

Council Substitute for House Bill No. 527

An act relating to environmental site redevelopment; amending s. 376.30715, F.S.; defining the term “acquired”; providing for financial assistance in certain additional circumstances involving the transfer of a contaminated property; s. 220.1845, F.S.; revising requirements for site rehabilitation tax credits; expanding eligibility for site rehabilitation tax credits; providing for application to brownfield site redevelopment solid waste removal costs; providing requirements and limitations; providing definitions; providing for application to construction and operation of new health care facilities or health care providers on brownfield sites; providing requirements; amending s. 376.30781, F.S.; revising provisions providing tax credits for rehabilitation of certain contaminated sites and brownfield sites; providing for application to solid waste removal activities and site rehabilitation; providing for granting tax credits to multiple applicants; providing criteria for claiming costs for solid waste removal; providing definitions; providing for application to construction and operation of new health care facilities or health care providers on brownfield sites; providing requirements; revising criteria and requirements for granting site rehabilitation tax credits; providing criteria and requirements for granting solid waste removal tax credits; revising criteria and requirements for Department of Environmental Protection review of tax credit applications; providing notice requirements for the department in reviewing applications; increasing available amounts eligible for tax credits; providing additional limitations on tax credit awards for site rehabilitation costs and solid waste removal costs; providing construction of costs not eligible for tax credits; providing requirements and procedures for allocating and awarding certain ineligible or disputed costs; amending s. 376.79, F.S.; revising definitions relating to brownfield redevelopment; conforming a cross-reference; amending s. 376.80, F.S.; revising the brownfield program administration process; revising local government proposal requirements; revising requirements for brownfield site redevelopment agreements; deleting certain brownfield site rehabilitation contractor certification requirements; deleting a requirement that certain professionals carry professional liability insurance; providing legislative findings and declarations; authorizing local governments to evaluate certain benefits and effects of brownfield site redevelopment and rehabilitation; providing criteria; authorizing the Department of Health to assist local governments in such evaluations; amending s. 376.82, F.S.; conforming references; amending s. 376.86, F.S.; providing for limited application of Brownfield Areas Loan Guarantee Program grants to construction and operation of new health care facilities and health care providers; expanding membership of the Brownfield Areas Loan Guarantee Council; providing for retroactive application; providing an effective date.

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

Section 1. Section 376.30715, Florida Statutes, is amended to read:

376.30715 Innocent victim petroleum storage system restoration.—A contaminated site acquired by the current owner prior to July 1, 1990, which has ceased operating as a petroleum storage or retail business prior to January 1, 1985, is eligible for financial assistance pursuant to s. 376.305(6), notwithstanding s. 376.305(6)(a). For purposes of this section, the term “acquired” means the acquisition of title to the property; however, a subsequent transfer of the property to a spouse, a surviving spouse in trust or free of trust, or a revocable trust created for the benefit of the settlor does not disqualify the site from financial assistance pursuant to s. 376.305(6). Eligible sites shall be ranked in accordance with s. 376.3071(5).

Section 2. Paragraphs (a), (c), (g), and (i) of subsection (1) and subsection (2) of section 220.1845, Florida Statutes, are amended, and paragraphs (j) and (k) are added to subsection (1) of that section, to read:

220.1845 Contaminated site rehabilitation tax credit.—

(1) AUTHORIZATION FOR TAX CREDIT; LIMITATIONS.—

(a) A credit in the amount of 50 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 site rehabilitation 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.

(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 up to a period not to exceed 5 years. The carryover credit may be used in a subsequent year if 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 (g), each transferee has 5 years after the date of transfer to use its credit.

(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 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 at least ~~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. ~~If in the event the credit provided for under this section is reduced due to either as a result of a determination by the Department of Environmental Protection or an examination or audit by the Department of Revenue, the such tax deficiency shall be recovered from the first entity, or the surviving or acquiring entity that, to have claimed the such credit up to the amount of credit taken. Any subsequent deficiencies shall be assessed against the any entity acquiring and claiming the such credit, or in the case of multiple succeeding entities in the order of credit succession.~~

