

CHAPTER 98-75

Committee Substitute for Senate Bill No. 1202

An act relating to brownfields redevelopment; amending s. 376.77, F.S.; correcting a cross-reference; amending s. 376.79, F.S.; redefining terms and defining the term "secretary"; amending s. 376.80, F.S.; providing that closed military bases may be designated as brownfield areas; clarifying the job-creation criteria for the designation of a brownfield site; clarifying certain terms; amending s. 376.81, F.S.; deleting a duplicative provision relating to the issuance of no-further-action orders; amending s. 376.82, F.S.; providing clarification regarding the eligibility of certain brownfield sites; clarifying the provisions relating to the job creation eligibility criteria; providing liability protection for properties acquired by local or state governments under certain conditions; amending s. 376.83, F.S.; correcting a cross-reference; amending s. 288.106, F.S.; providing that the wage requirement criteria may be waived for a designated brownfield area; requiring the Director of the Office of Tourism, Trade, and Economic Development to approve certain wage requirement waiver requests; amending s. 288.107, F.S.; defining the terms "brownfield area" and "brownfield site"; providing legislative intent regarding the inefficient use of public facilities and services in brownfield areas; creating the Brownfield Areas Loan Guarantee Program; creating the Brownfield Areas Loan Guarantee Council; providing duties and membership; providing that not more than \$5 million of the investment earnings on the investment of the minimum balance of the Nonmandatory Land Reclamation Trust Fund in a fiscal year shall be at risk at any time on one or more loan guarantees, or as loan loss reserves; requiring lenders seeking loan guarantees from the council to follow certain specified procedures; limiting the circumstances under which a lender may file a claim for a loss pursuant to the guaranty; providing the council with certain rulemaking authority; authorizing the council to receive certain funds; requiring the council to file an annual report to the Legislature; providing for future legislative review; amending s. 288.9602, F.S.; providing for the redevelopment of brownfield areas to be included in the declaration of findings regarding economic development; amending s. 288.9605, F.S.; expanding the powers and duties of the Florida Development Finance Corporation to authorize the corporation to make determinations regarding participation in certain partnerships and agreements concerning the redevelopment of brownfield areas and the guaranty of revenue bonds, loan guarantees, or loan loss reserves; requiring the Board of Regents to establish a Center for Brownfield Rehabilitation Assistance in the Environmental Sciences and Policy Program in the College of Arts and Sciences at the University of South Florida; specifying the purpose and duties of the center; amending s. 163.3187, F.S.; providing that local government comprehensive plan amendments directly related to proposed redevelopment of designated brownfield areas may be approved without regard to certain statutory limits on the frequency

of amendments to the local comprehensive plan; providing legislative findings and intent regarding lienholders on brownfield property; providing that certain counties and municipalities may apply for designation of an enterprise zone encompassing a brownfield pilot project under certain circumstances; amending s. 376.313, F.S.; correcting references to the Florida Administrative Code; repealing s. 21, ch. 86-159, Laws of Florida, relating to the scheduled repeal of s. 376.313(4), 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 amended to read:

376.77 Short title.—Sections 376.77-376.85 ~~376.83~~ may be cited as the “Brownfields Redevelopment Act.”

Section 2. Section 376.79, Florida Statutes, is amended 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 underused 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 and s. 376.80(11).

(11) “Natural attenuation” means the verifiable reduction of contaminants through natural processes, which may include diffusion, dispersion, adsorption ~~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~~ or an approved local pollution control program 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) “Secretary” means the Secretary of the Department of Environmental Protection.

~~(15)~~(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.

~~(16)~~(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.

~~(17)~~(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 3. Section 376.80, Florida Statutes, is amended 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. 376.77-376.85~~ 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, closed military bases, 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 10 new permanent jobs, whether 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 site rehabilitation agreement with the department or approved local pollution control program government.

(3) ~~When there is a person responsible for brownfield site rehabilitation, the local government must notify the department of the identity of that person. 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 subsection (5).

