

HB378 ENGROSSED



1 CVB4JW-2
2 By Representative Brown
3 RFD: Economic Development and Tourism
4 First Read: 25-Apr-23
5
6 2023 Regular Session



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A BILL
TO BE ENTITLED
AN ACT

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

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

"§22-30E-2

(a) The Legislature finds that ~~rural and urban property~~ properties in Alabama may have areas ~~of~~ with actual or perceived contamination ~~at~~ levels that may not be subject to assessment or cleanup under applicable laws and regulations. The Legislature finds that this perception of contamination



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29 discourages the purchase and productive use of otherwise
30 usable properties. The Legislature further finds that the
31 voluntary assessment and ~~or~~ cleanup of such properties is in
32 the public interest.

33 (b) The Legislature finds that ~~industries and~~
34 ~~developers often give preference to~~ previously unused
35 greenfield sites are often selected for development over
36 previously used property due largely to concerns over the
37 financial and environmental liabilities which may be incurred
38 in acquiring such previously used property for reuse and
39 redevelopment. The Legislature further finds that the
40 appropriate reuse and redevelopment of properties which are
41 contaminated, or perceived to be contaminated, is in the
42 public interest.

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

49 (d) The Legislature finds that it is necessary to pass
50 legislation that provides a mechanism to implement a cleanup
51 program which encourages applicants to voluntarily assess,
52 cleanup, remediate, and provide for the productive reuse of
53 such properties. The Legislature further finds that such a
54 cleanup program will increase the overall acreage and
55 inventory of potential properties for redevelopment that would
56 otherwise remain unavailable while also providing sources of



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57 revenue for payment of additional cleanup costs which may
58 arise after remediation, while not relieving. This finding
59 shall not be interpreted to relieve a "responsible person," ~~as~~
60 ~~defined by Section 22-30E-3,~~ from any liability for
61 administrative, civil, or criminal fines or penalties
62 otherwise authorized by law and imposed as a result of illegal
63 disposal of waste or for pollution of the land, air, or waters
64 of the state in violation of established laws and regulations
65 on an identified property.

66 (e) Therefore, the Legislature hereby establishes a
67 program, to be implemented, maintained, and administered by
68 the Alabama Department of Environmental Management, to
69 encourage the voluntary cleanup and the reuse and
70 redevelopment of such properties."

71 "§22-30E-3

72 Unless otherwise defined in this chapter, the
73 definition of all terms included in Section 22-30-3 shall be
74 applicable to this chapter. Other definitions as necessary may
75 be ~~promulgated~~ adopted as rules and regulations by the
76 department for further implementation of this chapter. Also,
77 as used in this chapter, the following words and terms have
78 the following meanings:

79 ~~(1) ALABAMA LAND RECYCLING AND ECONOMIC REDEVELOPMENT~~
80 ~~COMMISSION. That commission which is created in Section~~
81 ~~22-30E-12.~~

82 ~~(2)~~ (1) APPLICANT. An owner or operator or prospective
83 purchaser of a qualifying property seeking to participate in
84 the voluntary cleanup program established pursuant to this



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85 chapter.

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

88 (3) BROWNFIELD REMEDIATION RESERVE FUND CONTRIBUTION.
89 An amount provided to the department by a responsible person
90 applicant pursuant to Section 22-30E-5 for deposit into and to
91 be used for the purposes of the Brownfield Remediation Reserve
92 Fund.

93 ~~(3)~~ (4) CERTIFICATE OF COMPLIANCE. A statement prepared
94 by a professional engineer or geologist licensed to practice
95 in the State of Alabama which certifies compliance with a
96 voluntary cleanup plan required by Section 22-30E-9.

97 ~~(4)~~ (5) CLEANUP. ~~For purposes of this chapter, cleanup~~
98 ~~means the~~ The cleaning up, remediation, control, or removal of
99 contaminants from the environment in accordance with an
100 approved voluntary cleanup plan.

101 ~~(5)~~ (6) COMMISSION. The Environmental Management
102 Commission as defined in ~~subdivision (4) of~~ Section 22-22A-3,
103 ~~unless the context clearly indicates a reference to the~~
104 ~~Alabama Land Recycling and Economic Redevelopment Commission.~~

105 ~~(6)~~ (7) DEPARTMENT. The Alabama Department of
106 Environmental Management.

