

376.78 Legislative intent.--The Legislature finds and declares the following:

- (1) The reduction of public health and environmental hazards on existing commercial and industrial sites is vital to their use and reuse as sources of employment, housing, recreation, and open space areas. The reuse of industrial land is an important component of sound land use policy for productive urban purposes which will help prevent the premature development of farmland, open space areas, and natural areas, and reduce public costs for installing new water, sewer, and highway infrastructure.
 - (2) The abandonment or underuse of brownfield sites also results in the inefficient use of public facilities and services, as well as land and other natural resources, extends conditions of blight in local communities, and contributes to concerns about environmental equity and the distribution of environmental risks across population groups.
 - (3) Incentives should be put in place to encourage responsible persons to voluntarily develop and implement cleanup plans without the use of taxpayer funds or the need for enforcement actions by state and local governments.
 - (4) Environmental and public health hazards cannot be eliminated without clear, predictable remediation standards that provide for the protection of the environment and public health.
 - (5) Site rehabilitation should be based on the actual risk that contamination may pose to the environment and public health, taking into account current and future land and water use and the degree to which contamination may spread and place the public or the environment at risk.
 - (6) According to the statistical proximity study contained in the final report of the Environmental Equity and Justice Commission, minority and low-income communities are disproportionately impacted by targeted environmentally hazardous sites. The results indicate the need for the health and risk exposure assessments of minority and poverty populations around environmentally hazardous sites in this state. Redevelopment of hazardous sites should address questions relating to environmental and health consequences.
 - (7) Environmental justice considerations should be inherent in meaningful public participation elements of a brownfields redevelopment program.
 - (8) The existence of brownfields within a community may contribute to, or may be a symptom of, overall community decline, including issues of human disease and illness, crime, educational and employment opportunities, and infrastructure decay. The environment is an important element of quality of life in any community, along with economic opportunity, educational achievement, access to health care, housing quality and availability, provision of governmental services, and other socioeconomic factors. Brownfields redevelopment, properly done, can be a significant element in community revitalization.
 - (9) Cooperation among federal, state, and local agencies, local community development organizations, and current owners and prospective purchasers of brownfield sites is required to accomplish timely cleanup activities and the redevelopment or reuse of brownfield sites.
- History.--s. 2, ch. 97-277.

376.79 Definitions relating to Brownfields Redevelopment Act

As used in ss. 376.77-376.85, the term:

- (1) "Additive effects" means a scientific principle that the toxicity that occurs as a result of exposure is the sum of the toxicities of the individual chemicals to which the individual is exposed.
- (2) "Antagonistic effects" means a scientific principle that the toxicity that occurs as a result of exposure is less than the sum of the toxicities of the individual chemicals to which the individual is exposed.
- (3) "Brownfield sites" means real property, the expansion, redevelopment, or reuse of which may be complicated by actual or perceived environmental contamination.
- (4) "Brownfield area" means a contiguous area of one or more brownfield sites, some of which may not be contaminated, and which has been designated by a local government by resolution. Such areas may include all or portions of community redevelopment areas, enterprise zones, empowerment zones, other such designated economically deprived communities and areas, and Environmental Protection Agency-designated brownfield pilot projects.

- (5) "Contaminant" means any physical, chemical, biological, or radiological substance present in any medium which may result in adverse effects to human health or the environment or which creates an adverse nuisance, organoleptic, or aesthetic condition in groundwater.
- (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.
- (7) "Department" means the Department of Environmental Protection.
- (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.
- (9) "Environmental justice" means the fair treatment of all people of all races, cultures, and incomes with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.
- (10) "Institutional controls" means the restriction on use of or access to a site to eliminate or minimize exposure to chemicals of concern from petroleum 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) and 403.182.
- (12) "Natural attenuation" means a verifiable approach to site rehabilitation that 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.
- (13) "Person responsible for brownfield site rehabilitation" means the individual or entity that is designated by the local government to enter into the brownfield site rehabilitation agreement with the department or an approved local pollution control program and enters into an agreement with the local government for redevelopment of the site.
- (14) "Person" means any individual, partner, joint venture, or corporation; any group of the foregoing, organized or united for a business purpose; or any governmental entity.
- (15) "Risk reduction" means the lowering or elimination of the level of risk posed to human health or the environment through interim remedial actions, remedial action, or institutional, and if appropriate, engineering controls.
- (16) "Secretary" means the secretary of the Department of Environmental Protection.
- (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.
- (18) "Source removal" means the removal of free product, or the removal of contaminants from soil or sediment that has been contaminated to the extent that leaching to groundwater or surface water has occurred or is occurring.
- (19) "Synergistic effects" means a scientific principle that the toxicity that occurs as a result of exposure is more than the sum of the toxicities of the individual chemicals to which the individual is exposed.