(5) The person responsible for brownfield site rehabilitation must enter into a brownfield site rehabilitation agreement with the department or an approved local pollution control 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 pollution control 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. 376.77-376.85 ~~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 responsible for brownfield site rehabilitation 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 loss, spills, and leaks of hazardous waste and materials, and include goals for the reduction of releases of toxic materials; and

(i) Certification that an agreement exists between the person responsible for brownfield site rehabilitation and the local government with jurisdiction over the brownfield area. Such agreement shall contain terms for the redevelopment of the brownfield area.

(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, and 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 site 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 4. Section 376.81, Florida Statutes, is amended 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.~~

(h)(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.

(i)(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 5. Section 376.82, Florida Statutes, is amended 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 on or after July 1, 1997, is eligible to participate in the brownfield rehabilitation program established in ss. 376.77-376.85 ~~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 on or 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 this chapter 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 10 new permanent jobs, whether full-time 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) After July 1, 1997, petroleum and drycleaning contamination sites shall not receive both restoration funding assistance available for the discharge under this chapter 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 drycleaning 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 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, 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 area 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 site, 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 brownfield sites ~~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 area 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, or foreclosure~~ 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 brownfield sites ~~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, s. 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. 376.77-376.85 ~~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. 376.77-376.85 ~~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 brownfield sites ~~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 site.

(b) Lenders who hold indicia of ownership of a parcel within a brownfield area primarily to protect a security interest or who own a parcel within a brownfield area 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 site.

(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 site 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 site.

Section 6. Section 376.83, Florida Statutes, is amended to read:

376.83 Violation; penalties.—

(1) It is a violation of ss. 376.77-376.85 ~~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. 376.77-376.85 ~~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 7. Subsection (4) of section 288.106, Florida Statutes, is amended to read:

288.106 Tax refund program for qualified target industry businesses.—

(4) APPLICATION AND APPROVAL PROCESS.—

(a) To apply for certification as a qualified target industry business under this section, the business must file an application with the office before the business has made the decision to locate a new business in this state or before the business had made the decision to expand an existing business in this state. The application shall include, but is not limited to, the following information:

1. The applicant's federal employer identification number and the applicant's state sales tax registration number.

2. The permanent location of the applicant's facility in this state at which the project is or is to be located.

3. A description of the type of business activity or product covered by the project, including four-digit SIC codes for all activities included in the project.

4. The number of full-time equivalent jobs in this state that are or will be dedicated to the project and the average wage of those jobs. If more than one type of business activity or product is included in the project, the number of jobs and average wage for those jobs must be separately stated for each type of business activity or product.

5. The total number of full-time equivalent employees employed by the applicant in this state.

6. The anticipated commencement date of the project.

7. The amount of:

a. Taxes on sales, use, and other transactions paid under chapter 212;

b. Corporate income taxes paid under chapter 220;

c. Intangible personal property taxes paid under chapter 199;

- d. Emergency excise taxes paid under chapter 221; and
- e. Excise taxes on documents paid under chapter 201.
8. The estimated amount of tax refunds to be claimed in each fiscal year.
9. A brief statement concerning the role that the tax refunds requested will play in the decision of the applicant to locate or expand in this state.
10. An estimate of the proportion of the sales resulting from the project that will be made outside this state.
11. A resolution adopted by the governing board of the county or municipality in which the project will be located, which resolution recommends that certain types of businesses be approved as a qualified target industry business and states that the commitments of local financial support necessary for the target industry business exist. Before adoption of the resolution, the governing board may review the proposed public or private sources of such support and determine whether the proposed sources of local financial support can be provided.
12. Any additional information requested by the office.

