along with the creation of new jobs which are not**
17 **associated with the implementation of the rehabilitation**
18 **agreement.**

19 **(c) The redevelopment of the proposed brownfield site**
20 **is consistent with the local comprehensive plan and is a**
21 **permissible use under the applicable local land development**
22 **regulations.**

23 **(d) Notice of the proposed rehabilitation of the**
24 **brownfield area has been provided to adjacent property owners**
25 **and residents of the proposed brownfield area and the person**
26 **proposing the brownfield area for designation has afforded to**
27 **these receiving notice the opportunity for comments and**
28 **suggestions about site rehabilitation. Notice pursuant to**
29 **this paragraph must be made in a newspaper of general**
30 **circulation in the area, must be at least 6 inches square in**
31 **size, and must be posted in the affected area.**

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1 (e) The person proposing the area for designation has
2 provided reasonable assurance that he or she has sufficient
3 financial resources to implement and complete the
4 rehabilitation agreement and development plan.

5
6 The designation of a brownfield area and the identification of
7 a person responsible for brownfield site rehabilitation simply
8 entitles the identified person to negotiate a brownfield
9 rehabilitation agreement with the department or approved local
10 government.

11 (4) The local government must at the time of the
12 adoption of the resolution notify the department of the entity
13 that it is designating as the person responsible for
14 brownfield site rehabilitation. If the agency or person who
15 will be responsible for the coordination changes during the
16 approval process specified in this section, the department or
17 the affected local pollution control program must notify the
18 affected local government when the change occurs.

19 (5) Local governments or persons responsible for
20 rehabilitation of brownfield areas must establish an advisory
21 committee for the purpose of improving public participation
22 and receiving public comments on rehabilitation and
23 remediation of the brownfield area, future land use, local
24 employment opportunities, community safety, and environmental
25 justice. Such advisory committee should include residents
26 within or adjacent to the brownfield area, businesses
27 operating within the brownfield area, and others deemed
28 appropriate.

29 (6) The person responsible for brownfield site
30 rehabilitation must enter into a brownfield site
31 rehabilitation agreement with the department or an approved

1 local pollution control program. The brownfield site
2 rehabilitation agreement must include:
3 (a) A brownfield site rehabilitation schedule,
4 including milestones for completion of site rehabilitation
5 tasks, submittal of technical reports, rehabilitation plans,
6 and timeframes for the review of agreements, reports,
7 completed cleanup phases or tasks by the department or
8 approved local pollution control program as agreed upon by the
9 parties to the agreement.

10 (b) A commitment to conduct site rehabilitation
11 activities under the observation of professional engineers or
12 geologists who are registered in accordance with the
13 requirements of chapter 471 or chapter 492, respectively.
14 Submittals provided by the person responsible for brownfield
15 site rehabilitation must be signed and sealed by a
16 professional engineer registered under chapter 471, or a
17 professional geologist registered under chapter 492,
18 certifying that the submittal and associated work comply with
19 the law and rules of the department and those governing the
20 profession. In addition, upon completion of the approved
21 remedial action, the department shall require a professional
22 engineer registered under chapter 471 or a professional
23 geologist registered under chapter 492 to certify that the
24 corrective action was, to the best of his or her knowledge,
25 completed in substantial conformance with the plans and
26 specifications approved by the department.

27 (c) A commitment to conduct site rehabilitation in
28 accordance with an approved comprehensive quality assurance
29 plan under department rules.

30 (d) A commitment to conduct site rehabilitation
31 consistent with federal, state, and local laws consistent with

1 the brownfield site contamination cleanup criteria in s.
2 376.82, including any applicable requirements for risk-based
3 corrective action.

4 (e) A commitment to secure site access for the
5 department or approved local pollution control program to all
6 brownfield sites within the eligible brownfield area for
7 activities associated with site rehabilitation.

8 (f) Other provisions that the person responsible for
9 brownfield site rehabilitation and the department agree upon,
10 that are consistent with ss. 376.77-376.84 and that will
11 improve or enhance the brownfield site rehabilitation process.

12 (g) An agreement to develop within 2 years an
13 appropriate pollution prevention plan as determined by the
14 person responsible for brownfield site rehabilitation. Such
15 plans may include improved inventory or production controls
16 and procedures for preventing a loss, spills, and leaks of
17 hazardous waste and materials, and include goals for the
18 reduction of releases of toxic materials, and shall be
19 available to the public.

20 (7) Failure by the department or approved local
21 pollution control program to adhere to site rehabilitation
22 agreement milestones as described in subsection (6) concerning
23 the review of assessments, reports, completed cleanup phases,
24 or tasks shall constitute approval of the specific assessment,
25 report, phase, or task, and the eligible party may proceed
26 with site rehabilitation. Exceptions to the provisions of
27 subsection (6) and this subsection include requests for "No
28 Further Action," "Monitoring Only Proposals," and feasibility
29 studies which must be approved prior to implementation.

1 Section 5. Section 376.81, Florida Statutes, is
2 created to read: .

3 376.81 Brownfield redevelopment economic
4 incentives.--It is the intent of the Legislature that
5 brownfield redevelopment activities be viewed as opportunities
6 to significantly improve the utilization, general condition,
7 and appearance of these sites and areas. Different standards
8 than those in place for new development, as allowed under
9 current state and local laws, should be used to the fullest
10 extent to encourage the redevelopment of a brownfield site or
11 area. State and local governments are encouraged to offer
12 redevelopment incentives for this purpose, as an ongoing
13 public investment in infrastructure and services, to help
14 eliminate the public health and environmental hazards, and to
15 promote the creation of jobs in these areas. Such incentives
16 may include financial, regulatory, and technical assistance to
17 persons and businesses involved in the redevelopment of the
18 brownfield sites or areas pursuant to this act.

19 (1) Financial incentives and local incentives for
20 redevelopment may include, but not be limited to:

21 (a) Tax increment financing through community
22 redevelopment agencies pursuant to part III of chapter 163.

23 (b) Enterprise zone tax exemptions for businesses
24 pursuant to chapter 196 and chapter 290.

25 (c) Safe neighborhood improvement districts as
26 provided in ss. 163.501-163.523.

27 (d) Waiver, reduction, or limitation by line of
28 business with respect to occupational license taxes pursuant
29 to chapter 205.

30 (e) Tax exemption for historic properties as provided
31 in s. 196.1997.

1 (f) Residential electricity exemption of up to the
2 first 500 kilowatts of use may be exempted from the municipal
3 public service tax pursuant to s. 166.231.

4 (g) Minority business enterprise programs as provided
5 in s. 287.0943.

6 (h) Electric and gas tax exemption as provided in s.
7 166.231(6).

8 (i) Economic development tax abatement as provided in
9 s. 196.1925.

10 (j) Grants, including community development block
11 grants.

12 (k) Pledging of revenues to secure bonds.

13 (l) Low-interest revolving loans and zero-interest
14 loan pools.

15 (m) Local grant programs for facade, storefront,
16 signage, and other business improvements.

17 (n) Governmental coordination of loan programs with
18 lenders, such as microloans, business reserve fund loans,
19 letter of credit enhancements, gap financing, land lease and
20 sublease loans, and private equity.

21 (o) Payment schedules over time for payment of fees,
22 within criteria, and marginal cost pricing.

23 (2) Regulatory incentives may include, but not be
24 limited to:

25 (a) Cities' absorption of developers' concurrency
26 needs.

27 (b) Developers' performance of certain analyses.

28 (c) Exemptions and lessening of state and local review
29 requirements.

30 (d) Water and sewer regulatory incentives.
31

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1 (e) Waiver of transportation impact fees and permit
2 fees.

3 (f) Zoning incentives to reduce review requirements
4 for redevelopment changes in use and occupancy; establishment
5 of code criteria for specific uses; and institution of credits
6 for previous use within the area.

7 (g) Flexibility in parking standards and buffer zone
8 standards.

9 (h) Environmental management through specific code
10 criteria and conditions allowed by current law.

11 (i) Maintenance standards and activities by ordinance
12 and otherwise, and increased security and crime prevention
13 measures available through special assessments.

14 (j) Traffic-calming measures.

15 (k) Historic preservation ordinances, loan programs,
16 and review and permitting procedures.

17 (1) One-stop permitting and streamlined development
18 and permitting process.

19 (3) Technical assistance incentives may include, but
20 not be limited to:

21 (a) Expedited development applications.

22 (b) Formal and informal information on business
23 incentives and financial programs.

24 (c) Site design assistance.

25 (d) Marketing and promotion of projects or areas.

26 Section 6. Section 376.82, Florida Statutes, is
27 created to read:

28 376.82 Brownfield sites and brownfield area
29 contamination cleanup criteria.--

30 (1) It is the intent of the Legislature to protect the
31 health of all people under actual circumstances of exposure.

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1 By January 1, 1998, the secretary of the department shall
2 establish criteria by rule for the purpose of determining, on
3 a site-specific basis, the rehabilitation program tasks that
4 comprise a site rehabilitation program and the level at which
5 a rehabilitation program task and a site rehabilitation
6 program may be deemed completed. In establishing the rule,
7 the department shall incorporate, to the maximum extent
8 feasible, risk-based corrective-action principles to achieve
9 protection of human health and safety and the environment in a
10 cost-effective manner as provided in this subsection. The
11 criteria for determining what constitutes a rehabilitation
12 program task or completion of a site rehabilitation program
13 task or site rehabilitation program must:

14 (a) Consider the current exposure and potential risk
15 of exposure to humans and the environment, including multiple
16 pathways of exposure. The physical, chemical, and biological
17 characteristics of each contaminant must be considered in
18 order to determine the feasibility of risk-based
19 corrective-action assessment.

20 (b) Establish the point of compliance at the source of
21 the contamination. However, the department is authorized to
22 temporarily move the point of compliance to the boundary of
23 the property, or to the edge of the plume when the plume is
24 within the property boundary, while cleanup, including cleanup
25 through natural attenuation processes in conjunction with
26 appropriate monitoring, is proceeding. The department also is
27 authorized, pursuant to criteria provided for in this section,
28 to temporarily extend the point of compliance beyond the
29 property boundary with appropriate monitoring, if such
30 extension is needed to facilitate natural attenuation or to
31 address the current conditions of the plume, provided human

1 protected to the same degree as provided in subparagraphs 1.
2 and 2. Where a state water quality standard is applicable, a
3 deviation may not result in the application of cleanup target
4 levels more stringent than the standard. In determining
5 whether it is appropriate to establish alternative cleanup
6 target levels at a site, the department must consider the
7 effectiveness of source removal that has been completed at the
8 site and the practical likelihood of the use of low-yield or
9 poor quality groundwater, the use of groundwater near marine
10 surface water bodies, the current and projected use of the
11 affected groundwater in the vicinity of the site, or the use
12 of groundwater in the immediate vicinity of the contaminated
13 area, where it has been demonstrated that the groundwater
14 contamination is not migrating away from such localized
15 source, provided human health, public safety, and the
16 environment are adequately protected.

17 (h) Provide for the department to issue a "no further
18 action order" when alternative cleanup target levels
19 established pursuant to subparagraph (g)2, have been achieved
20 or issue a "no further action order" based upon the degree to
21 which the desired cleanup target level is achievable and can
22 be reasonably and cost-effectively implemented within
23 available technologies or engineering and institutional
24 control strategies.

25 (i) Establish appropriate cleanup target levels for
26 soils.

27 1. In establishing soil cleanup target levels for
28 human exposure to each contaminant found in soils from the
29 land surface to 2 feet below land surface, the department
30 shall consider the following, as appropriate: calculations
31 using a lifetime cancer risk level of 1.0E-6; a hazard index

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1 of 1 or less; the best achievable detection limit; or the
2 naturally occurring background concentration. Institutional
3 controls or other methods shall be used to prevent human
4 exposure to contaminated soils more than 2 feet below the land
5 surface. Any removal of such institutional controls shall
6 require such contaminated soils to be remediated.

7 2. Leachability-based soil target levels shall be
8 based on protection of the groundwater cleanup target levels
9 or the alternate cleanup target levels for groundwater
10 established pursuant to this paragraph, as appropriate.
11 Source removal and other cost-effective alternatives that are
12 technologically feasible shall be considered in achieving the
13 leachability soil target levels established by the department.
14 The leachability goals shall not be applicable if the
15 department determines, based upon individual site
16 characteristics, that contaminants will not leach into the
17 groundwater at levels which pose a threat to human health,
18 public safety, and the environment.

19 3. The department may set alternative cleanup target
20 levels based upon an applicant's demonstration, using
21 site-specific modeling and risk assessment studies, that human
22 health, public safety, and the environment are adequately
23 protected.

24 (2) The department shall require source removal, if
25 warranted and cost-effective. Once source removal at a site
26 is complete, the department shall reevaluate the site to
27 determine the degree of active cleanup needed to continue.
28 Further, the department shall determine if the reevaluated
29 site qualifies for monitoring only or if no further action is
30 required to rehabilitate the site. If additional site
31 rehabilitation is necessary to reach no-further-action status,

1 area, thus causing the level of risk to increase beyond the
2 acceptable risk level, may be required by the department or
3 approved local pollution control program to undertake
4 additional remediation measures to assure that human health,
5 public safety, and the environment are protected to levels
6 consistent with this act.

7 (e) That a new release occurs at the brownfield site
8 subsequent to a determination of eligibility for participation
9 in the brownfield program established in this act.

10 (4) ADDITIONAL LIABILITY PROTECTION FOR LENDERS.--

11 (a) The Legislature declares that, in order to achieve
12 the economic redevelopment and site rehabilitation of
13 brownfield sites in accordance with this act, it is imperative
14 to encourage financing of real property transactions involving
15 brownfield site corrective action plans. Accordingly,
16 lenders, including those serving as a trustee, personal
17 representative, or in any other fiduciary capacity, are
18 entitled to the liability protection established in subsection
19 (2) if they have not caused or contributed to a release of a
20 contaminant at the brownfield site.

21 (b) Lenders who hold indicia of ownership at a
22 brownfield site within an eligible brownfield area primarily
23 to protect a security interest or who own a brownfield site
24 within an eligible brownfield area as a result of foreclosure
25 or a deed in lieu of foreclosure of a security interest and
26 who seek to sell, transfer, or otherwise divest the site via
27 sale at the earliest practicable time are not liable for the
28 release or discharge of a contaminant from a brownfield site
29 within an eligible brownfield area; for the failure of the
30 person responsible for brownfield site rehabilitation to
31 comply with the brownfield site rehabilitation agreement; or

1 for future site rehabilitation activities required pursuant to
2 a recoper provision established in subsection (3) where the
3 lender has not divested the borrower of, or otherwise engaged
4 in, decisionmaking control of the site rehabilitation or site
5 operations or undertaken management activities beyond those
6 required to protect its financial interest and when an act or
7 omission of the lender has not otherwise caused or contributed
8 to a release of a contaminant at the brownfield site within an
9 eligible brownfield area.

10 Section 8. Section 376.84, Florida Statutes, is
11 created to read:

12 376.84 Violations; penalties--

13 (1) It is a violation of ss. 376.77-376.83, and it is
14 prohibited for any person to knowingly make any false
15 statement, representation, or certification in any
16 application, record, report, plan, or other document filed or
17 required to be maintained, or to falsify, temper with, or
18 knowingly render inaccurate any monitoring device or method
19 required to be maintained under ss. 376.77-376.83, or by any
20 permit, rule, or order issued under this chapter or chapter
21 403.

22 (2) Any person who willfully commits a violation
23 specified in subsection (1) is guilty of a misdemeanor of the
24 first degree, punishable by a fine of not more than \$10,000 or
25 by 6 months in jail, or both, for each offense. Each day
26 during any portion of which such violation occurs constitutes
27 a separate offense.

28 Section 9. The Department of Environmental Protection
29 shall prepare an annual report to the Speaker of the House of
30 Representatives and the President of the Senate, beginning in
31 December 1998, which shall include, but not be limited to:

1 (1) The number of sites that have been remediated
2 under the provisions of this act.

3 (2) The number of sites that are undergoing
4 remediation.

5 (3) The number and size of brownfield sites or areas
6 that have been designated.

7 (4) The number of petroleum and drycleaning sites that
8 are participating or have participated.

9 (5) The number of sites that have utilized
10 site-specific rehabilitation criteria, including those based
11 on risk-based corrective-action principles.

12 (6) The relationship of the state's program to the
13 United States Environmental Protection Agency brownfields
14 program.

15 (7) Local government incentives that have been offered
16 for brownfields and the locales where offered.

17
18 The report shall be available for public comment 60 days prior
19 to submittal to the Speaker of the House of Representatives
20 and the President of the Senate, and comment received shall be
21 submitted with the report to the Speaker of the House of
22 Representatives and the President of the Senate.

23 Section 10. This act shall take effect July 1, 1997.
24
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**House of Representatives
COMMITTEE INFORMATION RECORD**

**REPORTED TO
CLERK
4/14/97**

Committee on Environmental Protection

Date of Meeting April 4 1997

Time 10:00 am

Place 214 C

CS/HB's 1067 & 955

BILL NO HB 1067

FINAL ACTION: _____ Favorable
 _____ Favorable with _____ Amendments
 Favorable with Committee Substitute
 _____ Unfavorable

_____ Unanimous Favorable

VOTE:

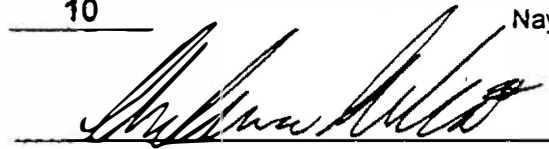
YEA	MEMBER	NAY
<input checked="" type="checkbox"/>	Representative Burroughs	
<input checked="" type="checkbox"/>	Representative Crow	
<input checked="" type="checkbox"/>	Representative Fischer	
<input checked="" type="checkbox"/>	Representative Greene	
	Representative Lacasa	<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>	Representative Murman	
<input checked="" type="checkbox"/>	Representative Peadar	
<input checked="" type="checkbox"/>	Representative Putnam	
	Representative Saunders	<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>	Representative Wiles	
<input checked="" type="checkbox"/>	Representative King	
<input checked="" type="checkbox"/>	Representative Sembler	

YEA	MEMBER	NAY

IF PRESENT, MEMBER WOULD HAVE VOTED

Total Yeas 10 Total Nays 2

YEA	MEMBER	NAY



Chair

APPEARANCE RECORD

The following persons (other than legislators) appeared before the committee during the consideration of this bill

Name	Representing	Address
<u>Doug Jones</u>	<u>DEP</u>	<u>Tallahassee, FL</u>

Note: Please indicate by an "X" any State employee appearing at the request of the Chair
 (FILE WITH CLERK)

STORAGE NAME. h1067s1.ep
DATE: April 8, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
ENVIRONMENTAL PROTECTION
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 1067 and 955

RELATING TO: Brownfield redevelopment

SPONSOR(S). ·Committee on Environmental Protection and Representatives Constantine and Eggelletion

STATUTE(S) AFFECTED: Creates s. 376.77, 376.78, 376.79, 376.80, 376.81, 376 82, 376.83, and 376.84, F S.

COMPANION BILL(S): HB 955(c), CS/CS/SB 1306 and 1934(s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE

- (1) ENVIRONMENTAL PROTECTION YEAS 10 NAYS 2
- (2) BUSINESS DEVELOPMENT AND INTERNATIONAL TRADE (W/D)
- (3) COMMUNITY AFFAIRS (W/D)
- (4) FINANCE AND TAXATION (W/D)
- (5) GENERAL GOVERNMENT APPROPRIATIONS

I. SUMMARY:

This bill creates the Brownfields Redevelopment Act. Provides legislative intent and definitions. Provides for a brownfield program administration process. Provides that a brownfield must be designated by a local government by resolution. Provides notice requirements for a brownfields designation. Requires the person responsible for brownfield site rehabilitation to enter into a brownfield site rehabilitation agreement with the Department of Environmental Protection (DEP) or an approved local environmental program. Specifies what the agreement must include. Provides that contractors must meet certain qualifications. Provides that any professional engineer or geologist providing professional services relating to site rehabilitation must carry professional liability insurance with a specified coverage amount. Provides that certain immunity provisions may be revoked under certain circumstances. Provides for cleanup criteria. Provides eligibility criteria and liability protection under certain circumstances. Provides penalties for violations of this act.

This bill shall take effect July 1, 1997.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Broadly defined, "brownfields" are abandoned, idled, or underused industrial and commercial properties where expansion or redevelopment is complicated by real or perceived environmental contamination. Brownfields are a chronic problem for both urban and rural areas. The U.S. General Accounting Office estimates that there are between 130,000 and 450,000 brownfield sites with a price tag of over \$650 billion to cleanup. Economic loss in jobs, loss of property taxes, and lender fear of financing the redevelopment of brownfields have resulted in support by the U.S. Environmental Protection Agency (EPA) and some twenty-two states with brownfield statutes.

Because of the cost of cleaning up a contaminated site and the potentially serious liability issues, it has been easier and more cost-effective for developers to ignore these sites in favor of developing open greenspace areas, even though many of the sites in a brownfield area may contain little or no actual environmental contamination. Concern over the rapid development of greenspace nationwide has prompted a great deal of interest in the redevelopment of brownfields.

In Florida, there are approximately 1,562 hazardous waste sites (not including sites which may contain contamination from petroleum products and drycleaning solvents) that are currently being managed by the Department of Environmental Protection's enforcement program. Also, there are 893 additional sites in Florida that are listed in the EPA's Environmental Response Compensation and Liability Information System (CERCLIS). The CERCLIS list is used by the EPA to track potentially contaminated sites evaluated under the federal Superfund program.

The EPA has launched the Brownfields Initiative to empower states, communities, and other stakeholders in economic redevelopment to work together in a timely manner to prevent, assess, safely cleanup, and sustainably reuse brownfields. The anticipated benefits of the Brownfields Initiative in the affected communities will be a cleaner environment, new jobs, an enhanced tax base, and a sense of optimism about the future. The EPA activities to help states implement and realize the benefits of the Brownfields Initiative include clarification of liability issues, partnership and outreach, brownfields pilot projects, and job development training. To date, Florida has two pilot projects receiving Brownfield Initiative funds from the EPA; these are located in Clearwater and Miami.

It is the uncertainty concerning the perceived risk or liability to the developer, purchaser, investor, or lender on such a transaction, as much as it is the contamination at the site, that is the main impediment to redevelopment. The threat of future and unlimited liability, property devaluation, reopens in "No Further Action" letters, stringent cleanup standards, and lender liability keeps potentially interested parties from recycling contaminated properties. In Florida, strict liability laws patterned after federal laws compel persons responsible for causing contamination from hazardous substances to be financially responsible for cleaning up the contaminated sites. Generally, these laws operate to hold everyone in the chain of title for a contaminated property jointly and severally responsible for the costs of cleanup and rehabilitation. These proceedings can be costly and drawn out over long periods of time.

Florida does not have a brownfields program. Cleanup of contaminated properties in Florida is completed by property owners and responsible parties pursuant to the DEP's enforcement authority provided in Chapter 403, F.S. A person who buys contaminated property is liable as an owner, even if the contamination resulted from the operations of a prior owner or tenant. The DEP usually requires parties to enter into a Consent Order, although the Department often waives formal enforcement actions and civil penalties on a case by case basis for parties that voluntarily complete a site cleanup.

For sites that pose immediate environmental and public health threats, Florida uses the Water Quality Assurance Trust Fund to respond while legal proceedings are under way to recover costs from responsible parties. This trust fund, however, serves a variety of needs and at the current rate of expenditures on brownfield sites, it will take decades to respond to the current list of potential brownfield sites.

A common feature of various Brownfield programs is the discretion to cleanup to less than prevailing target levels using Risk-Based Corrective Action (RBCA, pronounced Rebecca) principles. The RBCA principles allow use of engineering measures such as impermeable caps and institutional controls such as land use restrictions and deed notices in lieu of cleanups. Also, adjustments to cleanup target levels can be made based on industrial/commercial land use in contrast to residential land use. Target levels for cleanup in other states may be based on cancer risk management levels ranging from one in ten thousand to one in one million.

