

House Bill No. 7131

An act relating to the redevelopment of brownfields; amending ss. 199.1055, 220.1845, 376.30781, 376.80, and 376.86, F.S.; increasing the amount and percentage of the credit that may be applied against the intangible personal property tax and the corporate income tax for the cost of voluntary cleanup of a contaminated site; increasing the amount that may be received by the taxpayer as an incentive to complete the cleanup in the final year; increasing the total amount of credits that may be granted in any year; providing tax credits for voluntary cleanup activities related to solid waste disposal facilities; providing criteria for eligible sites and activities; increasing the amount of the Brownfield Areas Loan Guarantee; reducing the job creation requirements; directing the Department of Environmental Protection to apply certain criteria, requirements, and limitations for implementation of such provisions; providing certain exceptions; amending s. 288.9015, F.S.; requiring Enterprise Florida, Inc., to aggressively market brownfields; amending ss. 196.012 and 196.1995, F.S., to include brownfield areas in the implementation of the economic development ad valorem tax exemption authorized under s. 3, Art VII of the Florida Constitution; repealing s. 376.87, F.S., relating to the Brownfield Property Ownership Clearance Assistance; repealing s. 376.875, F.S., relating to the Brownfield Property Ownership Clearance Assistance Revolving Loan Trust Fund; amending s. 14.2015, F.S.; deleting a reference to the trust fund to conform; providing that the repeal of certain provisions relating to the tax on intangible personal property prevails over any amendment to such provisions contained in this act; providing an effective date.

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

Section 1. Section 199.1055, Florida Statutes, is amended to read:

199.1055 Contaminated site rehabilitation tax credit.—

(1) AUTHORIZATION FOR TAX CREDIT; LIMITATIONS.—

(a) A credit in the amount of 50 ~~35~~ percent of the costs of voluntary cleanup activity that is integral to site rehabilitation at the following sites is available against any tax due for a taxable year under s. 199.032, less any credit allowed by former s. 220.68 for that year:

1. A drycleaning-solvent-contaminated site eligible for state-funded site rehabilitation under s. 376.3078(3);

2. A drycleaning-solvent-contaminated site at which cleanup is undertaken by the real property owner pursuant to s. 376.3078(11), if the real property owner is not also, and has never been, the owner or operator of the drycleaning facility where the contamination exists; or

3. A brownfield site in a designated brownfield area under s. 376.80.

(b) A tax credit applicant, or multiple tax credit applicants working jointly to clean up a single site, may not be granted more than ~~\$500,000~~ \$250,000 per year in tax credits for each site voluntarily rehabilitated. Multiple tax credit applicants shall be granted tax credits in the same proportion as their contribution to payment of cleanup costs. Subject to the same conditions and limitations as provided in this section, a municipality, county, or other tax credit applicant which voluntarily rehabilitates a site may receive not more than ~~\$500,000~~ \$250,000 per year in tax credits which it can subsequently transfer subject to the provisions in paragraph (g).

(c) If the credit granted under this section is not fully used in any one year because of insufficient tax liability on the part of the tax credit applicant, the unused amount may be carried forward for a period not to exceed 5 years. Five years after the date a credit is granted under this section, such credit expires and may not be used. However, if during the 5-year period the credit is transferred, in whole or in part, pursuant to paragraph (g), each transferee has 5 years after the date of transfer to use its credit.

(d) A taxpayer that receives a credit under s. 220.1845 is ineligible to receive credit under this section in a given tax year.

(e) A tax credit applicant that receives state-funded site rehabilitation pursuant to s. 376.3078(3) for rehabilitation of a drycleaning-solvent-contaminated site is ineligible to receive credit under this section for costs incurred by the tax credit applicant in conjunction with the rehabilitation of that site during the same time period that state-administered site rehabilitation was underway.

(f) The total amount of the tax credits which may be granted under this section and s. 220.1845 is \$2 million annually.

(g)1. Tax credits that may be available under this section to an entity eligible under s. 376.30781 may be transferred after a merger or acquisition to the surviving or acquiring entity and used in the same manner with the same limitations.

2. The entity or its surviving or acquiring entity as described in subparagraph 1., may transfer any unused credit in whole or in units of no less than 25 percent of the remaining credit. The entity acquiring such credit may use it in the same manner and with the same limitation as described in this section. Such transferred credits may not be transferred again although they may succeed to a surviving or acquiring entity subject to the same conditions and limitations as described in this section.

3. In the event the credit provided for under this section is reduced either as a result of a determination by the Department of Environmental Protection or an examination or audit by the Department of Revenue, such tax deficiency shall be recovered from the first entity, or the surviving or acquiring entity, to have claimed such credit up to the amount of credit taken. Any subsequent deficiencies shall be assessed against any entity acquiring and

claiming such credit, or in the case of multiple succeeding entities in the order of credit succession.

(h) In order to encourage completion of site rehabilitation at contaminated sites being voluntarily cleaned up and eligible for a tax credit under this section, the tax credit applicant may claim an additional 25 ~~10~~ percent of the total cleanup costs, not to exceed ~~\$500,000~~ \$50,000, in the final year of cleanup as evidenced by the Department of Environmental Protection issuing a “No Further Action” order for that site.