(b) To qualify for review by the office, the application of a target industry business must, at a minimum, establish the following to the satisfaction of the office:

1. The jobs proposed to be provided under the application, pursuant to subparagraph (a)4., must pay an estimated annual average wage equaling at least 115 percent of the average private sector wage in the area where the business is to be located or the statewide private sector average wage. The office may waive this average wage requirement at the request of the local governing body recommending the project and Enterprise Florida, Inc. The wage requirement may only be waived for a project located in a brownfield area designated under s. 376.80 or in a rural city or county or in an enterprise zone and only when the merits of the individual project or the specific circumstances in the community in relationship to the project warrant such action. If the local governing body and Enterprise Florida, Inc., make such a recommendation, it must be transmitted in writing and the specific justification for the waiver recommendation must be explained. If the director elects to waive the wage requirement, the waiver must be stated in writing and the reasons for granting the waiver must be explained.

2. The target industry business's project must result in the creation of at least 10 jobs at such project.

3. The business activity or product for the applicant's project is within an industry or industries that have been identified by the office to be high-value-added industries that contribute to the area and to the economic growth of the state and that produce a higher standard of living for citizens of this state in the new global economy or that can be shown to make an equivalent contribution to the area and state's economic progress. The director must approve requests to waive the wage requirement for brownfield

areas designated under s. 376.80 unless it is demonstrated that such action is not in the public interest.

(c) Each application meeting the requirements of paragraph (b) must be submitted to the office for determination of eligibility. The office shall review and evaluate each application based on, but not limited to, the following criteria:

1. Expected contributions to the state strategic economic development plan adopted by Enterprise Florida, Inc., taking into account the long-term effects of the project and of the applicant on the state economy.

2. The economic benefit of the jobs created by the project in this state, taking into account the cost and average wage of each job created.

3. The amount of capital investment to be made by the applicant in this state.

4. The local commitment and support for the project.

5. The effect of the project on the local community, taking into account the unemployment rate for the county where the project will be located.

6. The effect of any tax refunds granted pursuant to this section on the viability of the project and the probability that the project will be undertaken in this state if such tax refunds are granted to the applicant, taking into account the expected long-term commitment of the applicant to economic growth and employment in this state.

7. The expected long-term commitment to this state resulting from the project.

8. A review of the business's past activities in this state or other states, including whether such business has been subjected to criminal or civil fines and penalties. Nothing in this subparagraph shall require the disclosure of confidential information.

(d) The office shall forward its written findings and evaluation concerning each application meeting the requirements of paragraph (b) to the director within 45 calendar days after receipt of a complete application. The office shall notify each target industry business when its application is complete, and of the time when the 45-day period begins. In its written report to the director, the office shall specifically address each of the factors specified in paragraph (c) and shall make a specific assessment with respect to the minimum requirements established in paragraph (b). The office shall include in its report projections of the tax refund claim that will be sought by the target industry business in each fiscal year based on the information submitted in the application.

(e)1. Within 30 days after receipt of the office's findings and evaluation, the director shall enter a final order that either approves or disapproves the application of the target industry business. The decision must be in writing and must provide the justifications for approval or disapproval.

2. If appropriate, the director shall enter into a written agreement with the qualified target industry business pursuant to subsection (5).

(f) The director may not enter a final order that certifies any target industry business as a qualified target industry business if the value of tax refunds to be included in that final order exceeds the available amount of authority to enter final orders as determined in s. 288.095(3). A final order that approves an application must specify the maximum amount of tax refund that will be available to the qualified industry business in each fiscal year and the total amount of tax refunds that will be available to the business for all fiscal years.

(g) Nothing in this section shall create a presumption that an applicant will receive any tax refunds under this section. However, the office may issue nonbinding opinion letters, upon the request of prospective applicants, as to the applicants' eligibility and the potential amount of refunds.

Section 8. Subsection (1) of section 288.107, Florida Statutes, is amended 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 sites” means sites that are generally abandoned, idled, or underused industrial and commercial properties where expansion or redevelopment is complicated by actual or perceived environmental contamination.

