

**HB378 ENROLLED**



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



## HB378 Enrolled

1 Enrolled, An Act,

2

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

13 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

14 Section 1. Sections 22-30E-2, 22-30E-3, 22-30E-4,  
15 22-30E-5, 22-30E-9, and 35-19-4, Code of Alabama 1975, are  
16 amended to read as follows:

17 "§22-30E-2

18 (a) The Legislature finds that ~~rural and urban property~~  
19 properties in Alabama may have areas ~~of~~ with actual or  
20 perceived contamination ~~at~~ levels that may not be subject to  
21 assessment or cleanup under applicable laws and regulations.  
22 The Legislature finds that this perception of contamination  
23 discourages the purchase and productive use of otherwise  
24 usable properties. The Legislature further finds that the  
25 voluntary assessment and ~~or~~ cleanup of such properties is in  
26 the public interest.

27 (b) The Legislature finds that ~~industries and~~  
28 ~~developers often give preference to~~ previously unused



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29 greenfield sites are often selected for development over  
30 previously used property due largely to concerns over the  
31 financial and environmental liabilities which may be incurred  
32 in acquiring such previously used property for reuse and  
33 redevelopment. The Legislature further finds that the  
34 appropriate reuse and redevelopment of properties which are  
35 contaminated, or perceived to be contaminated, is in the  
36 public interest.

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

43 (d) The Legislature finds that it is necessary to pass  
44 legislation that provides a mechanism to implement a cleanup  
45 program which encourages applicants to voluntarily assess,  
46 cleanup, remediate, and provide for the productive reuse of  
47 such properties. The Legislature further finds that such a  
48 cleanup program will increase the overall acreage and  
49 inventory of potential properties for redevelopment that would  
50 otherwise remain unavailable while also providing sources of  
51 revenue for payment of additional cleanup costs which may  
52 arise after remediation, ~~while not relieving.~~ This finding  
53 shall not be interpreted to relieve a "responsible person," ~~as~~  
54 ~~defined by Section 22-30E-3,~~ from any liability for  
55 administrative, civil, or criminal fines or penalties  
56 otherwise authorized by law and imposed as a result of illegal



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57 disposal of waste or for pollution of the land, air, or waters  
58 of the state in violation of established laws and regulations  
59 on an identified property.

60 (e) Therefore, the Legislature hereby establishes a  
61 program, to be implemented, maintained, and administered by  
62 the Alabama Department of Environmental Management, to  
63 encourage the voluntary cleanup and the reuse and  
64 redevelopment of such properties."

65 "§22-30E-3

66 Unless otherwise defined in this chapter, the  
67 definition of all terms included in Section 22-30-3 shall be  
68 applicable to this chapter. Other definitions as necessary may  
69 be ~~promulgated~~ adopted as rules and regulations by the  
70 department for further implementation of this chapter. Also,  
71 as used in this chapter, the following words and terms have  
72 the following meanings:

73 ~~(1) ALABAMA LAND RECYCLING AND ECONOMIC REDEVELOPMENT~~  
74 ~~COMMISSION. That commission which is created in Section~~  
75 ~~22-30E-12.~~

76 ~~(2)~~ (1) APPLICANT. An owner or operator or prospective  
77 purchaser of a qualifying property seeking to participate in  
78 the voluntary cleanup program established pursuant to this  
79 chapter.

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

82 (3) BROWNFIELD REMEDIATION RESERVE FUND CONTRIBUTION.  
83 An amount provided to the department by a responsible person  
84 applicant pursuant to Section 22-30E-5 for deposit into and to



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85 be used for the purposes of the Brownfield Remediation Reserve  
86 Fund.

87 ~~(3)~~ (4) CERTIFICATE OF COMPLIANCE. A statement prepared  
88 by a professional engineer or geologist licensed to practice  
89 in the State of Alabama which certifies compliance with a  
90 voluntary cleanup plan required by Section 22-30E-9.