107 ~~(7)~~ (8) ENVIRONMENT. The term includes the following, as
108 defined by the federal Comprehensive Environmental Response,
109 Compensation, and Liability Act, 42 U.S.C., ~~Section~~ § 9601, et
110 seq.:

111 a. The navigable waters, the waters of the contiguous
112 zone, and the ocean waters of which the natural resources are



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113 under the exclusive management authority of the United States
114 under the Magnuson Fishery Conservation and Management Act.

115 b. Any other surface water, ground water, drinking
116 water supply, land surface or subsurface strata, or ambient
117 air within the State of Alabama or under the jurisdiction of
118 the State of Alabama.

119 ~~(8)~~ (9) FACILITY. The term is synonymous with
120 "property."

121 ~~(9)~~ (10) HAZARDOUS SUBSTANCE. Any substance listed on
122 the List of Hazardous Substances and Reportable Quantities,
123 codified as 40 C.F.R., Part 302, Table 302.4, in force and
124 effect on May 21, 2001, and subsequent revisions thereof, or
125 any substance listed on the List of Extremely Hazardous
126 Substances and Their Threshold Planning Quantities, codified
127 as 40 C.F.R., Part 355, Appendix A, in force and effect on May
128 21, 2001, and subsequent revisions thereof.

129 ~~(10)~~ (11) HAZARDOUS WASTE TREATMENT, STORAGE, OR
130 DISPOSAL FACILITY. Any property or facility which is intended
131 or used for the treatment, storage, or disposal of hazardous
132 waste subject to the permit requirements of Section 22-30-12.

133 ~~(11)~~ (12) LAND USE CONTROLS. Any restriction or control,
134 which serves to protect human health ~~and~~/or the environment,
135 that limits use of ~~and~~/or exposure to any portion of a
136 property, including water resources.

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



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141 ~~(12)~~ (14) OWNER or OPERATOR.

142 a. The term includes the following:

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

145 2. Any person who owned, operated, or otherwise
146 controlled activities at a facility immediately prior to title
147 or control of the facility being conveyed due to bankruptcy,
148 foreclosure, tax delinquency, abandonment, or similar means to
149 a unit of state or local government.

150 b. The term does not include a person who can show
151 evidence of ownership or a deed in lieu of foreclosure
152 primarily to protect that person's security interest in the
153 facility or who acts in good faith solely in a fiduciary
154 capacity and who did not actively participate in the
155 management, disposal, or release of hazardous wastes,
156 hazardous constituents, or hazardous substances from the
157 facility.

158 c. The term does not include a unit of state or local
159 government which acquired ownership or control involuntarily
160 through bankruptcy, tax delinquency, abandonment, or other
161 circumstances in which the government involuntarily acquires
162 title by virtue of its function as sovereign. However, this
163 exclusion shall not apply to any state or local government
164 which has caused or contributed to the release of hazardous
165 waste, hazardous constituents, or hazardous substances from
166 the facility.

167 (15) PERSON. Any individual, corporation, general or
168 limited partnership, limited liability company or partnership,



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169 joint venture, association, trust, unincorporated
170 organization, or governmental authority.

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

173 a. Are incurred after issuance of the Letter of
174 Concurrence with Conditions for, or with respect to, the
175 investigation, assessment, cleanup, remediation, control, or
176 removal of contaminants resultant from, in whole or part, a
177 preexisting release at the qualifying property that were
178 identified and addressed in reports, assessments, or plans
179 approved by the department to demonstrate compliance with the
180 risk reduction standards from the qualifying property.

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

184 ~~(13)~~ (17) PREEXISTING RELEASE. A release, ~~as that term~~
185 ~~is defined in this section,~~ which occurred prior to an
186 applicant's application for a limitation of liability pursuant
187 to Section 22-30E-9.

188 ~~(14)~~ (18) PROPERTY. The term is synonymous with
189 "facility" and includes the following:

190 a. Any land, building, structure, installation,
191 equipment, pipe or pipeline, sewer or publicly owned treatment
192 works, pipe into a sewer or publicly owned treatment works,
193 well, pit, pond, lagoon, impoundment, ditch, landfill, or
194 storage container.

195 b. Any site or area where a hazardous waste, hazardous
196 constituent, hazardous substance, or petroleum product has



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197 been deposited, stored, disposed of, placed, or has otherwise
198 come to be located.

199 ~~(15)~~ (19) PROSPECTIVE PURCHASER. A person who intends to
200 purchase a qualifying property.

201 ~~(16)~~ (20) QUALIFYING PROPERTY. A property which meets
202 the criteria of Section 22-30E-6.

