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SYNOPSIS:

Under existing law, non-responsible parties are released from certain liabilities related to a brownfield site if they participate in the voluntary cleanup program administered by the Alabama Department of Environmental Management.

This bill would allow potentially responsible parties to be released from liability related to a brownfield site if they participate in the voluntary cleanup program.

This bill would create the Brownfield Remediation Reserve Fund to assist in costs associated with remediating certain brownfields.

This bill would provide for the creation of brownfield redevelopment districts to further provide for the remediation and ultimate reuse of brownfields.

This bill would also make nonsubstantive, technical revisions to update the existing code language to current style.

A BILL
TO BE ENTITLED
AN ACT



29
30 Relating to environmental protection; to amend Sections
31 22-30E-2, 22-30E-3, 22-30E-4, 22-30E-5, 22-30E-9, and 35-19-4,
32 Code of Alabama 1975, to provide potentially responsible
33 parties with limitations of liability with respect to a
34 brownfield site; to create the Brownfield Remediation Reserve
35 Fund; to add Sections 22-30E-14, 22-30E-15, and 22-30E-16 to
36 the Code of Alabama 1975, to provide for the creation of
37 brownfield redevelopment districts; and to make
38 nonsubstantive, technical revisions to update the existing
39 code language to current style

40 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

41 Section 1. Sections 22-30E-2, 22-30E-3, 22-30E-4,
42 22-30E-5, 22-30E-9, and 35-19-4, Code of Alabama 1975, are
43 amended to read as follows:

44 "§22-30E-2

45 (a) The Legislature finds that ~~rural and urban property~~
46 properties in Alabama may have areas ~~of~~ with actual or
47 perceived contamination ~~at~~ levels that may not be subject to
48 assessment or cleanup under applicable laws and regulations.
49 The Legislature finds that this perception of contamination
50 discourages the purchase and productive use of otherwise
51 usable properties. The Legislature further finds that the
52 voluntary assessment and ~~or~~ cleanup of such properties is in
53 the public interest.

54 (b) The Legislature finds that ~~industries and~~
55 ~~developers often give preference to~~ previously unused
56 greenfield sites are often selected for development over



57 previously used property due largely to concerns over the
58 financial and environmental liabilities which may be incurred
59 in acquiring such previously used property for reuse and
60 redevelopment. The Legislature further finds that the
61 appropriate reuse and redevelopment of properties which are
62 contaminated, or perceived to be contaminated, is in the
63 public interest.

64 (c) The Legislature finds that the reuse of previously
65 utilized property is an important component of a sound land
66 use policy that will help to preserve ~~heretofore~~ undeveloped
67 farmland, open space areas, and natural areas; and reduce
68 public costs for installing new water, sewer, and other
69 utilities and highway infrastructure.

70 (d) The Legislature finds that it is necessary to pass
71 legislation that provides a mechanism to implement a cleanup
72 program which encourages applicants to voluntarily assess,
73 cleanup, remediate, and provide for the productive reuse of
74 such properties. The Legislature further finds that such a
75 cleanup program will increase the overall acreage and
76 inventory of potential properties for redevelopment that would
77 otherwise remain unavailable while also providing sources of
78 revenue for payment of additional cleanup costs which may
79 arise after remediation, ~~while not relieving.~~ This finding
80 shall not be interpreted to relieve a "responsible person," ~~as~~
81 ~~defined by Section 22-30E-3,~~ from any liability for
82 administrative, civil, or criminal fines or penalties
83 otherwise authorized by law and imposed as a result of illegal
84 disposal of waste or for pollution of the land, air, or waters



85 of the state in violation of established laws and regulations
86 on an identified property.

87 (e) Therefore, the Legislature hereby establishes a
88 program, to be implemented, maintained, and administered by
89 the Alabama Department of Environmental Management, to
90 encourage the voluntary cleanup and the reuse and
91 redevelopment of such properties."

92 "§22-30E-3

93 Unless otherwise defined in this chapter, the
94 definition of all terms included in Section 22-30-3 shall be
95 applicable to this chapter. Other definitions as necessary may
96 be ~~promulgated~~ adopted as rules and regulations by the
97 department for further implementation of this chapter. Also,
98 as used in this chapter, the following words and terms have
99 the following meanings:

100 ~~(1) ALABAMA LAND RECYCLING AND ECONOMIC REDEVELOPMENT~~
101 ~~COMMISSION. That commission which is created in Section~~
102 ~~22-30E-12.~~

103 ~~(2)~~ (1) APPLICANT. An owner or operator or prospective
104 purchaser of a qualifying property seeking to participate in
105 the voluntary cleanup program established pursuant to this
106 chapter.

107 (2) BROWNFIELD REMEDIATION RESERVE FUND. The account or
108 fund authorized by Section 22-30E-5.

109 (3) BROWNFIELD REMEDIATION RESERVE FUND CONTRIBUTION.
110 An amount provided to the department by a responsible person
111 applicant pursuant to Section 22-30E-5 for deposit into and to
112 be used for the purposes of the Brownfield Remediation Reserve



113 Fund.

114 ~~(3)~~ (4) CERTIFICATE OF COMPLIANCE. A statement prepared
115 by a professional engineer or geologist licensed to practice
116 in the State of Alabama which certifies compliance with a
117 voluntary cleanup plan required by Section 22-30E-9.