91 ~~(4)~~ (5) CLEANUP. ~~For purposes of this chapter, cleanup~~  
92 ~~means the~~ The cleaning up, remediation, control, or removal of  
93 contaminants from the environment in accordance with an  
94 approved voluntary cleanup plan.

95 ~~(5)~~ (6) COMMISSION. The Environmental Management  
96 Commission as defined in ~~subdivision (4) of~~ Section 22-22A-3,  
97 ~~unless the context clearly indicates a reference to the~~  
98 ~~Alabama Land Recycling and Economic Redevelopment Commission.~~

99 ~~(6)~~ (7) DEPARTMENT. The Alabama Department of  
100 Environmental Management.

101 ~~(7)~~ (8) ENVIRONMENT. The term includes the following, as  
102 defined by the federal Comprehensive Environmental Response,  
103 Compensation, and Liability Act, 42 U.S.C., ~~Section~~ § 9601, et  
104 seq.:

105 a. The navigable waters, the waters of the contiguous  
106 zone, and the ocean waters of which the natural resources are  
107 under the exclusive management authority of the United States  
108 under the Magnuson Fishery Conservation and Management Act.

109 b. Any other surface water, ground water, drinking  
110 water supply, land surface or subsurface strata, or ambient  
111 air within the State of Alabama or under the jurisdiction of  
112 the State of Alabama.



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113           ~~(8)~~ (9) FACILITY. The term is synonymous with  
114 "property."

115           ~~(9)~~ (10) HAZARDOUS SUBSTANCE. Any substance listed on  
116 the List of Hazardous Substances and Reportable Quantities,  
117 codified as 40 C.F.R., Part 302, Table 302.4, in force and  
118 effect on May 21, 2001, and subsequent revisions thereof, or  
119 any substance listed on the List of Extremely Hazardous  
120 Substances and Their Threshold Planning Quantities, codified  
121 as 40 C.F.R., Part 355, Appendix A, in force and effect on May  
122 21, 2001, and subsequent revisions thereof.

123           ~~(10)~~ (11) HAZARDOUS WASTE TREATMENT, STORAGE, OR  
124 DISPOSAL FACILITY. Any property or facility which is intended  
125 or used for the treatment, storage, or disposal of hazardous  
126 waste subject to the permit requirements of Section 22-30-12.

127           ~~(11)~~ (12) LAND USE CONTROLS. Any restriction or control,  
128 which serves to protect human health ~~and~~/or the environment,  
129 that limits use of ~~and~~/or exposure to any portion of a  
130 property, including water resources.

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

135           ~~(12)~~ (14) OWNER or OPERATOR.

136           a. The term includes the following:

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

139           2. Any person who owned, operated, or otherwise  
140 controlled activities at a facility immediately prior to title



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141 or control of the facility being conveyed due to bankruptcy,  
142 foreclosure, tax delinquency, abandonment, or similar means to  
143 a unit of state or local government.

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

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

161 (15) PERSON. Any individual, corporation, general or  
162 limited partnership, limited liability company or partnership,  
163 joint venture, association, trust, unincorporated  
164 organization, or governmental authority.

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

167 a. Are incurred after issuance of the Letter of  
168 Concurrence with Conditions for, or with respect to, the



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169 investigation, assessment, cleanup, remediation, control, or  
170 removal of contaminants resultant from, in whole or part, a  
171 preexisting release at the qualifying property that were  
172 identified and addressed in reports, assessments, or plans  
173 approved by the department to demonstrate compliance with the  
174 risk reduction standards from the qualifying property.

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

178 ~~(13)~~ (17) PREEXISTING RELEASE. A release, ~~as that term~~  
179 ~~is defined in this section,~~ which occurred prior to an  
180 applicant's application for a limitation of liability pursuant  
181 to Section 22-30E-9.

182 ~~(14)~~ (18) PROPERTY. The term is synonymous with  
183 "facility" and includes the following:

184 a. Any land, building, structure, installation,  
185 equipment, pipe or pipeline, sewer or publicly owned treatment  
186 works, pipe into a sewer or publicly owned treatment works,  
187 well, pit, pond, lagoon, impoundment, ditch, landfill, or  
188 storage container.