(i) In order to encourage the construction of housing that meets the definition of affordable provided in s. 420.0004(3), an applicant for the tax credit may claim an additional 25 percent of the total site-rehabilitation costs that are eligible for tax credits under this section, not to exceed \$500,000. In order to receive this additional tax credit, the applicant must provide a certification letter from the Florida Housing Finance Corporation, the local housing authority, or other governmental agency that is a party to the use agreement, indicating that the construction on the brownfield site is complete, the brownfield site has received a certificate of occupancy, and the brownfield site has a properly recorded instrument that limits the use of the property to housing that meets the definition of affordable provided in s. 420.0004(3).

(2) FILING REQUIREMENTS.—Any taxpayer that wishes to obtain credit under this section must submit with its return a tax credit certificate approving partial tax credits issued by the Department of Environmental Protection under s. 376.30781.

(3) ADMINISTRATION; AUDIT AUTHORITY; TAX CREDIT FORFEITURE.—

(a) The Department of Revenue may adopt rules to prescribe any necessary forms required to claim a tax credit under this section and to provide the administrative guidelines and procedures required to administer this section.

(b) In addition to its existing audit and investigation authority relating to chapters 199 and 220, the Department of Revenue may perform any additional financial and technical audits and investigations, including examining the accounts, books, or records of the tax credit applicant, which are necessary to verify the site rehabilitation costs included in a tax credit return and to ensure compliance with this section. The Department of Environmental Protection shall provide technical assistance, when requested by the Department of Revenue, on any technical audits performed under this section.

(c) It is grounds for forfeiture of previously claimed and received tax credits if the Department of Revenue determines, as a result of either an audit or information received from the Department of Environmental Protection, that a taxpayer received tax credits under this section to which the taxpayer was not entitled. In the case of fraud, the taxpayer shall be prohibited from claiming any future tax credits under this section or s. 220.1845.

1. The taxpayer is responsible for returning forfeited tax credits to the Department of Revenue, and such funds shall be paid into the General Revenue Fund of the state.

2. The taxpayer shall file with the Department of Revenue an amended tax return or such other report as the Department of Revenue prescribes by rule and shall pay any required tax within 60 days after the taxpayer receives notification from the Department of Environmental Protection pursuant to s. 376.30781 that previously approved tax credits have been revoked or modified, if uncontested, or within 60 days after a final order is issued following proceedings involving a contested revocation or modification order.

3. A notice of deficiency may be issued by the Department of Revenue at any time within 5 years after the date the taxpayer receives notification from the Department of Environmental Protection pursuant to s. 376.30781 that previously approved tax credits have been revoked or modified. If a taxpayer fails to notify the Department of Revenue of any change in its tax credit claimed, a notice of deficiency may be issued at any time. In either case, the amount of any proposed assessment set forth in such notice of deficiency shall be limited to the amount of any deficiency resulting under this section from the recomputation of the taxpayer's tax for the taxable year.

4. Any taxpayer that fails to report and timely pay any tax due as a result of the forfeiture of its tax credit is in violation of this section and is subject to applicable penalty and interest.

Section 2. Section 220.1845, Florida Statutes, is amended to read:

220.1845 Contaminated site rehabilitation tax credit.—

(1) AUTHORIZATION FOR TAX CREDIT; LIMITATIONS.—

(a) A credit in the amount of 50 ~~35~~ percent of the costs of voluntary cleanup activity that is integral to site rehabilitation at the following sites is available against any tax due for a taxable year under this chapter:

1. A drycleaning-solvent-contaminated site eligible for state-funded site rehabilitation under s. 376.3078(3);

2. A drycleaning-solvent-contaminated site at which cleanup is undertaken by the real property owner pursuant to s. 376.3078(11), if the real property owner is not also, and has never been, the owner or operator of the drycleaning facility where the contamination exists; or

3. A brownfield site in a designated brownfield area under s. 376.80.

(b) A tax credit applicant, or multiple tax credit applicants working jointly to clean up a single site, may not be granted more than \$500,000 ~~\$250,000~~ per year in tax credits for each site voluntarily rehabilitated. Multiple tax credit applicants shall be granted tax credits in the same proportion as their contribution to payment of cleanup costs. Subject to the

same conditions and limitations as provided in this section, a municipality, county, or other tax credit applicant which voluntarily rehabilitates a site may receive not more than ~~\$500,000~~ \$250,000 per year in tax credits which it can subsequently transfer subject to the provisions in paragraph (h).

(c) If the credit granted under this section is not fully used in any one year because of insufficient tax liability on the part of the corporation, the unused amount may be carried forward for a period not to exceed 5 years. The carryover credit may be used in a subsequent year when the tax imposed by this chapter for that year exceeds the credit for which the corporation is eligible in that year under this section after applying the other credits and unused carryovers in the order provided by s. 220.02(8). Five years after the date a credit is granted under this section, such credit expires and may not be used. However, if during the 5-year period the credit is transferred, in whole or in part, pursuant to paragraph (h), each transferee has 5 years after the date of transfer to use its credit.