118 ~~(4)~~ (5) CLEANUP. ~~For purposes of this chapter, cleanup~~
119 ~~means the~~ The cleaning up, remediation, control, or removal of
120 contaminants from the environment in accordance with an
121 approved voluntary cleanup plan.

122 ~~(5)~~ (6) COMMISSION. The Environmental Management
123 Commission as defined in ~~subdivision (4) of~~ Section 22-22A-3,
124 ~~unless the context clearly indicates a reference to the~~
125 ~~Alabama Land Recycling and Economic Redevelopment Commission.~~

126 ~~(6)~~ (7) DEPARTMENT. The Alabama Department of
127 Environmental Management.

128 ~~(7)~~ (8) ENVIRONMENT. The term includes the following, as
129 defined by the federal Comprehensive Environmental Response,
130 Compensation, and Liability Act, 42 U.S.C., ~~Section~~ § 9601, et
131 seq.:

132 a. The navigable waters, the waters of the contiguous
133 zone, and the ocean waters of which the natural resources are
134 under the exclusive management authority of the United States
135 under the Magnuson Fishery Conservation and Management Act.

136 b. Any other surface water, ground water, drinking
137 water supply, land surface or subsurface strata, or ambient
138 air within the State of Alabama or under the jurisdiction of
139 the State of Alabama.

140 ~~(8)~~ (9) FACILITY. The term is synonymous with



141 "property."

142 ~~(9)~~ (10) HAZARDOUS SUBSTANCE. Any substance listed on
143 the List of Hazardous Substances and Reportable Quantities,
144 codified as 40 C.F.R., Part 302, Table 302.4, in force and
145 effect on May 21, 2001, and subsequent revisions thereof, or
146 any substance listed on the List of Extremely Hazardous
147 Substances and Their Threshold Planning Quantities, codified
148 as 40 C.F.R., Part 355, Appendix A, in force and effect on May
149 21, 2001, and subsequent revisions thereof.

150 ~~(10)~~ (11) HAZARDOUS WASTE TREATMENT, STORAGE, OR
151 DISPOSAL FACILITY. Any property or facility which is intended
152 or used for the treatment, storage, or disposal of hazardous
153 waste subject to the permit requirements of Section 22-30-12.

154 ~~(11)~~ (12) LAND USE CONTROLS. Any restriction or control,
155 which serves to protect human health ~~and/or~~ the environment,
156 that limits use of ~~and/or~~ exposure to any portion of a
157 property, including water resources.

158 (13) LETTER OF CONCURRENCE WITH CONDITIONS. A letter
159 issued by the department to an applicant upon the department's
160 concurrence with the certificate of compliance that pertains
161 to the response action and contains a legal description.

162 ~~(12)~~ (14) OWNER or OPERATOR.

163 a. The term includes the following:

164 1. In the case of a facility, any person ~~owning~~ who is
165 the owner or ~~operating~~ operator of ~~such~~ the facility.

166 2. Any person who owned, operated, or otherwise
167 controlled activities at a facility immediately prior to title
168 or control of the facility being conveyed due to bankruptcy,



169 foreclosure, tax delinquency, abandonment, or similar means to
170 a unit of state or local government.

171 b. The term does not include a person who can show
172 evidence of ownership or a deed in lieu of foreclosure
173 primarily to protect that person's security interest in the
174 facility or who acts in good faith solely in a fiduciary
175 capacity and who did not actively participate in the
176 management, disposal, or release of hazardous wastes,
177 hazardous constituents, or hazardous substances from the
178 facility.

179 c. The term does not include a unit of state or local
180 government which acquired ownership or control involuntarily
181 through bankruptcy, tax delinquency, abandonment, or other
182 circumstances in which the government involuntarily acquires
183 title by virtue of its function as sovereign. However, this
184 exclusion shall not apply to any state or local government
185 which has caused or contributed to the release of hazardous
186 waste, hazardous constituents, or hazardous substances from
187 the facility.

188 (15) PERSON. Any individual, corporation, general or
189 limited partnership, limited liability company or partnership,
190 joint venture, association, trust, unincorporated
191 organization, or governmental authority.

192 (16) POST-REMEDATION COSTS. Includes all costs to
193 which all of the following apply:

194 a. Are incurred after issuance of the Letter of
195 Concurrence with Conditions for, or with respect to, the
196 investigation, assessment, cleanup, remediation, control, or



197 removal of contaminants resultant from, in whole or part, a
198 preexisting release at the qualifying property that were
199 identified and addressed in reports, assessments, or plans
200 approved by the department to demonstrate compliance with the
201 risk reduction standards from the qualifying property.

202 b. Are not incurred as a result of noncompliance with
203 the applicable response action or land use controls within the
204 environmental covenant by the applicant.

205 ~~(13)~~ (17) PREEXISTING RELEASE. A release, ~~as that term~~
206 ~~is defined in this section,~~ which occurred prior to an
207 applicant's application for a limitation of liability pursuant
208 to Section 22-30E-9.