Based on 1996 legislation, the DEP has adopted RBCA principles for petroleum sites and is developing guidelines for the appropriate use of RBCA principles for non-petroleum sites. However, the contaminants at non-petroleum sites are often more hazardous and have different mobility and degradation rates than petroleum contaminants resulting in sites that are technically more complex and costly to cleanup. State law (s. 376.3071, F.S.) requires petroleum sites be managed at one in one million cancer risk level (10^{-6}) and a hazard index of 1 or less for non-carcinogens. The cleanup guidance criteria for non-petroleum sites are similarly based.

B EFFECT OF PROPOSED CHANGES:

This bill creates the Brownfields Redevelopment Act

Section 1: Section 376.77, F.S., is created to provide that the act shall be cited as the "Brownfields Redevelopment Act."

Section 2: Section 376.78, F.S., is created to provide legislative intent with regard to brownfields. The reduction of public health and environmental hazards on existing commercial and industrial sites is vital to their use and reuse as sources of employment, housing, recreation, and open-space areas. The reuse of industrial land is an important component of sound land-use policy for productive urban purposes that will help prevent the premature development of farmland, open-space areas, and natural areas, and reduce public costs for installing new water, sewer, and highway infrastructure. Further, the abandonment or underuse of brownfield sites results in the inefficient use of public facilities and services, as well as land and other natural resources, extends conditions of blight in local communities, and contributes to concerns about environmental equity and the distribution of environmental risks across population groups.

Incentives should be put in place to encourage responsible persons to voluntarily develop and implement cleanup plans without the use of taxpayer funds or the need for enforcement actions by state and local governments. Site rehabilitation should be based on the actual risk that contamination on a site may pose to the environment and public health, taking into account its current and future use and the degree to which contamination may spread and expose the public or the environment to risk.

This section further provides intent and findings regarding environmental justice considerations and recognition that the environment is an important element of the quality of life in any community, including but not limited to minority and low-income communities. Environmental justice considerations, and the fair treatment of all people, should be inherent in meaningful public participation elements of a brownfields redevelopment program.

Cooperation among federal, state, and local agencies, local community development organizations, current owners, and prospective purchasers of brownfield sites is required to accomplish timely cleanup activities and the redevelopment or reuse of brownfield sites.

Section 3: Section 376.79, F.S., is created to define the following terms: "additive effects", "antagonistic effects", "brownfield", "department", "engineering controls", "institutional controls", "local pollution control program", "natural attenuation", "person responsible for brownfield site rehabilitation", "person", "site rehabilitation", "source removal", and "synergistic effects".

Section 4: Section 376.80, F.S., is created to provide for a brownfield program administration process. A local government with jurisdiction over the brownfield must notify the DEP of its decision to designate a brownfield for rehabilitation. The notification must include a resolution by the local government body to which is attached a map adequate to clearly designate exactly which parcels are to be included in the brownfield or a less detailed map which is accompanied by a legal description of the brownfield. Any property owner within a proposed brownfield may request in writing to have his property removed from the proposed designation and the local government is required to grant the request. The local government shall provide for public hearings and notice of the proposed designation.

If a local government proposes to designate a brownfield that is outside community redevelopment areas, enterprise zones, empowerment zones, or designated brownfield pilot project areas, the local government must conduct at least one public hearing in the area to be designated to provide an opportunity for public input on the size of the area, the objectives for rehabilitation, job opportunities and economic developments anticipated, neighborhood residents' considerations, and other relevant local concerns. This section also provides the specifications for the notice of the public hearing requiring that the notice be at least 6 inches square in size, appear in ethnic newspapers or local community bulletins, be posted in the affected area, and be announced at a scheduled meeting of the local governing body before the actual public hearing.

The local government must consider the following in determining the area to be designated as a brownfield:

- Whether the brownfield warrants economic development and has a reasonable potential for such activities;

-Whether the proposed designation represents a reasonable, focused approach and is not overly large in geographic coverage;

- Whether the site has potential to interest the private sector in participating in rehabilitation; and

-Whether the site is suitable for limited recreational open space, cultural, or historical preservation purposes.

The designation of a brownfield and the identification of a person responsible for brownfield site rehabilitation simply entitles the identified person to negotiate a brownfield rehabilitation agreement with the department or approved local government.

A local government shall designate a brownfield under the provisions of this act provided that:

-A person who owns or controls a potential brownfield site is requesting the designation and has agreed to rehabilitate and redevelop the brownfield site;

- The rehabilitation and redevelopment of the proposed brownfield site will result in economic productivity of the area along with the creation of new jobs which are not associated with the implementation of the rehabilitation agreement;

- The redevelopment of the proposed brownfield site is consistent with the local comprehensive plan and is a permissible use under the applicable local land development regulations;

- Adjacent property owners and residents have been provided with the notice of the proposed rehabilitation and have been given an opportunity to give comments and suggestions about the site rehabilitation. This notice must be made in a newspaper of general circulation in the area, it must be at least 6 inches square in size, and it must also be posted in the affected area,

-An advisory committee has been established in order to improve public participation and receive public comments. It should include residents near the brownfield area, businesses operating in the brownfield area and others deemed appropriate; and

- The person proposing the area for designation has provided reasonable assurance that he or she has sufficient financial resources to implement and complete the rehabilitation agreement and development plan.

At the time of the adoption of the resolution, the local government must notify the DEP of the entity that it is designating as the person responsible for brownfield site rehabilitation. If the agency or person who will be responsible for the coordination changes during the brownfield site rehabilitation process, the DEP or the affected local pollution control program must notify the affected local government when the change occurs.

The person responsible for brownfield site rehabilitation must enter into a brownfield site rehabilitation agreement with DEP or an approved local pollution control program. The agreement must include:

- A brownfield rehabilitation schedule;

- A commitment to conduct site rehabilitation activities under the observation of professional engineers or geologists. Upon completion of the approved remedial action, the department shall require the professional engineer or professional geologist to certify that the corrective action was, to the best of his knowledge, completed in substantial conformance with the plans and specifications approved by the department;
- A commitment to conduct site rehabilitation in accordance with an approved comprehensive quality assurance plan under DEP rules;
- A commitment to conduct site rehabilitation consistent with federal, state, and local laws and consistent with the brownfield site contamination cleanup criteria specified in this bill;
- A commitment to secure site access for the department or approved local pollution control program to all brownfield sites within the eligible brownfield area for activities associated with rehabilitation;
- Other provisions that the person responsible for brownfield site rehabilitation and the DEP agree upon that will improve or enhance the brownfield site rehabilitation process; and
- An agreement to develop within two years an appropriate pollution prevention plan.

Contractors must meet certain qualifications.

Any professional engineer or geologist providing professional services relating to site rehabilitation program tasks must carry professional liability insurance with a coverage limit of at least \$1 million.

During the cleanup process, an eligible party may proceed from one phase or task of cleanup to the next prior to obtaining approval of the technical document for the next phase or task of cleanup. However, the eligible party will be required to complete any additional tasks identified by the department or local pollution control program found during the review.

If the person responsible for brownfield site rehabilitation fails to comply with the brownfield site rehabilitation agreement, DEP shall allow 90 days for that person to return to compliance to return to compliance with the provision at issue or to renegotiate a modification to the agreement with the DEP for good cause shown. If imminent hazard exists, the 90 grace period shall not apply. If the project is not returned to compliance with the agreement and a modification cannot be negotiated, the immunity provisions of s. 376.83, F.S. are revoked.

Any agreement to extend the completion date may not be for more than 180 days, one additional extension, not to exceed 180 days, may be granted if deemed appropriate by the department or the local pollution control program.

The DEP is authorized and encouraged to enter into delegation agreements with local pollution control programs

Failure by the department or local pollution control program to adhere to site rehabilitation milestones shall constitute approval of the specific task. Exceptions include requests for "no further action," "monitoring only proposals," and feasibility studies.

Section 5: Section 376.81, F.S., provides brownfield redevelopment economic incentives. State and local governments are encouraged to offer redevelopment incentives to encourage the redevelopment of brownfield sites, and the bill delineates various examples of financial, regulatory, and technical assistance incentives that may be used to encourage redevelopment of brownfield sites.

Section 6: Creates section 376.82, F.S., directing the DEP to establish by rule for the purpose of determining, on a site-specific basis, the rehabilitation program tasks that comprise a site rehabilitation program and the level at which a rehabilitation program may be completed. The criteria for determining what constitutes a rehabilitation program task or completion of a site rehabilitation program task or site rehabilitation program must:

- Consider the current exposure and potential risk of exposure to humans and the environment, including multiple pathways of exposure.
- Establish the point of compliance at the source of the contamination.
- Ensure that the site-specific cleanup goal is that all contaminated brownfield sites and brownfield areas ultimately achieve the applicable cleanup target levels.
- Allow brownfield site and brownfield area rehabilitation programs to include the use of institutional or engineering controls to eliminate or control the potential exposure to contaminants to humans or the environment. Use of such controls must be preapproved by the department.
- Consider the synergistic, antagonistic, and additive effects of contaminants when the scientific data becomes available.
- Take into consideration individual site characteristics.
- Apply state water quality standards.
- Provide for the department to issue a "no further action order" when alternative cleanup target levels have been achieved or based upon the degree to which the desired cleanup target level is achievable and can be reasonably and cost effectively implemented.
- Establish appropriate cleanup target levels for soils.

The department shall require source removal, if warranted and cost effective. Once source removal at a site is complete, the department shall reevaluate the site to determine the degree of active cleanup needed to continue. The department shall determine if the reevaluated site qualifies for monitoring only or if "no further action" is required to rehabilitate the site.

Section 7: Creates section 376.83, F.S., to provide eligibility criteria and liability protection.

Eligibility criteria will be granted to:

- Any person who has not caused or contributed to the contamination of a brownfield site after July 1, 1997; and
- Persons who have not caused or contributed to the contamination of a brownfield site after July 1, 1997, and who, prior to the department's approval of a brownfield site rehabilitation agreement, are subject to ongoing corrective action or enforcement under state authority, including those persons subject to a pending consent orders with the state if:
 - * The proposed brownfield site is currently idle or underutilized as a result of contamination, and participation will immediately, after cleanup or sooner, result in increased economic productivity, including the creation of new jobs, whether permanent or part time, which are not associated with implementation of the brownfield site corrective action plan; and
 - * The person is complying in good faith with the terms of an existing consent order or department-approved corrective action plan, or responding in good faith to an enforcement action.

Liability protection criteria will be granted to:

- Any person, including his or her successors and assigns, who executes and implements to successful completion a brownfield site rehabilitation agreement, shall be relieved of further liability for remediation of the site to the state and to third parties.

The liability protection shall not:

- be construed as a limitation on the right of a third party other than the state to pursue an action for damages to property or person.
- affect the ability or authority to seek contribution from any person who may have liability with respect to the site and who did not receive cleanup liability protection.

Liability protection will become effective upon execution of a brownfield site rehabilitation agreement and will remain effective, provided the person responsible for brownfield site rehabilitation complies with the terms of the agreement.

Completion of the performance of the remediation obligations at the brownfield site will be evidenced by a site rehabilitation completion letter or a "no further action" letter issued by the department.

Reopener criteria:

- Upon completion of site rehabilitation in compliance with the act no additional site rehabilitation shall be required unless it is demonstrated that: fraud was committed; new information confirms the existence of an area of previously unknown contamination that poses an imminent threat to human health and the environment; the remedial efforts failed to achieve the site rehabilitation goals; the level of risk is increased beyond the acceptable risk established; or a new release occurs.

Additional liability for lenders is also provided in this section.

Section 8: Creates section 376.84, F.S., establishing violations and penalties. Any person who willingly commits a violation is guilty of a misdemeanor of the first degree, punishable by a fine of not more than \$10,000 or six months in jail, or both, for each offense.

Section 9: The DEP is required to prepare an annual report to the Legislature, beginning in December 1998. The report shall include the number of sites remediated, the number of sites undergoing remediation, the number and size of brownfield sites or areas that have been designated, the number of sites that have utilized site-specific criteria, information regarding the relationship between the program and the EPA's brownfields program, and information regarding brownfield redevelopment incentives that have been offered by local governments.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

Rule authority increases for the department as it relates to developing RBCA tables and guidelines for application to new forms of contaminants.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Local governments will be required to designate by resolution brownfield sites or areas.

(3) any entitlement to a government service or benefit?

No

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No

b. Does the bill require or authorize an increase in any fees?

No

c. Does the bill reduce total taxes, both rates and revenues?

No

d. Does the bill reduce total fees, both rates and revenues?

No

e. Does the bill authorize any fee or tax increase by any local government?

No

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Yes

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No

5 Family Empowerment.

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

N/A

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

- (1) parents and guardians?

N/A

- (2) service providers?

N/A

(3) government employees/agencies?

N/A

D. SECTION-BY-SECTION RESEARCH:

See "Effect of Proposed Changes"

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS.

1. Non-recurring Effects:

Some administrative cost will occur for the department as it relates to the processing of brownfield designations and negotiations related to site rehabilitation plans.

2. Recurring Effects:

The department will have additional workloads for ongoing review and monitoring of the implementation of brownfield site agreements and utilization of RBCA cleanups. The amount is indeterminate and will be directly related to the number and size of brownfields.

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

See A.1. and A.2.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

Local governments will absorb portions of the costs associated with designation of brownfields, these include. noticing requirements, participation in negotiating site rehabilitation agreements, and additional administrative costs associated with adopting a resolution.

2. Recurring Effects:

None

3. Long Run Effects Other Than Normal Growth:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR.

1. Direct Private Sector Costs:

Persons choosing to seek the brownfield designation would incur costs associated with: noticing provisions contained in the bill; and the cleanup of contaminated sites.

2. Direct Private Sector Benefits:

Cost associated with rehabilitation of brownfield sites would be reduced under provisions of the bill.

3. Effects on Competition, Private Enterprise and Employment Markets.

The redevelopment of brownfield sites should contribute to economic revitalization, spurring business competition and additional employment opportunities in areas that have been economically depressed.

D. FISCAL COMMENTS:

Direct costs for any parties participating in this program are indeterminate due to their relationship to the size of the brownfield and the complexity of any cleanups.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY.

The bill does not reduce the authority that municipalities or counties have to raise revenues.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the percentage of state tax shared with counties and municipalities

V COMMENTS:

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

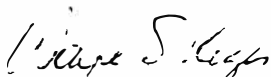
Ten amendments were adopted. Specifically they: provide legislative intent related to environmental justice; combine the definitions of brownfield sites and brownfield areas; direct that persons responsible for brownfield site rehabilitation shall adopt an appropriate pollution prevention plan within two years; provide that the designation of a brownfield only permits the person responsible to seek an agreement with the department or approved local program; provide that site rehabilitation completion deadline may be automatically extended for a period of 180 days and that an additional 180 day extension may be granted by the department; require local governments and persons responsible for site rehabilitations to form an advisory group for the purpose of improving public participation, replace the definitions of additive effects, antagonistic effects and synergistic effects; and, provide that the revocation of immunity is statutorially automatic.

VII. SIGNATURES:


COMMITTEE ON ENVIRONMENTAL PROTECTION:

Prepared by:

Legislative Research Director:



Wayne S. Kiger



Wayne S. Kiger

1 A bill to be entitled
2 An act relating to brownfields redevelopment;
3 creating ss. 376.77-376.84, F.S., the
4 Brownfields Redevelopment Act; providing
5 legislative intent; providing definitions;
6 providing duties of a local government that
7 designates a brownfield area for
8 rehabilitation; providing for notice to the
9 Department of Environmental Protection;
10 providing for public hearings; providing
11 requirements for such designation and
12 specifying effect thereof; requiring
13 establishment of an advisory committee;
14 providing for a brownfield site rehabilitation
15 agreement and providing requirements with
16 respect thereto; providing requirements for
17 contractors performing site rehabilitation and
18 for professional engineers and geologists;
19 providing consequences of failure to comply
20 with a rehabilitation agreement; authorizing
21 the department to enter into delegation
22 agreements with local pollution control
23 programs; encouraging state and local
24 governments to offer redevelopment incentives;
25 specifying financial, local, regulatory, and
26 technical assistance incentives that may be
27 included; directing the department to establish
28 by rule criteria for determining the tasks that
29 comprise a rehabilitation program and the level
30 at which tasks and programs may be deemed
31 completed; providing requirements for such

1 criteria; providing that source removal may be
 2 required under certain conditions; providing
 3 eligibility requirements for participation in
 4 brownfield rehabilitation; providing liability
 5 protection for persons who successfully
 6 complete a rehabilitation agreement; providing
 7 requirements for issuance of a "no further
 8 action" letter evidencing completion of
 9 rehabilitation; authorizing negotiation with
 10 the United States Environmental Protection
 11 Agency regarding enforcement; providing certain
 12 liability protection for state and local
 13 governments and for certain nonprofit land
 14 conservation corporations; providing conditions
 15 under which further rehabilitation may be
 16 required; providing liability protection for
 17 certain financial institutions; specifying
 18 violations and providing penalties; requiring
 19 an annual report; providing an effective date.
 20

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

22
 23 Section 1. Section 376.77, Florida Statutes, is
 24 created to read:

25 376.77 Short title.--Sections 376.77-376.84 may be
 26 cited as the "Brownfields Redevelopment Act."

27 Section 2. Section 376.78, Florida Statutes, is
 28 created to read:

29 376.78 Legislative intent.--The Legislature finds and
 30 declares the following:
 31

1 (1) The reduction of public health and environmental
2 hazards on existing commercial and industrial sites is vital
3 to their use and reuse as sources of employment, housing,
4 recreation, and open-space areas. The productive reuse of
5 land is an important component of sound land-use policy that
6 will help prevent the premature development of prime farmland,
7 open-space areas, and natural areas, and reduce public costs
8 for installing new water, sewer, and highway infrastructure.

9 (2) The abandonment or underuse of brownfield sites
10 also results in the inefficient use of public facilities and
11 services, as well as land and other natural resources; extends
12 conditions of blight in local communities; and contributes to
13 concerns about environmental equity and the distribution of
14 environmental risks across population groups.

15 (3) Incentives should be put in place to encourage
16 responsible persons to voluntarily develop and implement
17 cleanup plans without the use of taxpayer funds or the need
18 for enforcement actions by state and local governments.

19 (4) Environmental and public health hazards cannot be
20 eliminated without clear, predictable remediation standards
21 that provide for the protection of the environment and public
22 health.

23 (5) Site rehabilitation should be based on the actual
24 risk that contamination may pose to the environment and public
25 health, taking into account current and future use and the
26 degree to which contamination may spread and expose the public
27 or the environment to risk.

28 (6) Environmental justice considerations, which
29 include but are not limited to the impact of environmentally
30 hazardous sites on minority and low-income communities and the
31 fair treatment of all people, relating to the redevelopment of

1 hazardous sites should be inherent in meaningful public
2 participation elements of a brownfields redevelopment program.

3 (7) That a commitment exists to consider appropriate
4 pollution prevention measures and to implement those that the
5 person determines are reasonable and cost-effective, taking
6 into account the ultimate use or uses of the brownfield site.
7 Such measures may include improved inventory or production
8 controls and procedures for preventing a loss, spills, and
9 leaks of hazardous waste and materials, and include goals for
10 the reduction of releases of toxic materials.

11 (8) Cooperation among federal, state, and local
12 agencies, local community development organizations, current
13 owners, and prospective purchasers of brownfield sites is
14 required to accomplish timely cleanup activities and the
15 redevelopment or reuse of brownfield sites.

16 Section 3. Section 376.79, Florida Statutes, is
17 created to read:

18 376.79 Definitions.--As used in ss. 376.77-376.84,
19 unless the context otherwise indicates:

20 (1) "Additive effects" means a scientific principle
21 that the toxicity that occurs as a result of exposure is the
22 sum of the toxicities of the individual chemicals to which the
23 individual is exposed.

24 (2) "Antagonistic effects" means a scientific
25 principle that the toxicity that occurs as a result of
26 exposure is less than the sum of the toxicities of the
27 individual chemicals to which the individual is exposed.

28 (3) "Brownfield" means a site or a contiguous area of
29 one or more sites, which have been designated by local
30 government by resolution, that are generally abandoned, idled,
31 or underused industrial and commercial properties where

1 expansion or redevelopment is complicated by actual or
2 perceived environmental contamination. Such areas may
3 include, but are not limited to, portions of community
4 redevelopment areas, enterprise zones, empowerment zones,
5 other such designated economically deprived communities and
6 areas, and United States Environmental Protection Agency
7 designated brownfield pilot projects.

8 (4) "Department" means the Department of Environmental
9 Protection.

10 (5) "Engineering controls" means modifications to a
11 site to reduce or eliminate the potential for exposure to
12 contaminants. Such modifications may include, but are not
13 limited to, physical or hydraulic control measures, capping,
14 point of use treatments, or slurry walls.

15 (6) "Institutional controls" means the restriction on
16 use or access to a site to eliminate or minimize exposure to
17 contaminants. Such restrictions may include, but are not
18 limited to, deed restrictions, use restrictions, or
19 restrictive zoning.

20 (7) "Local pollution control program" means a local
21 pollution control program that has received delegated
22 authority from the Department of Environmental Protection
23 under s. 403.182.

24 (8) "Natural attenuation" means the verifiable
25 reduction of contaminants through natural processes, which may
26 include diffusion, dispersion, absorption, and biodegradation.

27 (9) "Person responsible for brownfield site
28 rehabilitation" means the individual or entity that is
29 designated by the local government in its resolution
30 establishing a brownfield area to enter into the brownfield
31 site rehabilitation agreement with the department.

1 (10) "Person" means any individual, partner, joint
2 venture, or corporation; any group of the foregoing, organized
3 or united for a business purpose; or any governmental entity.

4 (11) "Site rehabilitation" means the assessment of
5 site contamination and the remediation activities that reduce
6 the levels of contaminants at a site through accepted
7 treatment methods to meet the cleanup target levels
8 established for that site.

9 (12) "Source removal" means the removal of free
10 product or contaminants from soil that has been contaminated
11 to the extent that leaching to groundwater has or is
12 occurring.

13 (13) "Synergistic effects" means a scientific
14 principle that the toxicity that occurs as a result of
15 exposure is more than the sum of the toxicities of the
16 individual chemicals to which the individual is exposed.

17 Section 4. Section 376.80, Florida Statutes, is
18 created to read:

19 376.80 Brownfield program administration process.--

20 (1) A local government with jurisdiction over a
21 brownfield area must notify the department of its decision to
22 designate a brownfield area for rehabilitation for the
23 purposes of ss. 376.77-376.84. The notification must include
24 a resolution by the local government body to which is attached
25 a map adequate to clearly delineate exactly which parcels are
26 to be included in the brownfield area or, alternatively, a
27 less detailed map accompanied by a detailed legal description
28 of the brownfield area. If a property owner within the area
29 proposed for designation by the local government requests in
30 writing to have his or her property removed from the proposed
31 designation, the local government shall grant the request. For

1 municipalities, the governing body shall adopt the resolution
2 in accordance with the procedures outlined in s. 166.041,
3 except that the notice for the public hearings on the proposed
4 resolution must be in the form established in s.
5 166.041(3)(c)2. For counties, the governing body shall adopt
6 the resolution in accordance with the procedures outlined in
7 s. 125.66, except that the notice for the public hearings on
8 the proposed resolution shall be in the form established in s.
9 125.66(4)(b)2.