(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).~~

(j) In order to encourage the redevelopment of a brownfield site, as defined in the brownfield site rehabilitation agreement, that is hindered by the presence of solid waste, as defined in s. 403.703, a tax credit applicant, or multiple tax credit applicants working jointly to clean up a single brownfield site, may also claim costs required to address solid waste removal as defined in this paragraph in accordance with rules of the Department of Environmental Protection. Multiple tax credit applicants shall be granted tax credits in the same proportion as each applicant's contribution to payment of solid waste removal costs. 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 of Environmental Protection, to the best of the applicant's knowledge according to such consultation and available historical records, the brownfield site was never operated as a permitted solid waste disposal area or was never operated for monetary compensation and the applicant submits all other documentation and certifications required by this section. Under this section, wherever reference is made to "site rehabilitation," the Department of Environmental Protection shall instead consider whether or not the costs claimed are for solid waste removal. Tax credit applications claiming costs pursuant to this paragraph shall not be subject to the calendar-year limitation and January 31 annual application deadline, and the Department of Environmental Protection shall accept a one-time application filed subsequent to the comple-

tion by the tax credit applicant of the applicable requirements listed in this section. A tax credit applicant may claim 50 percent of the cost for solid waste removal, not to exceed \$500,000, after the applicant has determined solid waste removal is completed for the brownfield site. A solid waste removal tax credit application may be filed only once per brownfield site. For the purposes of this section, the term:

1. "Solid waste disposal area" means a landfill, dump, or other area where solid waste has been disposed of.

2. "Monetary compensation" means the fees that were charged or the assessments that were levied for the disposal of solid waste at a solid waste disposal area.

3. "Solid waste removal" means removal of solid waste from the land surface or excavation of solid waste from below the land surface and removal of the solid waste from the brownfield site. The term also includes:

a. Transportation of solid waste to a licensed or exempt solid waste management facility or to a temporary storage area.

b. Sorting or screening of solid waste prior to removal from the site.

c. Deposition of solid waste at a permitted or exempt solid waste management facility, whether the solid waste is disposed of or recycled.

(k) In order to encourage the construction and operation of a new health care facility as defined in s. 408.032 or s. 408.07, or a health care provider as defined in s. 408.07 or s. 408.7056, on a brownfield site, an applicant for a tax credit may claim an additional 25 percent of the total site rehabilitation costs, not to exceed \$500,000, if the applicant meets the requirements of this paragraph. In order to receive this additional tax credit, the applicant must provide documentation indicating that the construction of the health care facility or health care provider by the applicant on the brownfield site has received a certificate of occupancy or a license or certificate has been issued for the operation of the health care facility or health care provider.

(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.

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 ~~state's~~ state's 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 subsection paragraph (5)(a), tax credits allowed pursuant to s. 220.1845 are available for ~~any~~ site rehabilitation or solid waste removal conducted during the calendar year in which the applicable voluntary cleanup agreement or brownfield site rehabilitation agreement is executed, even if the site rehabilitation or solid waste removal is conducted prior to the execution of that agreement or the designation of the brownfield area.

(3)(a) A credit in the amount of 50 percent of the costs of voluntary cleanup activity that is integral to site rehabilitation at the following sites is allowed pursuant to s. 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 site rehabilitation 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 ~~receive~~ be granted more than \$500,000 per year in tax credits for each site voluntarily rehabilitated. Multiple tax credit applicants shall be granted tax credits in the same proportion as each applicant's their contribution to payment of site rehabilitation cleanup costs. Tax credits are available only for site rehabilitation conducted during the calendar year for which the tax credit application is submitted. For purposes of this section, the term "integral to site rehabilitation" means work that is necessary to implement the requirements of chapter 62-785 or chapter 62-782, Florida Administrative Code.

(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 percent of the total site rehabilitation cleanup costs, not to exceed \$500,000, 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 ~~may~~ shall be submitted each year for each site, an application for the additional credit provided for in this paragraph shall be submitted ~~after~~ as soon as all requirements to obtain ~~the~~ this additional tax credit have been met.

(e) ~~In order Notwithstanding the restrictions in this section that limit tax credit eligibility to costs that are integral to site rehabilitation,~~ to encourage the redevelopment of a brownfield site, as defined in the brownfield site rehabilitation agreement, properties in designated brownfield areas that is are hindered by the presence of solid waste, as defined in s. 403.703, costs related to solid waste removal may also be claimed under this section. A tax credit applicant, or multiple tax credit applicants working jointly to clean up a single brownfield site, may also claim costs to address the solid waste removal as defined in this paragraph, ~~but only those costs to remove, transport, and dispose of solid waste in accordance with department rules~~. Multiple tax credit applicants shall be granted tax credits in the same proportion as each applicant's contribution to payment of solid waste removal costs. 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 based upon such consultation and available historical records, the brownfield site was never operated as a permitted solid waste disposal area or was never operated landfill or dump site for monetary compensation, and the applicant 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 solid waste 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 31 ~~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 subsection paragraph. A tax credit applicant may claim 50 percent of the costs for solid waste removal, not to exceed \$500,000, after the applicant has determined solid waste removal is completed for the brownfield site. A solid waste removal tax credit application may be filed only once per brownfield site. For the purposes of this section, the term:

1. "Solid waste disposal area" means a landfill, dump, or other area where solid waste has been disposed.