209 ~~(14)~~ (18) PROPERTY. The term is synonymous with
210 "facility" and includes the following:

211 a. Any land, building, structure, installation,
212 equipment, pipe or pipeline, sewer or publicly owned treatment
213 works, pipe into a sewer or publicly owned treatment works,
214 well, pit, pond, lagoon, impoundment, ditch, landfill, or
215 storage container.

216 b. Any site or area where a hazardous waste, hazardous
217 constituent, hazardous substance, or petroleum product has
218 been deposited, stored, disposed of, placed, or has otherwise
219 come to be located.

220 ~~(15)~~ (19) PROSPECTIVE PURCHASER. A person who intends to
221 purchase a qualifying property.

222 ~~(16)~~ (20) QUALIFYING PROPERTY. A property which meets
223 the criteria of Section 22-30E-6.

224 ~~(17)~~ (21) RELEASE. Any intentional or unintentional act



225 or omission resulting in the spilling, leaking, pumping,
226 pouring, emitting, emptying, discharging, injecting, escaping,
227 leaching, dumping, or disposing into the environment,
228 including, without limitation, the abandonment or discarding
229 of barrels, containers, and other closed receptacles, of any
230 hazardous waste, hazardous constituent, petroleum products, or
231 hazardous substance.

232 ~~(18)~~ (22) REMEDIATION. This term is synonymous with
233 "cleanup."

234 (23) REMEDIATION COSTS. Includes all costs incurred
235 for, or in relation to, the investigation or cleanup of,
236 equitable relief relating to, or damages resultant from, in
237 whole or in part, either of the following:

238 a. A preexisting release at a qualifying property,
239 including any liability to the state or any other person for
240 the cleanup of the property under Chapters 22, 27, 30, 30A,
241 and 35.

242 b. A new release of a substance, constituent, or
243 material which had been a part of a preexisting release at the
244 property, unless the new release results from noncompliance
245 with an approved voluntary property assessment plan or
246 voluntary cleanup plan or from the negligent, wanton, willful,
247 or intentional conduct of the applicant.

248 ~~(19)~~ (24) RESPONSE ACTION. Those actions taken in the
249 event of a release or threatened release of a hazardous waste,
250 hazardous constituent, petroleum product, or hazardous
251 substance into the environment to remove, ~~or to~~ prevent, or
252 minimize the release of hazardous waste, hazardous



253 constituents, petroleum products, or hazardous substances so
254 that they do not pose a threat to public health or the
255 environment.

256 ~~(20)~~ (25) RESPONSIBLE PERSON. ~~This term generally means~~
257 Except as otherwise provided, any person who has contributed
258 or is contributing to a release of any hazardous waste,
259 hazardous constituent, or hazardous substance at a property.
260 This term specifically includes those persons described in
261 Sections 107(a)(1) through 107(a)(4) of the federal
262 Comprehensive Environmental Response, Compensation, and
263 Liability Act, 42 U.S.C., §_9601, et seq. This term
264 specifically excludes a responsible person applicant for those
265 matters addressed in the assessment plan and those persons
266 described in Section 107(b) of the federal Comprehensive
267 Environmental Response, Compensation, and Liability Act, 42
268 U.S.C., §_9601, et seq.

269 (26) RESPONSIBLE PERSON APPLICANT. Any owner or
270 operator who makes application and submits an assessment plan
271 for a qualifying property into the voluntary cleanup program
272 and who has been accepted by and whose assessment plan has
273 been approved by the department.

274 ~~(21)~~ (27) RISK ASSESSMENT. A written site specific
275 evaluation of the risks to human health and the environment
276 posed by conditions at a site.

277 ~~(22)~~ (28) VOLUNTARY CLEANUP PLAN. A voluntary cleanup
278 plan approved under Section 22-30E-9.

279 ~~(23)~~ (29) VOLUNTARY CLEANUP PROPERTIES INVENTORY. The
280 Voluntary Cleanup Properties Inventory compiled and updated by



281 the department pursuant to Section 22-30E-11.

282 ~~(24)~~ (30) VOLUNTARY PROPERTY ASSESSMENT PLAN. A
283 voluntary property assessment plan approved under Section
284 22-30E-9."

285 "§22-30E-4

286 (a) The department, acting through the commission, may
287 adopt, ~~promulgate~~, modify, amend, and repeal rules and
288 regulations to implement and enforce this chapter as necessary
289 to provide for the voluntary assessment, cleanup, reuse, and
290 redevelopment of qualifying properties. All rules and
291 regulations established pursuant to this chapter shall comply
292 with applicable provisions of the Alabama Administrative
293 Procedure Act, Section 41-22-11.

294 (b) The department's rules and regulations shall
295 include, at a minimum, the following:

296 (1) Rules and regulations establishing cleanup
297 standards.

298 (2) Rules and regulations governing procedures for
299 placement of properties on and removal of properties from the
300 Voluntary Cleanup Properties Inventory required under the
301 provisions of Section 22-30E-11.

302 (3) Rules and regulations governing procedures for the
303 filing in the deed records of the probate courts of
304 appropriate notice upon approval of a certificate of
305 compliance.

306 (4) Rules and regulations governing the maintenance and
307 retention of records pertaining to activities carried out
308 under this chapter.



309 (5) Rules and regulations providing for public notice
310 and participation and for meaningful community involvement in
311 the voluntary cleanup program.