~~(c) “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. “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.~~

~~(d)(e)~~ “Director” means the director of the Office of Tourism, Trade, and Economic Development.

~~(e)(d)~~ “Eligible business” means a qualified target industry business as defined in s. 288.106(2)(o).

(f)(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.

(g)(f) “Office” means the Office of Tourism, Trade, and Economic Development.

(h)(g) “Project” means the creation of a new business or the expansion of an existing business as defined in s. 288.106.

Section 9. (1) The Legislature finds that the underuse of brownfield areas results in the inefficient use of public facilities and services, as well as of 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.

(2) The reuse and redevelopment of brownfield areas is an important component of sound land-use policy for productive urban purposes which will help prevent the premature development of farm land, open space areas, and natural areas and reduce public costs for installing new water, sewer, and highway infrastructure.

(3) The Legislature finds that providing economic and financial incentives to promote the redevelopment of brownfield areas is an important and appropriate public purpose.

Section 10. Brownfield Areas Loan Guarantee Program.—

(1) The Brownfield Areas Loan Guarantee Council is created to review and approve or deny by a majority vote of its membership, the situations and circumstances for participation in partnerships by agreements with local governments, financial institutions, and others associated with the redevelopment of brownfield areas pursuant to the Brownfield Redevelopment Act for a limited state guaranty of up to 5 years of loan guarantees or loan loss reserves issued pursuant to law. The limited state loan guaranty applies only to 10 percent of the primary lenders loans for redevelopment projects in brownfield areas. A limited state guaranty of private loans or a loan loss reserve is authorized for lenders licensed to operate in the state upon a determination by the council that such an arrangement would be in the public interest and the likelihood of the success of the loan is great.

(2) The Council shall consist of the Secretary of the Department of Environmental Protection or the secretary’s designee, the Secretary of the Department of Community Affairs or the secretary’s designee, the Executive Director of the State Board of Administration or the executive director’s designee, the Executive Director of the Florida Housing Finance Agency or the executive director’s designee, and the Director of the Governor’s Office of Tourism, Trade, and Economic Development or the director’s designee. The chairperson of the Council shall be the Director of the Governor’s Office

of Tourism, Trade, Economic Development. Staff services for activities of the Council shall be provided as needed by the member agencies.

(3) The Council may enter into an investment agreement with the Department of Environmental Protection and the State Board of Administration concerning the investment of the earnings accrued and collected upon the investment of the balance of funds maintained in the Nonmandatory Land Reclamation Trust Fund. The investment must be limited as follows:

(a) Not more than \$5 million of the investment earnings earned on the investment of the minimum balance of the Nonmandatory Land Reclamation Trust Fund in a fiscal year may be at risk at any time on loan guarantees or as loan loss reserves. Of that amount, 15 percent shall be reserved for investment agreements involving predominantly minority-owned businesses which meet the requirements of subsection (4).

(b) The investment earnings may not be used to guarantee any loan guaranty or loan loss reserve agreement for a period longer than 5 years.

(4) A lender seeking a limited state guaranty for a loan from the Brownfield Areas Loan Guaranty Council must first provide to the council a report demonstrating that the lender has reviewed the project for redevelopment of the brownfield area and determined its feasibility in accordance with its standard procedures. The procedures include, but are not limited to:

(a) Obtaining a satisfactory credit report from a source deemed reliable by the lender;

(b) Reviewing a report of environmental conditions at the project and determining that actions are underway to comply with specific recommendations;

(c) Investigating the background and experience of the entity to receive the loan and manage the project and determining that the managing entity appears to possess the experience, competence, and capacity to manage the project;

(d) Determining that conditions exist to establish a financially sound redevelopment project that exposes the state loan guarantee program to a reasonable or acceptable level of risk; and

(e) Determining that the local government with jurisdiction over the area where the brownfield redevelopment project is located has committed in-kind resources, local financial incentives or local financial resources to the total project cost.