(d) A taxpayer that files a consolidated return in this state as a member of an affiliated group under s. 220.131(1) may be allowed the credit on a consolidated return basis up to the amount of tax imposed upon the consolidated group.

(e) A taxpayer that receives credit under s. 199.1055 is ineligible to receive credit under this section in a given tax year.

(f) A tax credit applicant that receives state-funded site rehabilitation under s. 376.3078(3) for rehabilitation of a drycleaning-solvent-contaminated site is ineligible to receive credit under this section for costs incurred by the tax credit applicant in conjunction with the rehabilitation of that site during the same time period that state-administered site rehabilitation was underway.

(g) The total amount of the tax credits which may be granted under this section and s. 199.1055 is \$2 million annually.

(h)1. Tax credits that may be available under this section to an entity eligible under s. 376.30781 may be transferred after a merger or acquisition to the surviving or acquiring entity and used in the same manner and with the same limitations.

2. The entity or its surviving or acquiring entity as described in subparagraph 1., may transfer any unused credit in whole or in units of no less than 25 percent of the remaining credit. The entity acquiring such credit may use it in the same manner and with the same limitation as described in this section. Such transferred credits may not be transferred again although they may succeed to a surviving or acquiring entity subject to the same conditions and limitations as described in this section.

3. In the event the credit provided for under this section is reduced either as a result of a determination by the Department of Environmental Protection or an examination or audit by the Department of Revenue, such tax deficiency shall be recovered from the first entity, or the surviving or acquiring entity, to have claimed such credit up to the amount of credit taken. Any

subsequent deficiencies shall be assessed against any entity acquiring and claiming such credit, or in the case of multiple succeeding entities in the order of credit succession.

(i) In order to encourage completion of site rehabilitation at contaminated sites being voluntarily cleaned up and eligible for a tax credit under this section, the tax credit applicant may claim an additional ~~25~~ 10 percent of the total cleanup costs, not to exceed ~~\$500,000~~ \$50,000, in the final year of cleanup as evidenced by the Department of Environmental Protection issuing a “No Further Action” order for that site.

(j) In order to encourage the construction of housing that meets the definition of affordable provided in s. 420.0004(3), an applicant for the tax credit may claim an additional 25 percent of the total site-rehabilitation costs that are eligible for tax credits under this section, not to exceed \$500,000. In order to receive this additional tax credit, the applicant must provide a certification letter from the Florida Housing Finance Corporation, the local housing authority, or other governmental agency that is a party to the use agreement, indicating that the construction on the brownfield site is complete, the brownfield site has received a certificate of occupancy, and the brownfield site has a properly recorded instrument that limits the use of the property to housing that meets the definition of affordable provided in s. 420.0004(3).

(2) FILING REQUIREMENTS.—Any corporation that wishes to obtain credit under this section must submit with its return a tax credit certificate approving partial tax credits issued by the Department of Environmental Protection under s. 376.30781.

(3) ADMINISTRATION; AUDIT AUTHORITY; TAX CREDIT FORFEITURE.—

(a) The Department of Revenue may adopt rules to prescribe any necessary forms required to claim a tax credit under this section and to provide the administrative guidelines and procedures required to administer this section.

(b) In addition to its existing audit and investigation authority relating to chapter 199 and this chapter, the Department of Revenue may perform any additional financial and technical audits and investigations, including examining the accounts, books, or records of the tax credit applicant, which are necessary to verify the site rehabilitation costs included in a tax credit return and to ensure compliance with this section. The Department of Environmental Protection shall provide technical assistance, when requested by the Department of Revenue, on any technical audits performed pursuant to this section.

(c) It is grounds for forfeiture of previously claimed and received tax credits if the Department of Revenue determines, as a result of either an audit or information received from the Department of Environmental Protection, that a taxpayer received tax credits pursuant to this section to which the taxpayer was not entitled. In the case of fraud, the taxpayer shall be

prohibited from claiming any future tax credits under this section or s. 199.1055.

1. The taxpayer is responsible for returning forfeited tax credits to the Department of Revenue, and such funds shall be paid into the General Revenue Fund of the state.

2. The taxpayer shall file with the Department of Revenue an amended tax return or such other report as the Department of Revenue prescribes by rule and shall pay any required tax within 60 days after the taxpayer receives notification from the Department of Environmental Protection pursuant to s. 376.30781 that previously approved tax credits have been revoked or modified, if uncontested, or within 60 days after a final order is issued following proceedings involving a contested revocation or modification order.

3. A notice of deficiency may be issued by the Department of Revenue at any time within 5 years after the date the taxpayer receives notification from the Department of Environmental Protection pursuant to s. 376.30781 that previously approved tax credits have been revoked or modified. If a taxpayer fails to notify the Department of Revenue of any change in its tax credit claimed, a notice of deficiency may be issued at any time. In either case, the amount of any proposed assessment set forth in such notice of deficiency shall be limited to the amount of any deficiency resulting under this section from the recomputation of the taxpayer's tax for the taxable year.