2. "Monetary compensation" means the fees that were charged or the assessments that were levied for the disposal of solid waste at a solid waste disposal area.

3. "Solid waste removal" means removal of solid waste from the land surface or excavation of solid waste from below the land surface and removal of the solid waste from the brownfield site. The term also includes:

- a. Transportation of solid waste to a licensed or exempt solid waste management facility or to a temporary storage area.
- b. Sorting or screening of solid waste prior to removal from the site.
- c. Deposition of solid waste at a permitted or exempt solid waste management facility, whether the solid waste is disposed of or recycled.

(f) In order to encourage the construction and operation of a new health care facility or a health care provider, as defined in s. 408.032, s. 408.07, or s. 408.7056, on a brownfield site, an applicant for a tax credit may claim an additional 25 percent of the total site rehabilitation costs, not to exceed \$500,000, if the applicant meets the requirements of this paragraph. In order to receive this additional tax credit, the applicant must provide documentation indicating that the construction of the health care facility or health care provider by the applicant on the brownfield site has received a certificate of occupancy or a license or certificate has been issued for the operation of the health care facility or health care provider.

(4) The Department of Environmental Protection ~~is shall be~~ responsible for allocating the tax credits provided for in s. 220.1845, ~~which may not to~~ exceed a total of \$2 million in tax credits annually.

(5) ~~To claim the credit for site rehabilitation or solid waste removal 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 filing a tax credit application with the Division of Waste Management 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)(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 and time complete applications are received by the Division of Waste Management, subject to the limitations of subsection (14). 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) For site rehabilitation tax credits, 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 have paid all deductibles pursuant to s. 376.3078(3)(e) for eligible drycleaning-solvent-cleanup program sites, as applicable. A site rehabilitation tax credit applicant must submit only a single completed application per site for each calendar year's site rehabilitation costs. A site rehabilitation application must be received by the Division of

Waste Management of the Department of Environmental Protection by January 31 of the year after the calendar year for which site rehabilitation costs are being claimed in a tax credit application.

(b) ~~For solid waste removal tax credits, have entered into a brownfield site rehabilitation agreement with the Department of Environmental Protection. A solid waste removal tax credit applicant must submit only a single complete application per brownfield site, as defined in the brownfield site rehabilitation agreement, for solid waste removal costs. A solid waste removal tax credit application must be received by the Division of Waste Management of the Department of Environmental Protection subsequent to the completion of the requirements listed in paragraph (3)(e) Have paid all deductibles pursuant to s. 376.3078(3)(e) for eligible drycleaning-solvent-cleanup program sites.~~

~~(6) 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 documents that describe the goods or services and associated costs being claimed that were integral to site rehabilitation as defined in s. 376.301 or s. 376.79 or were for solid waste removal as defined in this section during the time period covered by the application. Such documents must include contractual records that describe the scope of work performed, payment requests that describe the goods or services provided, and payment records involving actual costs incurred and paid. Such documentation must be sufficient to demonstrate a link between the contractual records, the payment requests, and the payment records for the time period covered by the application 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, a certified public accountant's report must be submitted and the certified public accountant must attest to the accuracy and validity of the costs incurred and paid during the time period covered in the application by conducting an independent review of the~~

data presented by the tax credit applicant. Accuracy and validity of costs incurred and paid shall ~~would~~ be determined ~~after~~ once the level of effort is was certified by an appropriate professional registered in this state in each contributing technical discipline. The certified public accountant's report must ~~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 in addition to the accountant's certification form in ~~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. If the scope of solid waste removal activities does not require oversight by a registered technical professional in this state, such certification form is not required as part of the tax credit application.

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

(8) 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, if applicable, for completeness and eligibility, as follows:

(a) ~~To be In order to have the application considered complete, the review must verify for the purpose of verifying that the tax credit applicant has met the appropriate qualifying criteria in subsections (3) and (5), and has submitted a completed application form, and has addressed each of the categories of submittals all required documentation listed in subsection (6). Upon verification that the tax credit applicant has met such completeness these requirements, the tax credit application secures a place in the first-come, first-served application line. If the department determines that an application is incomplete, the department shall notify the applicant in writing and the applicant shall have 30 days after receiving such notification to correct any deficiency. Upon timely correction of any deficiencies, the tax credit application secures a place in the first-come, first-served application line. Tax credit applications may not be altered to claim additional costs during this time.~~

