CHAPTER 97-277

Committee Substitute for Committee Substitute for Senate Bill Nos. 1306 and 1934

An act relating to environmental protection; 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; 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; providing consequences of failure to comply with a rehabilitation agreement; authorizing the Department of Environmental Protection to enter into delegation agreements with local pollution control program; providing requirements for local pollution control programs; creating s. 376.81, F.S.; providing for brownfield contamination cleanup criteria; directing the Department of Environmental Protection to establish by rule criteria for determining tasks that comprise a site rehabilitation program and the level at which tasks and programs may be deemed completed; providing that source removal may be required under certain conditions; creating s. 376.82, F.S.; providing eligibility requirements for participation in brownfield rehabilitation; providing liability protection for persons who successfully complete a rehabilitation agreement; providing requirements for the issuance of a "no further action" letter evidencing completion of rehabilitation; authorizing negotiation with the United States Environmental Protection Agency regarding enforcement; providing certain liability protection for state and local governments and for certain nonprofit land conservation corporations; providing conditions under which further rehabilitation may be required; providing liability protection for certain lenders; creating s. 376.83, F.S.; specifying violations and providing penalties; providing for pilot projects; creating s. 376.84, F.S.; specifying financial, local, regulatory, and technical assistance incentives that may be included; amending s. 288.095, F.S.; to conform; creating s. 288.107, F.S.; creating a brownfield bonus refund program; providing for refunds from the Economic Development Incentive Account to certain qualified target industry businesses for jobs created in a brownfield; providing criteria for participation; providing procedures and requirements for refunds; providing penalties; providing for administration; providing for the disbursement of funds; requiring the Department of Environmental Protection to report annually; amending s. 376.3071, F.S.; revising application deadlines for cleanup reimbursement from the Inland Protection Trust Fund; providing for audits by the Comptroller; revising eligibility criteria relating to the petroleum cleanup participation pro-

gram; amending s. 376.30711, F.S.; providing for competitive bidding for certain site rehabilitations; amending s. 376.3072, F.S.; specifying the process for applying certain supplemental deductibles; amending s. 403.0872, F.S.; clarifying permit filing deadlines; 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, 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 disproportionately impacted by targeted environmentally hazardous sites. The results indicate the need for the health and risk exposure assessments of minority and poverty populations around environmentally hazardous sites in this state. Redevelopment of hazardous

sites should address questions relating to environmental and health consequences.

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

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

(9) Cooperation among federal, state, and local agencies, local community development organizations, and 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, Florida Statutes, is created to read:

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.

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

376.80 Brownfield program administration process.—

(1) A local government with jurisdiction over the brownfield area must notify the department of its decision to designate a brownfield area for rehabilitation for the 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 permittable 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;

(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.

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

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

376.81 Brownfield site and brownfield areas contamination cleanup criteria.—

(1) It is the intent of the Legislature to protect the health of all people under actual circumstances of exposure. By July 1, 1998, the secretary of the department 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 program may be deemed completed. In establishing the rule, the department 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 as provided in this subsection. 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 task or site rehabilitation program must:

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

(b) Establish the point of compliance at the source of the contamination. However, the department is authorized to 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, while cleanup, including cleanup

through natural attenuation processes in conjunction with appropriate monitoring, is proceeding. The department also is authorized, pursuant to criteria provided for in this section, to temporarily extend the point of compliance beyond the property boundary with appropriate monitoring, if such extension is needed to facilitate natural attenuation or to address the current conditions of the plume, provided human health, public safety, and the environment are protected. When temporarily extending the point of compliance beyond the property boundary, it cannot be extended further than the lateral extent of the plume at the time of execution of the brownfield site rehabilitation agreement, if known, or the lateral extent of the plume as defined at the time of site assessment. Temporary extension of the point of compliance beyond the property boundary, as provided in this paragraph, must include actual notice by the person responsible for brownfield site rehabilitation to local governments and the owners of any property into which the point of compliance is allowed to extend and constructive notice to residents and business tenants of the property into which the point of compliance is allowed to extend. Persons receiving notice pursuant to this paragraph shall have the opportunity to comment within 30 days of receipt of the notice.

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

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

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

(f) Take into consideration individual site characteristics, which shall include, but not be limited to, the current and projected use of the affected

groundwater and surface water in the vicinity of the site, current and projected land uses of the area affected by the contamination, the exposed population, the degree and extent of contamination, the rate of contaminant migration, the apparent or potential rate of contaminant degradation through natural attenuation processes, the location of the plume, and the potential for further migration in relation to site property boundaries.

(g) Apply state water quality standards as follows:

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

2. Where surface waters are exposed to contaminated groundwater, the cleanup target levels for the contaminants shall be based on the surface water standards as established by department rule. The point of measuring compliance with the surface water standards shall be in the groundwater immediately adjacent to the surface water body.