189 b. Any site or area where a hazardous waste, hazardous  
190 constituent, hazardous substance, or petroleum product has  
191 been deposited, stored, disposed of, placed, or has otherwise  
192 come to be located.

193 ~~(15)~~ (19) PROSPECTIVE PURCHASER. A person who intends to  
194 purchase a qualifying property.

195 ~~(16)~~ (20) QUALIFYING PROPERTY. A property which meets  
196 the criteria of Section 22-30E-6.





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197           ~~(17)~~ (21) RELEASE. Any intentional or unintentional act  
198 or omission resulting in the spilling, leaking, pumping,  
199 pouring, emitting, emptying, discharging, injecting, escaping,  
200 leaching, dumping, or disposing into the environment,  
201 including, without limitation, the abandonment or discarding  
202 of barrels, containers, and other closed receptacles, of any  
203 hazardous waste, hazardous constituent, petroleum products, or  
204 hazardous substance.

205           ~~(18)~~ (22) REMEDIATION. This term is synonymous with  
206 "cleanup."

207           (23) REMEDIATION COSTS. Includes all costs incurred  
208 for, or in relation to, the investigation or cleanup of,  
209 equitable relief relating to, or damages resultant from, in  
210 whole or in part, either of the following:

211           a. A preexisting release at a qualifying property,  
212 including any liability to the state or any other person for  
213 the cleanup of the property under Chapters 22, 27, 30, 30A,  
214 and 35.

215           b. A new release of a substance, constituent, or  
216 material which had been a part of a preexisting release at the  
217 property, unless the new release results from noncompliance  
218 with an approved voluntary property assessment plan or  
219 voluntary cleanup plan or from the negligent, wanton, willful,  
220 or intentional conduct of the applicant.

221           ~~(19)~~ (24) RESPONSE ACTION. Those actions taken in the  
222 event of a release or threatened release of a hazardous waste,  
223 hazardous constituent, petroleum product, or hazardous  
224 substance into the environment to remove, ~~or to~~ prevent, or



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225 minimize the release of hazardous waste, hazardous  
226 constituents, petroleum products, or hazardous substances so  
227 that they do not pose a threat to public health or the  
228 environment.

229 ~~(20)~~ (25) RESPONSIBLE PERSON. ~~This term generally means~~  
230 Except as otherwise provided, any person who has contributed  
231 or is contributing to a release of any hazardous waste,  
232 hazardous constituent, or hazardous substance at a property.  
233 This term specifically includes those persons described in  
234 Sections 107(a)(1) through 107(a)(4) of the federal  
235 Comprehensive Environmental Response, Compensation, and  
236 Liability Act, 42 U.S.C., § 9601, et seq. This term  
237 specifically excludes a responsible person applicant for those  
238 matters addressed in the assessment plan and those persons  
239 described in Section 107(b) of the federal Comprehensive  
240 Environmental Response, Compensation, and Liability Act, 42  
241 U.S.C., § 9601, et seq.

242 (26) RESPONSIBLE PERSON APPLICANT. Any owner or  
243 operator who makes application and submits an assessment plan  
244 for a qualifying property into the voluntary cleanup program  
245 and who has been accepted by and whose assessment plan has  
246 been approved by the department.

247 ~~(21)~~ (27) RISK ASSESSMENT. A written site specific  
248 evaluation of the risks to human health and the environment  
249 posed by conditions at a site.

250 ~~(22)~~ (28) VOLUNTARY CLEANUP PLAN. A voluntary cleanup  
251 plan approved under Section 22-30E-9.

252 ~~(23)~~ (29) VOLUNTARY CLEANUP PROPERTIES INVENTORY. The



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253 Voluntary Cleanup Properties Inventory compiled and updated by  
254 the department pursuant to Section 22-30E-11.

255 ~~(24)~~ (30) VOLUNTARY PROPERTY ASSESSMENT PLAN. A  
256 voluntary property assessment plan approved under Section  
257 22-30E-9."

258 "§22-30E-4

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

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

269 (1) Rules and regulations establishing cleanup  
270 standards.