312 (6) Rules and regulations for establishing the criteria
313 for conducting a voluntary assessment plan.

314 (7) Rules and regulations for establishing the criteria
315 for a responsible person applicant to participate in the
316 voluntary cleanup program and to be eligible for the
317 limitations of liability provided in this chapter.

318 (8) Rules and regulations with respect to the terms,
319 provisions, contributions, custody, and application of the
320 Brownfield Remediation Reserve Fund.

321 (9) Rules and regulations addressing the reporting of
322 preexisting contamination or a preexisting release detected
323 during the course of due diligence or site assessment
324 activities to the department, provided that any
325 release-reporting obligations shall be co-extensive with
326 federal release-reporting obligations.

327 ~~(7)~~ (10) Rules and regulations governing the issuance of
328 variances to the criteria for property qualification for the
329 voluntary cleanup program pursuant to ~~subsection (b) of~~
330 Section 22-30E-6 (b), and to the criteria for applicant
331 participation in the voluntary cleanup program pursuant to
332 ~~subsection (b) of~~ Section 22-30E-7 (b).

333 (c) (1) For purposes of subsection (b) (10), the
334 ~~a. The~~ department may grant a variance from the
335 eligibility requirements contained in ~~subsection (a) of~~
336 Section 22-30E-6 (a), ~~and/or subsection (a) of~~ Section



337 22-30E-7 (a), or both, only if the department finds that ~~such~~
338 the requirements would render a property ineligible for
339 cleanup under this chapter, that no other qualified party has
340 applied to participate in the voluntary cleanup program at the
341 subject property, and that:

342 ~~1. Such ineligibility~~ a. Ineligibility would result in
343 the continuation of a condition ~~which does~~ that poses or could
344 pose a threat to human health ~~and/or~~ the environment.

345 ~~2.b.~~ Compliance with an eligibility requirement will
346 not provide for a cost-effective response and the proposed
347 voluntary cleanup plan will attain cleanup standards that are
348 equivalent to those required under any otherwise applicable
349 requirement through the use of a department approved method or
350 approach.

351 ~~3.c.~~ In the case of an abandoned site, the department
352 would otherwise be required to perform the necessary cleanup
353 using funds from the Alabama Hazardous Substance Cleanup Fund,
354 as described in Section 22-30A-3, and the department would be
355 unable to recover the cost of the cleanup as provided in
356 Chapter 30A of this title.

357 ~~4.d.~~ In the case of a facility subject to the
358 permitting, closure, postclosure, ~~and/or~~ corrective action
359 requirements of Sections 22-30-12 and 22-30-16, the cleanup
360 will be conducted in a manner consistent with the requirements
361 of any applicable regulations and permits issued thereunder.
362 Participation in the voluntary cleanup program may be used to
363 speed up required investigation and cleanup at ~~such~~ sites, but
364 shall not serve to limit the applicability or enforcement of



365 any applicable requirements at ~~such~~ facilities.

366 (2) The department may place ~~such~~ conditions upon the
367 grant of a variance as it deems appropriate including, without
368 limitation, a provision relating to the time in which all or a
369 portion of the cleanup must be completed, and if the applicant
370 fails to comply with ~~such~~ the conditions the department may
371 modify or withdraw ~~such~~ the variance, with ~~such~~ the withdrawal
372 subject to the department's administrative appeals process.

373 ~~b.~~ (3) The department shall not grant any variance from
374 the criteria for qualification for limitation of liability, as
375 contained in Section 22-30E-8.

376 ~~(e)~~ (d) In establishing cleanup standards pursuant to
377 ~~subdivision (1) of subsection (b) of~~ this section:

378 (1) The department shall consider impacts to human
379 health and the environment. In establishing cleanup standards,
380 cleanup levels may be based on specific requirements of
381 relevant environmental laws or regulations (e.g., Clean Water
382 Act, Clean Air Act, TSCA, RCRA, CERCLA), derived using the
383 procedures outlined in Section 300.430(e)(2) of the National
384 Oil and Hazardous Substances Pollution Contingency Plan (40
385 C.F.R. Part 300), ~~and~~/or based upon the results of a
386 site-specific risk assessment.

387 (2) The department may set cleanup levels for all
388 hazardous constituents, a subset of hazardous wastes, or for
389 those hazardous constituents that the department has reason to
390 believe may have been released at the property.

391 (3) The department may set cleanup levels ~~which~~ that
392 reflect current and future use scenarios for the property as



393 follows:

394 a. A site shall be deemed to have met the requirements
395 for unrestricted use if the cleanup levels are derived in a
396 manner consistent with department or Environmental Protection
397 Agency guidelines for assessing human and environmental health
398 risks from hazardous constituents.

399 b. For sites that do not achieve the unrestricted use
400 classification, restrictions on site use may be applied to
401 achieve cleanup standards. Restrictions shall include, but not
402 be limited to, land use controls. The restrictions imposed
403 upon a site shall be media-specific and may vary according to
404 site-specific conditions."

405 "§22-30E-5

406 (a) In addition to the powers and duties specified in
407 this chapter and in ~~Sections 22-22A-1 to 22-22A-16, inclusive~~
408 Chapter 22A of Title 22, the department shall have and may
409 exercise the following powers and duties:

410 (1) To establish and collect fees from applicants for
411 participation in the voluntary cleanup program authorized by
412 this chapter, to be utilized for the administration of this
413 chapter.