10 (2) If a local government proposes to designate a
11 brownfield area that is outside community redevelopment areas,
12 enterprise zones, empowerment zones, or brownfield pilot
13 project areas designated by the United States Environmental
14 Protection Agency, the local government must conduct at least
15 one public hearing in the area to be designated to provide an
16 opportunity for public input on the size of the area, the
17 objectives for rehabilitation, job opportunities and economic
18 developments anticipated, neighborhood residents'
19 considerations, and other local concerns. Notice of the
20 public hearing must be made in a newspaper of general
21 circulation in the area and such notice must be at least 6
22 inches square in size, must be in ethnic newspapers or local
23 community bulletins, must be posted in the affected area, and
24 must be announced at a scheduled meeting of the local
25 governing body prior to the actual public hearing. In
26 determining the areas to be designated, the local government
27 must consider:

28 (a) Whether the brownfield area has a reasonable
29 potential for economic development activities.
30
31

1 (b) Whether the proposed area to be designated
2 represents a reasonably focused approach and is not overly
3 large in geographic coverage.

4 (c) Whether the area has interest from the private
5 sector to participate in rehabilitation.

6 (d) Whether the area contains sites or parts of sites
7 suitable for limited recreational open space or cultural or
8 historical preservation purposes.

9 (3) A local government shall designate a brownfield
10 area under the provisions of this act provided that:

11 (a) A person who owns or controls a potential
12 brownfield site is requesting the designation and has agreed
13 to rehabilitate and redevelop the brownfield site.

14 (b) The rehabilitation and redevelopment of the
15 proposed brownfield site will result in economic productivity
16 of the area along with the creation of new jobs which are not
17 associated with the implementation of the rehabilitation
18 agreement.

19 (c) The redevelopment of the proposed brownfield site
20 is consistent with the local comprehensive plan and is a
21 permissible use under the applicable local land development
22 regulations.

23 (d) Notice of the proposed rehabilitation of the
24 brownfield area has been provided to adjacent property owners
25 and residents of the proposed brownfield area and the person
26 proposing the brownfield area for designation has afforded to
27 those receiving notice the opportunity for comments and
28 suggestions about site rehabilitation. Notice pursuant to
29 this paragraph must be made in a newspaper of general
30 circulation in the area, must be at least 6 inches square in
31 size, and must be posted in the affected area.

1 (e) The person proposing the area for designation has
2 provided reasonable assurance that he or she has sufficient
3 financial resources to implement and complete the
4 rehabilitation agreement and development plan.

5
6 The designation of a brownfield area and the identification of
7 a person responsible for brownfield site rehabilitation simply
8 entitles the identified person to negotiate a brownfield
9 rehabilitation agreement with the department or approved local
10 government.

11 (4) The local government must at the time of the
12 adoption of the resolution notify the department of the entity
13 that it is designating as the person responsible for
14 brownfield site rehabilitation. If the agency or person who
15 will be responsible for the coordination changes during the
16 approval process specified in this section, the department or
17 the affected local pollution control program must notify the
18 affected local government when the change occurs.

19 (5) Local governments or persons responsible for
20 rehabilitation of brownfield areas must establish an advisory
21 committee for the purpose of improving public participation
22 and receiving public comments on rehabilitation and
23 remediation of the brownfield area, future land use, local
24 employment opportunities, community safety, and environmental
25 justice. Such advisory committee should include residents
26 within or adjacent to the brownfield area, businesses
27 operating within the brownfield area, and others deemed
28 appropriate.

29 (6) The person responsible for brownfield site
30 rehabilitation must enter into a brownfield site
31 rehabilitation agreement with the department or an approved

1 local pollution control program. The brownfield site
2 rehabilitation agreement must include:

3 (a) A brownfield site rehabilitation schedule,
4 including milestones for completion of site rehabilitation
5 tasks, submittal of technical reports, rehabilitation plans,
6 and timeframes for the review of assessments, reports,
7 completed cleanup phases or tasks by the department or
8 approved local pollution control program as agreed upon by the
9 parties to the agreement.

10 (b) A commitment to conduct site rehabilitation
11 activities under the observation of professional engineers or
12 geologists who are registered in accordance with the
13 requirements of chapter 471 or chapter 492, respectively.
14 Submittals provided by the person responsible for brownfield
15 site rehabilitation must be signed and sealed by a
16 professional engineer registered under chapter 471, or a
17 professional geologist registered under chapter 492,
18 certifying that the submittal and associated work comply with
19 the law and rules of the department and those governing the
20 profession. In addition, upon completion of the approved
21 remedial action, the department shall require a professional
22 engineer registered under chapter 471 or a professional
23 geologist registered under chapter 492 to certify that the
24 corrective action was, to the best of his or her knowledge,
25 completed in substantial conformance with the plans and
26 specifications approved by the department.

27 (c) A commitment to conduct site rehabilitation in
28 accordance with an approved comprehensive quality assurance
29 plan under department rules.

30 (d) A commitment to conduct site rehabilitation
31 consistent with federal, state, and local laws consistent with

1 the brownfield site contamination cleanup criteria in s.
2 376.82, including any applicable requirements for risk-based
3 corrective action.

4 (e) A commitment to secure site access for the
5 department or approved local pollution control program to all
6 brownfield sites within the eligible brownfield area for
7 activities associated with site rehabilitation.

8 (f) Other provisions that the person responsible for
9 brownfield site rehabilitation and the department agree upon,
10 that are consistent with ss. 376.77-376.84 and that will
11 improve or enhance the brownfield site rehabilitation process.

12 (g) An agreement to develop within 2 years an
13 appropriate pollution prevention plan as determined by the
14 person responsible for brownfield site rehabilitation. Such
15 plans may include improved inventory or production controls
16 and procedures for preventing a loss, spills, and leaks of
17 hazardous waste and materials, and include goals for the
18 reduction of releases of toxic materials, and shall be
19 available to the public.

20 (7) Failure by the department or approved local
21 pollution control program to adhere to site rehabilitation
22 agreement milestones as described in subsection (6) concerning
23 the review of assessments, reports, completed cleanup phases,
24 or tasks shall constitute approval of the specific assessment,
25 report, phase, or task, and the eligible party may proceed
26 with site rehabilitation. Exceptions to the provisions of
27 subsection (6) and this subsection include requests for "No
28 Further Action," "Monitoring Only Proposals," and feasibility
29 studies which must be approved prior to implementation.

1 (8) Any contractor performing site rehabilitation
2 program tasks must demonstrate to the department that the
3 contractor:

4 (a) Meets all certification and license requirements
5 imposed by law.

6 (b) Has obtained approval for the comprehensive
7 quality-assurance plan prepared under department rules.

8 (9) The contractor must certify to the department that
9 the contractor:

10 (a) Complies with applicable OSHA regulations.

11 (b) Maintains workers' compensation insurance for all
12 employees as required by the Florida Workers' Compensation
13 Law.

14 (c) Maintains comprehensive general liability and
15 comprehensive automobile liability insurance with minimum
16 limits of at least \$1 million per occurrence and \$1 million
17 annual aggregate, sufficient to protect it from claims for
18 damage for personal injury, including accidental death, as
19 well as claims for property damage which may arise from
20 performance of work under this program, designating the state
21 as an additional insured party.

22 (d) Maintains professional liability insurance of at
23 least \$1 million per occurrence and \$1 million annual
24 aggregate.

25 (e) Has the capacity to perform or directly supervise
26 the majority of the work at a site in accordance with s.
27 489.113(9).

28 (10) Any professional engineer or geologist providing
29 professional services relating to site rehabilitation program
30 tasks must carry professional liability insurance with a
31 coverage limit of at least \$1 million.

1 (11) During the cleanup process, an eligible party may
2 proceed from one phase or task of cleanup to the next prior to
3 obtaining approval of the technical document for the next
4 phase or task of cleanup. However, the eligible party will be
5 required to complete any additional tasks identified by the
6 department or local pollution control program found during the
7 reviews provided for by subsection (6).

8 (12) If the person responsible for brownfield site
9 rehabilitation fails to comply with the brownfield site
10 rehabilitation agreement, the department or approved local
11 pollution control program shall allow 90 days for such person
12 to return to compliance with the provision at issue or to
13 negotiate a modification to the brownfield site rehabilitation
14 agreement for good cause shown. If an imminent hazard exists,
15 the 90-day grace period shall not apply. If the project is not
16 returned to compliance with the brownfield site rehabilitation
17 agreement and a modification cannot be negotiated, the
18 immunity provisions of s. 376.83 are revoked.

19 (13) Any agreement to extend the completion date of a
20 site rehabilitation agreement shall not be for a term longer
21 than 180 days. One additional extension, not to exceed 180
22 days, may be granted if deemed appropriate by the department
23 or the local pollution control program.

24 (14) The department is specifically authorized and
25 encouraged to enter into delegation agreements with local
26 pollution control programs approved under s. 403.182 to
27 administer the brownfield program within their jurisdiction,
28 thereby maximizing the integration of this process with the
29 other local development processes needed to facilitate
30 redevelopment of a brownfield area.

31

1 Section 5. Section 376.81, Florida Statutes, is
2 created to read:

3 376.81 Brownfield redevelopment economic
4 incentives.--It is the intent of the Legislature that
5 brownfield redevelopment activities be viewed as opportunities
6 to significantly improve the utilization, general condition,
7 and appearance of these sites and areas. Different standards
8 than those in place for new development, as allowed under
9 current state and local laws, should be used to the fullest
10 extent to encourage the redevelopment of a brownfield site or
11 area. State and local governments are encouraged to offer
12 redevelopment incentives for this purpose, as an ongoing
13 public investment in infrastructure and services, to help
14 eliminate the public health and environmental hazards, and to
15 promote the creation of jobs in these areas. Such incentives
16 may include financial, regulatory, and technical assistance to
17 persons and businesses involved in the redevelopment of the
18 brownfield sites or areas pursuant to this act.

19 (1) Financial incentives and local incentives for
20 redevelopment may include, but not be limited to:

21 (a) Tax increment financing through community
22 redevelopment agencies pursuant to part III of chapter 163.

23 (b) Enterprise zone tax exemptions for businesses
24 pursuant to chapter 196 and chapter 290.

25 (c) Safe neighborhood improvement districts as
26 provided in ss. 163.501-163.523.

27 (d) Waiver, reduction, or limitation by line of
28 business with respect to occupational license taxes pursuant
29 to chapter 205.

30 (e) Tax exemption for historic properties as provided
31 in s. 196.1997.

1 (f) Residential electricity exemption of up to the
2 first 500 kilowatts of use may be exempted from the municipal
3 public service tax pursuant to s. 166.231.

4 (g) Minority business enterprise programs as provided
5 in s. 287.0943.

6 (h) Electric and gas tax exemption as provided in s.
7 166.231(6).

8 (i) Economic development tax abatement as provided in
9 s. 196.1995.

10 (j) Grants, including community development block
11 grants.

12 (k) Pledging of revenues to secure bonds.

13 (l) Low-interest revolving loans and zero-interest
14 loan pools.

15 (m) Local grant programs for facade, storefront,
16 signage, and other business improvements.

17 (n) Governmental coordination of loan programs with
18 lenders, such as microloans, business reserve fund loans,
19 letter of credit enhancements, gap financing, land lease and
20 sublease loans, and private equity.

21 (o) Payment schedules over time for payment of fees,
22 within criteria, and marginal cost pricing.

23 (2) Regulatory incentives may include, but not be
24 limited to:

25 (a) Cities' absorption of developers' concurrency
26 needs.

27 (b) Developers' performance of certain analyses.

28 (c) Exemptions and lessening of state and local review
29 requirements.

30 (d) Water and sewer regulatory incentives.

31

1 (e) Waiver of transportation impact fees and permit
2 fees.

3 (f) Zoning incentives to reduce review requirements
4 for redevelopment changes in use and occupancy; establishment
5 of code criteria for specific uses; and institution of credits
6 for previous use within the area.

7 (g) Flexibility in parking standards and buffer zone
8 standards.

9 (h) Environmental management through specific code
10 criteria and conditions allowed by current law.

11 (i) Maintenance standards and activities by ordinance
12 and otherwise, and increased security and crime prevention
13 measures available through special assessments.

14 (j) Traffic-calming measures.

15 (k) Historic preservation ordinances, loan programs,
16 and review and permitting procedures.

17 (l) One-stop permitting and streamlined development
18 and permitting process.

19 (3) Technical assistance incentives may include, but
20 not be limited to:

21 (a) Expedited development applications.

22 (b) Formal and informal information on business
23 incentives and financial programs.

24 (c) Site design assistance.

25 (d) Marketing and promotion of projects or areas.

26 Section 6. Section 376.82, Florida Statutes, is
27 created to read:

28 376.82 Brownfield sites and brownfield area
29 contamination cleanup criteria.--

30 (1) It is the intent of the Legislature to protect the
31 health of all people under actual circumstances of exposure.

1 By January 1, 1998, the secretary of the department shall
2 establish criteria by rule for the purpose of determining, on
3 a site-specific basis, the rehabilitation program tasks that
4 comprise a site rehabilitation program and the level at which
5 a rehabilitation program task and a site rehabilitation
6 program may be deemed completed. In establishing the rule,
7 the department shall incorporate, to the maximum extent
8 feasible, risk-based corrective-action principles to achieve
9 protection of human health and safety and the environment in a
10 cost-effective manner as provided in this subsection. The
11 criteria for determining what constitutes a rehabilitation
12 program task or completion of a site rehabilitation program
13 task or site rehabilitation program must:

14 (a) Consider the current exposure and potential risk
15 of exposure to humans and the environment, including multiple
16 pathways of exposure. The physical, chemical, and biological
17 characteristics of each contaminant must be considered in
18 order to determine the feasibility of risk-based
19 corrective-action assessment.

20 (b) Establish the point of compliance at the source of
21 the contamination. However, the department is authorized to
22 temporarily move the point of compliance to the boundary of
23 the property, or to the edge of the plume when the plume is
24 within the property boundary, while cleanup, including cleanup
25 through natural attenuation processes in conjunction with
26 appropriate monitoring, is proceeding. The department also is
27 authorized, pursuant to criteria provided for in this section,
28 to temporarily extend the point of compliance beyond the
29 property boundary with appropriate monitoring, if such
30 extension is needed to facilitate natural attenuation or to
31 address the current conditions of the plume, provided human

1 health, public safety, and the environment are adequately
2 protected. Temporary extension of the point of compliance
3 beyond the property boundary, as provided in this paragraph,
4 shall include notice to local governments and owners of any
5 property into which the point of compliance is allowed to
6 extend.

7 (c) Ensure that the site-specific cleanup goal is that
8 all contaminated brownfield sites and brownfield areas
9 ultimately achieve the applicable cleanup target levels
10 provided in this section. However, the department is
11 authorized to allow concentrations of contaminants to
12 temporarily exceed the applicable cleanup target levels while
13 cleanup, including cleanup through natural attenuation
14 processes in conjunction with appropriate monitoring, is
15 proceeding, provided human health, public safety, and the
16 environment are adequately protected.

17 (d) Allow brownfield site and brownfield area
18 rehabilitation programs to include the use of institutional or
19 engineering controls to eliminate or control the potential
20 exposure to contaminants to humans or the environment. Use of
21 such controls must be preapproved by the department. When
22 institutional or engineering controls are implemented to
23 control exposure, the removal of such controls must have prior
24 department approval and must be accompanied by the resumption
25 of active cleanup, or other approved controls, unless cleanup
26 target levels pursuant to this section have been achieved.

27 (e) Consider the synergistic, antagonistic, and
28 additive effects of contaminants when the scientific data
29 become available.

30 (f) Take into consideration individual site
31 characteristics, which shall include, but not be limited to,

1 the current and projected use of the affected groundwater and
2 surface water in the vicinity of the site, current and
3 projected land uses of the area affected by the contamination,
4 the exposed population, the degree and extent of
5 contamination, the rate of contaminant migration, the apparent
6 or potential rate of contaminant degradation through natural
7 attenuation processes, the location of the plume, and the
8 potential for further migration in relation to site property
9 boundaries.

10 (g) Apply state water quality standards as follows:

11 1. Cleanup target levels for each contaminant found in
12 groundwater shall be the applicable state water quality
13 standards. Where such standards do not exist, the cleanup
14 target levels for groundwater shall be based on the minimum
15 criteria specified in department rule. The department shall
16 consider the following, as appropriate, in establishing the
17 applicable minimum criteria: calculations using a lifetime
18 cancer risk level of 1.0E-6; a hazard index of 1 or less; the
19 best achievable detection limit; the naturally occurring
20 background concentration; or nuisance, organoleptic, and
21 aesthetic considerations.

22 2. Where surface waters are exposed to contaminated
23 groundwater, the cleanup target levels for the contaminants
24 shall be based on the surface water standards as established
25 by department rule. The point of measuring compliance with
26 the surface water standards shall be in the groundwater
27 immediately adjacent to the surface water body.

28 3. The department may set alternative cleanup target
29 levels based upon an applicant's demonstration, using
30 site-specific modeling and risk assessment studies, that human
31 health, public safety, and the environment are adequately

1 protected to the same degree as provided in subparagraphs 1.
2 and 2. Where a state water quality standard is applicable, a
3 deviation may not result in the application of cleanup target
4 levels more stringent than the standard. In determining
5 whether it is appropriate to establish alternative cleanup
6 target levels at a site, the department must consider the
7 effectiveness of source removal that has been completed at the
8 site and the practical likelihood of the use of low-yield or
9 poor quality groundwater, the use of groundwater near marine
10 surface water bodies, the current and projected use of the
11 affected groundwater in the vicinity of the site, or the use
12 of groundwater in the immediate vicinity of the contaminated
13 area, where it has been demonstrated that the groundwater
14 contamination is not migrating away from such localized
15 source, provided human health, public safety, and the
16 environment are adequately protected.

17 (h) Provide for the department to issue a "no further
18 action order" when alternative cleanup target levels
19 established pursuant to subparagraph (g)3. have been achieved
20 or issue a "no further action order" based upon the degree to
21 which the desired cleanup target level is achievable and can
22 be reasonably and cost-effectively implemented within
23 available technologies or engineering and institutional
24 control strategies.

25 (i) Establish appropriate cleanup target levels for
26 soils.

27 1. In establishing soil cleanup target levels for
28 human exposure to each contaminant found in soils from the
29 land surface to 2 feet below land surface, the department
30 shall consider the following, as appropriate: calculations
31 using a lifetime cancer risk level of 1.0E-6; a hazard index

1 of 1 or less; the best achievable detection limit; or the
2 naturally occurring background concentration. Institutional
3 controls or other methods shall be used to prevent human
4 exposure to contaminated soils more than 2 feet below the land
5 surface. Any removal of such institutional controls shall
6 require such contaminated soils to be remediated.

7 2. Leachability-based soil target levels shall be
8 based on protection of the groundwater cleanup target levels
9 or the alternate cleanup target levels for groundwater
10 established pursuant to this paragraph, as appropriate.
11 Source removal and other cost-effective alternatives that are
12 technologically feasible shall be considered in achieving the
13 leachability soil target levels established by the department.
14 The leachability goals shall not be applicable if the
15 department determines, based upon individual site
16 characteristics, that contaminants will not leach into the
17 groundwater at levels which pose a threat to human health,
18 public safety, and the environment.

19 3. The department may set alternative cleanup target
20 levels based upon an applicant's demonstration, using
21 site-specific modeling and risk assessment studies, that human
22 health, public safety, and the environment are adequately
23 protected.

24 (2) The department shall require source removal, if
25 warranted and cost-effective. Once source removal at a site
26 is complete, the department shall reevaluate the site to
27 determine the degree of active cleanup needed to continue.
28 Further, the department shall determine if the reevaluated
29 site qualifies for monitoring only or if no further action is
30 required to rehabilitate the site. If additional site
31 rehabilitation is necessary to reach no-further-action status,

1 the department is encouraged to utilize natural attenuation
2 and monitoring where site conditions warrant.

3 Section 7. Section 376.83, Florida Statutes, is
4 created to read:

5 376.83 Eligibility criteria and liability
6 protection.--

7 (1) ELIGIBILITY.--Any person who has not caused or
8 contributed to the contamination of a brownfield site after
9 July 1, 1997, is eligible to participate in the brownfield
10 rehabilitation program established in ss. 376.77-376.84,
11 subject to the following:

12 (a) Potential brownfield sites that are subject to an
13 ongoing formal judicial or administrative enforcement action
14 or corrective action pursuant to federal authority, including,
15 but not limited to, the Comprehensive Environmental Response
16 Compensation and Liability Act, 42 U.S.C. ss. 9601 et seq., as
17 amended; the Safe Drinking Water Act, 42 U.S.C. ss. 300f-300i,
18 as amended; the Clean Water Act, 33 U.S.C. ss. 1251-1387, as
19 amended, or under an order from the United States
20 Environmental Protection Agency pursuant to s. 3008(h) of the
21 Resource Conservation and Recovery Act, as amended, 42
22 U.S.C.A. s. 6928(h), or that have obtained or are required to
23 obtain a permit for the operation of a hazardous waste
24 treatment, storage, or disposal facility, a postclosure
25 permit, or a permit pursuant to the federal Hazardous and
26 Solid Waste Amendments of 1984, are not eligible for
27 participation unless specific exemptions are secured by a
28 memorandum of agreement with the United States Environmental
29 Protection Agency pursuant to paragraph (2)(f). A brownfield
30 site within an eligible brownfield area that subsequently
31 becomes subject to formal judicial or administrative

1 enforcement action or corrective action under such federal
2 authority shall have its eligibility revoked unless specific
3 exemptions are secured by a memorandum of agreement with the
4 United States Environmental Protection Agency pursuant to
5 paragraph (2)(f).

6 (b) Persons who have not caused or contributed to the
7 contamination of a brownfield site after July 1, 1997, and
8 who, prior to the department's approval of a brownfield site
9 rehabilitation agreement, are subject to ongoing corrective
10 action or enforcement under state authority established in
11 this chapter or chapter 403, including those persons subject
12 to a pending consent order with the state, are eligible for
13 participation in a brownfield corrective action if:

14 1. The proposed brownfield site is currently idle or
15 underutilized as a result of the contamination, and
16 participation in the brownfield program will immediately,
17 after cleanup or sooner, result in increased economic
18 productivity at the site, including the creation of new jobs,
19 whether permanent or part time, which are not associated with
20 implementation of the brownfield site corrective-action plan;
21 and

22 2. The person is complying in good faith with the
23 terms of an existing consent order or department-approved
24 corrective-action plan, or responding in good faith to an
25 enforcement action, as evidenced by a determination issued by
26 the department or an approved local pollution control program.

27 (c) Potential brownfield sites owned by the state or a
28 local government which contain contamination for which a
29 governmental entity is potentially responsible and which are
30 already designated as federal brownfield pilot projects or
31 have filed an application for designation to the United States

1 Environmental Protection Agency are eligible for participation
2 in a brownfield corrective action.

3 (d) Petroleum sites and drycleaning sites eligible for
4 state sponsored cleanups as provided by this chapter are not
5 eligible for participation in the program under ss.
6 376.77-376.84 unless the site owner waives his or her
7 eligibility for the state-sponsored cleanup. Proof of waiver
8 must be evidenced by a letter from the site owner to the
9 department requesting that the petroleum site or drycleaning
10 site be removed from the department's list of eligible sites.

11 (2) LIABILITY PROTECTION.--

12 (a) Any person, including his or her successors and
13 assigns, who executes and implements to successful completion
14 a brownfield site rehabilitation agreement, shall be relieved
15 of further liability for remediation of the site to the state
16 and to third parties and of liability in contribution to any
17 other party who has or may incur cleanup liability for the
18 brownfield site.

19 (b) This section shall not be construed as a
20 limitation on the right of a third party other than the state
21 to pursue an action for damages to property or person;
22 however, such an action may not compel site rehabilitation in
23 excess of that required in the approved corrective-action
24 rehabilitation schedule or otherwise required by the
25 department or approved local pollution control program.

26 (c) This section shall not affect the ability or
27 authority to seek contribution from any person who may have
28 liability with respect to the site and who did not receive
29 cleanup liability protection under this act.