4. Any taxpayer that fails to report and timely pay any tax due as a result of the forfeiture of its tax credit is in violation of this section and is subject to applicable penalty and interest.

Section 3. Section 376.30781, Florida Statutes, is amended to read:

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

(1) The Legislature finds that:

(a) To facilitate property transactions and economic growth and development, it is in the interest of the state to encourage the cleanup, at the earliest possible time, of drycleaning-solvent-contaminated sites and brownfield sites in designated brownfield areas.

(b) It is the intent of the Legislature to encourage the voluntary cleanup of drycleaning-solvent-contaminated sites and brownfield sites in designated brownfield areas by providing a partial tax credit for the restoration of such property in specified circumstances.

(2) Notwithstanding the requirements of paragraph (5)(a), tax credits allowed pursuant to ss. 199.1055 and 220.1845 are available for any site rehabilitation conducted during the calendar year in which the applicable voluntary cleanup agreement or brownfield site rehabilitation agreement is

executed, even if the site rehabilitation is conducted prior to the execution of that agreement or the designation of the brownfield area.

(3)(2)(a) A credit in the amount of ~~50~~ 35 percent of the costs of voluntary cleanup activity that is integral to site rehabilitation at the following sites is allowed pursuant to ss. 199.1055 and 220.1845:

1. A drycleaning-solvent-contaminated site eligible for state-funded site rehabilitation under s. 376.3078(3);

2. A drycleaning-solvent-contaminated site at which cleanup is undertaken by the real property owner pursuant to s. 376.3078(11), if the real property owner is not also, and has never been, the owner or operator of the drycleaning facility where the contamination exists; or

3. A brownfield site in a designated brownfield area under s. 376.80.

(b) A tax credit applicant, or multiple tax credit applicants working jointly to clean up a single site, may not be granted more than ~~\$500,000~~ \$250,000 per year in tax credits for each site voluntarily rehabilitated. Multiple tax credit applicants shall be granted tax credits in the same proportion as their contribution to payment of cleanup costs. Tax credits are available only for site rehabilitation conducted during the calendar year for which the tax credit application is submitted.

(c) In order to encourage completion of site rehabilitation at contaminated sites that are being voluntarily cleaned up and that are eligible for a tax credit under this section, the tax credit applicant may claim an additional ~~25~~ 10 percent of the total cleanup costs, not to exceed ~~\$500,000~~ \$50,000, in the final year of cleanup as evidenced by the Department of Environmental Protection issuing a "No Further Action" order for that site.

(d) In order to encourage the construction of housing that meets the definition of affordable provided in s. 420.0004(3), an applicant for the tax credit may claim an additional 25 percent of the total site-rehabilitation costs that are eligible for tax credits under this section, not to exceed \$500,000. In order to receive this additional tax credit, the applicant must provide a certification letter from the Florida Housing Finance Corporation, the local housing authority, or other governmental agency that is a party to the use agreement, indicating that the construction on the brownfield site is complete, the brownfield site has received a certificate of occupancy, and the brownfield site has a properly recorded instrument that limits the use of the property to housing that meets the definition of affordable provided in s. 420.0004(3). Notwithstanding the limitation that only one application shall be submitted each year for each site, an application for the additional credit provided for in this paragraph shall be submitted as soon as all requirements to obtain this additional tax credit have been met.

(e) Notwithstanding the restrictions in this section that limit tax credit eligibility to costs that are integral to site rehabilitation, to encourage the redevelopment of properties in designated brownfield areas that are hindered by the presence of solid waste, as defined in s. 403.703, a tax credit applicant may also claim costs to address the solid waste, but only those

costs to remove, transport, and dispose of solid waste in accordance with department rules. These costs are eligible for a tax credit provided the applicant submits an affidavit stating that, after consultation with appropriate local government officials and the department, to the best of the applicant's knowledge, the site was never operated as a landfill or dump site for monetary compensation, and submits all other documentation and certifications required by this section. In this section, where reference is made to "site rehabilitation," the department shall instead consider whether the costs claimed are for removal, transportation, and disposal of solid waste. Tax credit applications claiming costs pursuant to this paragraph shall not be subject to the calendar-year limitation and January 15 annual application deadline, and the department shall accept a one-time application filed subsequent to the completion by the tax credit applicant of the applicable requirements listed in this paragraph.

(4)(3) The Department of Environmental Protection shall be responsible for allocating the tax credits provided for in ss. 199.1055 and 220.1845, not to exceed a total of ~~\$5~~ \$2 million in tax credits annually.