History.--s. 3, ch. 97-277; s. 2, ch. 98-75; s. 10, ch. 2000-317; s. 1, ch. 2004-40; s. 4, ch. 2008-239

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. 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 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 the area to be designated to provide an opportunity for public input on the size of the area, the objectives for rehabilitation, job opportunities and economic developments anticipated, neighborhood residents' considerations, and other relevant local concerns. Notice of the public hearing must be made in a newspaper of general circulation in the area and the notice must be at least 16 square inches in size, must be in ethnic newspapers or local community bulletins, must be posted in the affected area, and must be announced at a scheduled meeting of the local governing body before the actual public hearing. In determining the areas to be designated, the local government must consider:

1. Whether the brownfield area warrants economic development and has a reasonable potential for such activities;
2. Whether the proposed area to be designated represents a reasonably focused approach and is not overly large in geographic coverage;
3. Whether the area has potential to interest the private sector in participating in rehabilitation; and
4. Whether the area contains sites or parts of sites suitable for limited recreational open space, cultural, or historical preservation purposes.

(b) A local government shall designate a brownfield area under the provisions of this act provided that:

1. A person who owns or controls a potential brownfield site is requesting the designation and has agreed to rehabilitate and redevelop the brownfield site;
2. The rehabilitation and redevelopment of the proposed brownfield site will result in economic productivity of the area, along with the creation of at least 5 new permanent jobs at the brownfield site that are full-time equivalent positions not associated with the implementation of the brownfield site rehabilitation agreement and that are not associated with redevelopment project demolition or construction activities pursuant to the redevelopment of the proposed brownfield site or area. 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 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 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.

(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 proposed redevelopment agreements prepared 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, 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 the person responsible for brownfield site rehabilitation has consulted with 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.
- (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 sample collection and analyses pursuant to department rules.
- (7) 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) 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) 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) 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.

History.--s. 4, ch. 97-277; s. 3, ch. 98-75; s. 11, ch. 2000-317; s. 2, ch. 2004-40; s. 44, ch. 2005-2; s. 7, ch. 2006-291; s. 5, ch. 2008-239.

376.82, FS - Eligibility Criteria and Liability Protection

(1) ELIGIBILITY.-Any person who has not caused or contributed to the contamination of a brownfield site on or after July 1, 1997, is eligible to participate in the brownfield program established in ss. 376.77-376.85, subject to the following:

(a) Potential brownfield sites that are subject to an ongoing formal judicial or administrative enforcement action or corrective action pursuant to federal authority, including, but not limited to, the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. ss. 9601 et seq., as amended; the Safe Drinking Water Act, 42 U.S.C. ss. 300f-300i, as amended; the Clean Water Act, 33 U.S.C. ss. 1251-1387, as amended; or under an order from the United States Environmental Protection Agency pursuant to s. 3008(h) of the Resource Conservation and Recovery Act, as amended (42 U.S.C.A. s. 6928(h)); or that have obtained or are required to obtain a permit for the operation of a hazardous waste treatment, storage, or disposal facility; a postclosure permit; or a permit pursuant to the federal Hazardous and Solid Waste Amendments of 1984, are not eligible for participation unless specific exemptions are secured by a memorandum of agreement with the United States Environmental Protection Agency pursuant to paragraph (2)(g). A brownfield site within an eligible brownfield area that subsequently becomes subject to formal judicial or administrative enforcement action or corrective action under such

federal authority shall have its eligibility revoked unless specific exemptions are secured by a memorandum of agreement with the United States Environmental Protection Agency pursuant to paragraph (2)(g).