203 ~~(17)~~ (21) RELEASE. Any intentional or unintentional act
204 or omission resulting in the spilling, leaking, pumping,
205 pouring, emitting, emptying, discharging, injecting, escaping,
206 leaching, dumping, or disposing into the environment,
207 including, without limitation, the abandonment or discarding
208 of barrels, containers, and other closed receptacles, of any
209 hazardous waste, hazardous constituent, petroleum products, or
210 hazardous substance.

211 ~~(18)~~ (22) REMEDIATION. This term is synonymous with
212 "cleanup."

213 (23) REMEDIATION COSTS. Includes all costs incurred
214 for, or in relation to, the investigation or cleanup of,
215 equitable relief relating to, or damages resultant from, in
216 whole or in part, either of the following:

217 a. A preexisting release at a qualifying property,
218 including any liability to the state or any other person for
219 the cleanup of the property under Chapters 22, 27, 30, 30A,
220 and 35.

221 b. A new release of a substance, constituent, or
222 material which had been a part of a preexisting release at the
223 property, unless the new release results from noncompliance
224 with an approved voluntary property assessment plan or



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225 voluntary cleanup plan or from the negligent, wanton, willful,
226 or intentional conduct of the applicant.

227 ~~(19)~~ (24) RESPONSE ACTION. Those actions taken in the
228 event of a release or threatened release of a hazardous waste,
229 hazardous constituent, petroleum product, or hazardous
230 substance into the environment to remove, ~~or to~~ prevent, or
231 minimize the release of hazardous waste, hazardous
232 constituents, petroleum products, or hazardous substances so
233 that they do not pose a threat to public health or the
234 environment.

235 ~~(20)~~ (25) RESPONSIBLE PERSON. ~~This term generally means~~
236 Except as otherwise provided, any person who has contributed
237 or is contributing to a release of any hazardous waste,
238 hazardous constituent, or hazardous substance at a property.
239 This term specifically includes those persons described in
240 Sections 107(a)(1) through 107(a)(4) of the federal
241 Comprehensive Environmental Response, Compensation, and
242 Liability Act, 42 U.S.C., §_9601, et seq. This term
243 specifically excludes a responsible person applicant for those
244 matters addressed in the assessment plan and those persons
245 described in Section 107(b) of the federal Comprehensive
246 Environmental Response, Compensation, and Liability Act, 42
247 U.S.C., §_9601, et seq.

248 (26) RESPONSIBLE PERSON APPLICANT. Any owner or
249 operator who makes application and submits an assessment plan
250 for a qualifying property into the voluntary cleanup program
251 and who has been accepted by and whose assessment plan has
252 been approved by the department.



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253 ~~(21)~~ (27) RISK ASSESSMENT. A written site specific
254 evaluation of the risks to human health and the environment
255 posed by conditions at a site.

256 ~~(22)~~ (28) VOLUNTARY CLEANUP PLAN. A voluntary cleanup
257 plan approved under Section 22-30E-9.

258 ~~(23)~~ (29) VOLUNTARY CLEANUP PROPERTIES INVENTORY. The
259 Voluntary Cleanup Properties Inventory compiled and updated by
260 the department pursuant to Section 22-30E-11.

261 ~~(24)~~ (30) VOLUNTARY PROPERTY ASSESSMENT PLAN. A
262 voluntary property assessment plan approved under Section
263 22-30E-9."

264 "§22-30E-4

265 (a) The department, acting through the commission, may
266 adopt, ~~promulgate~~, modify, amend, and repeal rules and
267 regulations to implement and enforce this chapter as necessary
268 to provide for the voluntary assessment, cleanup, reuse, and
269 redevelopment of qualifying properties. All rules and
270 regulations established pursuant to this chapter shall comply
271 with applicable provisions of the Alabama Administrative
272 Procedure Act, Section 41-22-11.

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

275 (1) Rules and regulations establishing cleanup
276 standards.

277 (2) Rules and regulations governing procedures for
278 placement of properties on and removal of properties from the
279 Voluntary Cleanup Properties Inventory required under the
280 provisions of Section 22-30E-11.



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281 (3) Rules and regulations governing procedures for the
282 filing in the deed records of the probate courts of
283 appropriate notice upon approval of a certificate of
284 compliance.

285 (4) Rules and regulations governing the maintenance and
286 retention of records pertaining to activities carried out
287 under this chapter.