271 (2) Rules and regulations governing procedures for  
272 placement of properties on and removal of properties from the  
273 Voluntary Cleanup Properties Inventory required under the  
274 provisions of Section 22-30E-11.

275 (3) Rules and regulations governing procedures for the  
276 filing in the deed records of the probate courts of  
277 appropriate notice upon approval of a certificate of  
278 compliance.

279 (4) Rules and regulations governing the maintenance and  
280 retention of records pertaining to activities carried out



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281 under this chapter.

282 (5) Rules and regulations providing for public notice  
283 and participation and for meaningful community involvement in  
284 the voluntary cleanup program.

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

287 (7) Rules and regulations for establishing the criteria  
288 for a responsible person applicant to participate in the  
289 voluntary cleanup program and to be eligible for the  
290 limitations of liability provided in this chapter.

291 (8) Rules and regulations with respect to the terms,  
292 provisions, contributions, custody, and application of the  
293 Brownfield Remediation Reserve Fund.

294 (9) Rules and regulations addressing the reporting of  
295 preexisting contamination or a preexisting release detected  
296 during the course of due diligence or site assessment  
297 activities to the department, provided that any  
298 release-reporting obligations shall be co-extensive with  
299 federal release-reporting obligations.

300 ~~(7)~~ (10) Rules and regulations governing the issuance of  
301 variances to the criteria for property qualification for the  
302 voluntary cleanup program pursuant to ~~subsection (b) of~~  
303 Section 22-30E-6 (b), and to the criteria for applicant  
304 participation in the voluntary cleanup program pursuant to  
305 ~~subsection (b) of~~ Section 22-30E-7 (b).

306 (c) (1) For purposes of subsection (b) (10), the  
307 ~~a. The~~ department may grant a variance from the  
308 eligibility requirements contained in ~~subsection (a) of~~



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309 Section 22-30E-6 (a), ~~and/or subsection (a) of~~ Section  
310 22-30E-7 (a), or both, only if the department finds that ~~such~~  
311 the requirements would render a property ineligible for  
312 cleanup under this chapter, that no other qualified party has  
313 applied to participate in the voluntary cleanup program at the  
314 subject property, and that:

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

318 ~~2.b.~~ Compliance with an eligibility requirement will  
319 not provide for a cost-effective response and the proposed  
320 voluntary cleanup plan will attain cleanup standards that are  
321 equivalent to those required under any otherwise applicable  
322 requirement through the use of a department approved method or  
323 approach.

324 ~~3.c.~~ In the case of an abandoned site, the department  
325 would otherwise be required to perform the necessary cleanup  
326 using funds from the Alabama Hazardous Substance Cleanup Fund,  
327 as described in Section 22-30A-3, and the department would be  
328 unable to recover the cost of the cleanup as provided in  
329 Chapter 30A of this title.

330 ~~4.d.~~ In the case of a facility subject to the  
331 permitting, closure, postclosure, ~~and/or~~ corrective action  
332 requirements of Sections 22-30-12 and 22-30-16, the cleanup  
333 will be conducted in a manner consistent with the requirements  
334 of any applicable regulations and permits issued thereunder.  
335 Participation in the voluntary cleanup program may be used to  
336 speed up required investigation and cleanup at ~~such~~ sites, but



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337 shall not serve to limit the applicability or enforcement of  
338 any applicable requirements at ~~such~~ facilities.

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

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

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

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

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

364 (3) The department may set cleanup levels ~~which~~ that



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365 reflect current and future use scenarios for the property as  
366 follows:

367 a. A site shall be deemed to have met the requirements  
368 for unrestricted use if the cleanup levels are derived in a  
369 manner consistent with department or Environmental Protection  
370 Agency guidelines for assessing human and environmental health  
371 risks from hazardous constituents.

372 b. For sites that do not achieve the unrestricted use  
373 classification, restrictions on site use may be applied to  
374 achieve cleanup standards. Restrictions shall include, but not  
375 be limited to, land use controls. The restrictions imposed  
376 upon a site shall be media-specific and may vary according to  
377 site-specific conditions."