30 (d) The liability protection provided under this
31 section shall become effective upon execution of a brownfield

1 site rehabilitation agreement and shall remain effective,
2 provided the person responsible for brownfield site
3 rehabilitation complies with the terms of the agreement. Any
4 statute of limitations that would bar the department from
5 pursuing relief in accordance with its existing authority is
6 tolled from the time the agreement is executed until site
7 rehabilitation is completed or immunity is revoked pursuant to
8 s. 376.80(12).

9 (e) Completion of the performance of the remediation
10 obligations at the brownfield site shall be evidenced by a
11 site rehabilitation completion letter or a "no further action"
12 letter issued by the department or the approved local
13 pollution control program, which letter shall include the
14 following statement: "Based upon the information provided by
15 (property owner) concerning property located at (address), it
16 is the opinion of (the Florida Department of Environmental
17 Protection or approved local pollution control program) that
18 (party) has successfully and satisfactorily implemented the
19 approved brownfield site corrective action rehabilitation
20 schedule and, accordingly, no further action is required to
21 assure that any land use identified in the corrective action
22 rehabilitation schedule is consistent with existing and
23 proposed uses."

24 (f) The Legislature recognizes its limitations in
25 addressing cleanup liability under federal pollution control
26 programs. In an effort to secure federal liability protection
27 for persons willing to undertake remediation responsibility at
28 a brownfield site, the department shall attempt to negotiate a
29 memorandum of agreement or similar document with the United
30 States Environmental Protection Agency, whereby the United
31 States Environmental Protection Agency agrees to forgo

1 enforcement of federal corrective-action authority at
2 brownfield sites that have received a site rehabilitation
3 completion or "no further action" determination from the
4 department or the approved local pollution control program or
5 that are in the process of implementing a corrective action
6 rehabilitation schedule in accordance with this act.

7 (g) No unit of state or local government may be held
8 liable for implementing corrective actions at a brownfield
9 site within an eligible brownfield area as a result of the
10 involuntary ownership of the site through bankruptcy, tax
11 delinquency, abandonment, or other circumstances in which the
12 state or local government involuntarily acquires title by
13 virtue of its function as a sovereign, or as a result of
14 ownership from donation or gift, unless the state or local
15 government has otherwise caused or contributed to a release of
16 a contaminant at the brownfield site.

17 (h) The Legislature finds and declares that certain
18 brownfield sites and brownfield areas may be redeveloped for
19 open space, or limited recreational, cultural, or historical
20 preservation purposes, and that such facilities enhance the
21 redeveloped environment, attract visitors, and provide
22 wholesome activities for employees and residents of the area.
23 Further, the Legislature finds that purchasers of brownfield
24 sites who are nonprofit conservation organizations acting for
25 the public interest and who did not cause or contribute to the
26 release of contamination on the site warrant protection from
27 liability.

28 (i) Notwithstanding any provision of this chapter,
29 chapter 403, other laws, or ordinances of local governments, a
30 nonprofit, charitable, federal tax exempt, 501(c)(3) national
31 land conservation corporation which purchases title to

1 brownfield sites in the state for the purpose of conveying
2 such land to any governmental entity for conservation,
3 historical preservation or cultural resource, park, greenway,
4 or other similar uses shall not be liable to the state, local
5 government, or any third party for penalties or remediation
6 costs in connection with environmental contamination found in
7 the soil or groundwater of such sites, provided that such
8 corporation did not cause the original deposit or release of
9 the environmental contaminants, and provided the department
10 and local pollution control program and responsible parties
11 have access to the land for investigation, remediation, or
12 monitoring purposes.

13 (3) REOPENERS.--Upon completion of site rehabilitation
14 in compliance with this act, no additional site rehabilitation
15 shall be required unless it is demonstrated:

16 (a) That fraud was committed in demonstrating site
17 conditions or completion of the site rehabilitation.

18 (b) That new information confirms the existence of an
19 area of previously unknown contamination which exceeds the
20 site-specific rehabilitation levels established in accordance
21 with s. 376.82 and poses the threat of imminent harm to public
22 health, safety, or the environment in violation of the terms
23 of ss. 376.77-376.84. The determination of imminent threat
24 must be made by the department.

25 (c) That the remediation efforts failed to achieve the
26 site rehabilitation criteria established by this act.

27 (d) That the level of risk is increased beyond the
28 acceptable risk established in this act due to substantial
29 changes in exposure conditions, such as in a change in land
30 use from nonresidential use to residential use. Any person
31 who changes the land use of the brownfield site or brownfield

1 area, thus causing the level of risk to increase beyond the
2 acceptable risk level, may be required by the department or
3 approved local pollution control program to undertake
4 additional remediation measures to assure that human health,
5 public safety, and the environment are protected to levels
6 consistent with this act.

7 (e) That a new release occurs at the brownfield site
8 subsequent to a determination of eligibility for participation
9 in the brownfield program established in this act.

10 (4) ADDITIONAL LIABILITY PROTECTION FOR LENDERS.--

11 (a) The Legislature declares that, in order to achieve
12 the economic redevelopment and site rehabilitation of
13 brownfield sites in accordance with this act, it is imperative
14 to encourage financing of real property transactions involving
15 brownfield site corrective action plans. Accordingly,
16 lenders, including those serving as a trustee, personal
17 representative, or in any other fiduciary capacity, are
18 entitled to the liability protection established in subsection
19 (2) if they have not caused or contributed to a release of a
20 contaminant at the brownfield site.

21 (b) Lenders who hold indicia of ownership at a
22 brownfield site within an eligible brownfield area primarily
23 to protect a security interest or who own a brownfield site
24 within an eligible brownfield area as a result of foreclosure
25 or a deed in lieu of foreclosure of a security interest and
26 who seek to sell, transfer, or otherwise divest the site via
27 sale at the earliest practicable time are not liable for the
28 release or discharge of a contaminant from a brownfield site
29 within an eligible brownfield area; for the failure of the
30 person responsible for brownfield site rehabilitation to
31 comply with the brownfield site rehabilitation agreement; or

1 for future site rehabilitation activities required pursuant to
 2 a reopener provision established in subsection (3) where the
 3 lender has not divested the borrower of, or otherwise engaged
 4 in, decisionmaking control of the site rehabilitation or site
 5 operations or undertaken management activities beyond those
 6 required to protect its financial interest and when an act or
 7 omission of the lender has not otherwise caused or contributed
 8 to a release of a contaminant at the brownfield site within an
 9 eligible brownfield area.

10 Section 8. Section 376.84, Florida Statutes, is
 11 created to read:

12 376.84 Violations; penalties--

13 (1) It is a violation of ss. 376.77-376.83, and it is
 14 prohibited for any person to knowingly make any false
 15 statement, representation, or certification in any
 16 application, record, report, plan, or other document filed or
 17 required to be maintained, or to falsify, tamper with, or
 18 knowingly render inaccurate any monitoring device or method
 19 required to be maintained under ss. 376.77-376.83, or by any
 20 permit, rule, or order issued under this chapter or chapter
 21 403.

22 (2) Any person who willfully commits a violation
 23 specified in subsection (1) is guilty of a misdemeanor of the
 24 first degree, punishable by a fine of not more than \$10,000 or
 25 by 6 months in jail, or both, for each offense. Each day
 26 during any portion of which such violation occurs constitutes
 27 a separate offense.

28 Section 9. The Department of Environmental Protection
 29 shall prepare an annual report to the Speaker of the House of
 30 Representatives and the President of the Senate, beginning in
 31 December 1998, which shall include, but not be limited to:

1 (1) The number of sites that have been remediated
2 under the provisions of this act.

3 (2) The number of sites that are undergoing
4 remediation.

5 (3) The number and size of brownfield sites or areas
6 that have been designated.

7 (4) The number of petroleum and drycleaning sites that
8 are participating or have participated.

9 (5) The number of sites that have utilized
10 site-specific rehabilitation criteria, including those based
11 on risk-based corrective-action principles.

12 (6) The relationship of the state's program to the
13 United States Environmental Protection Agency brownfields
14 program.

15 (7) Local government incentives that have been offered
16 for brownfields and the locales where offered.

17
18 The report shall be available for public comment 60 days prior
19 to submittal to the Speaker of the House of Representatives
20 and the President of the Senate, and comment received shall be
21 submitted with the report to the Speaker of the House of
22 Representatives and the President of the Senate.

23 Section 10. This act shall take effect July 1, 1997.
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By the Committees on General Government Appropriations, Environmental Protection and Representatives Constantine, Eggelstien, Crow, Hurman, Peadar, Greene and Putnam

A bill to be entitled

An act relating to brownfields redevelopment and environmental protection; creating ss. 376.77-376.84, F.S., the Brownfields Redevelopment Act; providing legislative intent; providing definitions; providing duties of a local government that designates a brownfield for rehabilitation and redevelopment; providing for notice to the Department of Environmental Protection; providing for public hearings; providing requirements for such designation and specifying effect thereof; requiring establishment of an advisory committee; providing for a brownfield site rehabilitation agreement and providing requirements with respect thereto; providing requirements for contractors performing site rehabilitation and for professional engineers and geologists; providing consequences of failure to comply with a rehabilitation agreement; authorizing the department to enter into delegation agreements with local pollution control programs; providing requirements for local pollution control programs; encouraging state and local governments to offer redevelopment incentives; specifying financial, local, regulatory, and technical assistance incentives that may be included; creating a brownfield redevelopment bonus refund program; providing for refunds from the Economic Development

1 Incentive Account to certain qualified target
2 industry businesses for jobs created in a
3 brownfield; providing criteria for
4 participation; providing procedures and
5 requirements for payment of refunds; providing
6 penalties; providing for administration;
7 amending s. 288.095, F.S., to conform;
8 directing the department to establish by rule
9 criteria for determining the tasks that
10 comprise a rehabilitation program and the level
11 at which tasks and programs may be deemed
12 completed; providing requirements for such
13 criteria; providing that source removal may be
14 required under certain conditions; providing
15 eligibility requirements for participation in
16 brownfield rehabilitation; providing liability
17 protection for persons who successfully
18 complete a rehabilitation agreement; providing
19 requirements for issuance of a "no further
20 action" letter evidencing completion of
21 rehabilitation; authorizing negotiation with
22 the United States Environmental Protection
23 Agency regarding enforcement; providing certain
24 liability protection for state and local
25 governments and for certain nonprofit land
26 conservation corporations; providing conditions
27 under which further rehabilitation may be
28 required; providing liability protection for
29 certain lenders; specifying violations and
30 providing penalties; requiring an annual
31 report; providing for the award of grants to

1 certain pilot projects; amending s. 376.3071,
2 F.S.; revising application deadlines for
3 cleanup reimbursement from the Inland
4 Protection Trust Fund; providing for audits by
5 the Comptroller; revising eligibility criteria
6 relating to the petroleum cleanup participation
7 program; amending s. 376.30711, F.S.; providing
8 for competitive bidding for certain site
9 rehabilitation; amending s. 376.3072, F.S.;
10 specifying the process for applying certain
11 supplemental deductibles under the Florida
12 Petroleum Liability and Restoration Insurance
13 Program; providing an effective date.

14
15 Be It Enacted by the Legislature of the State of Florida:

16
17 Section 1. Section 376.77, Florida Statutes, is
18 created to read:

19 376.77 Short title.--Sections 376.77-376.84 may be
20 cited as the "Brownfields Redevelopment Act."

21 Section 2. Section 376.78, Florida Statutes, is
22 created to read:

23 376.78 Legislative intent.--The Legislature finds and
24 declares the following:

25 (1) The reduction of public health and environmental
26 hazards on existing commercial and industrial sites is vital
27 to their use and reuse as sources of employment, housing,
28 recreation, and open-space areas. The productive reuse of
29 land is an important component of sound land-use policy that
30 will help prevent the premature development of prime farmland.
31

1 ~~open-space areas, and natural areas, and reduce public costs~~
2 ~~for installing new water, sewer, and highway infrastructure.~~

3 (2) The abandonment or underuse of brownfield sites
4 also results in the inefficient use of public facilities and
5 services, as well as land and other natural resources; extends
6 conditions of blight in local communities; and contributes to
7 concerns about environmental equity and the distribution of
8 environmental risks across population groups.

9 (3) Incentives should be put in place to encourage
10 responsible persons to voluntarily develop and implement
11 cleanup plans without the use of taxpayer funds or the need
12 for enforcement actions by state and local governments.

13 (4) Environmental and public health hazards cannot be
14 eliminated without clear, predictable remediation standards
15 that provide for the protection of the environment and public
16 health.

17 (5) Site rehabilitation should be based on the actual
18 risk that contamination may pose to the environment and public
19 health, taking into account current and future use and the
20 degree to which contamination may spread and expose the public
21 or the environment to risk.

22 (6) Environmental justice considerations, which
23 include but are not limited to the impact of environmentally
24 hazardous sites on minority and low-income communities and the
25 fair treatment of all people, relating to the redevelopment of
26 hazardous sites should be inherent in meaningful public
27 participation elements of a brownfields redevelopment program.

28 (7) Cooperation among federal, state, and local
29 agencies, local community development organizations, current
30 owners, and prospective purchasers of brownfield sites is
31

1 required to accomplish timely cleanup activities and the
2 redevelopment or reuse of brownfield sites.

3 Section 3. Section 376.79, Florida Statutes, is
4 created to read:

5 376.79 Definitions.--As used in ss. 376.77-376.84,
6 unless the context otherwise indicates:

7 (1) "Additive effects" means a scientific principle
8 that the toxicity that occurs as a result of exposure is the
9 sum of the toxicities of the individual chemicals to which the
10 individual is exposed.

11 (2) "Antagonistic effects" means a scientific
12 principle that the toxicity that occurs as a result of
13 exposure is less than the sum of the toxicities of the
14 individual chemicals to which the individual is exposed.

15 (3) "Brownfield" or "brownfield site" means a parcel
16 or a contiguous area of one or more parcels, which have been
17 designated by local government by resolution, that are
18 generally abandoned, idled, or underused industrial and
19 commercial properties where expansion or redevelopment is
20 complicated by actual or perceived environmental
21 contamination. Such areas may include, but are not limited
22 to, portions of community redevelopment areas, enterprise
23 zones, empowerment zones, other such designated economically
24 deprived communities and areas, and United States
25 Environmental Protection Agency designated brownfield pilot
26 projects.

27 (4) "Contaminated site" means any contiguous land,
28 surface water, or groundwater areas that contain contaminants
29 that may be harmful to human health or the environment.

30 (5) "Department" means the Department of Environmental
31 Protection.

1 (6) "Engineering controls" means modifications to a
2 site to reduce or eliminate the potential for exposure to
3 contaminants. Such modifications may include, but are not
4 limited to, physical or hydraulic control measures, capping,
5 point of use treatments, or slurry walls.

6 (7) "Institutional controls" means the restriction on
7 use or access to a site to eliminate or minimize exposure to
8 contaminants. Such restrictions may include, but are not
9 limited to, deed restrictions, use restrictions, or
10 restrictive zoning.

11 (8) "Local pollution control program" means a local
12 pollution control program that has received delegated
13 authority from the Department of Environmental Protection
14 under s. 403.162.

15 (9) "Natural attenuation" means the verifiable
16 reduction of contaminants through natural processes, which may
17 include diffusion, dispersion, absorption, and biodegradation.

18 (10) "Person responsible for brownfield site
19 rehabilitation" means the individual or entity that is
20 designated by the local government in its resolution
21 establishing a brownfield to enter into the brownfield site
22 rehabilitation agreement with the department.

23 (11) "Person" means any individual, partner, joint
24 venture, or corporation; any group of the foregoing, organized
25 or united for a business purpose; or any governmental entity.

26 (12) "Site rehabilitation" means the assessment of
27 site contamination and the remediation activities that reduce
28 the levels of contaminants at a site through accepted
29 treatment methods to meet the cleanup target levels
30 established for that site.

31

1 (13) "Source removal" means the removal of free
2 product or contaminants from soil that has been contaminated
3 to the extent that leaching to groundwater has or is
4 occurring.

5 (14) "Synergistic effects" means a scientific
6 principle that the toxicity that occurs as a result of
7 exposure is more than the sum of the toxicities of the
8 individual chemicals to which the individual is exposed.

9 Section 4. Section 376.80, Florida Statutes, is
10 created to read:

11 376.80 Brownfield program administration process.--

12 (1) A local government with jurisdiction over a
13 brownfield must notify the department of its decision to
14 designate a brownfield for rehabilitation for the purposes of
15 ss. 376.77-376.84. The notification must include a resolution
16 by the local government body to which is attached a map
17 adequate to clearly delineate exactly which parcels are to be
18 included in the brownfield or, alternatively, a less detailed
19 map accompanied by a detailed legal description of the
20 brownfield. If a property owner within the brownfield
21 proposed for designation by the local government requests in
22 writing to have his or her property removed from the proposed
23 designation, the local government shall grant the request. For
24 municipalities, the governing body shall adopt the resolution
25 in accordance with the procedures outlined in s. 166.041,
26 except that the notice for the public hearings on the proposed
27 resolution must be in the form established in s.
28 166.041(3)(c)2. For counties, the governing body shall adopt
29 the resolution in accordance with the procedures outlined in
30 s. 125.66, except that the notice for the public hearings on
31

1 the proposed resolution shall be in the form established in s.
2 125.66(4)(b)2.

3 (2) If a local government proposes to designate a
4 brownfield that is outside community redevelopment areas,
5 enterprise zones, empowerment zones, or brownfield pilot
6 project areas designated by the United States Environmental
7 Protection Agency, the local government must conduct at least
8 one public hearing in the area to be designated to provide an
9 opportunity for public input on the size of the area, the
10 objectives for rehabilitation, job opportunities and economic
11 developments anticipated, neighborhood residents'
12 considerations, and other local concerns. Notice of the
13 public hearing must be made in a newspaper of general
14 circulation in the area and such notice must be at least 16
15 inches square in size, must be in ethnic newspapers or local
16 community bulletins, must be posted in the affected area, and
17 must be announced at a scheduled meeting of the local
18 governing body prior to the actual public hearing. In
19 determining the brownfields to be designated, the local
20 government must consider:

21 (a) Whether the brownfield has a reasonable potential
22 for economic development activities.

23 (b) Whether the proposed brownfield represents a
24 reasonably focused approach and is not overly large in
25 geographic coverage.

26 (c) Whether the brownfield has interest from the
27 private sector to participate in rehabilitation.

28 (d) Whether the brownfield contains parcels or parts
29 of parcels suitable for limited recreational open space or
30 cultural or historical preservation purposes.

1 (3) A local government shall designate a brownfield
2 under the provisions of this act provided that:

3 (a) A person who owns or controls a proposed
4 brownfield site is requesting the designation and has agreed
5 to rehabilitate and redevelop the proposed brownfield site.

6 (b) The rehabilitation and redevelopment of the
7 proposed brownfield site will result in economic productivity
8 of the area along with the creation of new jobs which are not
9 associated with the implementation of the rehabilitation
10 agreement.

11 (c) The redevelopment of the proposed brownfield site
12 is consistent with the local comprehensive plan and is a
13 permissible use under the applicable local land development
14 regulations.

15 (d) Notice of the proposed rehabilitation and
16 redevelopment of the brownfield has been provided to adjacent
17 property owners and residents of the proposed brownfield and
18 the person proposing the brownfield for designation has
19 afforded to those receiving notice the opportunity for
20 comments and suggestions about site rehabilitation. Notice
21 pursuant to this paragraph must be made in a newspaper of
22 general circulation in the area, must be at least 16 inches
23 square in size, and must be posted in the affected area.

24 (e) The person proposing the brownfield for
25 designation has provided reasonable assurance that he or she
26 has sufficient financial resources to implement and complete
27 the rehabilitation agreement and development plan.

28
29 The designation of a brownfield and the identification of a
30 person responsible for brownfield site rehabilitation simply
31 entitles the identified person to negotiate a brownfield site

1 rehabilitation agreement with the department or approved local
2 pollution control program.

3 (4) The local government must at the time of the
4 adoption of the resolution notify the department of the entity
5 that it is designating as the person responsible for
6 brownfield site rehabilitation. If the agency or person who
7 will be responsible for the coordination changes during the
8 approval process specified in this section, the department or
9 the affected local pollution control program must notify the
10 affected local government when the change occurs.

11 (5) Local governments or persons responsible for
12 rehabilitation of a brownfield must establish an advisory
13 committee for the purpose of improving public participation
14 and receiving public comments on rehabilitation, remediation,
15 and redevelopment of the brownfield, future land use, local
16 employment opportunities, community safety, and environmental
17 justice. Such advisory committee should include residents
18 within or adjacent to the brownfield, businesses operating
19 within the brownfield, and others deemed appropriate.

20 (6) The person responsible for brownfield site
21 rehabilitation must enter into a brownfield site
22 rehabilitation agreement with the department or an approved
23 local pollution control program. The brownfield site
24 rehabilitation agreement must include:

25 (a) A brownfield site rehabilitation schedule,
26 including milestones for completion of site rehabilitation
27 tasks, submittal of technical reports, rehabilitation plans,
28 and timeframes for the review of assessments, reports,
29 completed cleanup phases or tasks by the department or
30 approved local pollution control program as agreed upon by the
31 parties to the agreement.

1 (b) A commitment to conduct site rehabilitation
2 activities under the observation of professional engineers or
3 geologists who are registered in accordance with the
4 requirements of chapter 471 or chapter 492, respectively.
5 Submittals provided by the person responsible for brownfield
6 site rehabilitation must be signed and sealed by a
7 professional engineer registered under chapter 471, or a
8 professional geologist registered under chapter 492,
9 certifying that the submittal and associated work comply with
10 the law and rules of the department and those governing the
11 profession. In addition, upon completion of the approved
12 remedial action, the department shall require a professional
13 engineer registered under chapter 471 or a professional
14 geologist registered under chapter 492 to certify that the
15 corrective action was, to the best of his or her knowledge,
16 completed in substantial conformance with the plans and
17 specifications approved by the department.

18 (c) A commitment to conduct site rehabilitation in
19 accordance with an approved comprehensive quality assurance
20 plan under department rules.

21 (d) A commitment to conduct site rehabilitation
22 consistent with federal, state, and local laws consistent with
23 the brownfield contamination cleanup criteria in s. 376.82,
24 including any applicable requirements for risk-based
25 corrective action.

26 (e) A commitment to secure access for the department
27 or approved local pollution control program to all parcels
28 within the eligible brownfield for activities associated with
29 site rehabilitation.

30 (f) Other provisions that the person responsible for
31 brownfield site rehabilitation and the department agree upon.

1 that are consistent with ss. 376.77-376.84 and that will
2 improve or enhance the brownfield site rehabilitation process.

3 (g) An agreement to develop within 2 years an
4 appropriate pollution prevention plan as determined by the
5 person responsible for brownfield site rehabilitation. Such
6 plans may include improved inventory or production controls
7 and procedures for preventing a loss, spills, and leaks of
8 hazardous waste and materials, and include goals for the
9 reduction of releases of toxic materials, and shall be
10 available to the public.

11 (h) A site plan that at a minimum specifies the size
12 of the brownfield, the types of uses proposed, a development
13 completion date, and a list of capital improvements.

14 (i) An agreement between the person responsible for
15 site rehabilitation and the local government with jurisdiction
16 over the brownfield. Such agreement shall contain terms for
17 the redevelopment of the brownfield.

18 (7) Failure by the department or approved local
19 pollution control program to adhere to site rehabilitation
20 agreement milestones as described in subsection (6) concerning
21 the review of assessments, reports, completed cleanup phases,
22 or tasks shall constitute approval of the specific assessment,
23 report, phase, or task, and the eligible party may proceed
24 with site rehabilitation. Exceptions to the provisions of
25 this subsection include requests for "no further action,"
26 "monitoring only proposals," and feasibility studies, which
27 must be approved prior to implementation.

28 (8) Any contractor performing site rehabilitation
29 program tasks must demonstrate to the department that the
30 contractor:

1 (a) Meets all certification and license requirements
2 imposed by law.

3 (b) Has obtained approval for the comprehensive
4 quality-assurance plan prepared under department rules.