288 (5) Rules and regulations providing for public notice
289 and participation and for meaningful community involvement in
290 the voluntary cleanup program.

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

293 (7) Rules and regulations for establishing the criteria
294 for a responsible person applicant to participate in the
295 voluntary cleanup program and to be eligible for the
296 limitations of liability provided in this chapter.

297 (8) Rules and regulations with respect to the terms,
298 provisions, contributions, custody, and application of the
299 Brownfield Remediation Reserve Fund.

300 (9) Rules and regulations addressing the reporting of
301 preexisting contamination or a preexisting release detected
302 during the course of due diligence or site assessment
303 activities to the department, provided that any
304 release-reporting obligations shall be co-extensive with
305 federal release-reporting obligations.

306 ~~(7)~~ (10) Rules and regulations governing the issuance of
307 variances to the criteria for property qualification for the
308 voluntary cleanup program pursuant to ~~subsection (b) of~~



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309 Section 22-30E-6 (b), and to the criteria for applicant
310 participation in the voluntary cleanup program pursuant to
311 ~~subsection (b) of~~ Section 22-30E-7 (b).

312 (c) (1) For purposes of subsection (b) (10), the
313 ~~a.~~ The department may grant a variance from the
314 eligibility requirements contained in ~~subsection (a) of~~
315 Section 22-30E-6 (a), ~~and/or subsection (a) of~~ Section
316 22-30E-7 (a), ~~or both,~~ only if the department finds that ~~such~~
317 the requirements would render a property ineligible for
318 cleanup under this chapter, that no other qualified party has
319 applied to participate in the voluntary cleanup program at the
320 subject property, and that:

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

324 ~~2.b.~~ Compliance with an eligibility requirement will
325 not provide for a cost-effective response and the proposed
326 voluntary cleanup plan will attain cleanup standards that are
327 equivalent to those required under any otherwise applicable
328 requirement through the use of a department approved method or
329 approach.

330 ~~3.c.~~ In the case of an abandoned site, the department
331 would otherwise be required to perform the necessary cleanup
332 using funds from the Alabama Hazardous Substance Cleanup Fund,
333 as described in Section 22-30A-3, and the department would be
334 unable to recover the cost of the cleanup as provided in
335 Chapter 30A of this title.

336 ~~4.d.~~ In the case of a facility subject to the



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337 permitting, closure, postclosure, ~~and/or~~ corrective action
338 requirements of Sections 22-30-12 and 22-30-16, the cleanup
339 will be conducted in a manner consistent with the requirements
340 of any applicable regulations and permits issued thereunder.
341 Participation in the voluntary cleanup program may be used to
342 speed up required investigation and cleanup at ~~such~~ sites, but
343 shall not serve to limit the applicability or enforcement of
344 any applicable requirements at ~~such~~ facilities.

345 (2) The department may place ~~such~~ conditions upon the
346 grant of a variance as it deems appropriate including, without
347 limitation, a provision relating to the time in which all or a
348 portion of the cleanup must be completed, and if the applicant
349 fails to comply with ~~such~~ the conditions the department may
350 modify or withdraw ~~such~~ the variance, with ~~such~~ the withdrawal
351 subject to the department's administrative appeals process.

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

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

357 (1) The department shall consider impacts to human
358 health and the environment. In establishing cleanup standards,
359 cleanup levels may be based on specific requirements of
360 relevant environmental laws or regulations (e.g., Clean Water
361 Act, Clean Air Act, TSCA, RCRA, CERCLA), derived using the
362 procedures outlined in Section 300.430(e)(2) of the National
363 Oil and Hazardous Substances Pollution Contingency Plan (40
364 C.F.R. Part 300), ~~and/or~~ based upon the results of a



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365 site-specific risk assessment.

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

370 (3) The department may set cleanup levels ~~which~~ that
371 reflect current and future use scenarios for the property as
372 follows:

373 a. A site shall be deemed to have met the requirements
374 for unrestricted use if the cleanup levels are derived in a
375 manner consistent with department or Environmental Protection
376 Agency guidelines for assessing human and environmental health
377 risks from hazardous constituents.

378 b. For sites that do not achieve the unrestricted use
379 classification, restrictions on site use may be applied to
380 achieve cleanup standards. Restrictions shall include, but not
381 be limited to, land use controls. The restrictions imposed
382 upon a site shall be media-specific and may vary according to
383 site-specific conditions."