414 (2) To deposit all Brownfield Remediation Reserve Fund
415 contributions into the Brownfield Remediation Reserve Fund
416 solely for the administration and purpose of this chapter as
417 further provided in subsection (d).

418 ~~(2)~~ (3) To make determinations, in accordance with
419 procedures and criteria enumerated in this chapter and rules
420 and regulations ~~promulgated~~ adopted pursuant to this chapter,



421 as to whether a proposed voluntary cleanup plan is sufficient
422 to bring the qualifying property into compliance with the
423 cleanup standards.

424 ~~(3)~~ (4) To monitor actions taken under approved
425 voluntary property assessment plans and voluntary cleanup
426 plans for the purpose of determining whether an applicant
427 remains eligible for limitation of liability and for the
428 purpose of determining whether to concur in a certificate of
429 compliance.

430 ~~(4)~~ (5) To approve voluntary property assessment plans.

431 ~~(5)~~ (6) To approve voluntary cleanup plans.

432 ~~(6)~~ (7) To concur with certifications of compliance.

433 ~~(7)~~ (8) To seek and to receive federal, state, and
434 local, legislative appropriations, or other funds, grants,
435 delegations, materials, and services applicable for the
436 programs and activities described ~~herein~~ in this section.

437 (9) To establish a separate, segregated account or fund
438 designated the Brownfield Remediation Reserve Fund.

439 (10) To deposit in the Brownfield Remediation Reserve
440 Fund all amounts received by the department from Brownfield
441 Remediation Reserve Fund contributions.

442 (11) To invest the amounts in the Brownfield
443 Remediation Reserve Fund as provided by law for state funds
444 and in a manner consistent with the purposes of the fund.

445 (12) To apply and use the amounts in the Brownfield
446 Remediation Reserve Fund, in the determination of the
447 department, provided the amount does not exceed four million
448 dollars (\$4,000,000) per property, to pay the post-remediation



449 costs with respect to any property in the state which was
450 cleaned up or remediated in accordance with the provisions of
451 this act after December 31, 2023, for which there is no
452 responsible person, or in instances where the established risk
453 reduction standards upon which a cleanup or remediation was
454 previously conducted have changed, without regard to whether
455 the amounts in the Brownfield Remediation Reserve Fund to be
456 used for the property were derived from, or in respect of, the
457 property. The Brownfield Remediation Reserve Fund may not be
458 used to pay or reimburse any costs incurred as a result of
459 noncompliance with the applicable response action or land use
460 controls within an environmental covenant.

461 (b) The powers and duties described in subsection (a)
462 may be exercised and performed by the department through such
463 duly authorized agents and employees as the director deems
464 necessary and proper.

465 (c) The obligations of the department for the
466 application of amounts in the Brownfield Remediation Reserve
467 Fund as provided in this chapter shall not constitute a work
468 of internal improvement, a loan of money, or an extension of
469 credit by the state to any private or corporate enterprise or
470 any individual, association, or corporation. To the extent
471 there are insufficient funds in the fund to be used to pay for
472 remediation costs or post-remediation costs, the department
473 shall have no obligations or responsibility to pay for or
474 conduct cleanup activities.

475 (d) The department shall collect from each responsible
476 person applicant a Brownfield Remediation Reserve Fund



477 contribution in the amount of five hundred dollars (\$500) per
478 acre for each qualifying property in addition to the voluntary
479 cleanup program application and oversight fees established by
480 the department.

481 (e) Any unexpended or unencumbered funds remaining in
482 the Brownfield Remediation Reserve Fund at the end of the
483 state fiscal year shall not revert to the State General Fund
484 but shall be retained in the fund for continued use in
485 accordance with this chapter."

486 "§22-30E-9

487 (a) Subject to Sections 22-30E-8 and 22-30E-10, upon
488 the first to occur of the department's approval of a voluntary
489 property assessment plan, approval of a voluntary cleanup
490 plan, or concurrence with the certification of compliance
491 described in this section, ~~whichever first occurs,~~ an
492 applicant who is not a responsible person, ~~as defined in~~
493 ~~Section 22-30E-3, at the~~ with respect to a qualifying
494 property, shall be fully discharged and released from any and
495 all liability ~~not be liable~~ to the state or any ~~third party~~
496 other person, including any successor in interest to the
497 applicant with respect to the qualifying property, for costs
498 incurred, including any remediation costs or post-remediation
499 costs. ~~in the investigation or cleanup of, or equitable relief~~
500 ~~relating to, or damages resultant from, in whole or in part, a~~
501 ~~preexisting release at the qualifying property, including, but~~
502 ~~not limited to, any liability to the state for the cleanup of~~
503 ~~the property under Chapters 22, 27, 30, 30A, and 35 of this~~
504 ~~title, or a new release of a substance, constituent, or~~



505 ~~material which had been part of a preexisting release at the~~
506 ~~property, unless such new release results from noncompliance~~
507 ~~with an approved voluntary property assessment plan or~~
508 ~~voluntary cleanup plan or from the negligent, wanton, willful,~~
509 ~~or intentional conduct of the applicant.~~

510 (b) (1) A voluntary property assessment plan submitted
511 by an applicant shall describe in sufficient detail those
512 actions planned to develop information necessary to perform a
513 risk assessment or identify applicable cleanup standards for
514 the qualifying property utilizing risk-based corrective action
515 principles through the appropriate implementation of
516 applicable response actions ~~and~~/or land use controls.