(5)(4) To claim the credit for site rehabilitation conducted during the current calendar year, each tax credit applicant must apply to the Department of Environmental Protection for an allocation of the \$2 million annual credit by January 15 of the following year on a form developed by the Department of Environmental Protection in cooperation with the Department of Revenue. The form shall include an affidavit from each tax credit applicant certifying that all information contained in the application, including all records of costs incurred and claimed in the tax credit application, are true and correct. If the application is submitted pursuant to subparagraph (3)(2)(a)2., the form must include an affidavit signed by the real property owner stating that it is not, and has never been, the owner or operator of the drycleaning facility where the contamination exists. Approval of partial tax credits must be accomplished on a first-come, first-served basis based upon the date complete applications are received by the Division of Waste Management. A tax credit applicant shall submit only one complete application per site for each calendar year's site rehabilitation costs. Incomplete placeholder applications shall not be accepted and will not secure a place in the first-come, first-served application line. To be eligible for a tax credit, the tax credit applicant must:

(a) Have entered into a voluntary cleanup agreement with the Department of Environmental Protection for a drycleaning-solvent-contaminated site or a Brownfield Site Rehabilitation Agreement, as applicable; and

(b) Have paid all deductibles pursuant to s. 376.3078(3)(e) for eligible drycleaning-solvent-cleanup program sites.

(6)(5) To obtain the tax credit certificate, a tax credit applicant must annually file an application for certification, which must be received by the Division of Waste Management of the Department of Environmental Protection by January 15 of the year following the calendar year for which site rehabilitation costs are being claimed in a tax credit application. The tax credit applicant must provide all pertinent information requested on the tax

credit application form, including, at a minimum, the name and address of the tax credit applicant and the address and tracking identification number of the eligible site. Along with the tax credit application form, the tax credit applicant must submit the following:

(a) A nonrefundable review fee of \$250 made payable to the Water Quality Assurance Trust Fund to cover the administrative costs associated with the department's review of the tax credit application;

(b) Copies of contracts and documentation of contract negotiations, accounts, invoices, sales tickets, or other payment records from purchases, sales, leases, or other transactions involving actual costs incurred for that tax year related to site rehabilitation, as that term is defined in ss. 376.301 and 376.79;

(c) Proof that the documentation submitted pursuant to paragraph (b) has been reviewed and verified by an independent certified public accountant in accordance with standards established by the American Institute of Certified Public Accountants. Specifically, the certified public accountant must attest to the accuracy and validity of the costs incurred and paid by conducting an independent review of the data presented by the tax credit applicant. Accuracy and validity of costs incurred and paid would be determined once the level of effort was certified by an appropriate professional registered in this state in each contributing technical discipline. The certified public accountant's report would also attest that the costs included in the application form are not duplicated within the application. A copy of the accountant's report shall be submitted to the Department of Environmental Protection with the tax credit application; and

(d) A certification form stating that site rehabilitation activities associated with the documentation submitted pursuant to paragraph (b) have been conducted under the observation of, and related technical documents have been signed and sealed by, an appropriate professional registered in this state in each contributing technical discipline. The certification form shall be signed and sealed by the appropriate registered professionals stating that the costs incurred were integral, necessary, and required for site rehabilitation, as that term is defined in ss. 376.301 and 376.79.

~~(7)(6)~~ The certified public accountant and appropriate registered professionals submitting forms as part of a tax credit application must verify such forms. Verification must be accomplished as provided in s. 92.525(1)(b) and subject to the provisions of s. 92.525(3).

~~(8)(7)~~ The Department of Environmental Protection shall review the tax credit application and any supplemental documentation that the tax credit applicant may submit prior to the annual application deadline in order to have the application considered complete, for the purpose of verifying that the tax credit applicant has met the qualifying criteria in subsections ~~(3)(2)~~ and ~~(5)(4)~~ and has submitted all required documentation listed in subsection ~~(6)(5)~~. Upon verification that the tax credit applicant has met these requirements, the department shall issue a written decision granting eligibility for partial tax credits (a tax credit certificate) in the amount of ~~50~~ 35 percent of the total costs claimed, subject to the ~~\$500,000~~ \$250,000 limitation, for

the calendar year for which the tax credit application is submitted based on the report of the certified public accountant and the certifications from the appropriate registered technical professionals.

~~(9)~~⁽⁸⁾ On or before ~~March 31~~ March 1, the Department of Environmental Protection shall inform each eligible tax credit applicant of the amount of its partial tax credit and provide each eligible tax credit applicant with a tax credit certificate that must be submitted with its tax return to the Department of Revenue to claim the tax credit or be transferred pursuant to s. 199.1055(1)(g) or s. 220.1845(1)(h). Credits will not result in the payment of refunds if total credits exceed the amount of tax owed.

~~(10)~~⁽⁹⁾ If a tax credit applicant does not receive a tax credit allocation due to an exhaustion of the \$2 million annual tax credit authorization, such application will then be included in the same first-come, first-served order in the next year's annual tax credit allocation, if any, based on the prior year application.

~~(11)~~⁽¹⁰⁾ The Department of Environmental Protection may adopt rules to prescribe the necessary forms required to claim tax credits under this section and to provide the administrative guidelines and procedures required to administer this section.

~~(12)~~⁽¹¹⁾ The Department of Environmental Protection may revoke or modify any written decision granting eligibility for partial tax credits under this section if it is discovered that the tax credit applicant submitted any false statement, representation, or certification in any application, record, report, plan, or other document filed in an attempt to receive partial tax credits under this section. The Department of Environmental Protection shall immediately notify the Department of Revenue of any revoked or modified orders affecting previously granted partial tax credits. Additionally, the tax credit applicant must notify the Department of Revenue of any change in its tax credit claimed.