5 (9) The contractor must certify to the department that
6 the contractor:

7 (a) Complies with applicable OSHA regulations.

8 (b) Maintains workers' compensation insurance for all
9 employees as required by the Florida Workers' Compensation
10 Law.

11 (c) Maintains comprehensive general liability and
12 comprehensive automobile liability insurance with minimum
13 limits of at least \$1 million per occurrence and \$1 million
14 annual aggregate, sufficient to protect it from claims for
15 damage for personal injury, including accidental death, as
16 well as claims for property damage which may arise from
17 performance of work under this program, designating the state
18 as an additional insured party.

19 (d) Maintains professional liability insurance of at
20 least \$1 million per occurrence and \$1 million annual
21 aggregate.

22 (e) Has the capacity to perform or directly supervise
23 the majority of the work at a site in accordance with s.
24 489.113(9).

25 (10) Any professional engineer or geologist providing
26 professional services relating to site rehabilitation program
27 tasks must carry professional liability insurance with a
28 coverage limit of at least \$1 million.

9 (11) During the cleanup process, the person
30 responsible for brownfield site rehabilitation may proceed
31 from one phase or task of cleanup to the next prior to

1 obtain approval of the technical document for the next
2 phase or task of cleanup. However, the person responsible for
3 brownfield site rehabilitation will be required to complete
4 any additional tasks identified by the department or local
5 pollution control program found during the reviews provided
6 for by subsection (6). Exceptions to this subsection include
7 requests for "no further action," "monitoring only proposals,"
8 and feasibility studies, which must be approved prior to
9 implementation.

10 (12) If the person responsible for brownfield site
11 rehabilitation fails to comply with the brownfield site
12 rehabilitation agreement, the department or approved local
13 pollution control program shall allow 90 days for such person
14 to return to compliance with the provision at issue or to
15 negotiate a modification to the brownfield site rehabilitation
16 agreement for good cause shown. If an imminent hazard exists,
17 the 90-day grace period shall not apply. If the project is not
18 returned to compliance with the brownfield site rehabilitation
19 agreement and a modification cannot be negotiated, the
20 liability protection provisions of s. 976.83 are revoked.

21 (13) Any agreement to extend the completion date of a
22 site rehabilitation agreement shall not be for a term longer
23 than 180 days. One additional extension, not to exceed 180
24 days, may be granted if deemed appropriate by the department
25 or the local pollution control program.

26 (14) The department is specifically authorized and
27 encouraged to enter into delegation agreements with local
28 pollution control programs approved under s. 403.182 to
29 administer the brownfield program within their jurisdiction,
30 thereby maximizing the integration of this process with the
31 other local development processes needed to facilitate

1 redevelopment of a brownfield. The department shall include
2 the following requirements when determining whether a
3 delegation of all or a part of the brownfields program to a
4 local pollution control program is appropriate under this
5 subsection. The local pollution control program must:

6 (a) Have and maintain the administrative organization,
7 staff, and financial and other resources to effectively and
8 efficiently implement and enforce the statutory requirements
9 of the delegated brownfields program; and

10 (b) Apply chapter 120, as appropriate, to activities
11 and actions taken pursuant to the brownfields program.

12
13 The local pollution control program shall not be delegated
14 authority to take action on or make decisions regarding any
15 brownfield where a potential conflict of interest exists. Any
16 delegation agreement entered into pursuant to this subsection
17 shall contain such terms and conditions as necessary to ensure
18 the effective and efficient administration and enforcement of
19 the statutory requirements of the brownfields program as
20 established by the act and the rules and other criteria of the
21 department relative to the brownfields program.

22 Section 5. Section 376.81, Florida Statutes, is
23 created to read:

24 376.81 Brownfield redevelopment economic
25 incentives.--It is the intent of the Legislature that
26 brownfield redevelopment activities be viewed as opportunities
27 to significantly improve the utilization, general condition,
28 and appearance of these sites. Different standards than those
29 in place for new development, as allowed under current state
30 and local laws, should be used to the fullest extent to
31 encourage the redevelopment of a brownfield. State and local

1 (j) Maintenance standards and activities by ordinance
2 and otherwise, and increased security and crime prevention
3 measures available through special assessments.

4 (j) Traffic-calming measures.

5 (k) Historic preservation ordinances, loan programs,
6 and review and permitting procedures.

7 (l) One-stop permitting and streamlined development
8 and permitting process.

9 (3) Technical assistance incentives may include, but
10 not be limited to:

11 (a) Expedited development applications.

12 (b) Formal and informal information on business
13 incentives and financial programs.

14 (c) Site design assistance.

15 (d) Marketing and promotion of projects or areas.

16 Section 6. Paragraphs (a), (b), and (d) of subsection
17 (3) of section 288.095, Florida Statutes, 1996 Supplement, are
18 amended to read:

19 288.095 Economic Development Trust Fund.--

20 (3)(a) Contingent upon an annual appropriation by the
21 Legislature, the Office of Tourism, Trade, and Economic
22 Development may approve not more than the lesser of \$10
23 million in tax refunds pursuant to ss. 288.104, and 288.106,
24 and 376.815 or the amount appropriated to the Economic
25 Development Incentives Account for such tax refunds, for a
26 fiscal year pursuant to paragraph (b).

27 (b) The total amount of tax refunds approved by the
28 Office of Tourism, Trade, and Economic Development pursuant to
29 ss. 288.104, and 288.106, and 376.815 shall not exceed the
30 amount appropriated to the Economic Development Incentives
31 Account for such purposes for the fiscal year. In the event

1 the Legislature does not appropriate an amount sufficient to
2 satisfy projections by the department for tax refunds under
3 ss. 288.104, and 288.106, and 376.815 in a fiscal year, the
4 Office of Tourism, Trade, and Economic Development shall, not
5 later than July 15 of such year, determine the proportion of
6 each refund claim which shall be paid by dividing the amount
7 appropriated for tax refunds for the fiscal year by the
8 projected total of refund claims for the fiscal year. The
9 amount of each claim for a tax refund shall be multiplied by
10 the resulting quotient. If, after the payment of all such
11 refund claims, funds remain in the Economic Development
12 Incentives Account for tax refunds, the secretary shall
13 recalculate the proportion for each refund claim and adjust
14 the amount of each claim accordingly.

5 (d) Moneys in the Economic Development Incentives
16 Account may be used only to pay tax refunds and other payments
17 authorized under s. 288.104, or s. 288.106, or s. 376.815.

18 Section 7. Section 376.815, Florida Statutes, is
19 created to read:

20 376.815 Brownfield redevelopment bonus refunds.--

21 (1) DEFINITIONS.--As used in this section:

22 (a) "Account" means the Economic Development
23 Incentives Account as authorized in s. 288.095.

24 (b) "Brownfield" or "brownfield site" means a parcel
25 or a contiguous area of one or more parcels, which have been
26 designated by local government by resolution, that are
27 generally abandoned, idled, or underused industrial and
28 commercial properties where expansion or redevelopment is
9 complicated by actual or perceived environmental
30 contamination. Such areas may include, but are not limited
31 to, portions of community redevelopment areas, enterprise

1 zones, encroachment zones, other such designated economically
2 deprived communities and areas, and United States
3 Environmental Protection Agency designated brownfield pilot
4 projects.

5 (c) "Director" means the director of the Office of
6 Tourism, Trade, and Economic Development.

7 (d) "Eligible business" means a qualified target
8 industry business as defined in s. 288.106(2)(c).

9 (e) "Jobs" means full-time equivalent positions,
10 consistent with the use of such terms by the Department of
11 Labor and Employment Security for the purpose of unemployment
12 compensation tax, resulting directly from a project in this
13 state. This number does not include temporary construction
14 jobs involved with the construction of facilities for the
15 project and which are not associated with the implementation
16 of the corrective action plan as provided in s. 376.09.

17 (f) "Office" means the Office of Tourism, Trade, and
18 Economic Development.

19 (g) "Project" means the creation of a new business or
20 the expansion of an existing business as defined in s.
21 288.106.

22 (2) BROWNFIELD REDEVELOPMENT BONUS REFUND.--There
23 shall be allowed from the account a bonus refund of \$2,500 to
24 any qualified target industry business for each new Florida
25 job created in a brownfield which is claimed on the qualified
26 target industry business's annual refund claim authorized in
27 s. 288.106(6) and approved by the office as specified in the
28 final order issued by the director.

29 (3) CRITERIA.--The minimum criteria for participation
30 in the brownfield redevelopment bonus refund are:
31

1 (a) The creation of at least 10 new full-time
2 permanent jobs. Such jobs shall not include construction or
3 site rehabilitation jobs associated with the implementation of
4 a brownfield site agreement as described in 376.80(6).

5 (b) That the designation as a brownfield will
6 diversify and strengthen the economy of the area surrounding
7 the site.

8 (c) That the designation as a brownfield will promote
9 capital investment in the area beyond that contemplated for
10 the rehabilitation of the site.

11 (4) PAYMENT OF BROWNFIELD REDEVELOPMENT BONUS

12 REFUNDS.--

13 (a) To be eligible to receive a bonus refund for new
14 Florida jobs created in a brownfield, a business must have
15 been certified as a qualified target industry business under
16 s. 288.106 and must have indicated on the qualified target
17 industry tax refund application form submitted in accordance
18 with s. 288.106(4) that the project for which the application
19 is submitted is or will be located in a brownfield and that
20 the business is applying for certification as a qualified
21 brownfield business under this section, and must have signed a
22 qualified target industry tax refund agreement with the office
23 which indicates that the business has been certified as a
24 qualified target industry business located in a brownfield and
25 specifies the schedule of brownfield redevelopment bonus
26 refunds that the business may be eligible to receive in each
27 fiscal year.

28 (b) To be considered to receive an eligible brownfield
29 redevelopment bonus refund payment, the business meeting the
30 requirements of paragraph (a) must submit a claim once each
31 fiscal year on a claim form approved by the office which

1 indicates the location of the brownfield, the address of the
2 business facility's brownfield location, the name of the
3 brownfield in which it is located, the number of jobs created,
4 and the average wage of the jobs created by the business
5 within the brownfield as defined in s. 288.106 and the
6 administrative rules and policies for that section.

7 (c) The bonus refunds shall be available on the same
8 schedule as the qualified target industry tax refund payments
9 scheduled in the qualified target industry tax refund
10 agreement authorized in s. 288.106.

11 (d) After entering into a tax refund agreement as
12 provided in s. 288.106, an eligible business may receive
13 brownfield redevelopment bonus refunds from the account
14 pursuant to s. 288.106(3)(c).

15 (e) An eligible business that fraudulently claims a
16 refund under this section:

17 1. Is liable for repayment of the amount of the refund
18 to the account, plus a mandatory penalty in the amount of 200
19 percent of the tax refund, which shall be deposited into the
20 General Revenue Fund.

21 2. Commits a felony of the third degree, punishable as
22 provided in s. 775.082, s. 775.083, or s. 775.084.

23 (f) The office shall review all applications submitted
24 under s. 288.106 which indicate that the proposed project will
25 be located in a brownfield and determine, with the assistance
26 of the Department of Environmental Protection, that the
27 project location is within a brownfield as provided in this
28 act.

29 (g) The office shall approve all claims for a
30 brownfield redevelopment bonus refund payment that are found
31 to meet the requirements of paragraphs (b) and (d).

1 (b) The director, with such assistance as may be
2 required from the office and the Department of Environmental
3 Protection, shall specify by written final order the amount of
4 the brownfield redevelopment bonus refund that is authorized
5 for the qualified target industry business for the fiscal year
6 within 30 days after the date that the claim for the annual
7 tax refund is received by the office.

8 (i) The total amount of the bonus refunds approved by
9 the director under this section in any fiscal year must not
10 exceed the total amount appropriated to the Economic
11 Development Incentives Account for this purpose for the fiscal
12 year. In the event that the Legislature does not appropriate
13 an amount sufficient to satisfy projections by the office for
14 brownfield redevelopment bonus refunds under this section in a
15 fiscal year, the office shall, not later than July 15 of such
16 year, determine the proportion of each brownfield
17 redevelopment bonus refund claim which shall be paid by
18 dividing the amount appropriated for tax refunds for the
19 fiscal year by the projected total of brownfield redevelopment
20 bonus refund claims for the fiscal year. The amount of each
21 claim for a brownfield redevelopment bonus tax refund shall be
22 multiplied by the resulting quotient. If, after the payment
23 of all such refund claims, funds remain in the Economic
24 Development Incentives Account for brownfield redevelopment
25 tax refunds, the office shall recalculate the proportion for
26 each refund claim and adjust the amount of each claim
27 accordingly.

28 (j) Upon approval of the brownfield redevelopment
29 bonus refund, the Comptroller shall issue a warrant for the
30 amount specified in the final order. If the final order is
31 appealed, the Comptroller shall not issue a warrant for a

1 refused to the qualified target industry business until the
2 conclusion of all appeals of that order.

3 (5) ADMINISTRATION.--

4 (a) The office is authorized to verify information
5 provided in any claim submitted for tax credits under this
6 section with regard to employment and wage levels or the
7 payment of the taxes to the appropriate agency or authority,
8 including the Department of Revenue, the Department of Labor
9 and Employment Security, or any local government or authority.

10 (b) To facilitate the process of monitoring and
11 auditing applications made under this program, the office may
12 provide a list of qualified target industry businesses to the
13 Department of Revenue, to the Department of Labor and
14 Employment Security, to the Department of Environmental
15 Protection, or to any local government authority. The office
16 may request the assistance of these entities with respect to
17 monitoring the payment of the taxes listed in 289.106(3).

18 Section 8. Section 376.82, Florida Statutes, is
19 created to read:

20 376.82 Brownfield contamination cleanup criteria.--

21 (1) It is the intent of the Legislature to protect the
22 health of all people under actual circumstances of exposure.
23 By July 1, 1998, the secretary of the department shall
24 establish criteria by rule for the purpose of determining, on
25 a site-specific basis, the rehabilitation program tasks that
26 comprise a site rehabilitation program and the level at which
27 a rehabilitation program task and a site rehabilitation
28 program may be deemed completed. In establishing the rule,
29 the department shall incorporate, to the maximum extent
30 feasible, risk-based corrective-action principles to achieve
31 protection of human health and safety and the environment in a

1 cost-effective manner as provided in this subsection. The
2 rule shall also include protocols for the use of natural
3 attenuation and the issuance of "no further action" letters.
4 The criteria for determining what constitutes a rehabilitation
5 program task or completion of a site rehabilitation program
6 task or site rehabilitation program must:

7 (a) Consider the current exposure and potential risk
8 of exposure to humans and the environment, including multiple
9 pathways of exposure. The physical, chemical, and biological
10 characteristics of each contaminant must be considered in
11 order to determine the feasibility of risk-based
12 corrective-action assessment.

13 (b) Establish the point of compliance at the source of
14 the contamination. However, the department is authorized to
15 temporarily move the point of compliance to the boundary of
16 the property, or to the edge of the plume when the plume is
17 within the property boundary, while cleanup, including cleanup
18 through natural attenuation processes in conjunction with
19 appropriate monitoring, is proceeding. The department also is
20 authorized, pursuant to criteria provided for in this section,
21 to temporarily extend the point of compliance beyond the
22 property boundary with appropriate monitoring, if such
23 extension is needed to facilitate natural attenuation or to
24 address the current conditions of the plume, provided human
25 health, public safety, and the environment are adequately
26 protected. Temporary extension of the point of compliance
27 beyond the property boundary, as provided in this paragraph,
28 must include actual notice to local governments and owners of
29 any property into which the point of compliance is allowed to
30 extend.

31

1 (c) Ensure that the site-specific cleanup goal is that
2 all contaminated brownfields ultimately achieve the applicable
3 cleanup target levels provided in this section. However, the
4 department is authorized to allow concentrations of
5 contaminants to temporarily exceed the applicable cleanup
6 target levels while cleanup, including cleanup through natural
7 attenuation processes in conjunction with appropriate
8 monitoring, is proceeding, provided human health, public
9 safety, and the environment are adequately protected.

10 (d) Allow brownfield rehabilitation programs to
11 include the use of institutional or engineering controls where
12 appropriate to eliminate or control the potential exposure to
13 contaminants to humans or the environment. Use of such
14 controls must be preapproved by the department. When
15 institutional or engineering controls are implemented to
16 control exposure, the removal of such controls must have prior
17 department approval and must be accompanied by the resumption
18 of active cleanup, or other approved controls, unless cleanup
19 target levels pursuant to this section have been achieved.

20 (e) Consider the synergistic, antagonistic, and
21 additive effects of contaminants when the scientific data
22 become available.

23 (f) Take into consideration individual site
24 characteristics, which shall include, but not be limited to,
25 the current and projected use of the affected groundwater and
26 surface water in the vicinity of the site, current and
27 projected land uses of the area affected by the contamination,
28 the exposed population, the degree and extent of
29 contamination, the rate of contaminant migration, the apparent
30 or potential rate of contaminant degradation through natural
31 attenuation processes, the location of the plume, and the

1 potential for further migration in relation to site property
2 boundaries.

3 (g) Apply state water quality standards as follows:

4 1. Cleanup target levels for each contaminant found in
5 groundwater shall be the applicable state water quality
6 standards. Where such standards do not exist, the cleanup
7 target levels for groundwater shall be based on the minimum
8 criteria specified in department rule. The department shall
9 consider the following, as appropriate, in establishing the
10 applicable minimum criteria: calculations using a lifetime
11 cancer risk level of 1.0E-6; a hazard index of 1 or less; the
12 best achievable detection limit; the naturally occurring
13 background concentration; or nuisance, organoleptic, and
14 aesthetic considerations.

15 2. Where surface waters are exposed to contaminated
16 groundwater, the cleanup target levels for the contaminants
17 shall be based on the surface water standards as established
18 by department rule. The point of measuring compliance with
19 the surface water standards shall be in the groundwater
20 immediately adjacent to the surface water body.

21 3. The department may set alternative cleanup target
22 levels based upon an applicant's demonstration, using
23 site-specific modeling and risk assessment studies, that human
24 health, public safety, and the environment are adequately
25 protected to the same degree as provided in subparagraphs 1.
26 and 2. Where a state water quality standard is applicable, a
27 deviation may not result in the application of cleanup target
28 levels more stringent than the standard. In determining
29 whether it is appropriate to establish alternative cleanup
30 target levels at a site, the department must consider the
31 effectiveness of source removal that has been completed at the

1 site and the practical likelihood of the use of low-yield or
2 poor quality groundwater, the use of groundwater near marine
3 surface water bodies, the current and projected use of the
4 affected groundwater in the vicinity of the site, or the use
5 of groundwater in the immediate vicinity of the contaminated
6 area, where it has been demonstrated that the groundwater
7 contamination is not migrating away from such localized
8 source, provided human health, public safety, and the
9 environment are adequately protected.

10 (h) Provide for the department to issue a "no further
11 action order" when alternative cleanup target levels
12 established pursuant to subparagraph (g)3. have been achieved
13 or issue a "no further action order" based upon the degree to
14 which the desired cleanup target level is achievable and can
15 be reasonably and cost-effectively implemented within
16 available technologies or engineering and institutional
17 control strategies.

18 (i) Establish appropriate cleanup target levels for
19 soils.

20 1. In establishing soil cleanup target levels for
21 human exposure to each contaminant found in soils from the
22 land surface to 2 feet below land surface, the department
23 shall consider the following, as appropriate: calculations
24 using a lifetime cancer risk level of 1.0E-6; a hazard index
25 of 1 or less; the best achievable detection limit; or the
26 naturally occurring background concentration. Institutional
27 controls or other methods shall be used to prevent human
28 exposure to contaminated soils more than 2 feet below the land
29 surface. Any removal of such institutional controls shall
30 require such contaminated soils to be remediated.
31

1 2. Leachability-based soil target levels shall be
2 based on protection of the groundwater cleanup target levels
3 or the alternate cleanup target levels for groundwater
4 established pursuant to this paragraph, as appropriate.
5 Source removal and other cost-effective alternatives that are
6 technologically feasible shall be considered in achieving the
7 leachability soil target levels established by the department.
8 The leachability goals shall not be applicable if the
9 department determines, based upon individual site
10 characteristics, that contaminants will not leach into the
11 groundwater at levels which pose a threat to human health,
12 public safety, and the environment.

13 3. The department may set alternative cleanup target
14 levels based upon an applicant's demonstration, using
15 site-specific modeling and risk assessment studies, that human
16 health, public safety, and the environment are adequately
17 protected.

18 (2) The department shall require source removal, if
19 warranted and cost-effective. Once source removal at a site
20 is complete, the department shall reevaluate the site to
21 determine the degree of active cleanup needed to continue.
22 Further, the department shall determine if the reevaluated
23 site qualifies for monitoring only or if no further action is
24 required to rehabilitate the site. If additional site
25 rehabilitation is necessary to reach no-further-action status,
26 the department is encouraged to utilize natural attenuation
27 and monitoring where site conditions warrant.

28 Section 9. Section 376.83, Florida Statutes, is
29 created to read:

30 376.83 Eligibility criteria and liability
31 protection.--

1 (1) ELIGIBILITY.--Any person who has not caused or
2 contributed to the contamination of a brownfield after July 1,
3 1997, is eligible to participate in the brownfield
4 rehabilitation program established in ss. 376.77-376.84,
5 subject to the following:

6 (a) Contaminated sites that are subject to an ongoing
7 formal judicial or administrative enforcement action or
8 corrective action pursuant to federal authority, including,
9 but not limited to, the Comprehensive Environmental Response
10 Compensation and Liability Act, 42 U.S.C. ss. 9601 et seq., as
11 amended; the Safe Drinking Water Act, 42 U.S.C. ss. 300f-300i,
12 as amended; the Clean Water Act, 33 U.S.C. ss. 1251-1387, as
13 amended, or under an order from the United States
14 Environmental Protection Agency pursuant to s. 3008(b) of the
15 Resource Conservation and Recovery Act, as amended, 42
16 U.S.C.A. s. 6928(b), or that have obtained or are required to
17 obtain a permit for the operation of a hazardous waste
18 treatment, storage, or disposal facility, a postclosure
19 permit, or a permit pursuant to the federal Hazardous and
20 Solid Waste Amendments of 1984, are not eligible for
21 participation unless specific exemptions are secured by a
22 memorandum of agreement with the United States Environmental
23 Protection Agency pursuant to paragraph (2)(a). A contaminated
24 site within an eligible brownfield that subsequently becomes
25 subject to formal judicial or administrative enforcement
26 action or corrective action under such federal authority shall
27 have its eligibility revoked unless specific exemptions are
28 secured by a memorandum of agreement with the United States
29 Environmental Protection Agency pursuant to paragraph (2)(a).

30 (b) Persons who have not caused or contributed to the
31 contamination of a proposed brownfield after July 1, 1997, and

1 who, prior to the department's approval of a brownfield site
2 rehabilitation agreement, are subject to ongoing corrective
3 action or enforcement under state authority established in
4 this chapter or chapter 403, including those persons subject
5 to a pending consent order with the state, are eligible for
6 participation in a brownfield corrective action if:

7 1. The proposed brownfield is currently idle or
8 underutilized as a result of the contamination, and
9 participation in the brownfield program will immediately,
10 after cleanup or sooner, result in increased economic
11 productivity at the brownfield, including the creation of new
12 jobs, whether permanent or part time, which are not associated
13 with implementation of the brownfield site rehabilitation
14 agreement; and

15 2. The person is complying in good faith with the
16 terms of an existing consent order or department-approved
17 corrective-action plan, or responding in good faith to an
18 enforcement action, as evidenced by a determination issued by
19 the department or an approved local pollution control program.

20 (c) Proposed brownfields owned by the state or a local
21 government which contain contamination for which a
22 governmental entity is potentially responsible and which are
23 already designated as federal brownfield pilot projects or
24 have filed an application for designation to the United States
25 Environmental Protection Agency are eligible for participation
26 in a brownfield program.