384 "§22-30E-5

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

389 (1) To establish and collect fees from applicants for
390 participation in the voluntary cleanup program authorized by
391 this chapter, to be utilized for the administration of this
392 chapter.



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393 (2) To deposit all Brownfield Remediation Reserve Fund
394 contributions into the Brownfield Remediation Reserve Fund
395 solely for the administration and purpose of this chapter as
396 further provided in subsection (d).

397 ~~(2)~~ (3) To make determinations, in accordance with
398 procedures and criteria enumerated in this chapter and rules
399 and regulations ~~promulgated~~ adopted pursuant to this chapter,
400 as to whether a proposed voluntary cleanup plan is sufficient
401 to bring the qualifying property into compliance with the
402 cleanup standards.

403 ~~(3)~~ (4) To monitor actions taken under approved
404 voluntary property assessment plans and voluntary cleanup
405 plans for the purpose of determining whether an applicant
406 remains eligible for limitation of liability and for the
407 purpose of determining whether to concur in a certificate of
408 compliance.

409 ~~(4)~~ (5) To approve voluntary property assessment plans.

410 ~~(5)~~ (6) To approve voluntary cleanup plans.

411 ~~(6)~~ (7) To concur with certifications of compliance.

412 ~~(7)~~ (8) To seek and to receive federal, state, and
413 local, legislative appropriations, or other funds, grants,
414 delegations, materials, and services applicable for the
415 programs and activities described ~~herein~~ in this section.

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

418 (10) To deposit in the Brownfield Remediation Reserve
419 Fund all amounts received by the department from Brownfield
420 Remediation Reserve Fund contributions.



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

424 (12) To apply and use the amounts in the Brownfield
425 Remediation Reserve Fund, in the determination of the
426 department, provided the amount does not exceed four million
427 dollars (\$4,000,000) per property, to pay the post-remediation
428 costs with respect to any property in the state which was
429 cleaned up or remediated in accordance with the provisions of
430 this act after December 31, 2023, for which there is no
431 responsible person, or in instances where the established risk
432 reduction standards upon which a cleanup or remediation was
433 previously conducted have changed, without regard to whether
434 the amounts in the Brownfield Remediation Reserve Fund to be
435 used for the property were derived from, or in respect of, the
436 property. The Brownfield Remediation Reserve Fund may not be
437 used to pay or reimburse any costs incurred as a result of
438 noncompliance with the applicable response action or land use
439 controls within an environmental covenant.

440 (b) The powers and duties described in subsection (a)
441 may be exercised and performed by the department through such
442 duly authorized agents and employees as the director deems
443 necessary and proper.

444 (c) The obligations of the department for the
445 application of amounts in the Brownfield Remediation Reserve
446 Fund as provided in this chapter shall not constitute a work
447 of internal improvement, a loan of money, or an extension of
448 credit by the state to any private or corporate enterprise or



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449 any individual, association, or corporation. To the extent
450 there are insufficient funds in the fund to be used to pay for
451 remediation costs or post-remediation costs, the department
452 shall have no obligations or responsibility to pay for or
453 conduct cleanup activities.

454 (d) The department shall collect from each responsible
455 person applicant a Brownfield Remediation Reserve Fund
456 contribution in the amount of five hundred dollars (\$500) per
457 acre for each qualifying property in addition to the voluntary
458 cleanup program application and oversight fees established by
459 the department.

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

465 "§22-30E-9

466 (a) Subject to Sections 22-30E-8 and 22-30E-10, upon
467 the first to occur of the department's approval of a voluntary
468 property assessment plan, approval of a voluntary cleanup
469 plan, or concurrence with the certification of compliance
470 described in this section, ~~whichever first occurs,~~ an
471 applicant who is not a responsible person, ~~as defined in~~
472 ~~Section 22-30E-3, at the~~ with respect to a qualifying
473 property, shall be fully discharged and released from any and
474 all liability ~~not be liable~~ to the state or any ~~third party~~
475 other person, including any successor in interest to the
476 applicant with respect to the qualifying property, for costs



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477 incurred, including any remediation costs or post-remediation
478 costs. ~~in the investigation or cleanup of, or equitable relief~~
479 ~~relating to, or damages resultant from, in whole or in part, a~~
480 ~~preexisting release at the qualifying property, including, but~~
481 ~~not limited to, any liability to the state for the cleanup of~~
482 ~~the property under Chapters 22, 27, 30, 30A, and 35 of this~~
483 ~~title, or a new release of a substance, constituent, or~~
484 ~~material which had been part of a preexisting release at the~~
485 ~~property, unless such new release results from noncompliance~~
486 ~~with an approved voluntary property assessment plan or~~
487 ~~voluntary cleanup plan or from the negligent, wanton, willful,~~
488 ~~or intentional conduct of the applicant.~~

489 (b) (1) A voluntary property assessment plan submitted
490 by an applicant shall describe in sufficient detail those
491 actions planned to develop information necessary to perform a
492 risk assessment or identify applicable cleanup standards for
493 the qualifying property utilizing risk-based corrective action
494 principles through the appropriate implementation of
495 applicable response actions ~~and/or~~ land use controls.