~~(13)~~⁽¹²⁾ A tax credit applicant who receives state-funded site rehabilitation under s. 376.3078(3) for rehabilitation of a drycleaning-solvent-contaminated site is ineligible to receive a tax credit under s. 199.1055 or s. 220.1845 for costs incurred by the tax credit applicant in conjunction with the rehabilitation of that site during the same time period that state-administered site rehabilitation was underway.

Section 4. Subsections (15) and (16) of section 196.012, Florida Statutes, are amended to read:

196.012 Definitions.—For the purpose of this chapter, the following terms are defined as follows, except where the context clearly indicates otherwise:

(15) “New business” means:

(a)1. A business establishing 10 or more jobs to employ 10 or more full-time employees in this state, which manufactures, processes, compounds, fabricates, or produces for sale items of tangible personal property at a fixed location and which comprises an industrial or manufacturing plant;

2. A business establishing 25 or more jobs to employ 25 or more full-time employees in this state, the sales factor of which, as defined by s. 220.15(5), for the facility with respect to which it requests an economic development ad valorem tax exemption is less than 0.50 for each year the exemption is claimed; or

3. An office space in this state owned and used by a corporation newly domiciled in this state; provided such office space houses 50 or more full-time employees of such corporation; provided that such business or office first begins operation on a site clearly separate from any other commercial or industrial operation owned by the same business.

(b) Any business located in an enterprise zone or brownfield area that first begins operation on a site clearly separate from any other commercial or industrial operation owned by the same business.

(c) A business that is situated on property annexed into a municipality and that, at the time of the annexation, is receiving an economic development ad valorem tax exemption from the county under s. 196.1995.

(16) "Expansion of an existing business" means:

(a)1. A business establishing 10 or more jobs to employ 10 or more full-time employees in this state, which manufactures, processes, compounds, fabricates, or produces for sale items of tangible personal property at a fixed location and which comprises an industrial or manufacturing plant; or

2. A business establishing 25 or more jobs to employ 25 or more full-time employees in this state, the sales factor of which, as defined by s. 220.15(5), for the facility with respect to which it requests an economic development ad valorem tax exemption is less than 0.50 for each year the exemption is claimed; provided that such business increases operations on a site colocated with a commercial or industrial operation owned by the same business, resulting in a net increase in employment of not less than 10 percent or an increase in productive output of not less than 10 percent.

(b) Any business located in an enterprise zone or brownfield area that increases operations on a site colocated with a commercial or industrial operation owned by the same business.

Section 5. Section 196.1995, Florida Statutes, is amended to read:

196.1995 Economic development ad valorem tax exemption.—

(1) The board of county commissioners of any county or the governing authority of any municipality shall call a referendum within its total jurisdiction to determine whether its respective jurisdiction may grant economic development ad valorem tax exemptions under s. 3, Art. VII of the State Constitution if:

(a) The board of county commissioners of the county or the governing authority of the municipality votes to hold such referendum; or

(b) The board of county commissioners of the county or the governing authority of the municipality receives a petition signed by 10 percent of the registered electors of its respective jurisdiction, which petition calls for the holding of such referendum.

(2) The ballot question in such referendum shall be in substantially the following form:

Shall the board of county commissioners of this county (or the governing authority of this municipality, or both) be authorized to grant, pursuant to s. 3, Art. VII of the State Constitution, property tax exemptions to new businesses and expansions of existing businesses?

... Yes—For authority to grant exemptions.

... No—Against authority to grant exemptions.

(3) The board of county commissioners or the governing authority of the municipality ~~that which~~ calls a referendum within its total jurisdiction to determine whether its respective jurisdiction may grant economic development ad valorem tax exemptions may vote to limit the effect of the referendum to authority to grant economic development tax exemptions for new businesses and expansions of existing businesses located in an enterprise zone or a brownfield area, as defined in s. 376.79(4). ~~If In the event that an area nominated to be an enterprise zone pursuant to s. 290.0055 has not yet been designated pursuant to s. 290.0065, the board of county commissioners or the governing authority of the municipality may call such referendum prior to such designation; however, the authority to grant economic development ad valorem tax exemptions~~ does will not apply until such area is designated pursuant to s. 290.0065. The ballot question in such referendum shall be in substantially the following form and shall be used in lieu of the ballot question prescribed in subsection (2):

Shall the board of county commissioners of this county (or the governing authority of this municipality, or both) be authorized to grant, pursuant to s. 3, Art. VII of the State Constitution, property tax exemptions for new businesses and expansions of existing businesses which are located in an enterprise zone or a brownfield area?

... Yes—For authority to grant exemptions.

... No—Against authority to grant exemptions.

(4) A referendum pursuant to this section may be called only once in any 12-month period.