(b) Persons who have not caused or contributed to the contamination of a brownfield site on or after July 1, 1997, and who, prior to the department's approval of a brownfield site rehabilitation agreement, are subject to ongoing corrective action or enforcement under state authority established in this chapter or chapter 403, including those persons subject to a pending consent order with the state, are eligible for participation in a brownfield site rehabilitation agreement if:

1. The proposed brownfield site is currently idle or underutilized as a result of the contamination, and participation in the brownfield program will immediately, after cleanup or sooner, result in increased economic productivity at the site, including at a minimum the creation of 10 new permanent jobs, whether full-time or part-time, which are not associated with implementation of the brownfield site rehabilitation agreement; and

2. The person is complying in good faith with the terms of an existing consent order or department-approved corrective action plan, or responding in good faith to an enforcement action, as evidenced by a determination issued by the department or an approved local pollution control program.

(c) Potential brownfield sites owned by the state or a local government which contain contamination for which a governmental entity is potentially responsible and which are already designated as federal brownfield pilot projects or have filed an application for designation to the United States Environmental Protection Agency are eligible for participation in a brownfield site rehabilitation agreement.

(d) After July 1, 1997, petroleum and drycleaning contamination sites shall not receive both restoration funding assistance available for the discharge under this chapter and any state assistance available under s. 288.107. Nothing in this act shall affect the cleanup criteria, priority ranking, and other rights and obligations inherent in petroleum contamination and drycleaning contamination site rehabilitation under ss. 376.30-376.317, or the availability of economic incentives otherwise provided for by law.

(2) LIABILITY PROTECTION.--

(a) Any person, including his or her successors and assigns, who executes and implements to successful completion a brownfield site rehabilitation agreement, shall be relieved of further liability for remediation of the contaminated site or sites to the state and to third parties and of liability in contribution to any other party who has or may incur cleanup liability for the contaminated site or sites.

(b) This section shall not be construed as a limitation on the right of a third party other than the state to pursue an action for damages to property or person; however, such an action may not compel site rehabilitation in excess of that required in the approved brownfield site rehabilitation agreement or otherwise required by the department or approved local pollution control program.

(c) This section shall not affect the ability or authority to seek contribution from any person who may have liability with respect to the contaminated site and who did not receive cleanup liability protection under this act.

(d) The liability protection provided under this section shall become effective upon execution of a brownfield site rehabilitation agreement and shall remain effective, provided the person responsible for brownfield site rehabilitation complies with the terms of the site rehabilitation agreement. Any statute of limitations that would bar the department from pursuing relief in accordance with its existing authority is tolled from the time the agreement is executed until site rehabilitation is completed or immunity is revoked pursuant to s. 376.80(8).

(e) Completion of the performance of the remediation obligations at the brownfield site shall be evidenced by a site rehabilitation completion letter or a "no further action" letter issued by the department or the approved local pollution control program, which letter shall include the following statement: "Based upon the information provided by (property owner) concerning property located at (address), it is the opinion of (the Florida Department of Environmental Protection or approved local pollution control program) that (party) has successfully and satisfactorily implemented the approved brownfield site rehabilitation agreement schedule and, accordingly, no further action is required to assure that any land use identified in the brownfield site rehabilitation agreement is consistent with existing and proposed uses."

(f) Compliance with s. 376.80(5)(i) must be evidenced as set forth in that paragraph.

(g) The Legislature recognizes its limitations in addressing cleanup liability under federal pollution control programs. In an effort to secure federal liability protection for persons willing to undertake remediation responsibility at a brownfield site, the department shall attempt to negotiate a memorandum of agreement or similar document with the United States Environmental Protection Agency, whereby the United States Environmental Protection Agency agrees to forego enforcement of federal corrective action authority at brownfield sites that have received a site rehabilitation completion or "no further action" determination from the department or the approved local pollution control program or that are in the process of implementing a brownfield site rehabilitation agreement in accordance with this act.

(h) No unit of state or local government may be held liable for implementing corrective actions at a contaminated site within an eligible brownfield area as a result of the involuntary ownership of the site through bankruptcy, tax delinquency, abandonment, or other circumstances in which the state or local government involuntarily acquires title by virtue of its function as a sovereign, or as a result of ownership from donation, gift, or foreclosure unless the state or local government has otherwise caused or contributed to a release of a contaminant at the brownfield site.

(i) The Legislature finds and declares that certain brownfield sites may be redeveloped for open space, or limited recreational, cultural, or historical preservation purposes, and that such facilities enhance the redeveloped environment, attract visitors, and provide wholesome activities for employees and residents of the area. Further, the Legislature finds that purchasers of contaminated sites who are nonprofit conservation organizations acting for the public interest and who did not cause or contribute to the release of contamination on the site warrant protection from liability.