27 (d) Petroleum sites and drycleaning sites eligible for
28 state sponsored cleanups as provided by this chapter are not
29 eligible for participation in the program under ss.
30 376.77-376.84 unless the site owner waives his or her
31 eligibility for the state-sponsored cleanup. Proof of waiver

1 must be evidenced by a letter from the site owner to the
2 department requesting that the petroleum site or drycleaning
3 site be removed from the department's list of eligible sites.

4 (2) LIABILITY PROTECTION.--

5 (a) Any person, including his or her successors and
6 assigns, who executes and implements to successful completion
7 a brownfield site rehabilitation agreement, shall be relieved
8 of further liability for remediation of the contaminated site
9 or sites to the state and to third parties and of liability in
10 contribution to any other party who has or may incur cleanup
11 liability for the contaminated site or sites.

12 (b) This section shall not be construed as a
13 limitation on the right of a third party other than the state
14 to pursue an action for damages to property or person;
15 however, such an action may not compel site rehabilitation in
16 excess of that required in the approved brownfield site
17 rehabilitation agreement or otherwise required by the
18 department or approved local pollution control program.

19 (c) This section shall not affect the ability or
20 authority to seek contribution from any person who may have
21 liability with respect to the contaminated site and who did
22 not receive cleanup liability protection under this act.

23 (d) The liability protection provided under this
24 section shall become effective upon execution of a brownfield
25 site rehabilitation agreement and shall remain effective,
26 provided the person responsible for brownfield site
27 rehabilitation complies with the terms of the site
28 rehabilitation agreement. Any statute of limitations that
29 would bar the department from pursuing relief in accordance
30 with its existing authority is tolled from the time the
31

1 agreement is executed until site rehabilitation is completed
2 or immunity is revoked pursuant to s. 376.80(12).

3 (e) Completion of the performance of the remediation
4 obligations at the brownfield shall be evidenced by a site
5 rehabilitation completion letter or a "no further action"
6 letter issued by the department or the approved local
7 pollution control program, which letter shall include the
8 following statement: "Based upon the information provided by
9 (property owner) concerning property located at (address), it
10 is the opinion of (the Florida Department of Environmental
11 Protection or approved local pollution control program) that
12 (party) has successfully and satisfactorily implemented the
13 approved brownfield site rehabilitation agreement schedule
14 and, accordingly, no further action is required to assure that
15 any land use identified in the brownfield site rehabilitation
16 agreement is consistent with existing and proposed uses."

17 (f) Compliance with the agreement referenced in s.
18 376.80(6)(i) must be evidenced by a finding by the local
19 government with jurisdiction over the brownfield that the
20 terms of the agreement have been met.

21 (g) The Legislature recognizes its limitations in
22 addressing cleanup liability under federal pollution control
23 programs. In an effort to secure federal liability protection
24 for persons willing to undertake remediation responsibility at
25 a brownfield, the department shall attempt to negotiate a
26 memorandum of agreement or similar document with the United
27 States Environmental Protection Agency, whereby the United
28 States Environmental Protection Agency agrees to forgo
29 enforcement of federal corrective-action authority at
30 brownfields that have received a site rehabilitation
31 completion or "no further action" determination from the

1 department or the approved local pollution control program or
2 that are in the process of implementing a brownfield site
3 rehabilitation agreement in accordance with this act.

4 (h) No unit of state or local government may be held
5 liable for implementing corrective actions at a contaminated
6 site within an eligible brownfield as a result of the
7 involuntary ownership of the site through bankruptcy, tax
8 delinquency, abandonment, or other circumstances in which the
9 state or local government involuntarily acquires title by
10 virtue of its function as a sovereign, or as a result of
11 ownership from donation or gift, unless the state or local
12 government has otherwise caused or contributed to a release of
13 a contaminant at the brownfield site.

14 (i) The Legislature finds and declares that certain
15 brownfields may be redeveloped for open space, or limited
16 recreational, cultural, or historical preservation purposes,
17 and that such facilities enhance the redeveloped environment,
18 attract visitors, and provide wholesome activities for
19 employees and residents of the area. Further, the Legislature
20 finds that purchasers of contaminated sites who are nonprofit
21 conservation organizations acting for the public interest and
22 who did not cause or contribute to the release of
23 contamination on the site warrant protection from liability.

24 (j) Notwithstanding any provision of this chapter,
25 chapter 403, other laws, or ordinances of local governments, a
26 nonprofit, charitable, federal tax exempt, 501(c)(3) national
27 land conservation corporation which purchases title to
28 property in the state for the purpose of conveying such land
29 to any governmental entity for conservation, historical
30 preservation or cultural resource, park, greenway, or other
31 similar uses shall not be liable to the state, local

1 government, or any third party for penalties or remediation
2 costs in connection with environmental contamination found in
3 the soil or groundwater of such property, provided that such
4 corporation did not cause the original deposit or release of
5 the environmental contaminants, and provided the department
6 and local pollution control program and responsible parties
7 have access to the land for investigation, remediation, or
8 monitoring purposes.

9 (3) REOPENERS.--Upon completion of site rehabilitation
10 in compliance with this act, no additional site rehabilitation
11 shall be required unless it is demonstrated:

12 (a) That fraud was committed in demonstrating site
13 conditions or completion of the site rehabilitation.

14 (b) That new information confirms the existence of an
15 area of previously unknown contamination which exceeds the
16 site-specific rehabilitation levels established in accordance
17 with s. 376.82 and poses an imminent hazard to public health,
18 safety, or the environment in violation of the terms of ss.
19 376.77-376.84. The determination of imminent hazard must be
20 made by the department.

21 (c) That the remediation efforts failed to achieve the
22 site rehabilitation criteria established by this act.

23 (d) That the level of risk is increased beyond the
24 acceptable risk established in this act due to substantial
25 changes in exposure conditions, such as in a change in land
26 use from nonresidential use to residential use. Any person
27 who changes the land use of the brownfield, thus causing the
28 level of risk to increase beyond the acceptable risk level,
29 may be required by the department or approved local pollution
30 control program to undertake additional remediation measures

31

1 to assure that human health, public safety, and the
2 environment are protected to levels consistent with this act.

3 (e) That a new release occurs at the brownfield
4 subsequent to a determination of eligibility for participation
5 in the brownfield program established in this act.

6 (4) ADDITIONAL LIABILITY PROTECTION FOR LENDERS.--

7 (a) The Legislature declares that, in order to achieve
8 the economic redevelopment and site rehabilitation of
9 brownfields in accordance with this act, it is imperative to
10 encourage financing of real property transactions involving
11 brownfield site rehabilitation plans. Accordingly, lenders,
12 including those serving as a trustee, personal representative,
13 or in any other fiduciary capacity, are entitled to the
14 liability protection established in subsection (2) if they
15 have not caused or contributed to a release of a contaminant
16 at the brownfield.

17 (b) Lenders who hold indicia of ownership of a parcel
18 within a brownfield solely to protect a security interest or
19 who own a parcel within a brownfield as a result of
20 foreclosure or a deed in lieu of foreclosure of a security
21 interest and who seek to sell, transfer, or otherwise divest
22 the parcel via sale at the earliest practicable time are not
23 liable for the release or discharge of a contaminant from the
24 parcel; for the failure of the person responsible for
25 brownfield site rehabilitation to comply with the brownfield
26 site rehabilitation agreement; or for future site
27 rehabilitation activities required pursuant to a reopening
28 provision established in subsection (3) where the lender has
29 not divested the borrower of, or otherwise engaged in,
30 decisionmaking control of the site rehabilitation or site
31 operations or undertaken management activities beyond those

1 required to protect its financial interest while making a good
2 faith effort to sell the site as soon as practicable and when
3 an act or omission of the lender has not otherwise caused or
4 contributed to a release of a contaminant at the brownfield.

5 (c) Lenders who obtain ownership of brownfields by
6 methods described in this subsection shall not be eligible for
7 economic incentives that were granted to a person responsible
8 for site rehabilitation by state or local governments.

9 Section 10. Section 376.84, Florida Statutes, is
10 created to read:

11 376.84 Violations; penalties--

12 (1) It is a violation of ss. 376.77-376.83, and it is
13 prohibited for any person to knowingly make any false
14 statement, representation, or certification in any
15 application, record, report, plan, or other document filed or
16 required to be maintained, or to falsify, tamper with, or
17 knowingly render inaccurate any monitoring device or method
18 required to be maintained under ss. 376.77-376.83, or by any
19 permit, rule, or order issued under this chapter or chapter
20 403.

21 (2) Any person who willfully commits a violation
22 specified in subsection (1) commits a misdemeanor of the first
23 degree, punishable by a fine of not more than \$10,000 or by 6
24 months in jail, or both, for each offense. Each day during
25 any portion of which such violation occurs constitutes a
26 separate offense.

27 Section 11. The Department of Environmental Protection
28 shall prepare an annual report to the Speaker of the House of
29 Representatives and the President of the Senate, beginning in
30 December 1998, which shall include, but not be limited to:

31

1 (1) The number of brownfields that have been
2 remediated under the provisions of this act.

3 (2) The number of brownfields that are undergoing
4 remediation.

5 (3) The number and size of brownfields that have been
6 designated.

7 (4) The number of petroleum and drycleaning sites that
8 are participating or have participated.

9 (5) The number of brownfields that have utilized
10 site-specific rehabilitation criteria, including those based
11 on risk-based corrective-action principles.

12 (6) The relationship of the state's program to the
13 United States Environmental Protection Agency brownfields
14 program.

15 (7) Local government incentives that have been offered
16 for brownfields and the locales where offered.

17
18 The report shall be available for public comment 60 days prior
19 to submittal to the Speaker of the House of Representatives
20 and the President of the Senate, and comment received shall be
21 submitted with the report to the Speaker of the House of
22 Representatives and the President of the Senate.

23 Section 12. (1) The Legislature recognizes that the
24 United States Environmental Protection Agency has created
25 several pilot projects for redevelopment of brownfields to
26 gather information on the best ways to return old industrial
27 and commercial sites to productive use in situations where
28 redevelopment is complicated by potential environmental
29 contamination. These pilot project areas will perform initial
30 work to seek developers to restore the sites, and will also
31 incorporate the efforts of lenders, regulators, and other

1 groups. The United States Environmental Protection Agency is
2 flexible, allowing local governments to use a variety of
3 approaches to rehabilitate abandoned or underutilized sites,
4 neighborhoods, and small regional areas.

5 (2) The Legislature has determined that it would be
6 beneficial to provide similar incentives in this state for the
7 rehabilitation and redevelopment of brownfields. Accordingly,
8 the department shall, contingent upon funds being available in
9 the General Appropriations Act for fiscal year 1997-1998,
10 award grants in the amount of \$1 million to each United States
11 Environmental Protection national or regional brownfield pilot
12 project. These grants shall be awarded to existing pilot
13 projects and to any additional pilot projects that receive
14 designation prior to December 31, 1997.

15 Section 13. The introductory paragraph and paragraph
16 (k) of subsection (12) and paragraph (g) of subsection (13) of
17 section 376.3071, Florida Statutes, 1996 Supplement, are
18 amended to read:

19 376.3071 Inland Protection Trust Fund; creation;
20 purposes; funding.--

21 (12) REIMBURSEMENT FOR CLEANUP EXPENSES.--Except as
22 provided in s. 2(3), chapter 95-2, Laws of Florida, this
23 subsection shall not apply to any site rehabilitation program
24 task initiated after March 29, 1995. Effective August 1, 1996,
25 no further site rehabilitation work on sites eligible for
26 state-funded cleanup from the Inland Protection Trust Fund
27 shall be eligible for reimbursement pursuant to this
28 subsection. The person responsible for conducting site
29 rehabilitation may seek reimbursement for site rehabilitation
30 program task work conducted after March 28, 1995, in
31 accordance with s. 2(2) and (3), chapter 95-2, Laws of

1 responsible for site rehabilitation demonstrates to the
2 department that application of a financial or technical
3 auditing requirement would create a substantial hardship or
4 would violate principles of fairness. For purposes of this
5 subsection, "substantial hardship" means a demonstrated
6 economic, technological, legal, or other type of hardship to
7 the person requesting the variance or waiver. For purposes of
8 this subsection, "principles of fairness" are violated when
9 the application of a requirement affects a particular person
10 in a manner significantly different from the way it affects
11 other similarly situated persons who are affected by the
12 requirement or when the requirement is being applied
13 retroactively without due notice to the affected parties.

14 b. A person whose reimbursed costs are subject to a
15 financial and technical audit under this section may file a
16 written request to the department for grant of a variance or
17 waiver. The request shall specify:

18 (I) The requirement from which a variance or waiver is
19 requested.

20 (II) The type of action requested.

21 (III) The specific facts which would justify a waiver
22 or variance.

23 (IV) The reason or reasons why the requested variance
24 or waiver would serve the purposes of this section.

25 c. Within 90 days after receipt of a written request
26 for variance or waiver under this subsection, the department
27 shall grant or deny the request. If the request is not granted
28 or denied within 90 days of receipt, the request shall be
29 deemed approved. An order granting or denying the request
30 shall be in writing and shall contain a statement of the
31 relevant facts and reasons supporting the department's action.

1 The department's decision to grant or deny the petition shall
2 be supported by competent substantial evidence and is subject
3 to ss. 120.569 and 120.57. Once adopted, model rules
4 promulgated by the Administration Commission under s. 120.542
5 shall govern the processing of requests under this provision;
6 however, the department may process requests prior to the
7 adoption of those model rules.

8 6. The Comptroller may audit the records of persons
9 who receive or who have received payments pursuant to this
10 chapter in order to verify site restoration costs, ensure
11 compliance with this chapter, and verify the accuracy and
12 completeness of audits performed by the department pursuant to
13 this paragraph. The Comptroller may contract with entities or
14 persons to perform audits pursuant to this subparagraph. The
15 Comptroller shall commence any audit within 1 year after the
16 department's completion of an audit conducted pursuant to this
17 paragraph, except in cases where the department or the
18 Comptroller alleges specific facts indicating fraud.

19 (13) PETROLEUM CLEANUP PARTICIPATION PROGRAM.--To
20 encourage detection, reporting, and cleanup of contamination
21 caused by discharges of petroleum or petroleum products, the
22 department shall, within the guidelines established in this
23 subsection, implement a cost-sharing cleanup program to
24 provide rehabilitation funding assistance for all property
25 contaminated by discharges of petroleum or petroleum products
26 occurring before January 1, 1995, subject to a copayment
27 provided for in a preapproved site rehabilitation agreement.
28 Eligibility shall be subject to an annual appropriation from
29 the Inland Protection Trust Fund. Additionally, funding for
30 eligible sites shall be contingent upon annual appropriation
31 in subsequent years. Such continued state funding shall not

1 he deemed an entitlement or a vested right under this
2 subsection. Eligibility in the program shall be
3 notwithstanding any other provision of law, consent order,
4 order, judgment, or ordinance to the contrary.

5 (g) The following shall be excluded from participation
6 in the program:

7 1. Sites at which the department has been denied
8 reasonable site access to implement the provisions of this
9 section.

10 2. Sites that were active facilities when owned or
11 operated by the Federal Government.

12 3. Sites that are identified by the United States
13 Environmental Protection Agency to be on, or which qualify for
14 listing on, the National Priorities List under Superfund.
15 This exception does not apply to those sites for which
16 eligibility has been requested or granted as of the effective
17 date of this act under the Early Detection Incentive Program
18 established pursuant to s. 15, chapter 86-159, Laws of
19 Florida.

20 4. The contamination is covered under the Early
21 Detection Incentive Program, the Abandoned Tank Restoration
22 Program or the Petroleum Liability and Restoration Insurance
23 Program, in which case site rehabilitation funding assistance
24 shall continue under the respective program.

25 5. Any person who knowingly acquires title to
26 contaminated property shall not be eligible for restoration
27 funding pursuant to this subsection. The provisions of this
28 subsection do not relieve any person who has acquired title
29 subsequent to July 1, 1992, from the duty to establish by a
30 preponderance of the evidence that he or she undertook, at the
31 time of acquisition, all appropriate inquiry into the previous

1 ownership and use of the property consistent with good
2 commercial or customary practice in an effort to minimize
3 liability, as required by s. 376.308(1)(c). The provisions of
4 this subparagraph do not apply to any person who acquires
5 title by succession or devise.

6 Section 14. Subsection (8) is added to section
7 376.30711, Florida Statutes, 1996 Supplement, to read:
8 376.30711 Preapproved site rehabilitation, effective
9 March 29, 1995.--

10 (8) If site rehabilitation work pursuant to ss.
11 376.3071-376.3075 has not commenced by July 1, 1997, the
12 department shall only allow site rehabilitation on such sites
13 based on competitive bids for preapproved costs and
14 rehabilitation procedures.

5 Section 15. Subsection (3) of section 376.3072,
16 Florida Statutes, 1996 Supplement, is amended to read:
17 376.3072 Florida Petroleum Liability and Restoration
18 Insurance Program.--

19 (3) Sites that were certified as insured facilities
20 and that were denied coverage for a discharge under the
21 Petroleum Liability and Restoration Insurance Program may
22 request a reevaluation under the criteria in subsection (2).
23 Such request shall be made by December 31, 1996. If the
24 contamination is redetermined to be eligible, the deductible
25 and coverage limit in effect at the time the discharge was
26 reported shall be applicable. The redetermination shall not
27 affect the department's authority for assessing supplemental
28 deductibles or civil penalties. The department shall not
29 assess a supplemental deductible or civil penalty for alleged
30 failure to report or abate a discharge when the owner or
31 operator can establish no discharge occurred. Notwithstanding

1 any department order to the contrary, the supplemental
2 deductibles in subparagraph (2)(d)2.f. shall not be applied
3 cumulatively but, rather, the highest applicable supplemental
4 deductible shall be applied.

5 Section 16. This act shall take effect July 1, 1997.
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STORAGE NAME: h1067s2 gg
DATE: April 18, 1997

REPORTED TO
CLERK

HOUSE OF REPRESENTATIVES
COMMITTEE ON
GENERAL GOVERNMENT APPROPRIATIONS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT

BILL #: CS/CS/HB 1067 and 955
RELATING TO: Brownfield redevelopment and environmental protection
SPONSOR(S): Committees on General Government Appropriations, Environmental Protection and Representatives Constantine; Eggelton; and others
STATUTE(S) AFFECTED: Creates s. 376.77, 376.78, 376.79, 376.80, 376.81, 376.815, 376.82, 376.83, and 376.84, F.S., amends 288.095, 376.3071, 376.30711, and 376.3072, F.S.
COMPANION BILL(S): CS/CS/SB 1306 and 1934(s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) ENVIRONMENTAL PROTECTION YEAS 10 NAYS 2
- (2) BUSINESS DEVELOPMENT AND INTERNATIONAL TRADE (W/D)
- (3) COMMUNITY AFFAIRS (W/D)
- (4) FINANCE AND TAXATION (W/D)
- (5) GENERAL GOVERNMENT APPROPRIATIONS YEAS 10 NAYS 0

I. SUMMARY:

The bill creates the "Brownfield Redevelopment Act" and amends provisions of the underground storage tank program. Specific provisions

Direct local governments to designate a brownfield by ordinance provided it meets a set of criteria. Criteria include: increased economic activity, proper notice is given to affected parties; and a reasonable assurance that sufficient financial resources exist to complete the tasks. Designation as a brownfield only entitles the person to negotiate a brownfield rehabilitation agreement.

A site rehabilitation agreement would contain: rehabilitation schedules; a commitment to use professional engineers and geologists, a commitment to develop a pollution prevention plan, site plans, and an agreement describing the redevelopment terms

Direct the department to delegate this program to local governments that meet certain minimum specifications.

Create a "Brownfield Redevelopment Bonus." A \$2,500 bonus per job is available to those brownfields that create a minimum of ten full-time new jobs not associated with rehabilitation activities

Establish contamination cleanup criteria. The department is directed to utilize a risk-based approach in determining site specific cleanup criteria. Such rules are to be based on applicable state water quality and soil standards. In addition, noticing requirements are detailed for cleanup activities that impact adjacent property owners

Detail eligibility requirements. These include: any site for which the owner has not caused or contributed to the contamination; contaminated sites that are under consent orders and preceding in a good faith cleanup; sites owned by governmental agencies, and petroleum and dry-cleaning may participate if they waive their rights to state sponsored cleanups.

Provide liability protection for persons responsible for site rehabilitation and lenders. This protection is from actions to enforce cleanups and only applies to those designated sites that comply with the site rehabilitation agreement. Third parties still retain their right to sue for damages. The bill also contains a series of clauses that would permit the reopening of sites and require additional cleanups

Would provide grant funds to United States Environmental Protection Agency pilot projects

Amend the underground storage tank program. Specifically extends a claim filing deadline; empowers the Comptroller to perform audits, clarifies the application of deductibles, allows property to pass among family members without jeopardizing eligibility, and expands the use of competitive bidding

The act would take effect July 1, 1997

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Broadly defined, "brownfields" are abandoned, idled, or underused industrial and commercial properties where expansion or redevelopment is complicated by real or perceived environmental contamination. Brownfields are a chronic problem for both urban and rural areas. The U.S. General Accounting Office estimates that there are between 130,000 and 450,000 brownfield sites with a price tag of over \$650 billion to cleanup. Economic loss in jobs, loss of property taxes, and lender fear of financing the redevelopment of brownfields have resulted in support by the U.S. Environmental Protection Agency (EPA) and some twenty-two states with brownfield statutes.

Because of the cost of cleaning up a contaminated site and the potentially serious liability issues, it has been easier and more cost-effective for developers to ignore these sites in favor of developing open greenspace areas, even though many of the sites in a brownfield area may contain little or no actual environmental contamination. Concern over the rapid development of greenspace nationwide has prompted a great deal of interest in the redevelopment of brownfields.

In Florida, there are approximately 1,562 hazardous waste sites (not including sites which may contain contamination from petroleum products and drycleaning solvents) that are currently being managed by the Department of Environmental Protection's (DEP) enforcement program. Also, there are 893 additional sites in Florida that are listed in the EPA's Environmental Response Compensation and Liability Information System (CERCLIS). The CERCLIS list is used by the EPA to track potentially contaminated sites evaluated under the federal Superfund program.

The EPA has launched the Brownfields Initiative to empower states, communities, and other stakeholders in economic redevelopment to work together in a timely manner to prevent, assess, safely cleanup, and sustainably reuse brownfields. The anticipated benefits of the Brownfields Initiative in the affected communities will be a cleaner environment, new jobs, an enhanced tax base, and a sense of optimism about the future. The EPA activities to help states implement and realize the benefits of the Brownfields Initiative include clarification of liability issues, partnership and outreach, brownfields pilot projects, and job development training. To date, Florida has two pilot projects receiving Brownfield Initiative funds from the EPA; these are located in Clearwater and Miami.

It is the uncertainty concerning the perceived risk or liability to the developer, purchaser, investor, or lender on such a transaction, as much as it is the contamination at the site, that is the main impediment to redevelopment. The threat of future and unlimited liability, property devaluation, reopeners in "No Further Action" letters, stringent cleanup standards, and lender liability keeps potentially interested parties from recycling contaminated properties. In Florida, strict liability laws patterned after federal laws compel persons responsible for causing contamination from hazardous substances to be financially responsible for cleaning up the contaminated sites. Generally, these laws operate to hold everyone in the chain of title for a contaminated property jointly and severally responsible for the costs of cleanup and rehabilitation. These proceedings can be costly and drawn out over long periods of time.

Florida does not have a brownfields program. Cleanup of contaminated properties in Florida is completed by property owners and responsible parties pursuant to the DEP's enforcement authority provided in Chapter 403, F.S. A person who buys contaminated property is liable as an owner, even if the contamination resulted from the operations of a prior owner or tenant. The DEP usually requires parties to enter into a Consent Order, although the Department often waives formal enforcement actions and civil penalties on a case by case basis for parties that voluntarily complete a site cleanup.