(5) A lender covered by a limited state guaranty for a loan is not entitled to file a claim for loss pursuant to the guaranty unless all reasonable and normal remedies available and customary for lending institutions for resolving problems of loan repayments are exhausted. If the lender has received collateral security in connection with the loan, the lender must first exhaust all available remedies against the collateral security.

(6) The council may, by rule, establish requirements for the issuance of loan guarantees, including contractual provisions to foster reimbursement, in the event of default, to the guarantee fund.

(7) The council may receive public and private funds, federal grants, and private donations in carrying out its responsibilities.

(8) The Council shall provide an annual report to the Legislature by February 1 of each year describing its activities and agreements approved relating to redevelopment of brownfield areas. This section shall be reviewed by the Legislature by October 1, 2003, and a determination made related to the need to continue or modify this section. New loan guarantees may not be approved in 2003 until the review by the Legislature has been completed and a determination has been made as to the feasibility of continuing the use of the Nonmandatory Land Reclamation Trust Fund to guarantee portions of loans under this section.

Section 11. Subsections (1), (6), and (8) of section 288.9602, Florida Statutes, are amended to read:

288.9602 Findings and declarations of necessity.—The Legislature finds and declares that:

(1) There is a need to enhance economic activity in the cities and counties of the state by attracting manufacturing, development, redevelopment of brownfield areas, business enterprise management, and other activities conducive to economic promotion in order to provide a stronger, more balanced, and stable economy in the cities and counties of the state.

(6) In order to improve the prosperity and welfare of the cities and counties of this state and its inhabitants, to improve and promote the financing of projects related to the economic development of the cities and counties of this state, including redevelopment of brownfield areas, and to increase the purchasing power and opportunities for gainful employment of citizens of the cities and counties of this state, it is necessary and in the public interest to facilitate the financing of such projects as provided for in this act and to do so without regard to the boundaries between counties, municipalities, special districts, and other local governmental bodies or agencies in order to more effectively and efficiently serve the interests of the greatest number of people in the widest area practicable.

(8) In order to efficiently and effectively achieve the purposes of this act, it is necessary and in the public interest to create a special development finance authority to cooperate and act in conjunction with public agencies of this state and local governments of this state, through interlocal agreements pursuant to the Florida Interlocal Cooperation Act of 1969, in the promotion and advancement of projects related to economic development, including redevelopment of brownfield areas, throughout the state.

Section 12. Paragraph (w) is added to subsection (2) of section 288.9605, Florida Statutes, to read:

288.9605 Exercise of powers by the corporation.—

(2) The corporation is authorized and empowered to:

(w) Determine the situations and circumstances for participation in partnerships by agreement with local governments, financial institutions, and others associated with the redevelopment of brownfield areas pursuant to the Brownfield Redevelopment Act for a limited state guaranty of revenue bonds, loan guarantees, or loan loss reserves.

Section 13. Interdisciplinary Center for Brownfield Rehabilitation Assistance.—The Board of Regents shall establish a Center for Brownfield Rehabilitation Assistance in the Environmental Sciences and Policy Program in the College of Arts and Sciences at the University of South Florida with the collaboration of other related disciplines such as business administration, environmental science, and medicine. The center shall work in conjunction with other colleges in the State University System. The Center for Brownfield Rehabilitation Assistance shall:

(1) Conduct research relating to problems and solutions associated with rehabilitation and restoration of brownfield areas as defined in section 376.79, Florida Statutes. The research must include identifying innovative solutions to removing contamination from brownfield sites to reduce the threats to drinking water supplies and other potential public health threats from contaminated sites.

(2) Provide public service to local, regional, and state agencies, units of government, and authorities by helping them to create workable mechanisms, partnerships with public and private sectors and other techniques for rehabilitating brownfield areas.

(3) Conduct special research relating to risk-based corrective actions for rehabilitation of brownfield areas.

(4) Develop a base of informational and financial support from the private sector for the activities of the center.