(5) Upon a majority vote in favor of such authority, the board of county commissioners or the governing authority of the municipality, at its discretion, by ordinance may exempt from ad valorem taxation up to 100 percent of the assessed value of all improvements to real property made by or for the use of a new business and of all tangible personal property of such new business, or up to 100 percent of the assessed value of all added improve-

ments to real property made to facilitate the expansion of an existing business and of the net increase in all tangible personal property acquired to facilitate such expansion of an existing business, provided that the improvements to real property are made or the tangible personal property is added or increased on or after the day the ordinance is adopted. However, if the authority to grant exemptions is approved in a referendum in which the ballot question contained in subsection (3) appears on the ballot, the authority of the board of county commissioners or the governing authority of the municipality to grant exemptions is limited solely to new businesses and expansions of existing businesses that which are located in an enterprise zone or brownfield area. Property acquired to replace existing property shall not be considered to facilitate a business expansion. The exemption applies only to taxes levied by the respective unit of government granting the exemption. The exemption does not apply, however, to taxes levied for the payment of bonds or to taxes authorized by a vote of the electors pursuant to s. 9(b) or s. 12, Art. VII of the State Constitution. Any such exemption shall remain in effect for up to 10 years with respect to any particular facility, regardless of any change in the authority of the county or municipality to grant such exemptions. The exemption shall not be prolonged or extended by granting exemptions from additional taxes or by virtue of any reorganization or sale of the business receiving the exemption.

(6) With respect to a new business as defined by s. 196.012(15)(c), the municipality annexing the property on which the business is situated may grant an economic development ad valorem tax exemption under this section to that business for a period that will expire upon the expiration of the exemption granted by the county. If the county renews the exemption under subsection (7), the municipality may also extend its exemption. A municipal economic development ad valorem tax exemption granted under this subsection may not extend beyond the duration of the county exemption.

(7) The authority to grant exemptions under this section will expire 10 years after the date such authority was approved in an election, but such authority may be renewed for another 10-year period in a referendum called and held pursuant to this section.

(8) Any person, firm, or corporation which desires an economic development ad valorem tax exemption shall, in the year the exemption is desired to take effect, file a written application on a form prescribed by the department with the board of county commissioners or the governing authority of the municipality, or both. The application shall request the adoption of an ordinance granting the applicant an exemption pursuant to this section and shall include the following information:

(a) The name and location of the new business or the expansion of an existing business;

(b) A description of the improvements to real property for which an exemption is requested and the date of commencement of construction of such improvements;

(c) A description of the tangible personal property for which an exemption is requested and the dates when such property was or is to be purchased;

(d) Proof, to the satisfaction of the board of county commissioners or the governing authority of the municipality, that the applicant is a new business or an expansion of an existing business, as defined in s. 196.012(15) or (16); and

(e) Other information deemed necessary by the department.

(9) Before it takes action on the application, the board of county commissioners or the governing authority of the municipality shall deliver a copy of the application to the property appraiser of the county. After careful consideration, the property appraiser shall report the following information to the board of county commissioners or the governing authority of the municipality:

(a) The total revenue available to the county or municipality for the current fiscal year from ad valorem tax sources, or an estimate of such revenue if the actual total revenue available cannot be determined;

(b) Any revenue lost to the county or municipality for the current fiscal year by virtue of exemptions previously granted under this section, or an estimate of such revenue if the actual revenue lost cannot be determined;

(c) An estimate of the revenue which would be lost to the county or municipality during the current fiscal year if the exemption applied for were granted had the property for which the exemption is requested otherwise been subject to taxation; and

(d) A determination as to whether the property for which an exemption is requested is to be incorporated into a new business or the expansion of an existing business, as defined in s. 196.012(15) or (16), or into neither, which determination the property appraiser shall also affix to the face of the application. Upon the request of the property appraiser, the department shall provide to him or her such information as it may have available to assist in making such determination.

(10) An ordinance granting an exemption under this section shall be adopted in the same manner as any other ordinance of the county or municipality and shall include the following:

(a) The name and address of the new business or expansion of an existing business to which the exemption is granted;

(b) The total amount of revenue available to the county or municipality from ad valorem tax sources for the current fiscal year, the total amount of revenue lost to the county or municipality for the current fiscal year by virtue of economic development ad valorem tax exemptions currently in effect, and the estimated revenue loss to the county or municipality for the current fiscal year attributable to the exemption of the business named in the ordinance;

(c) The period of time for which the exemption will remain in effect and the expiration date of the exemption; and

(d) A finding that the business named in the ordinance meets the requirements of s. 196.012(15) or (16).

Section 6. Subsection (2) of section 288.9015, Florida Statutes, is amended to read:

288.9015 Enterprise Florida, Inc.; purpose; duties.—

(2) It shall be the responsibility of Enterprise Florida, Inc., to aggressively market Florida's rural communities, distressed urban communities, brownfields, and enterprise zones as locations for potential new investment, to aggressively assist in the retention and expansion of existing businesses in these communities, and to aggressively assist these communities in the identification and development of new economic development opportunities for job creation, fully marketing state incentive programs such as the Qualified Target Industry Tax Refund Program under s. 288.106 and the Quick Action Closing Fund under s. 288.1088 in economically distressed areas.