496 (2) A voluntary property assessment plan shall include
497 that a responsible person applicant for a qualifying property
498 may limit the assessment of contaminants and may limit the
499 delineation of potential contamination to the qualifying
500 property boundaries or portions thereof.

501 ~~(2)~~ (3) Upon the department's approval of the voluntary
502 property assessment plan, the applicant shall implement the
503 plan.

504 ~~(3)~~ (4) The department's approval of the voluntary



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505 property assessment plan shall specify a time within which the
506 applicant shall initiate activities under the voluntary
507 property assessment plan. The department shall approve or
508 disapprove each complete plan within 60 days of receiving the
509 submittal. Failure to act within this time shall be deemed
510 approval.

511 ~~(4)~~ (5) If at any time the department determines
512 activities at the property are not being implemented in
513 accordance with the voluntary property assessment plan, the
514 department may, after a reasonable opportunity is given to
515 cure the deficiency, revoke the limitation of liability by
516 providing the applicant with written notification specifying
517 the basis for making ~~such~~ the determination and requesting
518 modification and resubmission of a modified plan or an
519 opportunity to address any deficiencies in implementing the
520 plan within a reasonable specified time. If at any time the
521 applicant or the department determines that any element of an
522 approved voluntary property assessment plan must be modified
523 in order to develop the information necessary to perform a
524 risk assessment or identify applicable cleanup standards for
525 the qualifying property, the applicant shall modify the
526 approved plan and obtain approval of the proposed
527 modification. If at any time the applicant determines that any
528 element of an approved voluntary property assessment plan must
529 be modified in order to terminate activities at the property
530 for any reason, the applicant shall notify the department and
531 obtain approval of the proposed modification which may be
532 withheld only if the requested modification to terminate



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533 assessment activities would increase the risk to human health
534 and the environment posed by the conditions at the property.

535 ~~(5)~~ (6) An applicant shall, upon completion of those
536 activities specified in the voluntary property assessment
537 plan, submit to the department a report of the assessment and
538 findings from the assessment, which may include a
539 recommendation for applying cleanup standards to the property.

540 (c) (1) A voluntary cleanup plan submitted by an
541 applicant shall describe in sufficient detail those actions
542 planned to satisfy the cleanup standards for the qualifying
543 property.

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

549 (3) Upon the department's approval of the voluntary
550 cleanup plan, the applicant shall ~~then~~ implement the plan. The
551 department's approval of a voluntary cleanup plan shall not ~~in~~
552 ~~any way~~ be construed as a guarantee, promise, or assurance
553 that the department will concur with the applicant's
554 certification of compliance with the cleanup standards.

555 (4) The department's approval of the voluntary cleanup
556 plan shall specify a time within which the applicant must
557 initiate activities under the voluntary cleanup plan. The
558 department shall approve or disapprove each properly submitted
559 plan within 60 days after completion of applicable
560 requirements established pursuant to ~~subdivision (5) of~~



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561 ~~subsection (b) of~~ Section 22-30E-4 (b) (5). Failure to act
562 within this time shall be deemed approval.

563 (5) If at any time the department determines the
564 cleanup is not being implemented in accordance with the
565 voluntary cleanup plan, the department may, after a reasonable
566 opportunity is given to cure the deficiency, revoke the
567 limitation of liability by providing the applicant with
568 written notification specifying the basis for making ~~such~~ the
569 determination and requesting modification and resubmission of
570 a modified plan or an opportunity to address any deficiencies
571 in implementing the voluntary cleanup plan within a reasonable
572 specified time. If at any time the applicant determines that
573 any element of an approved voluntary cleanup plan must be
574 modified in order to achieve the applicable cleanup standards
575 for the qualifying property, the applicant shall notify the
576 department and obtain approval of the proposed modification.
577 If at any time the applicant determines that any element of an
578 approved voluntary cleanup plan must be modified in order to
579 terminate activities at the property for any reason, the
580 applicant shall notify the department and obtain approval of
581 the proposed modification which may be withheld only if the
582 requested modification would increase the risk to human health
583 and the environment posed by the conditions at the property.