378 "§22-30E-5

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

383 (1) To establish and collect fees from applicants for  
384 participation in the voluntary cleanup program authorized by  
385 this chapter, to be utilized for the administration of this  
386 chapter.

387 (2) To deposit all Brownfield Remediation Reserve Fund  
388 contributions into the Brownfield Remediation Reserve Fund  
389 solely for the administration and purpose of this chapter as  
390 further provided in subsection (d).

391 ~~(2)~~ (3) To make determinations, in accordance with  
392 procedures and criteria enumerated in this chapter and rules



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393 and regulations ~~promulgated~~ adopted pursuant to this chapter,  
394 as to whether a proposed voluntary cleanup plan is sufficient  
395 to bring the qualifying property into compliance with the  
396 cleanup standards.

397 ~~(3)~~ (4) To monitor actions taken under approved  
398 voluntary property assessment plans and voluntary cleanup  
399 plans for the purpose of determining whether an applicant  
400 remains eligible for limitation of liability and for the  
401 purpose of determining whether to concur in a certificate of  
402 compliance.

403 ~~(4)~~ (5) To approve voluntary property assessment plans.

404 ~~(5)~~ (6) To approve voluntary cleanup plans.

405 ~~(6)~~ (7) To concur with certifications of compliance.

406 ~~(7)~~ (8) To seek and to receive federal, state, and  
407 local, legislative appropriations, or other funds, grants,  
408 delegations, materials, and services applicable for the  
409 programs and activities described ~~herein~~ in this section.

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

412 (10) To deposit in the Brownfield Remediation Reserve  
413 Fund all amounts received by the department from Brownfield  
414 Remediation Reserve Fund contributions.

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

418 (12) To apply and use the amounts in the Brownfield  
419 Remediation Reserve Fund, in the determination of the  
420 department, provided the amount does not exceed four million





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

434 (b) The powers and duties described in subsection (a)  
435 may be exercised and performed by the department through such  
436 duly authorized agents and employees as the director deems  
437 necessary and proper.

438 (c) The obligations of the department for the  
439 application of amounts in the Brownfield Remediation Reserve  
440 Fund as provided in this chapter shall not constitute a work  
441 of internal improvement, a loan of money, or an extension of  
442 credit by the state to any private or corporate enterprise or  
443 any individual, association, or corporation. To the extent  
444 there are insufficient funds in the fund to be used to pay for  
445 remediation costs or post-remediation costs, the department  
446 shall have no obligations or responsibility to pay for or  
447 conduct cleanup activities.

448 (d) The department shall collect from each responsible



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449 person applicant a Brownfield Remediation Reserve Fund  
450 contribution in the amount of five hundred dollars (\$500) per  
451 acre for each qualifying property in addition to the voluntary  
452 cleanup program application and oversight fees established by  
453 the department.

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

459 "§22-30E-9

460 (a) Subject to Sections 22-30E-8 and 22-30E-10, upon  
461 the first to occur of the department's approval of a voluntary  
462 property assessment plan, approval of a voluntary cleanup  
463 plan, or concurrence with the certification of compliance  
464 described in this section, ~~whichever first occurs,~~ an  
465 applicant who is not a responsible person, ~~as defined in~~  
466 ~~Section 22-30E-3, at the~~ with respect to a qualifying  
467 property, shall be fully discharged and released from any and  
468 all liability ~~not be liable~~ to the state or any ~~third party~~  
469 other person, including any successor in interest to the  
470 applicant with respect to the qualifying property, for costs  
471 ~~incurred,~~ including any remediation costs or post-remediation  
472 costs. ~~in the investigation or cleanup of, or equitable relief~~  
473 ~~relating to, or damages resultant from, in whole or in part, a~~  
474 ~~preexisting release at the qualifying property, including, but~~  
475 ~~not limited to, any liability to the state for the cleanup of~~  
476 ~~the property under Chapters 22, 27, 30, 30A, and 35 of this~~



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477 ~~title, or a new release of a substance, constituent, or~~  
478 ~~material which had been part of a preexisting release at the~~  
479 ~~property, unless such new release results from noncompliance~~  
480 ~~with an approved voluntary property assessment plan or~~  
481 ~~voluntary cleanup plan or from the negligent, wanton, willful,~~  
482 ~~or intentional conduct of the applicant.~~

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

490 (2) A voluntary property assessment plan shall include  
491 that a responsible person applicant for a qualifying property  
492 may limit the assessment of contaminants and may limit the  
493 delineation of potential contamination to the qualifying  
494 property boundaries or portions thereof.