517 (2) A voluntary property assessment plan shall include
518 that a responsible person applicant for a qualifying property
519 may limit the assessment of contaminants and may limit the
520 delineation of potential contamination to the qualifying
521 property boundaries or portions thereof.

522 ~~(2)~~ (3) Upon the department's approval of the voluntary
523 property assessment plan, the applicant shall implement the
524 plan.

525 ~~(3)~~ (4) The department's approval of the voluntary
526 property assessment plan shall specify a time within which the
527 applicant shall initiate activities under the voluntary
528 property assessment plan. The department shall approve or
529 disapprove each complete plan within 60 days of receiving the
530 submittal. Failure to act within this time shall be deemed
531 approval.

532 ~~(4)~~ (5) If at any time the department determines



533 activities at the property are not being implemented in
534 accordance with the voluntary property assessment plan, the
535 department may, after a reasonable opportunity is given to
536 cure the deficiency, revoke the limitation of liability by
537 providing the applicant with written notification specifying
538 the basis for making ~~such~~ the determination and requesting
539 modification and resubmission of a modified plan or an
540 opportunity to address any deficiencies in implementing the
541 plan within a reasonable specified time. If at any time the
542 applicant or the department determines that any element of an
543 approved voluntary property assessment plan must be modified
544 in order to develop the information necessary to perform a
545 risk assessment or identify applicable cleanup standards for
546 the qualifying property, the applicant shall modify the
547 approved plan and obtain approval of the proposed
548 modification. If at any time the applicant determines that any
549 element of an approved voluntary property assessment plan must
550 be modified in order to terminate activities at the property
551 for any reason, the applicant shall notify the department and
552 obtain approval of the proposed modification which may be
553 withheld only if the requested modification to terminate
554 assessment activities would increase the risk to human health
555 and the environment posed by the conditions at the property.

556 ~~(5)~~ (6) An applicant shall, upon completion of those
557 activities specified in the voluntary property assessment
558 plan, submit to the department a report of the assessment and
559 findings from the assessment, which may include a
560 recommendation for applying cleanup standards to the property.



561 (c) (1) A voluntary cleanup plan submitted by an
562 applicant shall describe in sufficient detail those actions
563 planned to satisfy the cleanup standards for the qualifying
564 property.

565 (2) The applicant shall submit proof of financial
566 assurance, in ~~such~~ a form ~~as~~ specified by the department, of
567 his or her ability to implement the voluntary cleanup plan,
568 provided one form of acceptable assurance shall be to rely
569 solely on the assets of the applicant.

570 (3) Upon the department's approval of the voluntary
571 cleanup plan, the applicant shall ~~then~~ implement the plan. The
572 department's approval of a voluntary cleanup plan shall not ~~in~~
573 ~~any way~~ be construed as a guarantee, promise, or assurance
574 that the department will concur with the applicant's
575 certification of compliance with the cleanup standards.

576 (4) The department's approval of the voluntary cleanup
577 plan shall specify a time within which the applicant must
578 initiate activities under the voluntary cleanup plan. The
579 department shall approve or disapprove each properly submitted
580 plan within 60 days after completion of applicable
581 requirements established pursuant to ~~subdivision (5) of~~
582 ~~subsection (b) of~~ Section 22-30E-4 (b) (5). Failure to act
583 within this time shall be deemed approval.

584 (5) If at any time the department determines the
585 cleanup is not being implemented in accordance with the
586 voluntary cleanup plan, the department may, after a reasonable
587 opportunity is given to cure the deficiency, revoke the
588 limitation of liability by providing the applicant with



589 written notification specifying the basis for making ~~such~~ the
590 determination and requesting modification and resubmission of
591 a modified plan or an opportunity to address any deficiencies
592 in implementing the voluntary cleanup plan within a reasonable
593 specified time. If at any time the applicant determines that
594 any element of an approved voluntary cleanup plan must be
595 modified in order to achieve the applicable cleanup standards
596 for the qualifying property, the applicant shall notify the
597 department and obtain approval of the proposed modification.
598 If at any time the applicant determines that any element of an
599 approved voluntary cleanup plan must be modified in order to
600 terminate activities at the property for any reason, the
601 applicant shall notify the department and obtain approval of
602 the proposed modification which may be withheld only if the
603 requested modification would increase the risk to human health
604 and the environment posed by the conditions at the property.

605 (6) An applicant shall, upon completion of those
606 activities specified in the voluntary cleanup plan, submit to
607 the department a compliance status report certifying the
608 compliance of the qualifying property with the cleanup
609 standards and cleanup requirements. The qualifying property
610 shall be deemed in compliance with the cleanup standards upon
611 the applicant's receipt of the department's written
612 concurrence with the compliance status report.

613 (d) Upon the department's approval of the voluntary
614 property assessment plan or voluntary cleanup plan, the
615 property shall be listed on the Voluntary Cleanup Properties
616 Inventory as provided in Section 22-30E-11.