584 (6) An applicant shall, upon completion of those
585 activities specified in the voluntary cleanup plan, submit to
586 the department a compliance status report certifying the
587 compliance of the qualifying property with the cleanup
588 standards and cleanup requirements. The qualifying property



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589 shall be deemed in compliance with the cleanup standards upon
590 the applicant's receipt of the department's written
591 concurrence with the compliance status report.

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

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

601 (f) Subject to Sections 22-30E-8 and 22-30E-10, upon
602 the department's concurrence with the certification of
603 compliance described in this section with respect to a
604 qualifying property, an applicant shall be relieved of further
605 liability to the state for the cleanup of the property under
606 Chapters 22, 27, 30, 30A, and 35 of this title, for any
607 contamination identified and addressed in reports,
608 assessments, or plans submitted to and approved by the
609 department to demonstrate compliance with the risk-reduction
610 standards.

611 (g) Subject to Sections 22-30E-8 and 22-30E-10, upon
612 the first to occur of the department's approval of a voluntary
613 property assessment plan, approval of a voluntary cleanup
614 plan, or concurrence with the certification of compliance
615 described in this section, with respect to a qualifying
616 property, a responsible person applicant shall be fully



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617 discharged and released from any and all liability to the
618 state or to any other person, including any successor in
619 interest to the applicant, with respect to the qualifying
620 property for post-remediation costs incurred in connection
621 with, equitable relief relating to, or damages resultant from,
622 in whole or in part, a preexisting release at the qualifying
623 property."

624 "§35-19-4

625 (a) An environmental covenant must meet all of the
626 following requirements:

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

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

631 (3) Describe the activity and use limitations on the
632 real property.

633 (4) Identify every holder.

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

637 (6) Identify the name and location of any
638 administrative record for the environmental response project
639 reflected in the environmental covenant.

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

644 (1) Requirements for notice following transfer of a



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645 specified interest in, or concerning proposed changes in use
646 of, applications for building permits for, or proposals for
647 any site work affecting the contamination on, the property
648 subject to the covenant.

649 (2) Requirements for periodic reporting describing
650 compliance with the covenant.

651 (3) Rights of access to the property granted in
652 connection with implementation or enforcement of the covenant.

653 (4) A brief narrative description of the contamination
654 and remedy, including the contaminants of concern, the
655 pathways of exposure, limits on exposure, and the location and
656 extent of the contamination.

657 (5) An exculpatory provision that releases the grantor
658 from future claims by the grantee or the grantee's successor
659 in title that is consistent and enforceable under the laws of
660 this state.

661 ~~(5)~~ (6) Limitation on amendment or termination of the
662 covenant in addition to those contained in Sections 35-19-9
663 and 35-19-10.

664 ~~(6)~~ (7) Rights of the holder in addition to its right to
665 enforce the covenant pursuant to Section 35-19-11.

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

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

672 §22-30E-14



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673 (a) The owner or owners of any affected property may
674 deliver to any local government that has jurisdiction over the
675 affected property a written petition requesting the local
676 government to establish a brownfield redevelopment district,
677 as a separate public corporation for the purposes of this
678 chapter, for the affected property. The petition shall be
679 executed by the owners of all affected properties who elect to
680 be included within the district and shall set forth therein,
681 or by attachments, all of the following:

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

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

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

688 (4) A request that the local government adopt a
689 resolution approving the formation of the district as a public
690 corporation, approving the form of the articles of
691 incorporation of the district, and authorizing the
692 representative of the owners to form the district.

693 (5) A proposed form of the articles of incorporation of
694 the district which shall include:

695 a. The names of the owners of the affected properties
696 to be included within the district.

697 b. A statement that the district is organized pursuant
698 to this section by authority of the resolution adopted by the
699 local government, a copy of which shall be attached to the
700 articles of incorporation.



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

706 d. A description by any reasonable reference method,
707 including metes and bounds, tax assessment tracts, subdivision
708 lots, or deeds of the affected properties to be included in
709 the district.

710 e. The location of the principle office of the district
711 which shall be within the boundaries of the district and may
712 be the principle office of the local government.

713 f. The number and terms of office of the directors of
714 the district.