3. The department may set alternative cleanup target levels based upon an applicant's demonstration, using site-specific modeling and risk assessment studies, that human health, public safety, and the environment are protected to the same degree as provided in subparagraphs 1. and 2. Where a state water quality standard is applicable, a deviation may not result in the application of cleanup target levels more stringent than the standard. In determining whether it is appropriate to establish alternative cleanup target levels at a site, the department must consider the effectiveness of source removal that has been completed at the site and the practical 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 protected.

(h) Provide for the department to issue a "no further action order" when alternative cleanup target levels established pursuant to subparagraph (g)3. have been achieved.

(i) Provide for the department to issue a "no further action order" with conditions, where appropriate, when alternative cleanup target levels established pursuant to subparagraph (g)3. have been achieved, or when the person responsible for brownfield site rehabilitation can demonstrate that the cleanup target level is unachievable within available technologies. Prior to issuing such an order, the department shall consider the feasibility of an alternative site rehabilitation technology in the brownfield area.

(j) Establish 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. Institutional controls or other methods shall be used to prevent human exposure to contaminated soils more than 2 feet below the land surface. Any removal of such institutional controls shall require such contaminated soils to be remediated.

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.

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

(2) 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. Further, the department shall determine if the reevaluated site qualifies for monitoring only or if no further action is required to rehabilitate the site. If additional site rehabilitation is necessary to reach "no further action" status, the department is encouraged to utilize natural attenuation and monitoring where site conditions warrant.

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

376.82 Eligibility criteria and liability protection.—

(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)(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.

(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 reopener 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.

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

376.83 Violation; penalties.—

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

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

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 redevel-

opment 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 1997-1998, 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 than 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.

Section 13. The Department of Environmental Protection shall prepare an annual report to the Legislature, beginning in December 1998, which shall include, but not be limited to 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.

Section 14. 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 15. 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 1997-1998, 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 16. 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.

Section 17. Subsection (1) of section 403.767, Florida Statutes, is amended to read:

403.767 Certification of used oil transporters.—

(1) Any person who transports over public highways after January 1, 1990, more than 500 gallons annually of used oil must be a certified transporter. This subsection does not apply to:

(a) Local governments or private solid waste haulers under contract to a local government that transport used oil collected from households to a public used oil collection center.

(b) Persons who transport less than 55 gallons of used oil at one time that is stored in tightly closed containers which are secured in a totally enclosed section of the transport vehicle.

(c) Persons who transport their own used oil, which is generated at their own noncontiguous facilities, to their own central collection facility for storage, processing, or engery recovery. However, such persons shall provide the

same proof of liability insurance or other means of financial responsibility for liability which may be incurred in the transport of used oil as provided by certified transporters under subsection (3).

Section 18. Subparagraph 7. of subsection (11)(a) of section 403.0872, Florida Statutes, is amended to read:

403.0872 Operation permits for major sources of air pollution; annual operation license fee.—Provided that program approval pursuant to 42 U.S.C. s. 7661a has been received from the United States Environmental Protection Agency, beginning January 2, 1995, each major source of air pollution, including electrical power plants certified under s. 403.511, must obtain from the department an operation permit for a major source of air pollution under this section, which is the only department operation permit for a major source of air pollution required for such source. Operation permits for major sources of air pollution, except general permits issued pursuant to s. 403.814, must be issued in accordance with the following procedures and in accordance with chapter 120; however, to the extent that chapter 120 is inconsistent with the provisions of this section, the procedures contained in this section prevail:

(11) Commencing in 1993, each major source of air pollution permitted to operate in this state must pay between January 15 and March 1 of each year, upon written notice from the department, an annual operation license fee in an amount determined by department rule. The annual operation license fee shall be terminated immediately in the event the United States Environmental Protection Agency imposes annual fees solely to implement and administer the major source air-operation permit program in Florida under 40 C.F.R. s. 70.10(d).

(a) The annual fee must be assessed based upon the source's previous year's emissions and must be calculated by multiplying the applicable annual operation license fee factor times the tons of each regulated air pollutant (except carbon monoxide) allowed to be emitted per hour by specific condition of the source's most recent construction or operation permit, times the annual hours of operation allowed by permit condition; provided, however, that:

7. If the department has not received the fee by February 15 of the calendar year, the permittee must be sent a written warning of the consequences for failing to pay the fee by March 1. If ~~the department has not received~~ the fee is not postmarked by March 1 of the calendar year, commencing with calendar year 1997, the department shall impose, in addition to the fee, a penalty of 50 percent of the amount of the fee, plus interest on such amount computed in accordance with s. 220.807. The department may not impose such penalty or interest on any amount underpaid, provided that the permittee has timely remitted payment of at least 90 percent of the amount determined to be due and remits full payment within 60 days after receipt of notice of the amount underpaid. The department may waive the collection of underpayment and shall not be required to refund overpayment of the fee, if the amount due is less than 1 percent of the fee, up to $50. The department may revoke any major air pollution source operation permit if

it finds that the permitholder has failed to timely pay any required annual operation license fee, penalty, or interest.

Section 19. This act shall take effect July 1, 1997.

Approved by the Governor May 30, 1997.

Filed in Office Secretary of State May 30, 1997.