617 (e) For those properties that are cleaned up to
618 standards less stringent than those required for unrestricted
619 residential use, the property owner shall comply with the
620 requirements of subsection (b) of Section 22-30E-11 within 60
621 days of the submission of the certification of compliance.

622 (f) Subject to Sections 22-30E-8 and 22-30E-10, upon
623 the department's concurrence with the certification of
624 compliance described in this section with respect to a
625 qualifying property, an applicant shall be relieved of further
626 liability to the state for the cleanup of the property under
627 Chapters 22, 27, 30, 30A, and 35 of this title, for any
628 contamination identified and addressed in reports,
629 assessments, or plans submitted to and approved by the
630 department to demonstrate compliance with the risk-reduction
631 standards.

632 (g) Subject to Sections 22-30E-8 and 22-30E-10, upon
633 the first to occur of the department's approval of a voluntary
634 property assessment plan, approval of a voluntary cleanup
635 plan, or concurrence with the certification of compliance
636 described in this section, with respect to a qualifying
637 property, a responsible person applicant shall be fully
638 discharged and released from any and all liability to the
639 state or to any other person, including any successor in
640 interest to the applicant, with respect to the qualifying
641 property for post-remediation costs incurred in connection
642 with, equitable relief relating to, or damages resultant from,
643 in whole or in part, a preexisting release at the qualifying
644 property."



645 "§35-19-4

646 (a) An environmental covenant must meet all of the
647 following requirements:

648 (1) State that the instrument is an environmental
649 covenant executed pursuant to this chapter.

650 (2) Contain a legally sufficient description of the
651 real property subject to the covenant.

652 (3) Describe the activity and use limitations on the
653 real property.

654 (4) Identify every holder.

655 (5) Be signed by the director, every holder, and unless
656 waived by the agency, every owner of the fee simple of the
657 real property subject to the covenant.

658 (6) Identify the name and location of any
659 administrative record for the environmental response project
660 reflected in the environmental covenant.

661 (b) In addition to the information required by
662 subsection (a), an environmental covenant may contain other
663 information, restrictions, and requirements agreed to by the
664 persons who signed it, including any of the following:

665 (1) Requirements for notice following transfer of a
666 specified interest in, or concerning proposed changes in use
667 of, applications for building permits for, or proposals for
668 any site work affecting the contamination on, the property
669 subject to the covenant.

670 (2) Requirements for periodic reporting describing
671 compliance with the covenant.

672 (3) Rights of access to the property granted in



673 connection with implementation or enforcement of the covenant.

674 (4) A brief narrative description of the contamination
675 and remedy, including the contaminants of concern, the
676 pathways of exposure, limits on exposure, and the location and
677 extent of the contamination.

678 (5) An exculpatory provision that releases the grantor
679 from future claims by the grantee or the grantee's successor
680 in title that is consistent and enforceable under the laws of
681 this state.

682 ~~(5)~~ (6) Limitation on amendment or termination of the
683 covenant in addition to those contained in Sections 35-19-9
684 and 35-19-10.

685 ~~(6)~~ (7) Rights of the holder in addition to its right to
686 enforce the covenant pursuant to Section 35-19-11.

687 (c) In addition to other conditions for its approval of
688 an environmental covenant, the agency may require those
689 persons specified by the agency who have interests in the real
690 property to sign the covenant."

691 Section 2. Sections 22-30E-14, 22-30E-15, and 22-30E-16
692 are added to the Code of Alabama 1975, to read as follows:

693 §22-30E-14

694 (a) The owner or owners of any affected property may
695 deliver to any local government that has jurisdiction over the
696 affected property a written petition requesting the local
697 government to establish a brownfield redevelopment district,
698 as a separate public corporation for the purposes of this
699 chapter, for the affected property. The petition shall be
700 executed by the owners of all affected properties who elect to



701 be included within the district and shall set forth therein,
702 or by attachments, all of the following:

703 (1) The name and address of each owner.

704 (2) A confirmation of the ownership of the affected
705 properties to be included in the district.

706 (3) The designation of a person, who may or may not be
707 an owner of any affected property, to act as a representative
708 of the owners before the local government.

709 (4) A request that the local government adopt a
710 resolution approving the formation of the district as a public
711 corporation, approving the form of the articles of
712 incorporation of the district, and authorizing the
713 representative of the owners to form the district.

714 (5) A proposed form of the articles of incorporation of
715 the district which shall include:

716 a. The names of the owners of the affected properties
717 to be included within the district.

718 b. A statement that the district is organized pursuant
719 to this section by authority of the resolution adopted by the
720 local government, a copy of which shall be attached to the
721 articles of incorporation.

722 c. The name of the district which shall be in the form
723 of "The Brownfield Redevelopment District of the City (or
724 Town) of," including such words or numerals sufficient to
725 distinguish the district from other districts established by
726 the local government (e.g., "West," "1," or "I").

727 d. A description by any reasonable reference method,
728 including metes and bounds, tax assessment tracts, subdivision



729 lots, or deeds of the affected properties to be included in
730 the district.

731 e. The location of the principle office of the district
732 which shall be within the boundaries of the district and may
733 be the principle office of the local government.