715 g. The period of the duration of the district, which
716 shall not exceed 30 years from the October 1 which next
717 succeeds the date of establishment of the district.

718 h. That the district shall be a nonprofit corporation
719 and no part of the net earnings which remain after payment of
720 expenses shall inure to the benefit of any person other than
721 the local government.

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

725 (b) The governing body of the local government shall
726 consider the petition as soon as practicable after receipt
727 and, if the governing body determines that formation of the
728 district is in the public interest, shall adopt a resolution



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729 upon original introduction of the petition for immediate
730 consideration at a meeting of the body. The resolution need
731 not be by unanimous consent and shall become effective
732 immediately without publication and shall include all of the
733 following:

734 (1) A legislative determination that the establishment
735 and incorporation of the district is necessary and in the
736 public interest.

737 (2) A legislative determination that all of the
738 affected properties to be included in the district are located
739 within the corporate limits or territorial boundaries of the
740 local government.

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

743 (4) The authorization of the records clerk of the local
744 government to provide to the representative of the owners of
745 the affected property a certified copy of the resolution and
746 of the proceedings of the governing body of the local
747 government regarding the adoption of the resolution.

748 (5) The authorization of the representative of the
749 owners to proceed to establish, form, and incorporate the
750 district by recording the articles of incorporation in the
751 office of the judge of probate of the county in which the
752 principal office of the local government is located.

753 (c) (1) Upon receipt of the resolution and proceedings
754 of the governing body of the local government by the
755 representative of the owners of the affected property, the
756 representative shall complete, execute, and acknowledge the



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757 articles of incorporation before an officer authorized by the
758 laws of the state to take acknowledgments of deeds and cause
759 the articles to be filed in the office directed by the
760 resolution.

761 (2) Upon filing the articles of incorporation, the
762 district shall come into existence as a public corporation
763 under the name provided in the articles and have all authority
764 and powers provided by this chapter. The recorded articles of
765 incorporation shall be conclusive evidence of the due, legal,
766 and valid incorporation of the district in all courts.

767 (d) A municipality or county may only establish a
768 brownfield redevelopment district that includes affected
769 property within the corporate limits or territorial boundaries
770 thereof, provided a county may include any affected property
771 within a municipality that is within the county so long as a
772 majority of the members of the governing body of the
773 municipality consent.

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

779 (f) Upon establishing a brownfield redevelopment
780 district, the applicants of qualifying property located within
781 the district who meet the criteria provided in Section
782 22-30E-8 shall qualify for those limitations of liability
783 provided in Section 22-30E-9(a) and (g), provided that each
784 applicant of a qualifying property located within the district



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785 shall covenant not to sue any other applicant within the
786 district commensurate with the release of liability provided
787 to each applicant.

788 §22-30E-15

789 (a) A brownfield redevelopment district formed and
790 incorporated pursuant to Section 22-30E-14 shall be governed
791 by a board of directors who shall have and exercise all power
792 and authority of the district.

793 (b) The board of directors shall be appointed by the
794 governing body of the establishing local government and
795 composed of the number of directors, provided not less than
796 three, and for the terms of office as provided for in the
797 articles of incorporation. Any officer of the local government
798 or owner of any affected property within the district,
799 regardless of residence, may serve as a director of the
800 district. The board shall elect a chair, vice chair, and
801 secretary-treasurer from the members of the board.

802 (c) All directors shall remain in office upon the
803 expiration of their term until a successor is appointed, and
804 may be impeached and removed from office as provided in
805 Section 175 of the Constitution of Alabama of 2022, and by the
806 general laws of the state for impeachment and removal of
807 officers mentioned in Section 175. A majority of the directors
808 shall constitute a quorum for the exercise of all authority
809 and powers of the district. Each director shall serve without
810 compensation.

811 §22-30E-16

812 A brownfield redevelopment district may do any of the



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813 following:

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

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

818 (3) At the direction of the local government which
819 established the district:

820 a. Provide for the administration, management, and
821 supervision of the activities and business of the district.

822 b. Acquire interests in property.

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

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

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

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



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House of Representatives

838 Read for the first time and referred25-Apr-23
839 to the House of Representatives
840 committee on Economic Development
841 and Tourism
842
843 Read for the second time and placed03-May-23
844 on the calendar:
845 0 amendments
846
847 Read for the third time and passed09-May-23
848 as amended
849 Yeas 92
850 Nays 0
851 Abstains 11

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John Treadwell
Clerk