For sites that pose immediate environmental and public health threats, Florida uses the Water Quality Assurance Trust Fund to respond while legal proceedings are under way to recover costs from responsible parties. This trust fund, however, serves a variety of needs and at the current rate of expenditures on brownfield sites, it will take decades to respond to the current list of potential brownfield sites.

A common feature of various Brownfield programs is the discretion to cleanup to less than prevailing target levels using Risk-Based Corrective Action (RBCA, pronounced Rebecca) principles. The RBCA principles allow use of engineering measures such as impermeable caps and institutional controls such as land use restrictions and deed notices in lieu of cleanups. Also, adjustments to cleanup target levels can be made based on industrial/commercial land use in contrast to residential land use. Target levels for cleanup in other states may be based on cancer risk management levels ranging from one in ten thousand to one in one million.

Based on 1996 legislation, the DEP has adopted RBCA principles for petroleum sites and is developing guidelines for the appropriate use of RBCA principles for non-petroleum sites. However, the contaminants at non-petroleum sites are often more hazardous and have different mobility and degradation rates than petroleum contaminants resulting in sites that are technically more complex and costly to cleanup. State law (s. 376.3071, F.S.) requires petroleum sites be managed at one in one million cancer risk level (10^{-6}) and a hazard index of 1 or less for non-carcinogens. The cleanup guidance criteria for non-petroleum sites are similarly based.

B. EFFECT OF PROPOSED CHANGES:

This bill creates the Brownfields Redevelopment Act and amends sections related to the Underground Petroleum Storage Tank Program.

Section 1: Section 376.77, F.S., is created to provide that the act shall be cited as the "Brownfields Redevelopment Act."

Section 2: Section 376.78, F.S., is created to provide legislative intent with regard to brownfields. The reduction of public health and environmental hazards on existing commercial and industrial sites is vital to their use and reuse as sources of employment, housing, recreation, and open-space areas. The reuse of industrial land is an important component of sound land-use policy for productive urban purposes that will help prevent the premature development of farmland, open-space areas, and natural areas, and reduce public costs for installing new water, sewer, and highway infrastructure. Further, the abandonment or underuse of brownfield sites results in the inefficient use of public facilities and services, as well as land and other natural resources, extends conditions of blight in local communities, and contributes to concerns about environmental equity and the distribution of environmental risks across population groups.

Incentives should be put in place to encourage responsible persons to voluntarily develop and implement cleanup plans without the use of taxpayer funds or the need for enforcement actions by state and local governments. Site rehabilitation should be based on the actual risk that contamination on a site may pose to the environment and public health, taking into account its current and future use and the degree to which contamination may spread and expose the public or the environment to risk.

This section further provides intent and findings regarding environmental justice considerations and recognition that the environment is an important element of the quality of life in any community, including but not limited to minority and low-income communities. Environmental justice considerations, and the fair treatment of all people, should be inherent in meaningful public participation elements of a brownfields redevelopment program.

Cooperation among federal, state, and local agencies, local community development organizations, current owners, and prospective purchasers of brownfield sites is required to accomplish timely cleanup activities and the redevelopment or reuse of brownfield sites.

Section 3: Section 376.79, F.S., is created to define the following terms: "additive effects", "antagonistic effects", "brownfield", "contaminated site", "department", "engineering controls", "institutional controls", "local pollution control program", "natural attenuation", "person responsible for brownfield site rehabilitation", "person", "site rehabilitation", "source removal", and "synergistic effects".

Section 4: Section 376.80, F.S., is created to provide for a brownfield program administration process. A local government with jurisdiction over the brownfield must notify the DEP of its decision to designate a brownfield for rehabilitation. The notification must include a resolution by the local government to which is attached a map adequate to clearly designate exactly which parcels are to be included in the brownfield or a less detailed map which is accompanied by a legal description of the brownfield. Any property owner within a proposed brownfield may request in writing to have his property removed from the proposed designation and the local government is required to grant the request. The local government shall provide for public hearings and notice of the proposed designation.

If a local government proposes to designate a brownfield that is outside community redevelopment areas, enterprise zones, empowerment zones, or designated brownfield pilot project areas, the local government must conduct at least one public hearing in the area to be designated to provide an opportunity for public input on the size of the area, the objectives for rehabilitation, job opportunities and economic developments anticipated, neighborhood residents' considerations, and other relevant local concerns. This section also provides the specifications for the notice of the public hearing requiring that the notice be at least 16 inches square in size, appear in ethnic newspapers or local community bulletins, be posted in the affected area, and be announced at a scheduled meeting of the local governing body before the actual public hearing.

The local government must consider the following in designating a brownfield:

- Whether the brownfield warrants economic development and has a reasonable potential for such activities;

-Whether the proposed designation represents a reasonable, focused approach and is not overly large in geographic coverage;

- Whether the site has potential to interest the private sector in participating in rehabilitation, and

-Whether the site is suitable for limited recreational open space, cultural, or historical preservation purposes.

A local government shall designate a brownfield under the provisions of this act provided that:

-A person who owns or controls a potential brownfield is requesting the designation and has agreed to rehabilitate and redevelop the brownfield;

- The rehabilitation and redevelopment of the proposed brownfield will result in economic productivity of the area along with the creation of new jobs which are not associated with the implementation of the rehabilitation agreement;

- The redevelopment of the proposed brownfield is consistent with the local comprehensive plan and is a permissible use under the applicable local land development regulations;

- Adjacent property owners and residents have been provided with notice of the proposed rehabilitation and have been given an opportunity to comment about the site rehabilitation. This notice must be in a newspaper of general circulation in the area, must be at least 16 inches square in size, and must also be posted in the affected area;

-An advisory committee has been established in order to improve public participation and receive public comment. It should include residents near the brownfield, businesses operating in the brownfield and others deemed appropriate; and

- The person proposing the designation has provided reasonable assurance that he or she has sufficient financial resources to implement and complete the rehabilitation agreement and development plan.

The designation of a brownfield and the identification of a person responsible for brownfield site rehabilitation simply entitles the identified person to negotiate a brownfield rehabilitation agreement with the DEP or approved local government.

At the time of the adoption of the resolution, the local government must notify the DEP of the entity that it is designating as the person responsible for brownfield site rehabilitation. If the agency or person responsible for the coordination changes during the brownfield site rehabilitation process, the DEP or the affected local pollution control program must notify the affected local government when the change occurs.

The person responsible for brownfield site rehabilitation must enter into a brownfield site rehabilitation agreement with DEP or an approved local pollution control program. The agreement must include:

- A brownfield site rehabilitation schedule;

- A commitment to conduct site rehabilitation activities under the observation of professional engineers or geologists. Upon completion of the approved remedial action, the department shall require the professional engineer or professional geologist to certify that the corrective action was, to the best of his knowledge, completed in substantial conformance with the plans and specifications approved by the department;
- A commitment to conduct site rehabilitation in accordance with an approved comprehensive quality assurance plan under DEP rules;
- A commitment to conduct site rehabilitation consistent with federal, state, and local laws and consistent with the brownfield site contamination cleanup criteria specified in this bill;
- A commitment to secure site access for the department or approved local pollution control program to the eligible brownfield for activities associated with rehabilitation;
- Other provisions that the person responsible for brownfield site rehabilitation and the DEP agree upon that will improve or enhance the brownfield site rehabilitation process;
- An agreement to develop within two years an appropriate pollution prevention plan;
- A site plan that specifies the size of the brownfield, the types of uses proposed, a completion date for redevelopment, and a list of capital improvements; and
- An agreement between the person responsible for site rehabilitation and the local government which details the terms for redevelopment.

Contractors must meet certain qualifications. Any professional engineer or geologist providing professional services relating to site rehabilitation program tasks must carry professional liability insurance with a coverage limit of at least \$1 million.

During the cleanup process, an eligible party may proceed from one phase or task of cleanup to the next prior to obtaining approval of the technical document for the next phase or task of cleanup. However, the eligible party will be required to complete any additional tasks identified by the department or local pollution control program found during the review.

If the person responsible for brownfield site rehabilitation fails to comply with the brownfield site rehabilitation agreement, DEP shall allow 90 days for that person to return to compliance with the provision at issue or to renegotiate a modification to the agreement with the DEP for good cause shown. If an imminent hazard exists, the 90 day grace period shall not apply. If the project is not returned to compliance with the agreement and a modification cannot be negotiated, the immunity provisions of s. 376.83, F.S. are revoked.

Failure by the department or approved local pollution control program to adhere to site rehabilitation deadlines constitutes approval of that specific task. Exceptions to this provision include "no further action" letters, "monitoring only" proposals, and feasibility studies.

Any agreement to extend the completion date may not be for more than 180 days, one additional extension, not to exceed 180 days, may be granted if deemed appropriate by the department or the local pollution control program.

The DEP is authorized and encouraged to enter into delegation agreements with local pollution control programs provided the local program has the administrative capacity to perform the work and adheres to Chapter 120, F.S.

Section 5: Creates s. 376.81, F.S., to provide brownfield redevelopment economic incentives. State and local governments are encouraged to offer redevelopment incentives to encourage the redevelopment of brownfields, and the bill delineates various examples of financial, regulatory, and technical assistance incentives that may be used to encourage redevelopment of brownfields

Section 6: Amends s. 288.095, F.S. to include the "Brownfield Redevelopment Bonus" as an authorized use of the Economic Development Trust Fund

Section 7: Creates s. 376.815, F.S. the "Brownfield Redevelopment Bonus." This creates a \$2,500 bonus per job, provided a minimum of 10 new full-time jobs, not related to site rehabilitation, are created; that the brownfield will diversify and strengthen the economy; and the designation will promote capital investment. This section also details administrative procedures for payment of the bonus by the Office of Tourism, Trade and Economic Development.

Section 8: Creates section 376.82, F.S., directing the DEP to establish by rule, for the purpose of determining, on a site-specific basis, the rehabilitation program tasks that comprise a site rehabilitation program and the level at which a rehabilitation program must be completed. The DEP is directed to adopt the rule by July 1, 1998. The criteria for determining what constitutes a rehabilitation program task or completion of a site rehabilitation program task or site rehabilitation program must:

- Consider the current exposure and potential risk of exposure to humans and the environment, including multiple pathways of exposure.
- Establish the point of compliance at the source of the contamination. However, the DEP is given direction to allow for the temporary movement of this point provided it maintains adequate protection to human health and the environment. Any movement of the point of compliance onto adjacent property requires actual notice to the property owner and local governments.
- Ensure that the site-specific cleanup goal is that all contaminated brownfields ultimately achieve the applicable cleanup target levels.
- Allow brownfield site rehabilitation programs to include the use of institutional or engineering controls, where appropriate, to eliminate or control the potential exposure to contaminants to humans or the environment. Use of such controls must be preapproved by the department.
- Consider the synergistic, antagonistic, and additive effects of contaminants when the scientific data becomes available.
- Take into consideration individual site characteristics.

- Apply state water quality standards.
- Provide for the department to issue a "no further action order" when alternative cleanup target levels have been achieved or based upon the degree to which the desired cleanup target level is achievable and can be reasonably and cost effectively implemented.
- Establish appropriate cleanup target levels for soils.

The department shall require source removal, if warranted and cost effective. Once source removal at a site is complete, the department shall reevaluate the site to determine the degree of active cleanup needed to continue. The department shall determine if the reevaluated site qualifies for monitoring only or a "no further action" letter.

Section 9: Creates s. 376.83, F.S., to provide eligibility criteria and liability protection:

Eligibility criteria will be granted to:

- Any person who has not caused or contributed to the contamination of a brownfield after July 1, 1997; and
- Persons who have not caused or contributed to the contamination of a brownfield after July 1, 1997, and who, prior to the department's approval of a brownfield site rehabilitation agreement, are subject to ongoing corrective action or enforcement under state authority, including those persons subject to a pending consent orders with the state if:
 - * The proposed brownfield is currently idle or underutilized as a result of contamination, and participation will immediately, after cleanup or sooner, result in increased economic productivity, including the creation of new jobs, whether permanent or part time, which are not associated with implementation of the brownfield site corrective action plan; and
 - * The person is complying in good faith with the terms of an existing consent order or department-approved corrective action plan, or responding in good faith to an enforcement action

Petroleum and dry-cleaning sites eligible for previously established state sponsored cleanups are not eligible for brownfield designations unless they forgo their eligibility under those programs.

Liability protection criteria will be granted to:

- Any person, including his or her successors and assigns, who executes and implements to successful completion a brownfield site rehabilitation agreement, shall be relieved of further liability for remediation of the site to the state and to third parties.

The liability protection shall not:

-be construed as a limitation on the right of a third party other than the state to pursue an action for damages to property or person.

-affect the ability or authority to seek contribution from any person who may have liability with respect to the site and who did not receive cleanup liability protection.

Liability protection will become effective upon execution of a brownfield site rehabilitation agreement and will remain effective, provided the person responsible for brownfield site rehabilitation complies with the terms of the agreement.

Completion of the performance of the remediation obligations at the brownfield site will be evidenced by a site rehabilitation completion letter or a "no further action" letter issued by the department.

Completion of the redevelopment portions of the agreement shall be evidenced by a finding by the local government that such terms have been met.

In addition, liability protection is extended to nonprofit conservation and charitable organizations who own contaminated property provided they did not cause or contribute to the contamination.

Reopener criteria:

-Upon completion of site rehabilitation in compliance with the act no additional site rehabilitation shall be required unless it is demonstrated that: fraud was committed; new information confirms the existence of an area of previously unknown contamination that poses an imminent hazard to human health and the environment; the remedial efforts failed to achieve the site rehabilitation goals; the level of risk is increased beyond the acceptable risk established; or a new release occurs.

Additional protection is also provided for lenders which protects them from actions undertaken by the person responsible for site rehabilitation. Should the person go bankrupt the lender would maintain protection provided they seek to sell the property as soon as practicable. Lenders who obtain title in this manner would not be eligible for incentives granted by the designation.

Section 10: Creates section 376.84, F.S., establishing violations and penalties. Any person who willingly commits a violation is guilty of a misdemeanor of the first degree, punishable by a fine of not more than \$10,000 or six months in jail, or both, for each offense.

Section 11: Requires the DEP to prepare an annual report to the Legislature, beginning in December 1998. The report shall include the number of sites remediated, the number of sites undergoing remediation, the number and size of brownfield sites that have been designated, the number of sites that have utilized site-specific criteria, information regarding the relationship between the program and the EPA's brownfields program, and information regarding brownfield redevelopment incentives that have been offered by local governments.

Section 12: Provides a \$1 million grant, subject to appropriation, to United States Environmental Protection Agency pilot projects located within the state. Currently Pinellas and Dade county have this designation.

Section 13: Amends s. 376 3071, F.S to extend the deadline for reimbursement applications in the underground storage tank program. This is done to address a series of applications that were late filed due to weather and mechanical problems associated with national delivery services. An additional subsection is also created to give the Comptroller specific authority to audit reimbursement claims associated with the program.

Language is also added to clarify that knowingly acquiring title does not include situations of inheritance or succession. Current statute denied eligibility to previously eligible sites even if family members acquired title in this manner.

Section 14: Amends s. 376.3072, F.S to clarify the legislatures intent that deductibles as applied to the underground storage tank program are not to be applied cumulatively.

Section 15: Amends s. 376.30711, F.S. to direct the DEP to utilize competitive bidding procedures for all underground tank sites in which no rehabilitation activity has begun as of July 1, 1997.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

Rule authority increases for the department as it relates to developing RBCA tables and guidelines for application to new forms of contaminants.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Local governments will be required to designate brownfields by resolution.

(3) any entitlement to a government service or benefit?

No

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes.

a. Does the bill increase anyone's taxes?

No

b. Does the bill require or authorize an increase in any fees?

No

c. Does the bill reduce total taxes, both rates and revenues?

No

d. Does the bill reduce total fees, both rates and revenues?

No

e. Does the bill authorize any fee or tax increase by any local government?

No

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Yes

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

N/A

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

- (1) parents and guardians?

N/A

- (2) service providers?

N/A

(3) government employees/agencies?

N/A

D. SECTION-BY-SECTION RESEARCH:

See "Effect of Proposed Changes"

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS.

1. Non-recurring Effects:

Some administrative cost will occur for the department as it relates to the processing of brownfield designations and negotiations related to site rehabilitation plans.

The extension of the filing deadline for underground storage tank reimbursement claims from December 31, 1996 to January 3, 1997 would allow an additional 50 claims in the amount of \$2.2 million.

The \$1 million grant program for EPA pilot projects would cost \$2 million for fiscal year 1997-1998 if funded

2. Recurring Effects:

The department will have additional workloads for ongoing review and monitoring of the implementation of brownfield site agreements and utilization of RBCA cleanups. The amount is indeterminate and will be directly related to the number and size of brownfields.

The "Brownfield Redevelopment Bonus" would have a recurring cost associated. This cost would be determined by the number of eligible jobs which qualified and the annual appropriation that would be available within the Economic Development Trust Fund.

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

See A 1 and A.2.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

Local governments will absorb portions of the costs associated with designation of brownfields, these include: noticing requirements, participation in negotiating site rehabilitation agreements, and additional administrative costs associated with adopting a resolution.

2. Recurring Effects:

None

3. Long Run Effects Other Than Normal Growth:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Persons choosing to seek the brownfield designation would incur costs associated with: noticing provisions contained in the bill; and the cleanup of contaminated sites.

2. Direct Private Sector Benefits:

Cost associated with rehabilitation of brownfield sites would be reduced under provisions of the bill.

3. Effects on Competition, Private Enterprise and Employment Markets:

The redevelopment of brownfield sites should contribute to economic revitalization, spurring business competition and additional employment opportunities in areas that have been economically depressed

D. FISCAL COMMENTS:

Direct costs for any parties participating in this program are indeterminate due to their relationship to the size of the brownfield and the complexity of any cleanups.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds

B REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority that municipalities or counties have to raise revenues.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the percentage of state tax shared with counties and municipalities.

V. COMMENTS:

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 4, 1997 the Committee on Environmental Protection adopted ten amendments and passed the bill as a committee substitute. After passing HB 1067 as a committee substitute the committee passed a motion to combine HB 955, by Representative Eggelton with HB 1067.

The adopted amendments: provide legislative intent related to environmental justice; combine the definitions of brownfield sites and brownfield areas; direct that persons responsible for brownfield site rehabilitation shall adopt an appropriate pollution prevention plan within two years; provide that the designation of a brownfield only permits the person responsible to seek an agreement with the department or approved local program; provide that site rehabilitation completion deadline may be automatically extended for a period of 180 days and that an additional 180 day extension may be granted by the department; require local governments and persons responsible for site rehabilitations to form an advisory group for the purpose of improving public participation; replace the definitions of additive effects, antagonistic effects and synergistic effects; and, provide that the revocation of immunity is statutorially automatic.

On April 18, 1997 the Committee on General Government Appropriations adopted a strike everything amendment to the bill and passed the bill as a committee substitute. Substantial changes made by the strike everything to CS/HB 1067 and 955:

- directed that persons responsible for site rehabilitation would be required to enter into an agreement with local government which details the proposed redevelopment plans for the site, in addition this agreement would now be tied to liability protection;
- required that site rehabilitation agreements contain a site plan describing the size of the brownfield, the types of uses proposed, a development completion date, and a list of capital improvements;
- requires that local pollution control agencies have the administrative capacity to handle the program and comply with Chapter 120, F.S provisions prior to any delegation agreement from the DEP;
- created the "Brownfield Redevelopment Bonus" program;

- amended notice provisions related to the point of compliance;
- clarified lender liability protection to ensure that sites have been designated a brownfield and that economic benefits associated with the designation do not go to the lender in cases of foreclosure;
- established a grant program for EPA pilot projects; and
- amended the underground storage tank program by: extending the deadline for filing reimbursement applications, directing the Comptroller to perform audits, clarifying eligibility requirements, directing that deductibles are not to be applied cumulatively, and expanding the competitive bidding program.

VII. SIGNATURES:

COMMITTEE ON ENVIRONMENTAL PROTECTION.

Prepared by:

Legislative Research Director:

Wayne S. Kiger

Wayne S. Kiger

AS FURTHER REVISED BY THE COMMITTEE ON GENERAL GOVERNMENT
APPROPRIATIONS:

Prepared by:

Legislative Research Director:

Cynthia P. Kelly
Cynthia P. Kelly

Cynthia P. Kelly
Cynthia P. Kelly

**DEPARTMENT OF ENVIRONMENTAL PROTECTION
FINAL BILL ANALYSIS
1997**

BILL #: CS/CS/SBs 1306 & 1934 Enrolled

RELATING TO: Brownfields Redevelopment

SPONSOR: Senators Latvala & Hargrett

STATUTE(S)

AFFECTED: Creates ss. 376.77, 376.78, 376.79, 376.80, 376.81, 376.82, 376.83, 376.84, and 288.107, F.S.; and amends ss. 288.095, 376.3071, 376.30711, 376.3072 and 403.0872, F.S.

COMPANION

BILL: CS/CS/HBs 1067 & 955

ANALYST/DATE/

PHONE NO.:	Bruce M. Deterding	05/14/97	487-2916
	Lisa M. Duchene	05/14/97	488-0190

I. SUMMARY:

Creates the Brownfields Redevelopment Act authorizing local governments to designate brownfield areas and establish advisory committees to improve public participation. The department or an approved local pollution control program provides regulatory oversight for the cleanup process through a brownfield site rehabilitation agreement with the applicant. The DEP is specifically authorized and encouraged to establish delegation agreements with local pollution control programs approved under s. 403.182, Florida Statutes, to administer the brownfields program locally. The bill requires that Risk-Based Corrective Action (RBCA) be applied at brownfield sites and directs the DEP to adopt a cleanup criteria rule by July 1, 1998. Additionally, the bill provides eligibility criteria and liability protection for certain brownfield program participants, with reopener provisions under certain circumstances. The bill also provides liability protection for lenders who meet certain criteria to encourage financing of real property transactions involving brownfield site rehabilitation plans. The bill lists brownfield redevelopment economic incentives that may be offered by the state and by local governments, and creates the brownfield redevelopment bonus refund to be funded out of the existing Economic Development Trust Fund.

Contingent on the availability of funds for FY 1997-1998, the bill establishes redevelopment grants to be awarded to the EPA-designated brownfield pilot projects in Florida. The bill requires the DEP to prepare a brownfields program annual activity report to the Legislature.

Lastly, the bill includes several provisions relating to the Tanks Reimbursement and Cleanup Programs, license fee deadlines for operation permits for major sources of air pollution, and certification of used oil transporters.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION

The federal Brownfields concept was developed to promote the cleanup and revitalization of abandoned or underutilized properties as an alternative to development of undeveloped areas (greenfields). The U.S. Environmental Protection Agency's (EPA) Brownfields Initiative focuses on providing funding support to local governments and municipalities and developing partnerships with regulatory agencies and other stakeholders involved in the redevelopment of Brownfields sites. Some states have enacted Brownfields legislation as a component of Voluntary Cleanup Programs (VCPs) or Real Estate Reuse Acts (RERAs) to help provide support and create incentives for the cleanup and redevelopment of properties in special industrial areas and designated economic development or enterprise zones.

In November 1995, the Governor's Commission for a Sustainable South Florida (GCSSF) recommended that the regional agencies and local governments take advantage of EPA's Brownfields Initiative to afford the safe commercial and industrial reuse of contaminated sites within infill and redevelopment areas. The GCSSF also recommended that the department, in consultation with the Risk-Based Priority Council, prepare legislation for a RERA for Brownfields sites. The development of such programs in other states provided incentives for prospective purchasers and lending institutions concerned about liability for existing site contamination. Those same concerns have spurred interest in establishing a Florida Brownfields program. Except for various incentives to encourage participation, most Brownfields programs are not state-funded programs. They rely on private capital to fund the cleanups. Also, most states have established funding sources generated by application fees or taxes to pay for regulatory oversight of voluntary cleanup projects, including review of technical documents.