(b) In order to have costs considered eligible, the review of the complete application shall be performed to verify that the work claimed was integral to site rehabilitation or was for solid waste removal, that the work claimed was performed in the applicable timeframe, and that the costs claimed were properly documented. Upon verification, the department shall issue a writ-

ten decision granting eligibility for ~~partial~~ tax credits (a tax credit certificate). ~~Complete tax credit applications shall be reviewed for eligible costs in conjunction with in the amount of 50 percent of the total costs claimed, subject to the \$500,000 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, as applicable.~~

(9) On or before ~~May 1 March 31~~, the Department of Environmental Protection shall inform each ~~eligible~~ tax credit applicant that is ~~subject to the January 31 annual application deadline of the applicant's eligibility status and of the amount of any its partial tax credit due.~~ The department shall 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. 220.1845(1)(g)(h). The May 1 deadline for annual site rehabilitation tax credit certificate awards shall not apply to any tax credit application for which the department has issued a notice of deficiency pursuant to subsection (8). The department shall respond within 90 days after receiving a response from the tax credit applicant to such a notice of deficiency. Credits may will not result in the payment of refunds if total credits exceed the amount of tax owed.

(10) For solid waste removal, new health care facility or health care provider, and affordable housing tax credit applications, the Department of Environmental Protection shall inform the applicant of the department's determination within 90 days after the application is deemed complete. Each eligible tax credit applicant shall be informed of the amount of its tax credit and provided 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. 220.1845(1)(g). Credits may not result in the payment of refunds if total credits exceed the amount of tax owed.

(11)(10) 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.

(12)(11) 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.

(13)(12) 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.

~~(14)(a)(13)~~ 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. 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.

(b) Tax credits for site rehabilitation awarded pursuant to paragraphs (3)(b)-(d) and (f) are additive, but at no time shall the total tax credit award for site rehabilitation exceed 100 percent of the costs incurred and paid by an applicant.

(c) A single brownfield site may receive tax credits for both eligible site rehabilitation costs and eligible solid waste removal costs provided the costs for any given activity are not claimed for both site rehabilitation and solid waste removal such that the same costs are claimed twice.

(d) For purposes of this subsection, costs incurred that are not considered integral to site rehabilitation include, but are not limited to, brownfield area designation costs and tax credit application preparation and submittal costs.

(e) If the department notifies an applicant pursuant to subsection (9) that any claimed costs are ineligible, those costs may not be allocated and applied to the annual tax credit authorization, and any disputed costs may not delay the application processing or award for subsequent eligible tax credit applicants in the first-come, first-served application line. However, if the department subsequently agrees to award tax credits on any amount that was disputed, the department shall do so based upon the first-come, first-served application line determined by the applicant's original completeness date and time, provided there is any tax credit authorization available. If a tax credit applicant does not receive an award for the disputed costs due to an exhaustion of the annual tax credit authorization, such subsequent tax credit award shall be included in the same first-come, first-served order in the next year's annual tax credit allocation, if any, based upon the applicant's original completeness date and time.

Section 4. Subsections (6), (8), (10), (11), (12), and (17) of section 376.79, Florida Statutes, are amended to read:

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

(6) “Contaminated site” means any contiguous land, sediment, surface water, or groundwater areas that contain contaminants that may be harmful to human health or the environment.

(8) “Engineering controls” means modifications to a site to reduce or eliminate the potential for exposure to chemicals of concern from petroleum products, drycleaning solvents, or other contaminants. Such modifications may include, but are not limited to, physical or hydraulic control measures, capping, point of use treatments, or slurry walls.

(10) “Institutional controls” means the restriction on use of or access to a site to eliminate or minimize exposure to chemicals of concern from petro-

leum products, drycleaning solvents, or other contaminants. Such restrictions may include, but are not limited to, deed restrictions, restrictive covenants, or conservation easements.

(11) “Local pollution control program” means a local pollution control program that has received delegated authority from the Department of Environmental Protection under ss. 376.80(9)(11) and 403.182.

(12) “Natural attenuation” means a verifiable approach to site rehabilitation ~~that which~~ allows natural processes to contain the spread of contamination and reduce the concentrations of contaminants in contaminated groundwater and soil. Natural attenuation processes may include sorption, biodegradation, chemical reactions with subsurface materials, diffusion, dispersion, and volatilization.

(17) “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. For purposes of sites subject to the Resource Conservation and Recovery Act, as amended, the term includes removal, decontamination, and corrective action of releases of hazardous substances.