Section 7. 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. 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 hear-

ing. 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 ~~5~~ 10 new permanent jobs at the brownfield site, ~~whether full-time or part-time, which are full-time equivalent positions~~ not associated with the implementation of the brownfield site rehabilitation agreement and which are not associated with redevelopment project demolition or construction activities pursuant to the redevelopment agreement required under paragraph (5)(i). However, the job-creation requirement shall not apply to the rehabilitation and redevelopment of a brownfield site that will provide affordable housing as defined in s. 420.0004(3) or the creation of recreational areas, conservation areas, or parks;

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.

(3) When there is a person responsible for brownfield site rehabilitation, the local government must notify the department of the identity of that person. 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 or use an existing advisory committee that has formally expressed its intent to address redevelopment of the specific brownfield area 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 person responsible for brownfield site rehabilitation must notify the advisory committee of the intent to rehabilitate and redevelop the site before executing the brownfield site rehabilitation agreement, and provide the committee with a copy of the draft plan for site rehabilitation which addresses elements required by subsection (5). This includes disclosing potential reuse of the property as well as site rehabilitation activities, if any, to be performed. The advisory committee shall review the proposed redevelopment agreement required pursuant to paragraph (5)(i) and provide comments, if appropriate, to the board of the local government with jurisdiction over the brownfield area. The advisory committee must receive a copy of the executed brownfield site rehabilitation agreement. When the person responsible for brownfield site rehabilitation submits a site assessment report or the technical document containing the proposed course of action following site assessment to the department or the local pollution control program for review, the person responsible for brownfield site rehabilitation must hold a meeting or attend a regularly scheduled meeting to inform the advisory committee of the findings and recommendations in the site assessment report or the technical document containing the proposed course of action following site assessment.

(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:

(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 department quality assurance 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 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, 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 the necessary approvals for conducting sample collection and analyses pursuant to 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 with limits of not less than \$1 \$2 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 the state as an additional insured party.
- (d) Maintains professional liability insurance of at least \$1 million per claim and \$1 million annual aggregate.
- (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 8. Subsection (1) of section 376.86, Florida Statutes, is amended to read:

376.86 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 Brownfields 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 ~~50~~ 40 percent of the primary lenders loans for redevelopment projects in brownfield areas. If the redevelopment project is for affordable housing, as defined in s. 420.0004(3), in a brownfield area, the limited state loan guaranty applies to 75 percent of the primary lender's loan. 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.

Section 9. Sections 376.87 and 376.875, Florida Statutes, are repealed.

Section 10. Paragraph (f) of subsection (2) of section 14.2015, Florida Statutes, is amended to read:

14.2015 Office of Tourism, Trade, and Economic Development; creation; powers and duties.—

(2) The purpose of the Office of Tourism, Trade, and Economic Development is to assist the Governor in working with the Legislature, state agencies, business leaders, and economic development professionals to formulate and implement coherent and consistent policies and strategies designed to provide economic opportunities for all Floridians. To accomplish such purposes, the Office of Tourism, Trade, and Economic Development shall:

(f)1. Administer the Florida Enterprise Zone Act under ss. 290.001-290.016, the community contribution tax credit program under ss. 220.183 and 624.5105, the tax refund program for qualified target industry businesses under s. 288.106, the tax-refund program for qualified defense contractors under s. 288.1045, contracts for transportation projects under s. 288.063, the sports franchise facility program under s. 288.1162, the professional golf hall of fame facility program under s. 288.1168, the expedited permitting process under s. 403.973, the Rural Community Development Revolving Loan Fund under s. 288.065, the Regional Rural Development Grants Program under s. 288.018, the Certified Capital Company Act under s. 288.99, the Florida State Rural Development Council, the Rural Economic Development Initiative, and other programs that are specifically assigned to the office by law, by the appropriations process, or by the Governor. Notwithstanding any other provisions of law, the office may expend interest earned from the investment of program funds deposited in the Grants and Donations Trust Fund ~~and the Brownfield Property Ownership Clearance Assistance Revolving Loan Trust Fund~~ to contract for the administration of the programs, or portions of the programs, enumerated in this paragraph or assigned to the office by law, by the appropriations process, or by the Governor. Such expenditures shall be subject to review under chapter 216.

2. The office may enter into contracts in connection with the fulfillment of its duties concerning the Florida First Business Bond Pool under chapter 159, tax incentives under chapters 212 and 220, tax incentives under the Certified Capital Company Act in chapter 288, foreign offices under chapter 288, the Enterprise Zone program under chapter 290, the Seaport Employment Training program under chapter 311, the Florida Professional Sports Team License Plates under chapter 320, Spaceport Florida under chapter 331, Expedited Permitting under chapter 403, and in carrying out other functions that are specifically assigned to the office by law, by the appropriations process, or by the Governor.

Section 11. An amendment to any provision of chapter 199, Florida Statutes, contained in this act does not supersede a repeal of that provision contained in House Bill 209.

Section 12. This act shall take effect July 1, 2006.

Approved by the Governor June 22, 2006.

Filed in Office Secretary of State June 22, 2006.