495 ~~(2)~~ (3) Upon the department's approval of the voluntary  
496 property assessment plan, the applicant shall implement the  
497 plan.

498 ~~(3)~~ (4) The department's approval of the voluntary  
499 property assessment plan shall specify a time within which the  
500 applicant shall initiate activities under the voluntary  
501 property assessment plan. The department shall approve or  
502 disapprove each complete plan within 60 days of receiving the  
503 submittal. Failure to act within this time shall be deemed  
504 approval.



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505           ~~(4)~~ (5) If at any time the department determines  
506 activities at the property are not being implemented in  
507 accordance with the voluntary property assessment plan, the  
508 department may, after a reasonable opportunity is given to  
509 cure the deficiency, revoke the limitation of liability by  
510 providing the applicant with written notification specifying  
511 the basis for making ~~such~~ the determination and requesting  
512 modification and resubmission of a modified plan or an  
513 opportunity to address any deficiencies in implementing the  
514 plan within a reasonable specified time. If at any time the  
515 applicant or the department determines that any element of an  
516 approved voluntary property assessment plan must be modified  
517 in order to develop the information necessary to perform a  
518 risk assessment or identify applicable cleanup standards for  
519 the qualifying property, the applicant shall modify the  
520 approved plan and obtain approval of the proposed  
521 modification. If at any time the applicant determines that any  
522 element of an approved voluntary property assessment plan must  
523 be modified in order to terminate activities at the property  
524 for any reason, the applicant shall notify the department and  
525 obtain approval of the proposed modification which may be  
526 withheld only if the requested modification to terminate  
527 assessment activities would increase the risk to human health  
528 and the environment posed by the conditions at the property.

529           ~~(5)~~ (6) An applicant shall, upon completion of those  
530 activities specified in the voluntary property assessment  
531 plan, submit to the department a report of the assessment and  
532 findings from the assessment, which may include a



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533 recommendation for applying cleanup standards to the property.

534 (c) (1) A voluntary cleanup plan submitted by an  
535 applicant shall describe in sufficient detail those actions  
536 planned to satisfy the cleanup standards for the qualifying  
537 property.

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

543 (3) Upon the department's approval of the voluntary  
544 cleanup plan, the applicant shall ~~then~~ implement the plan. The  
545 department's approval of a voluntary cleanup plan shall not ~~in~~  
546 ~~any way~~ be construed as a guarantee, promise, or assurance  
547 that the department will concur with the applicant's  
548 certification of compliance with the cleanup standards.

549 (4) The department's approval of the voluntary cleanup  
550 plan shall specify a time within which the applicant must  
551 initiate activities under the voluntary cleanup plan. The  
552 department shall approve or disapprove each properly submitted  
553 plan within 60 days after completion of applicable  
554 requirements established pursuant to ~~subdivision (5) of~~  
555 ~~subsection (b) of~~ Section 22-30E-4 (b) (5). Failure to act  
556 within this time shall be deemed approval.