(j) Notwithstanding any provision of this chapter, chapter 403, other laws, or ordinances of local governments, a nonprofit, charitable, federal tax-exempt, s. 501(c)(3) national land conservation corporation which purchases title to property in the state for the purpose of conveying such land to any governmental entity for conservation, historical preservation or cultural resource, park, greenway, or other similar uses shall not be liable to the state, local government, or any third party for penalties or remediation costs in connection with environmental contamination found in the soil or groundwater of such property, provided that such corporation did not cause the original deposit or release of the environmental contaminants, and provided the department and local pollution control program and responsible parties have access to the land for investigation, remediation, or monitoring purposes.

(k) A person whose property becomes contaminated due to geophysical or hydrologic reasons, including the migration of contaminants onto their property from the operation of facilities and activities on a nearby designated brownfield area, and whose property has never been occupied by a business that utilized or stored the contaminants or similar constituents is not subject to administrative or judicial action brought by or on behalf of another to compel the rehabilitation of or the payment of the costs for the rehabilitation of sites contaminated by materials that migrated onto the property from the designated brownfield area, if the person:

1. Does not own and has never held an ownership interest in, or shared in the profits of, activities in the designated brownfield area operated at the source location;
2. Did not participate in the operation or management of the activities in the designated brownfield area operated at the source location; and
3. Did not cause, contribute to, or exacerbate the release or threat of release of any hazardous substance through any act or omission.

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

(3) REOPENERS.--Upon completion of site rehabilitation in compliance with ss. 376.77-376.85, no additional site rehabilitation shall be required unless it is demonstrated:

- (a) That fraud was committed in demonstrating site conditions or completion of site rehabilitation;
- (b) That new information confirms the existence of an area of previously unknown contamination which exceeds the site-specific rehabilitation levels established in accordance with s. 376.81, or which otherwise poses the threat of real and substantial harm to public health, safety, or the environment in violation of the terms of ss. 376.77-376.85;
- (c) That the remediation efforts failed to achieve the site rehabilitation criteria established under s. 376.81;
- (d) That the level of risk is increased beyond the acceptable risk established under s. 376.81 due to substantial changes in exposure conditions, such as a change in land use from nonresidential to residential use. Any person who changes the land use of the brownfield site thus causing the level of risk to increase beyond the acceptable risk level may be required by the department to undertake additional remediation measures to assure that human health, public safety, and the environment are protected to levels consistent with s. 376.81; or
- (e) That a new release occurs at the brownfield site subsequent to a determination of eligibility for participation in the brownfield program established under s. 376.80.

(4) ADDITIONAL LIABILITY PROTECTION FOR LENDERS.--

- (a) The Legislature declares that, in order to achieve the economic redevelopment and site rehabilitation of brownfield sites in accordance with this act, it is imperative to encourage financing of real property transactions involving brownfield site rehabilitation plans. Accordingly, lenders, including those serving as a trustee, personal representative, or in any other fiduciary capacity, in connection with a loan, are entitled to the liability protection established in subsection (2) if they have not caused or contributed to a release of a contaminant at the brownfield site.
- (b) Lenders who hold indicia of ownership of a parcel within a brownfield area primarily to protect a security interest or who own a parcel within a brownfield area as a result of foreclosure or a deed in lieu of foreclosure of a security interest and who seek to sell, transfer, or otherwise divest the parcel via sale at the earliest practicable time are not liable for the release or discharge of a contaminant from the parcel; for the failure of the person responsible for brownfield site rehabilitation to comply with the brownfield site rehabilitation agreement; or for future site rehabilitation activities required pursuant to a reopener provision established in subsection (3) where the lender has not divested the borrower of, or otherwise engaged in, decisionmaking control of the site rehabilitation or site operations or undertaken management activities beyond those required to protect its financial interest while making a good faith effort to sell the site as soon as practicable and when an act or omission of the lender has not otherwise caused or contributed to a release of a contaminant at the brownfield site.
- (c) The economic incentives that were granted to a person responsible for site rehabilitation by state or local governments shall not accrue to a lender who obtains ownership of the brownfield site by one of the methods described in this subsection. The economic incentives are abated during the lender's ownership, but they may be transferred and reinstated upon the sale of the brownfield site.

History.--s. 6, ch. 97-277; s. 5, ch. 98-75; s. 182, ch. 99-13; s. 13, ch. 2000-317; s. 3, ch. 2004-40; s. 71, ch. 2007-5; s. 6, ch. 2008-239.

