

Committee Substitute for Senate Bill No. 338

An act relating to brownfield loan guarantees; amending s. 376.79, F.S.; revising the definition of “brownfield sites”; amending s. 376.80, F.S.; revising a condition under which a local government is required to designate a brownfield area; revising a required component of a brownfield site rehabilitation agreement; revising a requirement of a contractor performing site rehabilitation program tasks; revising contractor requirements that must be certified to the Department of Environmental Protection; revising and providing additional insurance requirements; amending s. 376.82, F.S.; revising terminology with respect to eligibility to participate in the brownfield rehabilitation program; authorizing a county and the Department of Environmental Protection to enter into a written agreement for the performance, funding, and reimbursement of investigative and remedial acts necessary for a property that escheats to the county; amending s. 376.86, F.S.; revising certain restrictions on investing funds maintained in the Inland Protection Trust Fund; providing a schedule for legislative review of the Brownfield Areas Loan Guarantee Program; providing an effective date.

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

Section 1. Subsection (3) of section 376.79, Florida Statutes, is amended to read:

376.79 Definitions relating to Brownfields Redevelopment Act.—As used in ss. 376.77-376.85, the term:

(3) “Brownfield sites” means real property, the expansion, redevelopment, or reuse of which may be ~~sites that are generally abandoned, idled, or underused industrial and commercial properties where expansion or redevelopment is complicated by actual or perceived environmental contamination.~~

Section 2. Paragraph (b) of subsection (2), paragraph (c) of subsection (5), paragraph (b) of subsection (6) and subsection (7) of section 376.80, Florida Statutes, are amended to read:

376.80 Brownfield program administration process.—

(2)

(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 at the brownfield site, whether full-time or part-time, which are not associated with the implementation of the brownfield site rehabilitation agreement and are not associated with redevelopment project demolition or construction activities pursuant to the redevelopment agreement required under paragraph (5)(i) 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.

(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 program if actual contamination exists at the brownfield site. The brownfield site rehabilitation agreement must include:

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

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

(b) Has obtained the necessary approvals for conducting sample collection and analyses pursuant to approval for the comprehensive quality assurance plan prepared under department rules.

(7) The contractor who is performing the majority of the site rehabilitation program tasks pursuant to a brownfield site rehabilitation agreement or supervising the performance of such tasks by licensed subcontractors in accordance with the provisions of s. 489.113(9) 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 coverage with limits of not less than \$1 million per occurrence and \$2 million general aggregate for bodily injury and property damage and comprehensive automobile liability coverage insurance with minimum limits of not less than \$2 million at least \$1 million combined single limit. The contractor shall also maintain pollution liability coverage with limits of not less than \$3 million aggregate for personal injury or death, \$1 million per occurrence for personal injury or death, and \$1 million per occurrence for property damage. The contractor's certificate of insurance shall name per claim 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 claim 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).~~

Section 3. Subsection (1) of section 376.82, Florida Statutes, is amended, and paragraph (1) is added to subsection (2) of said section, 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, 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)(g). 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 site rehabilitation agreement ~~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 or part-time, which are not associated with implementation of the brownfield site rehabilitation agreement ~~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 site rehabilitation agreement ~~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.—

(1) When a property, including a brownfield site, escheats to a county, the county is not subject to any liability imposed by this chapter or chapter 403 for preexisting soil or groundwater contamination due solely to its ownership. However, this paragraph does not affect the rights or liabilities of any past or future owners of the escheated property and does not affect the liability of any governmental entity for the results of its actions that create or exacerbate a pollution source. The county and the Department of Environmental Protection may enter into a written agreement for the performance, funding, and reimbursement of the investigative and remedial acts necessary for a property that escheats to the county.

Section 4. Subsections (3) and (8) of section 376.86, Florida Statutes, as amended by section 56 of chapter 2003-399, Laws of Florida, are amended to read:

376.86 Brownfield Areas Loan Guarantee Program.—

(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 Inland Protection 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 Inland Protection 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) Such funds at risk at any time ~~The investment earnings~~ may not be used to guarantee any loan guaranty or loan loss reserve agreement for a period longer than 5 years.

(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 January 1, 2007 ~~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 ~~2007~~ 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 Inland Protection Nonmandatory Land Reclamation Trust Fund to guarantee portions of loans under this section.

Section 5. This act shall take effect July 1, 2004.

Approved by the Governor May 12, 2004.

Filed in Office Secretary of State May 12, 2004.