Currently, Florida does not have a formal Brownfields program or VCP. Cleanup of contaminated properties in Florida is completed by property owners and responsible parties pursuant to the department's enforcement authority provided in Ch. 403, F.S., modeled on federal statutes. A person who buys contaminated property is liable as an owner, even if the contamination resulted from the operations of a prior owner or tenant. The department usually requires parties to enter into a Consent Order, although often waiving formal enforcement actions and civil penalties (case-by-case basis) for parties that voluntarily complete a site cleanup. In Florida, site cleanups for non-petroleum contamination are generally completed by licensed environmental professionals in accordance with the department's Model Corrective Actions for Contaminated Sites guidance document. This document provides recommended procedures for the development and approval of work plans and reports. The department's cleanup criteria are based on applicable ground water and surface water standards, ground water guidance

concentrations, contaminant leachability factors and soil exposure guidelines. The department has adopted Risk-Based Corrective Action (RBCA) principles for petroleum cleanups and is developing guidelines for use of RBCA concepts for non-petroleum sites. The department hesitated to use institutional controls such as land use and deed restrictions due to the uncertainty in monitoring future compliance, and opposes any changes in cleanup standards that reduce the overall protection provided to Florida citizens.

The department oversees cleanup actions, in conjunction with toxicologists and public health specialists, to ensure that the public health and environment are protected during site cleanups. The oversight of cleanup actions also provides the department with a mechanism to identify sites requiring immediate response actions and to provide assurance that the planned actions are appropriate and effective.

Department personnel from the Bureau of Waste Cleanup and the Office of General Counsel are working with the EPA and several Florida governments to develop procedures and incentives for the cleanup and redevelopment of potential Brownfields sites. The department will continue to assist local governments with Brownfields initiatives and will pursue available federal funding for Brownfields projects. The department can also use its existing discretionary enforcement authority to help ease liability concerns for prospective purchasers and lenders by waiving formal enforcement and penalties and entering into prospective purchaser agreements with parties that voluntarily cleanup and redevelop Brownfields sites.

B. EFFECT OF PROPOSED CHANGES:

The effect of the Brownfields Redevelopment Act is to authorize local governments to designate areas as brownfields by passage of a resolution with appropriate public notice under certain conditions. The bill makes it mandatory for a local government to designate a brownfield area if requested to do so by a person who owns or controls a potential brownfield site and who has agreed to rehabilitate and redevelop the site and can demonstrate that it will result in increased economic productivity at the site, including the creation of at least ten new jobs. Other requirements include local comprehensive plan consistency, public notice and financial assurances. Contaminated areas previously idled, abandoned or under-utilized will be rehabilitated and effect jobs and other economic opportunities. Because the bill requires the person responsible for brownfield site rehabilitation to enter into a site rehabilitation agreement with the department or a delegated approved local environmental program, the bill's provisions would increase workloads for the department and local program staffs. Resources will be expended and staff will be needed to negotiate brownfield site rehabilitation agreements and to review all of the technical documentation submitted as part of the site rehabilitation process. The bill also has the effect of applying RBCA cleanup criteria to brownfields sites. The RBCA language in this bill is similar to that passed last year's Tanks bill (HB 1127), which only applied to

petroleum sites.

The bill makes any person who has not caused or contributed to the contamination of a brownfield site after July 1, 1997, eligible to participate in the brownfield program except for certain sites subject to federal enforcement or corrective action. Also, sites subject to state enforcement or corrective action must be in good faith compliance. The cutoff date would exclude future polluters from the program. The bill also establishes that petroleum and dry cleaning contamination sites shall not receive both restoration funding assistance available under chapter 376 and the state assistance available under the newly created s. 288.107, which creates the Brownfield Redevelopment Bonus Refund. The bill does not preclude petroleum and dry cleaning contamination sites from brownfield program eligibility; however, it does state that nothing in this act shall affect the cleanup criteria, priority ranking, and other rights and obligations inherent in the petroleum and dry cleaning programs. When cleanup is completed in accordance with the terms of the brownfield site rehabilitation agreement, the person responsible for brownfield site rehabilitation is relieved of further cleanup liability subject to certain reopener provisions. The bill also has the effect of extending the existing lender liability defenses for petroleum sites to brownfield sites, which will include non-petroleum contaminants.

The bill provides economic incentives to increase interest in the brownfields program, including Brownfields Redevelopment Bonus Refunds for each new Florida job created.

The bill directs the DEP to award grants to each United States EPA national or regional brownfield pilot project, contingent upon available funding in the General Appropriations Act, making this state's brownfields program a partially state-funded program. The bill also requires that DEP prepare an annual brownfields program progress report to the legislature.

The bill extends the December 31, 1996 filing deadline for tanks program reimbursement applications to January 3, 1997, and gives the Comptroller the authority to audit the records of persons receiving payments pursuant to chapter 376, F.S.; i.e., tanks reimbursement claims. The bill clarifies the existing eligibility provisions for the Petroleum Cleanup Participation Program by establishing that the due diligence provision does not apply to any person who acquires title by succession or devise. The bill directs the DEP to use competitive bid procedures to procure site rehabilitation services on a minimum of 25 priority sites under certain conditions, and it exempts this competitive bidding from the requirements of s. 287.055, F.S. Also, the bill has the effect of prohibiting "stacking" of supplemental deductibles in the Petroleum Liability and Restoration Insurance Program by establishing that the deductibles shall not be applied cumulatively, but rather the highest applicable supplemental deductible shall be applied.

The bill exempts certain entities from the requirement to be certified used oil transporters, codifying in statute the existing department rule. During recent rulemaking, the Joint Administrative Procedures Committee (JAPC) indicated that the department rule lacked authority to allow such exemptions. This provision now gives the DEP that authority.

Lastly, the bill has the effect of changing the applicable deadline for the annual operation license fee for major sources of air pollution by requiring that it be postmarked by March 1 rather than received by that date.

C. SECTION-BY-SECTION ANALYSIS

Section 1: Section 376.77, F.S., is created to provide that the act may be cited as the "Brownfields Redevelopment Act."

Section 2: Section 376.78, F.S., is created to provide legislative intent with regard to brownfields.

Section 3: Section 376.79, F.S., is created to define the following terms: "Additive effects"; "Antagonistic effects"; "Brownfield sites"; "Brownfield area"; "Contaminated site"; "Department"; "Engineering controls"; "Environmental justice"; "Institutional controls"; "Local pollution control program"; "Natural attenuation"; "Person responsible for brownfield site rehabilitation"; "Person"; "Site rehabilitation"; "Source removal"; and "Synergistic effects."

Section 4: Section 376.80, F.S., is created to provide for a brownfield program administration process. A local government with jurisdiction over the brownfield area must notify the DEP of its decision to designate a brownfield area for rehabilitation. The notification must include a resolution by the local government body and attach a map delineating which parcels are to be included in the brownfield area, or a less detailed map accompanied by a detailed legal description. Any property owner within a proposed brownfield area may request in writing to have his property removed from the proposed designation and the local government is required to grant the request. The local government shall provide for public hearings and notice of the proposed designation. If a local government proposes to designate a brownfield area outside community redevelopment areas, enterprise zones, empowerment zones, or designated brownfield pilot project areas, they must conduct at least one area public hearing to provide an opportunity for public input on the size, objectives for rehabilitation, job opportunities and economic developments anticipated, and other relevant local. The notice must appear in ethnic newspapers or local community bulletins as well as a newspaper of general circulation in the area. Notice must be posted in the affected area and announced at a scheduled meeting of the local governing body before the actual public hearing. The local government must consider the following in determining the area to be designated as a brownfield area:

- Whether the brownfield area warrants economic development and has a reasonable potential for such activities,

- Whether the proposed area to be designated represents a reasonably focused approach and is not overly large in geographic coverage,
- Whether the area has potential to interest the private sector in participating in rehabilitation, and
- Whether the area contains sites or parts of sites suitable for limited recreational open space, cultural, or historical preservation purposes.

The local government shall designate a brownfield area if requested by a person, under certain conditions. Persons owning or controlling the potential brownfield site must demonstrate that site rehabilitation and redevelopment will result in increased economic productivity, including the creation of at least ten new jobs which are not associated with the implementation of the brownfield site rehabilitation agreement or any agreement between the person responsible for brownfield site rehabilitation and the applicable local government regarding the terms for redevelopment of the area. Local comprehensive plan consistency is required, as well as public notice and financial assurances that cleanup and development will be completed.

At the time of the adoption of the resolution, the local government must notify the DEP of the entity designated as the "person responsible for brownfield site rehabilitation." If the responsible agency or person changes during the brownfield site rehabilitation approval process, the DEP or the affected local pollution control program must notify the affected local government when the change occurs. Also, local governments or persons responsible for brownfield site rehabilitation must establish an advisory committee to improve public participation and to receive public comment on the proposed brownfield project. The advisory committee must review and provide recommendations to the board of the jurisdictional local government on the proposed site rehabilitation agreement outlined below.

The person responsible for brownfield site rehabilitation must enter into a brownfield site rehabilitation agreement with the DEP or an approved local environmental program. The agreement must include

- A brownfield site rehabilitation schedule.
- A commitment to conduct site rehabilitation activities under the observation of professional engineers or geologists who are registered under Florida law.
- A commitment to conduct site rehabilitation in accordance with an approved comprehensive quality assurance plan under DEP rules.
- A commitment to conduct site rehabilitation consistent with state, federal, and local laws and consistent with the site contamination cleanup criteria specified in this bill.
- Timeframes for the DEP's review of technical reports and plans submitted in accordance with the agreement. The DEP is required to make every effort to adhere to established agency goals for reasonable timeframes for review of such documents.
- A commitment to secure site access for the DEP or approved local environmental program.

- Other provisions that the person responsible for brownfield site rehabilitation and the DEP agree upon that will improve or enhance the brownfield site rehabilitation process
- A commitment to consider and implement appropriate pollution prevention measures.
- An agreement between the person responsible for brownfield site rehabilitation and the local government with jurisdiction over the brownfield containing terms for the redevelopment of the brownfield.

Contractors must meet certain listed qualifications.

Professional engineers or geologists providing professional services relating to site rehabilitation program tasks must carry professional liability insurance with a coverage limit of at least \$1 million.

During the cleanup process, if the DEP or local program fails to complete the review of a technical document within the timeframe specified in the brownfield site rehabilitation agreement, the person responsible for brownfield site rehabilitation may proceed to the next site rehabilitation task at his own risk. Exceptions include requests for "No Further Action," "Monitoring Only Proposals," and feasibility studies which must be approved prior to implementation.

If the responsible person fails to comply with the brownfield site rehabilitation agreement, the DEP shall allow 90 days for that person to return to compliance with the provision at issue or to renegotiate a modification to the agreement with the DEP for good cause shown. However, if an imminent hazard exists, the 90-day grace period does not apply. If the project is not returned to compliance with the agreement and a modification cannot be negotiated, the immunity provisions of s. 376.82, F.S., are revoked.

The DEP is authorized and encouraged to enter into delegation agreements with local pollution control programs approved under s. 403.182 to administer the brownfields program within their jurisdictions.

Local governments are encouraged to utilize the full range of economic and tax incentive available to promote the rehabilitation of brownfield areas.

Section 5: Section 376.81, F.S., is created to provide for contamination cleanup criteria. By July 1, 1998, the secretary of DEP shall establish criteria by rule for the purpose of determining, on a site-specific basis, the rehabilitation program tasks that comprise a site rehabilitation program and the level at which a rehabilitation program task and a site rehabilitation may be deemed completed. In establishing the rule, the DEP shall incorporate, to the maximum extent feasible, risk-based corrective action principles to achieve protection of human health and safety and the environment in a cost-effective manner. The rule shall also include protocols for the use of natural attenuation and the issuance of "no further action" letters. The criteria for determining what constitutes a rehabilitation program task or completion of a site rehabilitation program or task must:

- Consider the current exposure and potential risk to humans and the

- environment, including multiple pathways of exposure.
- Establish the point of compliance at the source of the contamination. The department may temporarily move the point of compliance under certain conditions.
 - Ensure that the site-specific cleanup goal is that all contaminated brownfield sites and brownfield areas achieve the applicable cleanup target levels provided for in this section. The department may allow the concentrations of contaminants to temporarily exceed the applicable cleanup target levels under certain conditions.
 - Allow brownfield site and brownfield area rehabilitation programs to include the use of institutional or engineering controls to eliminate or control the potential exposure of contaminants to humans or the environment. The use of controls must be preapproved by the department.
 - Consider the additive effects of contaminants. The synergistic and antagonistic effects of contaminants shall also be considered when the scientific data become available.
 - Take into consideration certain individual site characteristics.
 - Apply state water quality standards as specified in the bill.
 - Provide for the department to issue a "no further action order" under certain circumstances, with or without conditions.
 - Establish appropriate cleanup target levels for soils.

The department shall require source removal under certain circumstances.

Section 6: Section 376.82, F.S., is created to provide the eligibility criteria and liability protection. Any person who has not caused or contributed to the contamination of a brownfield site after July 1, 1997, is eligible to participate in the rehabilitation program subject to the following:

- Certain potential sites subject to an ongoing formal judicial or administrative enforcement action or corrective action pursuant to federal authority are not eligible for participation unless specific exemptions are secured by a memorandum of agreement with EPA. Provides for revocation of eligibility if a site subsequently becomes subject to such federal action.
- Persons who have not caused or contributed to the contamination of a brownfield site after July 1, 1997, and who, prior to the department's approval of a brownfield site rehabilitation agreement, are subject to ongoing corrective action or enforcement under state authority, including those persons subject to a pending consent order with the state, are eligible for participation in a brownfield corrective under certain conditions.
- Petroleum and dry cleaning contamination sites may be eligible for the brownfield program, but they cannot receive both restoration funding assistance under chapter 376 and any state assistance under s. 288.107 (the brownfield redevelopment bonus refunds). Additionally, brownfield eligibility does not affect the cleanup criteria and priority ranking applied to the petroleum and dry

cleaning sites.

Any person, including successors and assigns, who executes and implements to successful completion a brownfield site rehabilitation agreement is relieved of further liability for remediation of the contaminated site or sites to the state and to third parties and of liability in contribution to any other party who has or may incur cleanup liability for the contaminated site or sites. This section does not limit the right of a third party other than the state to pursue an action for damages to property or person; however, a third party cannot compel site rehabilitation in excess of that required in the approved brownfield site rehabilitation agreement or otherwise required by the DEP or approved local pollution control program. This section does not affect the ability or authority to seek contribution from any person who may have liability with respect to the contaminated site and who did not receive cleanup liability protection under this act.

The liability protection is effective upon execution of the brownfield site rehabilitation agreement and remains effective, provided the person responsible for brownfield site rehabilitation complies with the terms of the agreement. Also, the bill tolls any statute of limitations that would bar the DEP from pursuing relief in accordance with its existing authority until site rehabilitation is completed or immunity is revoked.

Completion of the performance of the remedial obligations at the brownfield site shall be evidenced by a site rehabilitation completion letter or a "no further action" letter issued by the department or the approved local pollution control program.

Compliance with the agreement between the person responsible for brownfield site rehabilitation and the applicable local government must be evidenced by a finding by the local government that the terms of the agreement have been met. The legislature, in recognition of its limitations in addressing cleanup liability under federal pollution control programs, directs the DEP to attempt to negotiate a memorandum of agreement or similar document with the U.S.E.P.A. whereby the EPA agrees to forego enforcement of federal corrective action authority at brownfield sites that have received a site rehabilitation completion or "no further action" determination from the department or the approved local pollution control program or that are in the process of implementing a brownfield site rehabilitation agreement.

No unit of state or local government may be held liable for implementing corrective action at a contaminated site within an eligible brownfield as a result of the involuntary ownership of the site through bankruptcy, tax delinquency, abandonment, or other circumstances in which the state or local government involuntarily acquires title by virtue of its sovereign function, or as a result of ownership from donation or gift, unless the state or local government has otherwise caused or contributed to a release of a contaminant at the site.

The bill also provides immunity provisions for certain nonprofit conservation organizations acting in the public interest who purchase land for conveyance to any governmental entity for conservation, historical preservation or cultural

resource, park, greenway, or other similar uses

The bill provides certain "reopener" provisions. A person who completes approved remediation is not required to undertake other remedial actions unless:

- Fraud was committed in demonstrating site conditions or completion of site rehabilitation,
- New information confirms the existence of an area of previously unknown contamination exceeding the site-specific rehabilitation levels or otherwise poses a threat of real and substantial harm to public health, safety, or the environment;
- The remediation efforts failed to achieve the site rehabilitation criteria established under s. 376.81, F.S.;
- The level of risk is increased beyond the acceptable risk established under s. 376.81, F.S., due to substantial changes in exposure conditions. Any person changing the land use of the brownfield site, causing the level of risk to increase beyond the acceptable risk level, may be required by the department to undertake additional remediation measures, or
- A new release occurs at the brownfield site subsequent to a determination of eligibility for participation in the brownfield program.

Additional liability protection is provided for lenders under certain conditions. The economic incentives granted to any person responsible for brownfield site rehabilitation shall not accrue to a lender, but may be transferred and reinstated upon the sale of the brownfield

Section 7: Section 376.83, F.S., is created to provide penalties for violations of this act.

Section 8: Creates s. 376.84, F.S., to provide legislative intent and to encourage state and local governments to offer redevelopment incentives including a lengthy list of financial, regulatory and technical assistance incentives to persons and businesses involved with brownfield redevelopment.

Section 9: The DEP is directed to award grants to each national or regional brownfield pilot project designated by the U.S. EPA, contingent upon funds being available in the General Appropriations Act for FY 1997-98.

Section 10: Amends s. 288.095 regarding tax refunds from the Economic Development Trust Fund to add reference to the newly created Brownfields Redevelopment Bonus Refund.

Section 11: Creates s. 288.107 governing the new Brownfields Redevelopment Bonus Refund. This section includes definitions, criteria for participation, payment procedures, and administration regarding monitoring and auditing applications for bonus refunds.

Section 12: Establishes how the brownfield redevelopment grant money shall be distributed, with funds going first to US EPA brownfield pilot projects designated as of May 1, 1997, in the amount of \$500,000 each, next US EPA brownfield pilot projects designated as of the effective date of this act (July 1, 1997) shall receive \$200,000 grants each; remaining funds shall be split on a pro-rata basis to those pilot projects that applied but did not receive the US EPA designation, not to exceed \$200,000. Grants funds shall be used by local governments to set up and implement a program which promotes brownfield redevelopment.

Section 13: Directs the DEP to prepare an annual report to the Legislature regarding the progress of the brownfields program.

Section 14: Amends s. 376.3071, F.S., to extend the December 31, 1996 filing deadline for tanks program reimbursement applications to January 3, 1997. Provides audit authority for the Comptroller's Office. Clarifies eligibility provisions for the Petroleum Cleanup Participation Program by establishing that the provision requiring due diligence does not apply to any person who acquires title by succession or devise.

Section 15: Amends s. 376.30711, F.S., to direct the DEP to use competitive bid procedures to procure site rehabilitation services on a minimum of 25 priority sites under certain conditions. Exempts this competitive bidding from the requirements of s. 287.055, F.S.

Section 16: Amends s. 376.3072, F.S., regarding supplemental deductibles in the Petroleum Liability and Restoration Insurance Program to establish that the deductibles shall not be applied cumulatively, but rather the highest applicable supplemental deductible shall be applied.

Section 17: Amends s. 403.767, F.S., to provide exemptions from the requirements regarding certification of used oil transporters.

Section 18: Amends s. 403.0872, F.S., changing the applicable deadline for the annual operation license fee for major sources of air pollution by requiring that it be postmarked by March 1 rather than received by that date.

Section 19: This act takes effect on July 1, 1997.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

Funding was provided in the General Appropriations Act as follows: a \$3 million appropriation for the Brownfield Redevelopment grants, and a \$485,000 appropriation to fund 7 positions at DEP to administer the brownfields program

1. Non-recurring Effects: Indeterminate non-recurring costs associated with the required rulemaking for cleanup criteria, (brownfields RBCA rule). These costs include publication of a proposed rule through mail-outs and public workshops around the state, as well as costs associated with publication and process requirements pursuant to chapter 120, F.S.

Based on the \$3 million appropriation in the General Appropriations Act for brownfield redevelopment grants, the state's GR fund will be impacted for the full \$3 million amount because there are eligible brownfield pilot projects in each category established in the bill (FPA designated by May 1, 1997; EPA designated by July 1, 1997; and those that have applied but were not designated.)

Additionally, the deadline extension, from 12/31/96 to 01/03/97, for filing tanks program reimbursement applications, will require the DEP to process and pay the allowable claims for reimbursement, which will be paid from the Inland Protection Trust Fund. The current estimated amount claimed in this category of late-filed applications totals approximately \$2.5 million dollars.

2. Recurring Effects: Since the General Appropriations Act authorized only 7 FTE's, the DEP may have to absorb some of the costs associated with implementation and continued operation of the program into its current budget and workload, depending on the level of public interest and participation, which is expected to grow. This may affect existing programs as staff and resources are shifted to the brownfields program, to deal with negotiation of brownfield site rehabilitation agreements, technical document review during the cleanup process, and preparation of the annual report on the brownfields program. A program of this potential magnitude could require significant staff resources.

3. Long Run Effects Other Than Normal Growth: Unknown.

4. Total Revenues and Expenditures: See narrative above.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First-Year Start-up Effects: Unknown. Although it is unclear what the direct fiscal impact will be, local governments will have significant incidental costs associated with implementation of the program.

2. Recurring or Annualized Continuation Effects: There will be various costs associated with continued implementation of the brownfield program at the local level, including application review, conducting public hearings, and public outreach prior to brownfield designation by resolution. Incentives for participation, such as tax incentives, will impact local tax revenues. If a local government receives a delegation from the department, its approved local pollution control program will expend resources to perform technical document reviews and other similar regulatory functions.

The local governments that receive brownfield redevelopment grants will greatly benefit from this state-funded portion of their brownfield efforts.

3. Long-Run Effects Other than Normal Growth: Unknown.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs: Unknown. To the extent that individuals or entities choose to participate in the brownfield program, they will expend private capital to rehabilitate contaminated sites and redevelop them.

2. Direct Private Sector Benefits: Unknown. A positive economic effect on the private sector is anticipated once the pilot projects and other brownfields projects are initiated. Direct benefits include employment opportunities for environmental cleanup contractors, future job opportunities for area residents (at least 10 new jobs), opportunity for developers to realize profits on properties, increases in contiguous property values, and a reduction or elimination of risk to public health and the environment resulting from contamination cleanup.

The private sector benefits from the incentives package, bonus refunds of \$2,500 for each new Florida job created, and liability release. Lenders are afforded the benefit of liability protection under certain conditions.

Applicants who missed the December 31, 1996 filing deadline for tanks program reimbursement applications, but filed by January 3, 1997, will benefit by having the opportunity to refile their applications and seek reimbursement from the Inland Protection Trust Fund. Private sector participants in the Petroleum Liability and Restoration Insurance Program may benefit by being subject to only one supplemental deductible rather than multiple deductibles for multiple violations.

3. Effects on Competition, Private Enterprise and Employment Markets: Unknown. Economic redevelopment is likely to stimulate competition, help private enterprise thrive, and create more opportunities in the employment market.

IV. COMMENTS/AMENDMENTS:

The department supports this important legislation.

(If you have questions concerning the bill analysis or this form, contact DEP Legislative Affairs, Bruce M. Deterding: 904-487-2916, FAX 904-488-7093).

cc: Governor's Office OPB/ENV FAX 922-6200

FAX

Date 05/27/97

Number of pages including cover sheet 15

TO: ED TRIBBLE

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REMARKS: Urgent For your review Reply ASAP Please Comment
AS REQUESTED ANALYSIS OF BROWNFIELDS LEGISLATION PREPARED BY DEP.