557 (5) If at any time the department determines the  
558 cleanup is not being implemented in accordance with the  
559 voluntary cleanup plan, the department may, after a reasonable  
560 opportunity is given to cure the deficiency, revoke the



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561 limitation of liability by providing the applicant with  
562 written notification specifying the basis for making ~~such~~ the  
563 determination and requesting modification and resubmission of  
564 a modified plan or an opportunity to address any deficiencies  
565 in implementing the voluntary cleanup plan within a reasonable  
566 specified time. If at any time the applicant determines that  
567 any element of an approved voluntary cleanup plan must be  
568 modified in order to achieve the applicable cleanup standards  
569 for the qualifying property, the applicant shall notify the  
570 department and obtain approval of the proposed modification.  
571 If at any time the applicant determines that any element of an  
572 approved voluntary cleanup plan must be modified in order to  
573 terminate activities at the property for any reason, the  
574 applicant shall notify the department and obtain approval of  
575 the proposed modification which may be withheld only if the  
576 requested modification would increase the risk to human health  
577 and the environment posed by the conditions at the property.

578 (6) An applicant shall, upon completion of those  
579 activities specified in the voluntary cleanup plan, submit to  
580 the department a compliance status report certifying the  
581 compliance of the qualifying property with the cleanup  
582 standards and cleanup requirements. The qualifying property  
583 shall be deemed in compliance with the cleanup standards upon  
584 the applicant's receipt of the department's written  
585 concurrence with the compliance status report.

586 (d) Upon the department's approval of the voluntary  
587 property assessment plan or voluntary cleanup plan, the  
588 property shall be listed on the Voluntary Cleanup Properties



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589 Inventory as provided in Section 22-30E-11.

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

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

605 (g) Subject to Sections 22-30E-8 and 22-30E-10, upon  
606 the first to occur of the department's approval of a voluntary  
607 property assessment plan, approval of a voluntary cleanup  
608 plan, or concurrence with the certification of compliance  
609 described in this section, with respect to a qualifying  
610 property, a responsible person applicant shall be fully  
611 discharged and released from any and all liability to the  
612 state or to any other person, including any successor in  
613 interest to the applicant, with respect to the qualifying  
614 property for post-remediation costs incurred in connection  
615 with, equitable relief relating to, or damages resultant from,  
616 in whole or in part, a preexisting release at the qualifying



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617 [property.](#)"

618 "§35-19-4

619 (a) An environmental covenant must meet all of the  
620 following requirements:

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

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

625 (3) Describe the activity and use limitations on the  
626 real property.

627 (4) Identify every holder.

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

631 (6) Identify the name and location of any  
632 administrative record for the environmental response project  
633 reflected in the environmental covenant.

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

638 (1) Requirements for notice following transfer of a  
639 specified interest in, or concerning proposed changes in use  
640 of, applications for building permits for, or proposals for  
641 any site work affecting the contamination on, the property  
642 subject to the covenant.

643 (2) Requirements for periodic reporting describing  
644 compliance with the covenant.





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

647 (4) A brief narrative description of the contamination  
648 and remedy, including the contaminants of concern, the  
649 pathways of exposure, limits on exposure, and the location and  
650 extent of the contamination.

651 (5) An exculpatory provision that releases the grantor  
652 from future claims by the grantee or the grantee's successor  
653 in title that is consistent and enforceable under the laws of  
654 this state.

655 ~~(5)~~ (6) Limitation on amendment or termination of the  
656 covenant in addition to those contained in Sections 35-19-9  
657 and 35-19-10.

658 ~~(6)~~ (7) Rights of the holder in addition to its right to  
659 enforce the covenant pursuant to Section 35-19-11.

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

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

666 §22-30E-14

667 (a) The owner or owners of any affected property may  
668 deliver to any local government that has jurisdiction over the  
669 affected property a written petition requesting the local  
670 government to establish a brownfield redevelopment district,  
671 as a separate public corporation for the purposes of this  
672 chapter, for the affected property. The petition shall be



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673 executed by the owners of all affected properties who elect to  
674 be included within the district and shall set forth therein,  
675 or by attachments, all of the following:

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

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

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

682 (4) A request that the local government adopt a  
683 resolution approving the formation of the district as a public  
684 corporation, approving the form of the articles of  
685 incorporation of the district, and authorizing the  
686 representative of the owners to form the district.

687 (5) A proposed form of the articles of incorporation of  
688 the district which shall include:

689 a. The names of the owners of the affected properties  
690 to be included within the district.