376.84, FS - Brownfield Redevelopment Economic Incentives

It is the intent of the Legislature that brownfield redevelopment activities be viewed as opportunities to significantly improve the utilization, general condition, and appearance of these sites. Different standards than those in place for new development, as allowed under current state and local laws, should be used to the fullest extent to encourage the redevelopment of a brownfield. State and local governments are encouraged to offer redevelopment incentives for this purpose, as an ongoing public investment in infrastructure and services, to help eliminate the public health and environmental hazards, and to promote the creation of jobs in these areas. Such incentives may include financial, regulatory, and technical assistance to persons and businesses involved in the redevelopment of the brownfield pursuant to this act.

- (1) Financial incentives and local incentives for redevelopment may include, but not be limited to:
 - (a) Tax increment financing through community redevelopment agencies pursuant to part III of chapter 163.
 - (b) Enterprise zone tax exemptions for businesses pursuant to chapters 196 and 290.

- (c) Safe neighborhood improvement districts as provided in ss. 163.501-163.523.
 - (d) Waiver, reduction, or limitation by line of business with respect to business taxes pursuant to chapter 205.
 - (e) Tax exemption for historic properties as provided in s. 196.1997.
 - (f) Residential electricity exemption of up to the first 500 kilowatts of use may be exempted from the municipal public service tax pursuant to s. 166.231.
 - (g) Minority business enterprise programs as provided in s. 287.0943.
 - (h) Electric and gas tax exemption as provided in s. 166.231(6).
 - (i) Economic development tax abatement as provided in s. 196.1995.
 - (j) Grants, including community development block grants.
 - (k) Pledging of revenues to secure bonds.
 - (l) Low-interest revolving loans and zero-interest loan pools.
 - (m) Local grant programs for facade, storefront, signage, and other business improvements.
 - (n) Governmental coordination of loan programs with lenders, such as microloans, business reserve fund loans, letter of credit enhancements, gap financing, land lease and sublease loans, and private equity.
 - (o) Payment schedules over time for payment of fees, within criteria, and marginal cost pricing.
 - (2) Regulatory incentives may include, but not be limited to:
 - (a) Cities' absorption of developers' concurrency needs.
 - (b) Developers' performance of certain analyses.
 - (c) Exemptions and lessening of state and local review requirements.
 - (d) Water and sewer regulatory incentives.
 - (e) Waiver of transportation impact fees and permit fees.
 - (f) Zoning incentives to reduce review requirements for redevelopment changes in use and occupancy; establishment of code criteria for specific uses; and institution of credits for previous use within the area.
 - (g) Flexibility in parking standards and buffer zone standards.
 - (h) Environmental management through specific code criteria and conditions allowed by current law.
 - (i) Maintenance standards and activities by ordinance and otherwise, and increased security and crime prevention measures available through special assessments.
 - (j) Traffic-calming measures.
 - (k) Historic preservation ordinances, loan programs, and review and permitting procedures.
 - (l) One-stop permitting and streamlined development and permitting process.
 - (3) Technical assistance incentives may include, but not be limited to:
 - (a) Expedited development applications.
 - (b) Formal and informal information on business incentives and financial programs.
 - (c) Site design assistance.
 - (d) Marketing and promotion of projects or areas.
- History.--s. 8, ch. 97-277; s. 72, ch. 2007-5.

376.86, FS - 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, 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.

(3) The council may enter into an investment agreement with the Department of Environmental Protection and the State Board of Administration concerning the investment of the balance of funds maintained in the Inland Protection Trust Fund. The investment must be limited as follows:

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

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

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

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

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

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

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

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

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

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

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

(8) The council shall provide an annual report to the Legislature by February 1 of each year describing its activities and agreements approved relating to redevelopment of brownfield areas. This section shall be reviewed by the Legislature by January 1, 2007, and a determination made related to the need to continue or modify this section. New loan guarantees may not be approved in 2007 until the review by the Legislature has been completed and a determination has been made as to the feasibility of continuing the use of the Inland Protection Trust Fund to guarantee portions of loans under this section.

History.--s. 10, ch. 98-75; s. 7, ch. 2000-153; ss. 55, 56, ch. 2003-399; s. 4, ch. 2004-40; s. 8, ch. 2006-291; s. 7, ch. 2008-239.