734 f. The number and terms of office of the directors of
735 the district.

736 g. The period of the duration of the district, which
737 shall not exceed 30 years from the October 1 which next
738 succeeds the date of establishment of the district.

739 h. That the district shall be a nonprofit corporation
740 and no part of the net earnings which remain after payment of
741 expenses shall inure to the benefit of any person other than
742 the local government.

743 i. That upon dissolution of the district as provided by
744 law, title to any property then owned by the district shall
745 immediately vest in the local government.

746 (b) The governing body of the local government shall
747 consider the petition as soon as practicable after receipt
748 and, if the governing body determines that formation of the
749 district is in the public interest, shall adopt a resolution
750 upon original introduction of the petition for immediate
751 consideration at a meeting of the body. The resolution need
752 not be by unanimous consent and shall become effective
753 immediately without publication and shall include all of the
754 following:

755 (1) A legislative determination that the establishment
756 and incorporation of the district is necessary and in the



757 public interest.

758 (2) A legislative determination that all of the
759 affected properties to be included in the district are located
760 within the corporate limits or territorial boundaries of the
761 local government.

762 (3) The approval of the proposed form of the articles
763 of incorporation of the district as set forth in the petition.

764 (4) The authorization of the records clerk of the local
765 government to provide to the representative of the owners of
766 the affected property a certified copy of the resolution and
767 of the proceedings of the governing body of the local
768 government regarding the adoption of the resolution.

769 (5) The authorization of the representative of the
770 owners to proceed to establish, form, and incorporate the
771 district by recording the articles of incorporation in the
772 office of the judge of probate of the county in which the
773 principal office of the local government is located.

774 (c) (1) Upon receipt of the resolution and proceedings
775 of the governing body of the local government by the
776 representative of the owners of the affected property, the
777 representative shall complete, execute, and acknowledge the
778 articles of incorporation before an officer authorized by the
779 laws of the state to take acknowledgments of deeds and cause
780 the articles to be filed in the office directed by the
781 resolution.

782 (2) Upon filing the articles of incorporation, the
783 district shall come into existence as a public corporation
784 under the name provided in the articles and have all authority



785 and powers provided by this chapter. The recorded articles of
786 incorporation shall be conclusive evidence of the due, legal,
787 and valid incorporation of the district in all courts.

788 (d) A municipality or county may only establish a
789 brownfield redevelopment district that includes affected
790 property within the corporate limits or territorial boundaries
791 thereof, provided a county may include any affected property
792 within a municipality that is within the county so long as a
793 majority of the members of the governing body of the
794 municipality consent.

795 (e) A brownfield redevelopment district established
796 pursuant to this chapter shall constitute a governmental
797 entity as defined in Chapter 93 of Title 11 for purposes of
798 limiting the damages for which the district, and all of the
799 district's directors, officers, and agents may be liable.

800 (f) Upon establishing a brownfield redevelopment
801 district, the applicants of qualifying property located within
802 the district who meet the criteria provided in Section
803 22-30E-8 shall qualify for those limitations of liability
804 provided in Section 22-30E-9(a) and (g), provided that each
805 applicant of a qualifying property located within the district
806 shall covenant not to sue any other applicant within the
807 district commensurate with the release of liability provided
808 to each applicant.

809 §22-30E-15

810 (a) A brownfield redevelopment district formed and
811 incorporated pursuant to Section 22-30E-14 shall be governed
812 by a board of directors who shall have and exercise all power



813 and authority of the district.

814 (b) The board of directors shall be appointed by the
815 governing body of the establishing local government and
816 composed of the number of directors, provided not less than
817 three, and for the terms of office as provided for in the
818 articles of incorporation. Any officer of the local government
819 or owner of any affected property within the district,
820 regardless of residence, may serve as a director of the
821 district. The board shall elect a chair, vice chair, and
822 secretary-treasurer from the members of the board.

823 (c) All directors shall remain in office upon the
824 expiration of their term until a successor is appointed, and
825 may be impeached and removed from office as provided in
826 Section 175 of the Constitution of Alabama of 2022, and by the
827 general laws of the state for impeachment and removal of
828 officers mentioned in Section 175. A majority of the directors
829 shall constitute a quorum for the exercise of all authority
830 and powers of the district. Each director shall serve without
831 compensation.

832 §22-30E-16

833 A brownfield redevelopment district may do any of the
834 following:

835 (1) Adopt and amend bylaws not in conflict with the
836 articles of incorporation.

837 (2) Sue and be sued in civil action subject to the
838 limitations of liability provided by this chapter.

839 (3) At the direction of the local government which
840 established the district:



841 a. Provide for the administration, management, and
842 supervision of the activities and business of the district.

843 b. Acquire interests in property.

844 c. Incur indebtedness for purposes of this chapter on
845 behalf of the local government that is payable only from funds
846 provided by the local government to the district for such use.

847 (4) Make agreements and contracts, take all actions,
848 and do any and all things not otherwise prohibited by law to
849 accept, realize, and use any financial aid or other assistance
850 provided by any person or other entity.

851 (5) Take any other actions as necessary to carry out
852 the authority expressly given in this section.

853 Section 3. This act shall become effective on the first
854 day of the third month following its passage and approval by
855 the Governor, or its otherwise becoming law.