691 b. A statement that the district is organized pursuant  
692 to this section by authority of the resolution adopted by the  
693 local government, a copy of which shall be attached to the  
694 articles of incorporation.

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

700 d. A description by any reasonable reference method,



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701 including metes and bounds, tax assessment tracts, subdivision  
702 lots, or deeds of the affected properties to be included in  
703 the district.

704 e. The location of the principle office of the district  
705 which shall be within the boundaries of the district and may  
706 be the principle office of the local government.

707 f. The number and terms of office of the directors of  
708 the district.

709 g. The period of the duration of the district, which  
710 shall not exceed 30 years from the October 1 which next  
711 succeeds the date of establishment of the district.

712 h. That the district shall be a nonprofit corporation  
713 and no part of the net earnings which remain after payment of  
714 expenses shall inure to the benefit of any person other than  
715 the local government.

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

719 (b) The governing body of the local government shall  
720 consider the petition as soon as practicable after receipt  
721 and, if the governing body determines that formation of the  
722 district is in the public interest, shall adopt a resolution  
723 upon original introduction of the petition for immediate  
724 consideration at a meeting of the body. The resolution need  
725 not be by unanimous consent and shall become effective  
726 immediately without publication and shall include all of the  
727 following:

728 (1) A legislative determination that the establishment



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729 and incorporation of the district is necessary and in the  
730 public interest.

731 (2) A legislative determination that all of the  
732 affected properties to be included in the district are located  
733 within the corporate limits or territorial boundaries of the  
734 local government.

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

737 (4) The authorization of the records clerk of the local  
738 government to provide to the representative of the owners of  
739 the affected property a certified copy of the resolution and  
740 of the proceedings of the governing body of the local  
741 government regarding the adoption of the resolution.

742 (5) The authorization of the representative of the  
743 owners to proceed to establish, form, and incorporate the  
744 district by recording the articles of incorporation in the  
745 office of the judge of probate of the county in which the  
746 principal office of the local government is located.

747 (c) (1) Upon receipt of the resolution and proceedings  
748 of the governing body of the local government by the  
749 representative of the owners of the affected property, the  
750 representative shall complete, execute, and acknowledge the  
751 articles of incorporation before an officer authorized by the  
752 laws of the state to take acknowledgments of deeds and cause  
753 the articles to be filed in the office directed by the  
754 resolution.

755 (2) Upon filing the articles of incorporation, the  
756 district shall come into existence as a public corporation



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757 under the name provided in the articles and have all authority  
758 and powers provided by this chapter. The recorded articles of  
759 incorporation shall be conclusive evidence of the due, legal,  
760 and valid incorporation of the district in all courts.

761 (d) A municipality or county may only establish a  
762 brownfield redevelopment district that includes affected  
763 property within the corporate limits or territorial boundaries  
764 thereof, provided a county may include any affected property  
765 within a municipality that is within the county so long as a  
766 majority of the members of the governing body of the  
767 municipality consent.

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

773 (f) Upon establishing a brownfield redevelopment  
774 district, the applicants of qualifying property located within  
775 the district who meet the criteria provided in Section  
776 22-30E-8 shall qualify for those limitations of liability  
777 provided in Section 22-30E-9(a) and (g), provided that each  
778 applicant of a qualifying property located within the district  
779 shall covenant not to sue any other applicant within the  
780 district commensurate with the release of liability provided  
781 to each applicant.

782 §22-30E-15

783 (a) A brownfield redevelopment district formed and  
784 incorporated pursuant to Section 22-30E-14 shall be governed



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785 by a board of directors who shall have and exercise all power  
786 and authority of the district.

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

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

805 §22-30E-16

806 A brownfield redevelopment district may do any of the  
807 following:

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

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

812 (3) At the direction of the local government which



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813 established the district:

814           a. Provide for the administration, management, and  
815 supervision of the activities and business of the district.

816           b. Acquire interests in property.

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

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

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

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



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Speaker of the House of Representatives

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President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in and was passed by the House 09-May-23, as amended.

John Treadwell  
Clerk

Senate

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**24-May-23**

Passed