Section 5. 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. ~~376.77-376.86~~ 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 shall adopt the resolution and must conduct the public hearings in accordance with the requirements of subsection (1), except at least one of the required public hearings shall be conducted as close as reasonably practicable to 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, neighbor-

hood 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 5 new permanent jobs at the brownfield site that ~~which~~ are full-time equivalent positions not associated with the implementation of the brownfield site rehabilitation agreement and that ~~which~~ are not associated with redevelopment project demolition or construction activities pursuant to the redevelopment of the proposed brownfield site or area ~~agreement required under paragraph (5)(4)~~. 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 subparagraph ~~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 of the brownfield site 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 any the proposed redevelopment ~~agreements prepared~~ 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. ~~376.77-376.86~~ 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.;

(i) Certification that ~~an agreement exists between~~ the person responsible for brownfield site rehabilitation has consulted with ~~and~~ the local government with jurisdiction over the brownfield area about the proposed redevelopment of the brownfield site, that the local government is in agreement with or approves the proposed redevelopment, and that the proposed redevelopment complies with applicable laws and requirements for such redevelopment. Certification shall be accomplished by referencing or providing a legally recorded or officially approved land use or site plan, a development order or approval, a building permit, or a similar official document issued

by the local government that reflects the local government's approval of proposed redevelopment of the brownfield site; providing a copy of the local government resolution designating the brownfield area that contains the proposed redevelopment of the brownfield site; or providing a letter from the local government that describes the proposed redevelopment of the brownfield site and expresses the local government's agreement with or approval of the proposed redevelopment. 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) Will conduct~~ 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 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.~~

~~(7)(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.

(8)(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.

(9)(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 brownfield 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 brownfield program; and

(b) Provide for the enforcement of the requirements of the delegated brownfield 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 brownfield program as established by the act and the relevant rules and other criteria of the department.

(10)(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.

(11)(a) The Legislature finds and declares that:

1. Brownfield site rehabilitation and redevelopment can improve the overall health of a community and the quality of life for communities, including for individuals living in such communities.

2. The community health benefits of brownfield site rehabilitation and redevelopment should be better measured in order to achieve the legislative intent as expressed in s. 376.78.

3. There is a need in this state to define and better measure the community health benefits of brownfield site rehabilitation and redevelopment.

4. Funding sources should be established to support efforts by the state and local governments, in collaboration with local health departments, community health providers, and nonprofit organizations, to evaluate the community health benefits of brownfield site rehabilitation and redevelopment.

(b) Local governments may and are encouraged to evaluate the community health benefits and effects of brownfield site rehabilitation and redevelopment in connection with brownfield areas located within their jurisdictions. Factors that may be evaluated and monitored before and after brownfield site rehabilitation and redevelopment include, but are not limited to:

1. Health status, disease distribution, and quality of life measures regarding populations living in or around brownfield sites that have been rehabilitated and redeveloped.

2. Access to primary and other health care or health services for persons living in or around brownfield sites that have been rehabilitated and redeveloped.

3. Any new or increased access to open, green, park, or other recreational spaces that provide recreational opportunities for individuals living in or around brownfield sites that have been rehabilitated and redeveloped.

4. Other factors described in rules adopted by the Department of Environmental Protection or the Department of Health, as applicable.

(c) The Department of Health may and is encouraged to assist local governments, in collaboration with local health departments, community health providers, and nonprofit organizations, in evaluating the community health benefits of brownfield site rehabilitation and redevelopment.

Section 6. Paragraphs (d) and (f) of subsection (2) of section 376.82, Florida Statutes, are amended to read:

376.82 Eligibility criteria and liability protection.—

(2) LIABILITY PROTECTION.—

(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~~(8)~~(10).

(f) Compliance with ~~the agreement referenced in s. 376.80(5)(i)~~ must be evidenced ~~as set forth in that paragraph~~ by a finding by the local government with jurisdiction over the brownfield area that the terms of the agreement have been met.

Section 7. Subsections (1) and (2) of section 376.86, Florida Statutes, are 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 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. If the redevelopment project includes the construction and operation of a new health care facility or a health care provider, as defined in s. 408.032, s. 408.07, or s. 408.7056, on a brownfield site and the applicant has obtained documentation in accordance with s. 376.30781 indicating that the construction of the health care facility or health care provider by the applicant on the brownfield site has received a certificate of occupancy or a license or certificate has been issued for the operation of the health care facility or health care provider, 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.

(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 State Surgeon General or the State Surgeon General'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 Corporation 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, and Economic Development. Staff services for activities of the council shall be provided as needed by the member agencies.

Section 8. This act shall take effect upon becoming a law and shall operate retroactively to January 1, 2008.

Approved by the Governor June 30, 2008.

Filed in Office Secretary of State June 30, 2008.