Section 14. Paragraph (g) is added to subsection (1) of section 163.3187, Florida Statutes, to read:

163.3187 Amendment of adopted comprehensive plan.—

(1) Amendments to comprehensive plans adopted pursuant to this part may be made not more than two times during any calendar year, except:

(g) Any local government comprehensive plan amendments directly related to proposed redevelopment of brownfield areas designated under s. 376.80 may be approved without regard to statutory limits on the frequency of consideration of amendments to the local comprehensive plan.

Section 15. Brownfield Property Ownership Clearance Assistance.—

(1) The Legislature recognizes that some brownfield redevelopment projects are more difficult to redevelop due to the existence of various types of liens on the property and complications from previous ownership having declared bankruptcy. Oftentimes lien holders on brownfield property are

reluctant to foreclose on the property out of concern for liability questions and may be willing to settle for a reduced value on their lien to clear up any of their rights to the property and to clear the way for organized efforts by a private and public partnership to revitalize and redevelop brownfield areas.

(2) The Legislature recognizes that a revolving loan fund could assist in the early stages of redeveloping brownfields by helping to clear prior liens on the property through a negotiated process. Such a revolving loan fund could be repaid in later years from the resale of brownfield properties following site rehabilitation and other activities that will enhance the properties' ultimate value.

Section 16. Notwithstanding any provision of law to the contrary, the governing body of a municipality or county containing a United States Environmental Protection Agency brownfield pilot project that was designated as of May 1, 1997, may apply to the Office of Tourism, Trade, and Economic Development for designation of one enterprise zone encompassing the brownfield pilot project, if the project is located in a county with a population less than 1 million. The application must be submitted by December 31, 1999, and must comply with the requirements of section 290.0055, Florida Statutes, except section 290.0055(3), Florida Statutes. Notwithstanding the provisions of section 290.0065, Florida Statutes, limiting the total number of enterprise zones designated and the number of enterprise zones within a population category, the Office of Tourism, Trade, and Economic Development shall designate one enterprise zone under this section if the zone is consistent with the limitations imposed under this section. The Office of Tourism, Trade, and Economic Development shall establish the initial effective date of the enterprise zone designated pursuant to this section.

Section 17. Subsection (4) of section 376.313, Florida Statutes, is amended to read:

376.313 Nonexclusiveness of remedies and individual cause of action for damages under ss. 376.30-376.319.—

(4) In any civil action brought after July 1, 1986, against the owner or operator of a petroleum storage system for damages arising from a petroleum storage system discharge, the provisions of subsection (3) shall not apply if it can be proven that, at the time of the discharge:

(a) The alleged damages resulted solely from a discharge from a petroleum storage system which was installed, replaced, or retrofitted, and maintained, in a manner consistent with the construction, operation, repair, and maintenance standards established for such systems under chapter 62-761 17-61, Florida Administrative Code, as that chapter may hereafter be amended. The requirement of consistency with such standards may be satisfied only by being in compliance with the standards at the time of the discharge, regardless of the time specified for compliance under the schedule provided in said chapter.

(b) A leak detection system or systems or a monitoring well or wells were installed and operating in a manner consistent with technical requirements

of chapter ~~62-761~~ 17-61, Florida Administrative Code, as that chapter may hereafter be amended; and

(c) All inventory, recordkeeping, and reporting requirements of chapter ~~62-761~~ 17-61, Florida Administrative Code, as that chapter may hereafter be amended, have been and are being complied with.

Any person bringing such an action must prove negligence to recover damages under this subsection. For the purposes of this subsection, noncompliance with this act, or any of the rules promulgated pursuant hereto, as the same may hereafter be amended, shall be prima facie evidence of negligence.

Section 18. Section 21 of chapter 86-159, Laws of Florida, is repealed.

Section 19. This act shall take effect July 1, 1998.

Approved by the Governor May 21, 1998.

Filed in Office Secretary of State May 21, 1998.